

CHALLENGES TO MONITORING THE EXERCISE OF WOMEN'S RIGHTS IN THE AMERICAS



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In the first place, I'd like to thank the CIM for the invitation, and the possibility to be here this morning with you, sharing these important reflections and challenges. It is a special privilege for me personally to be here with our current Rapporteur of the Commission on Women's Rights and our past Rapporteur on the Rights of Women of the Commission, Susana Villarán.

My presentation is going to complement, to a certain extent, that of our Special Rapporteur on Women's Rights. What I'd like to speak about a bit is some of the challenges the Inter-American Commission on Human Rights has seen in practice and some of the approaches, some of the tools that the system offers to address the challenges that women encounter in trying to fully exercise their political rights.

The first and most basic challenge that I'd like to discuss briefly with you is that the right of women to participate fully and freely in political life is a right. That might seem like an awfully basic point to emphasize, but it can be very challenging for states to understand that this is a right. It's not something good; it's not something nice.

It's actually a right and that right gives rise to a number of obligations on the part of states.

What the inter-American system indicates in this regard is that the right to participate in government is a right under the American Convention, and under the American Declaration.¹ Every citizen shall enjoy the right to take part in the conduct of public affairs directly and through freely chosen representatives, to vote and to be elected. In the design of the system, this right has to be recognized with nondiscrimination. Under Article 1 of the American Convention, and under the American Declaration, states have to recognize rights for everyone, without discrimination. Under the system as well, citizens have the right to be equally protected before and under the law, and all of the rights that are recognized in the system, and fundamental rights at the national level, have to be subjected to judicial protection and guarantees. So, this is the set of basic rights that we are working with in the system when we talk about the right of women to participate fully and freely in political life.

In this regard, what one can see in practice is that even when, for example, the Federal Government has recognized that the right of women to participate in political life, in political office -- even in countries where there are quota laws or affirmative action policies to ensure that women can participate directly in political life -- officials at the local level don't necessarily understand this as a right, and so, often these policies, these laws, are not properly implemented and put into practice. So, there is a question of understanding, at all levels of the state, that this is a right and not just something that's desirable, or good, or with which officials are free to disagree. This is one of the challenges that the system has been trying to work with in practice.

1. Sources for references to the work of the inter-American human rights system may be found on the web page of the Inter-American Commission on Human Rights at www.cidh.org, which contains basic information including: an introduction to the system; the regional human rights instruments; case, country and thematic reports; and information about the mechanisms, in English and Spanish, as well as useful links, including to the web page of the Inter-American Court of Human Rights www.corteidh.or.cr.

One of the special tools that we have in the inter-American system to deal with different forms of discrimination against women is the Convention on the Prevention, Punishment, and Eradication of Violence against Women. Why is this a special tool with respect to political participation? Because the Convention recognizes the link between violence and discrimination. It recognizes that violence can impede women from exercising the full range of their civil, political, economic, social, and cultural rights. It also gives us a very special approach in recognizing the relationship between discrimination and the right to be educated and valued, free of stereotypes. One of the great obstacles in women's ability to freely and fully exercise their political rights is the question of stereotyping. So, this recognition of the link between discrimination and stereotyping is actually incredibly important; this recognition in the Convention that states have an obligation to apply due diligence to eliminate, to redress, to eradicate, this kind of stereotyping.

The Convention of Belém do Pará, the convention on violence against women of our system represents one of the few international law instruments that incorporates the perspective of gender. In this way, our regional convention on violence against women helps us to re-envision what international law can do to protect the rights of women, recognizing this link between violence, discrimination, and stereotyping, and the obligation of states to apply due diligence to deal with these problems.

Another special plus that we have in our regional human rights system is the emphasis on democracy and human rights, which is actually really unusual. All of the regional systems share certain common rights, certain common protections, certain common points of orientation and emphasis, but each of the regional systems also has its particularities, and one of the particularities of the inter-American system is its emphasis on democracy, voting, and democratic institutions. These have been points of priority in our system.

The OAS has as one of its principle purposes the promotion of representative democracy. There are subsequent instruments that

attempt to create mechanisms to deal with ruptures of democracy or threats to representative democracy, and this prioritization is reflected in the Inter-American Democratic Charter, which recognizes that in order to have an effective exercise of human rights, it is required that there be a democratic system of government in place, so that the one is the safeguard and guarantor of the other. Human rights give you the platform for representative democracy; representative democracy gives you the necessary preconditions for the enjoyment of human rights. That is a very unique set of principles that apply in our regional system, and they should have a very special impact on the ability of women to fully realize their right to political participation in this region.

In the system, we have a small but growing number of cases and country reports, and other ways that the mechanisms of the Commission and the Inter-American Court have begun to look at the question of political participation and remedying historical exclusion and discrimination for women, and also for other groups that have historically been excluded from full participation in political life.

When the Commission started with its work in this regard, one of the focal points was free and fair election practices. If we look at the Commission's work on Mexico, for example, in the 1990s, we had a series of cases, we had a country report from 1998, and those analyzed free and fair election practices. They looked at the mechanics of the electoral process.

As we go forward in time, the system has begun to more closely analyze what is required for citizens to have access to the political process, to have access to participation -- the question of the substantive possibility, capacity, and opening of political processes to women, and to other groups that have historically been excluded.

It is a challenge for the system and for different human rights mechanisms to go beyond the mechanics of the process and address the structural forms of discrimination that impede women's full participation in political life. If we look for an example from our system where the Commission was trying to analyze some of the more structural

problems that impede full participation in political life, we could take the Commission's report on Guatemala from 2001, which was, on the whole, looking at state compliance with human rights obligations through the lens of the Peace Accords. One of the issues that was covered in the Peace Accords was the right to political participation and to participate in electoral processes.

More specifically, what the Commission was analyzing was the fact that it is perfectly possible to have a technically free and fair election, while at the same time the substantive goal of inclusive participation may not be met. What the Commission was looking at, at the time, was a referendum on constitutional changes that were designed to respond to certain aspects of the Peace Accords. The Commission took into account that the voting itself was free, clean, transparent, peaceful, and the Commission underlined the fundamental nature of the political opening that allowed that voting to take place. So, there were certain conditions in place to make the process work.

At the same time, the Commission took into account low voter turnout, lack of engagement by officials, by political parties and by the media. The citizens were not well informed. The Commission looked at the way the process was managed as a political exercise and that the results reflected the gap between the interests of the rural population and the urban population, between the indigenous population and the non-indigenous population. The Commission also looked at voter registration—voter registration was cumbersome; it was available for people in urban areas but not for people in rural areas; and women were not registered on the rolls of voters due to a number of historical factors of discrimination. Also, there were insufficient judicial remedies in place to respond to complaints of irregularities. So, at the end of the day, the voting process was technically correct, but it was empty, and that was the conclusion of the report.

One of the main challenges in working with women's rights—and, in fact, one of the main challenges in working with discrimination at all—is to explain to states, or really to anybody, when it is that the

obligation of no-discrimination requires people to be treated exactly the same and when it is that the obligation of nondiscrimination requires that people be treated differently. That is not an intuitive kind of explanation.

The Commission has dealt with a number of situations that have given it ways to begin explaining when it is that historical discrimination requires that women be treated differently precisely so they can be treated with respect for equality. One of those examples would be the opinion that the Commission prepared, at the request of the Inter-American Commission of Women of the OAS, on measures of affirmative action, precisely in the political arena. This is kind of historical now—it was back in 2001—but the reasoning is equally valid now, and a number of the situations that the Commission was looking at, that the CIM has been looking at, have not changed that much over the intervening period. The basic principle that the Commission wanted to share was that in cases of historical discrimination, of historical exclusion, temporary special measures designed to remedy such past discrimination may not only be permitted, but in fact required of the states.

The Commission has not had a lot of individual cases that have to do with the right of women to freely and fully participate in political life, but it did have a friendly settlement that had to do with what some people call the “quota” law in Argentina and the fact that it was not being properly implemented in practice because local officials weren’t understanding it as a right. The purpose of the friendly settlement and the eventual outcome of the friendly settlement was an executive decree to issue new implementing legislation so that it would be understood by everybody that it was a right of women to participate, and it was an obligation of the state to comply precisely with the percentages that the law was requiring so that women could actually end up being elected.

We also have a case concerning the right of indigenous communities to participate in electoral processes. I mention it, not because it is a direct analogy, but because the idea of remedying historical discrimination is

such an important one, and that idea applies very fully to what it is that women require to gain full access to political participation.

The case that I'm thinking of is called *Yatama*, and it had to do with a particular community that, in order to participate in the elections, converted itself into a political party. It hadn't started out as one; it was trying to adjust itself to the dominant system. So it tried to incorporate itself as a party, and when it tried to register, the official said no. The community went to the courts and said: "we need to challenge this; we need you to protect our rights to political participation."

The courts were not easily accessible, they were not prompt, and they did not explain why the denial should be upheld, but they upheld the denial anyway. So, the community came to the system, and the case worked its way through the Inter-American Commission and then through the Court. The eventual outcome of the case was to indicate that there are times when historical exclusion requires that states put in place different mechanisms to be able to recognize participation by these excluded communities. This was the case with these indigenous communities that spoke a different language, had a different culture, and had a different form of internal organization. The Inter-American Court said that has to be recognized and there has to be a way for them to be able to participate effectively in the processes. The Court also found that they had been denied judicial protection and guarantees, and one of the important tools in our system is this idea that for all fundamental rights, including the right of women to participate in political life, there must be effective judicial protection and guarantees in place.

States may also encounter challenges in acting to promote the participation of women in political processes when they are trying to deal with how far to go in telling political parties what to do. There are some very real challenges involved in balancing the right of women to freely participate and balancing the right to association and free expression of political parties. That is something that I think the system is really still coming to terms with.

Another key challenge would be this idea of ensuring that domestic remedies are in place. We had also the case of Jorge Casteñeda Gutman, in Mexico. He wanted to register himself as an independent, unaffiliated candidate for President, without any political party. This was not accepted in the internal system, so he went to the local courts to try and seek protection for his right to participate. The local courts did not respond promptly, or easily, or effectively.

At the end of the day, the case went through the Inter-American Commission and Court, and both the Commission and the Court decided that states may have a certain amount of latitude in determining which is the internal political system that should prevail and whether it is necessary to go through political parties to participate, but that everyone, regardless, must have the right to effective, prompt, judicial protection and guarantees. So that principle was the main finding that came out of the case.

In conclusion, I just wanted to share some reflections with you about what we are actually seeing in practice from the system and the way that our system has some special advantages, I think, for continuing to take on these challenges. Thank you.