

Human Rights *Brief*



Center for Human Rights and Humanitarian Law

A Legal Resource for the International Human Rights Community

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Interview With Paulo Sérgio Pinheiro, IACHR Rapporteur on the Rights of the Child

Human Rights Brief: After being Rapporteur on the Rights of the Child for the Inter-American Commission on Human Rights (IACHR) since 2004, what do you think have been the main areas where the Rapporteurship on the Rights of the Child has made an impact during these eight years?

Commissioner Paulo Sérgio Pinheiro: It is incredible how fast my term as Commissioner and Rapporteur has gone. I can't believe it's been eight years. One of the most difficult things generally in human rights work is to measure impact. Often, impacts are not immediate results; instead they are accumulations of gradual changes.

It is possible to measure the impact by going through the cases that have been admitted to the Inter-American Court on Human Rights (IACtHR), and determining whether there was a friendly settlement or any impact linked reports issued. I remember a great case about psychiatric institutions for children in Paraguay that caused Paraguay to modify how it monitors juvenile justice detention centers.¹ Similarly, there have been several decisions and settlements on cases in Paraguay involving mandatory military service for children.²

You can also evaluate impact based on how much you helped put the topic in the public debate or agenda. One example is how the application of an anti-terrorist law in the Mapuche communities affects children—we've highlighted this, but not with great success.³ Another ongoing, more successful case was a very positive dialogue with the Government of El Salvador about a project of civil service for adolescents and children in El Salvador. We've also been able to expose or highlight the terrible situation in some cases of detention of children in Central America, especially street children.⁴

In terms of the standards, I don't think I was successful because there is a wave of regression on child rights in this continent, particularly on the increase in sentencing and decrease in the age of criminal responsibility (especially in South America). In the United States, I was very concerned with life imprisonment of children without parole. This is inhuman sentencing. Fortunately, during my Rapporteurship the U.S. renounced capital punishment for children, and in that decision, the Supreme Court invoked the American Convention on Human Rights (Convention).⁵ This was a very positive achievement. But as a whole, I don't remember that I was successful on changing the standards. In the case of Brazil, it was not because of my Rapporteurship, but perhaps because of the work of the Commission that both former presidents of Brazil, Cardoso and Lula, made formal statements saying they would veto any legislation decreasing the age for criminal responsibility of children.

My contribution, I think was in collaborating with other systems and organizations. For the first time, we published



Photo Courtesy of the OAS.

Paulo Sérgio Pinheiro

two reports with the UN and the essential cooperation of the UNICEF TACRO regional office: *Citizen Security and Human Rights* and *Juvenile Justice and Human Rights in the Americas*. Most of what I've done would not have been possible without them and Save the Children. Working together with an international organization in the UN system and international NGOs was very important for the Rapporteurship on the Rights of the Child at the IACHR.

HRB: What are the main challenges that the Rapporteurship on the Rights of the Child has faced in raising awareness regarding violations of the rights of children and adolescents in the hemisphere during your term?

P.S.P.: I visited twenty-one countries and, in every government I've encountered, I've found people inclined to promote the rights of the child. I never found a single government against the rights of the child. This is the magic of the Convention, even in this country where the Convention is not ratified. Perhaps the U.S. is one of the countries that most respects the rights of children, but all governments except Venezuela were open to receive me. Even Venezuela, however, is positive because it's one of the three countries with a complete ban on corporal punishment, whereas in the U.S. there is a strong resistance to banning corporal punishment. The other countries with such a ban are Costa Rica and Uruguay. I published a report on corporal punishment of children and adolescents with the support of Save the Children, and I have promoted the prohibition of corporal punishment in all countries, including several initiatives in Peru. I think that promotion was a success of the Rapporteurship; Brazil, for example, will vote very soon on a ban for corporal punishment.

HRB: What do you think will be the main challenges that the IACHR's new Rapporteur on the Rights of the Child will face?

P.S.P.: I worked on four topics during my term: corporal punishment, the relationship between public security and children/adolescents, juvenile justice systems/institutions, and children in institutions/care facilities. These are the disasters on this continent. My successor will still have to face these issues. Another problem they may consider is unaccompanied child migrants and undocumented aliens (children of families of undocumented aliens) who are detained with their families. These are problem in the U.S. and in Central America. My successor may also look to problems associated with adoption. Illegal adoption in Haiti and Guatemala is continually a problem, often with the participation of the judiciary. I haven't been able to address this in depth yet because you have to limit your work to what is accomplishable, but I have addressed it in Haiti recently.

HRB: When you updated the report, *The Rights of the Child in the Inter-American Human Rights System* in 2009, what were the principle changes from the 2002 version or how have you seen those rights evolve?

P.S.P.: It was more an update of the cases; there was no dramatic change. The system has not improved; it has only regressed because the new democracies were not prepared to abandon the system of understanding the child as an object to be tutored instead of a subject of rights. First, states were not very well prepared for that change in ideology. Second, there is a very heavy legacy in the institutions, like the judiciary and all the juvenile justice systems. Third, there are very few systems of participation for children even though it's very clear in the Convention that the voice of the child must be heard. However, democratic governments feel threatened by adolescents and do not create mechanisms for children to participate. This is one of the weaknesses I've addressed in the world report. The state could establish youth councils so that the opinions of adolescents can be heard. For example, the mayor of Lima, a great former colleague of mine at the IACHR, Susana Villarán, now has an advisory council of children. You have to find creative ways to hear the voices of children. In the preparation of the *World Report on Violence Against Children* that I presented to the UN Secretary-General in 2006, children participated as delegates in a consultative council and prepared a friendly version of the world report by themselves. In many countries, there are parliaments of children.

HRB: Earlier this year, you put out the report *Juvenile Justice & Human Rights in the Americas*, what do you think were the primary findings from your site visits for the report?

P.S.P.: This report is a direct consequence of my knowledge of the malfunction of judicial structures in dealing with children, specifically the institutionalization of children, which is supposed to be the last option under the Convention. Second, the facilities are dreadful; sometimes, children are mixed with adults, girls are dealt with by male agents, and there is torture and maltreatment within the institutions. I think the judicial structure has the heaviest legacy of this previous approach of not recognizing children as being subjects of rights.

In the U.S., I never got to visit detention centers. I think this was one of the weaknesses of my activity in the U.S. because I dealt so much with the death penalty and Guantanamo that I wasn't able to devote sufficient time to detention centers. Though I have done so in Europe when I prepared the World Report.

HRB: Specifically, what likelihood do you see for states to carry out the recommendation to abolish prison sentences for children and adolescents?

P.S.P.: This must be the horizon, and only for the most egregious, exceptional cases should courts sentence children to institutions. In the spirit of the Convention, the adolescent must have full opportunities to escape criminalization because every adolescent put in an institution is a candidate for a criminal career. I was insistent on inserting this in the recommendation and text of the report; I did the same in the World Report. That's also the position of the Commissioner for Human Rights in the Counsel of Europe. The point of departure is the refusal to institutionalize adolescents, but there are exceptional cases to consider institutionalization. Even then, however, it cannot be a prison; the institution must have services, because you have to invest the most you can to prevent children from becoming criminal adults.

HRB: As Country Rapporteur for the U.S., what do you believe the main advances by this State have been during recent years in the area of human rights? What do you think are the main problems to which State authorities should pay more attention?

P.S.P.: In terms of the child and health of children, the U.S. is fantastic. I think the big achievement was the death penalty decision by the Supreme Court. I'm not attributing it to me, but it was the stellar accomplishment in my period. Most worrisome in this country is life for children without parole. I can't believe how the U.S. as a democracy can live with that. It's a bad example for the world when the U.S. is rightly promoting democracy from Libya to Afghanistan. I would like to address this. Additionally, there are problems related to the situation of the African American children, income concentration, and access to education issues. But as a whole, the opportunities that children have in this country are wonderful. In many aspects of the Convention the U.S. excels—just the juvenile justice system is rather problematic.

Also, there were adolescents in Guantanamo; I did not visit because, although we were allowed to visit the base, we were not going to be given access to the prisoners, so we refused to go. During my eight years, the U.S. has had very positive cooperation with the Commission – this is very important – both the previous and present administrations. Even if we do not agree on every issue, the U.S. takes the work of the Commission very seriously. We have very contentious cases with the U.S., but many times the Commission helped the U.S. in addressing issues that at a later point the U.S. could recognize as problems. Many times, the U.S. executive branch was in agreement with the Commission but the state government was not. This happens with other federal states in the OAS as well.

HRB: What are your plans for next year when your last term is up?

P.S.P.: I'm already busy. I chair the Independent International Commission on Syria until March. I am involved in another panel on human dignity supported by the Swiss government, and I am on a panel for the promotion of the ban on corporal punishment with several prominent individuals such as George Soros. For that panel, we write to heads of state to introduce legislation. I stay busy, but I have become more tired than before, and at a certain point you have to stop so the new people can come in. I am 67; I think I'll stay busy only until I'm 70.

HRB: Anything you'd like to add?

P.S.P.: The basic lesson is that there is no automatic result. You have to always have the notion of process, and you can never stop fighting for the human rights of the child because you never know when something you've done, said, or written will have an impact. Most of the time, the work of the Rapporteurs and Commission has some impact. It's very unpredictable—the victims count on our work. This is what is relevant.

Jessica Lynd, a J.D. candidate at the American University Washington College of Law, conducted this interview for the Human Rights Brief in collaboration with Santiago Vasquez, an LL.M candidate at the American University Washington College of Law.

Endnotes: Interview of Paulo Sérgio Pinheiro, IACHR Rapporteur on the Rights of the Child

¹ See I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112.

² See IACHR, Report No. 85/09, Case 11.607, Merits-Compliance Agreement, *Víctor Hugo Maciel*, Paraguay, August 6, 2009.

³ Annex to Press Release 28/11 of the IACHR: <http://www.cidh.org/Comunicados/English/2011/28A-11eng.htm>

⁴ I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63.

⁵ *Roper v. Simmons*, 543 U.S. 551 (2005).