

Remarks of Dr. Douglass Cassel, Notre Dame Law School
Candidate (United States), Inter-American Commission on Human Rights
Special Meeting of the OAS Permanent Council
May 5, 2017

Good morning, buenos días, Mr. President, Distinguished Ambassadors and members of Missions to the OAS, Esteemed Fellow candidates, and respected observers from civil society.

Thank you for the privilege of appearing before you. I commend the Permanent Council for this initiative, which I applaud as a positive measure of transparency.

I ask your permission, Mr. President, and the indulgence of all present, to permit me to say a few introductory words in Spanish, and then to complete my remarks in English. I extend special appreciation to the delegations of Brazil, Canada and Haiti for their understanding that, while I do read Portuguese and French, they might find my oral expression in those languages less than enjoyable.

Es por supuesto un gran honor ser postulado para ser miembro de la Comisión Interamericana. Pero el honor no es, ni debe ser, el motivo para buscar un cargo tan importante. Mi motivo para ser Comisionado es, simple y sencillo, que tengo compromiso firme y de corazón con la protección y promoción de los derechos humanos. Ello se demuestra por décadas de dedicarme a la investigación, el litigio, la enseñanza, las publicaciones académicas, las consultorías, las negociaciones, las capacitaciones y la promoción en materia de derechos humanos. Espero que mi experiencia con el manejo de casos ante la Comisión y la Corte Interamericana, así como mi conocimiento de la realidad de las situaciones de los derechos humanos y de los sistemas de justicia en diversos países del hemisferio, mi conocimiento del Derecho Internacional de los Derechos Humanos – y en especial del Derecho Interamericano -- y mi experiencia diplomática en reuniones de la OEA y en negociaciones de paz de alto nivel, me preparen para dar un aporte positivo a las posibilidades de la Comisión de contribuir a un mayor respeto para los derechos humanos en nuestros países.

And now to English. I wish to address briefly four points:

First, while the Commission must process cases, that is not its only mission. The case system is a means, not an end. The goal of the Commission is to contribute to the highest possible level of respect for human rights throughout the hemisphere.

How best can the Commission pursue that goal? Broadly speaking, there are two main ways. One is the case system. The Commission must act independently and impartially to process cases in a manner which is fair to all parties. Its process must be efficient, legally well-grounded, and ultimately effective in protecting human rights.

The Commission's case system is essential. There is no other effective alternative for cases where States have not met their human rights responsibilities. Even if the

Commission's role is only subsidiary to the primary responsibility of States, this complementary role remains vital for the protection of human rights.

However, the Commission must not lose sight of its other primary role, what I will call its proactive functions. The Commission is empowered to communicate and consult with OAS member States and to assist them to achieve the highest possible level of protection for human rights. This proactive role can succeed only if carried out diplomatically, in a way that is constructive in purpose, mutually respectful in tone, and focused on achieving concrete, practical benefits for human rights.

Unlike litigation, which centers on events that have already occurred, the Commission's proactive role is primarily forward-looking. Its purpose is to anticipate and to prevent or mitigate future violations, by building systems and institutions that can best protect human rights.

In addition, while the case system leads at times to adversarial relations, the proactive role is one in which the Commission and States can and should strive to work together toward common goals.

I believe the proactive role needs more emphasis and can achieve enhanced results. I suggest that the Commission, or at least the commissioner who is the rapporteur for a country, should meet regularly with both the government and civil society in order to assess and anticipate human rights challenges in that country, and to strategize and share best practices about how to avoid or to mitigate them.

An ongoing relation of cooperation and mutual respect can also assist in achieving my second point: timely and effective resolution of cases. At present petitions typically take several years, and often much longer, before they are resolved by the Commission. This is unacceptable. It is not proper justice. It disrespects human rights. Lengthy delays are unfair to victims and burdensome to States.

I suggest that new petitions should be reviewed immediately by the commissioners themselves. Those cases that are serious, urgent or emblematic, and are well-prepared and appear to meet exhaustion requirements or the exceptions, should immediately be sent to states, with two requests: first, for an initial written response, which need not be the final word, and second, with a request that the State agree to attend a working meeting with the commissioner rapporteur, together with a representative of the complainant.

The meeting would have two goals. Ideally, to achieve a friendly settlement where possible. But in all cases to narrow the issues to those truly in dispute. The commissioner rapporteur should be an active case manager, pressing the parties to identify those issues of fact and law on which there is no genuine dispute. The litigation should thereafter focus only on those issues truly in dispute.

This approach could facilitate friendly settlements at the outset, as opposed to under current procedures, where settlement discussions usually do not even begin until after years have passed. It could also streamline and expedite the case process, reducing the burden of paperwork and legal arguments on all concerned. And it could be more effective, because States are far more likely to comply with negotiated resolutions than with adversarial Commission resolutions and Court judgments.

My third point is that we need a Commission that serves the peoples of all OAS member States. In my view the Commission has not given sufficient emphasis to the non-Spanish speaking member States of the Caribbean. If elected, I will view it as my responsibility, as a native English-speaking lawyer trained in the common law, to reach out to bar associations, law schools, judges, and diplomats of Caribbean States to explore how best the Commission can address the needs of Caribbean peoples, whose legal systems and human rights challenges are quite different from those of Latin America.

If the System is to serve the entire hemisphere, universality is an important goal. I chaired an American Bar Association task force which recommended that the US ratify the American Convention on Human Rights. I have testified in favor of ratification before a Canadian Senate committee. While I am aware of the obstacles to universality, I am also committed to seeking ways to overcome them.

Finally, if elected I will work hard to defend the Commission's budget before the government of my country and other countries.

But beyond additional funding, I suggest three ways in which the Commission might achieve greater productivity. One I have already mentioned: streamlining case procedures to avoid, from the outset, mounds of paperwork and years of lawyering on issues not truly in dispute.

Second is to prioritize matters where the Commission can achieve a multiplier effect, by strengthening national institutions essential for the protection of human rights, including independent judiciaries, the free press, and human rights defenders.

Third is for the Commission to negotiate contracts with specialized human rights centers in universities throughout the hemisphere. In return for offering advanced law students valuable educational opportunities to work on real human rights issues, under the supervision of a professor and overall supervision by the Commission, students could assist the Commission on matters such as thematic and country reports.

This election presents a rare opportunity. A majority of the Commission will be new – three new members elected by the General Assembly, plus one more elected by the Permanent Council this month. This will be an opportune moment to take a fresh look at how the Commission functions. How can its case procedures be most timely and effective? How can the Commission best work with States to achieve greater human rights protection? Those are among the questions we must all ask.

Thank you for your attention. Muchas gracias, muito obrigado, merci beaucoup.

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