

Pr. Bernard Duhaime, UQAM

OPENING UP TO THE AMERICAS IN ORDER TO BETTER PROTECT HUMAN RIGHTS AND COMMITTING TO RECONCILIATION

This project proposes setting up a platform that would allow Canadians to better understand, share, and propose solutions drawn from the Latin-American experiences in terms of human rights violations claims and denunciations, as well as policies and programs implementing the states' obligations to better promote and protect these rights.

1. Human Rights in the Americas

For a few years now, Latin America has stood out as a region which, after having gone through periods of instability, civil wars and dictatorships, is consolidating its democratization and institutionalization of the rule of law. These advancements are also reflected in the field of human rights. Although there is yet much to do in this area, Latin America has indeed succeeded in building an innovative and promising regional experience on many planes, among them transitional justice, the respect of human rights within the framework of the fight against terrorism, cultural pluralism, political participation, etc. These successes have marked not only the recent history of the States in the region but that of the entire planet, whether it be on the normative and institutional planes or that of emancipation strategies and cultural anchors (Sikkink 2014).

These advancements are due in great part to the innovative work of some international institutions that, in the last decades, have worked hand in hand with civil society in the quest for truth and justice. It is the case of, among others, the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) as well as the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) of the Organization of American States (OAS) (Goldman 2009). Although some may feel that changes come about slowly, this is often due to the fact that our outlook on the world holds and reflects our own cultural, economic and social experiences. In order to transform the world and mark a step change to it, specifically as it relates to human rights, it is important to have a perspective that encompasses all members of our community, and more broadly, the world.

In Canada, measures such as the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls are the conclusive evidence of this change. In fact, in the last few years, these kinds of commissions have been created in numerous countries in Latin America—Peru, Chile and Argentina, to name but a few—in order to initiate an accessible process centered on victims.

2. The Inter-American System for the protection of Human Rights (IASPHR)

In the America's, the OAS' Inter-American Commission on Human Rights in addition to treating individual complaints, also observes the situation of human rights duties in the region. To that end it can, namely, use its system of rapporteurs as well as theme or country-based reports in order to recommend that governments adopt measures meant to promote and respect human rights. As far as the Court is concerned, it was established under the American Convention; it can have cases brought to it by the Inter-American Commission or by any other State party to the Convention within the frame of contentious cases alleging the violation of rights protected by its constituent instrument or any other instrument over which it holds jurisdiction. The Court may also give advisory opinions at the request of any State member of the OAS as well as certain bodies of the Organization about the interpretation of the Convention or any other treaty dealing with human rights protection in the Americas, as well as adjudicating on the compatibility of a national law with those instruments.

If, when they assume their duties, inter-American bodies are confronted with massive and systematic human rights violation cases perpetrated by abusive regimes, those cases brought to them also expose structural problems linked to the functioning of democracies. Nowadays, victims are often part of groups placed in vulnerable situations within their societies, and the violation of their individual rights generally raises questions of systemic discrimination. The sanctioning of the violation of guaranteed rights in this type of case thus calls into question the entire apparatus of the State in its legislative duties as well as its political and institutional organization. In light of these developments in case law, the IASPHR has sought to develop solutions not only based on individual reparation of the violated rights, but also on entrenching its analysis within the institutional and social context of the matters being presented to it. In so doing, Inter-American bodies have introduced the principle of the protection of vulnerable groups “who have suffered ‘discriminating’ alienation from a historical, sociological, economic or political point of view.” Thus, the Commission and the Court have developed a case law current that could be qualified as being “socially mindful”, acknowledging the existence of groups that are placed in vulnerable situations in order to determine precisely which positive obligations the States are responsible for in the effective protection of guaranteed rights (Duhaime 2011, 2007).

3. Canada’s position

As Canada endeavours to create a closer bond with its Latin-American neighbours, both on the immigration and on the economic development front, many Canadians may doubtless be surprised to learn that Canada is one of the rare American countries that have not fully integrated the IASPHR. It is in fact the case that, although Canada joined the OAS in 1990, it did not subscribe to the inter-American treaties for the protection of human rights and has not accepted the compulsory jurisdiction of the Regional Court in this matter. Canada therefore only remains bound by the OAS Charter as well as the American Declaration of the Rights and Duties of Man and is only subjected to the competence of the Inter-American Commission (Duhaime 2012, 2010). This Commission has brought forward many important recommendations to Canada in terms of human rights protection, among them everything having to do with the rights of refugees and the rights of aboriginal women (IACHR 2016, 2014, 2000). It is worth noting that the Canadian Senate has twice recommended that the Canadian government fully adhere to the IASPHR (Senate 2003, 2005).

4. Human Rights in Canada: State of Affairs

Although Canada is often seen or puts itself forward as a champion of human rights on the international scene, many problems remain in regard to this throughout the country. This is especially true in the case of effective enjoyment of economic, social and cultural rights, the rights of women to equality and of living free of violence, the rights of refugees and other migrants, freedom of expression and social protest. Aboriginal peoples, of course, are still the direct and indirect victims of these inequalities, more specifically with regard to territorial rights, cultural rights and governance.

Although many actions have been taken by the government to remedy this situation—*Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Arbour Commission) and the *Royal Commission on Aboriginal Peoples* released in 1996 (Erasmus Dussault Commission)—the situation is slow to improve and structural and cultural changes are taking a long time to be implemented. The *Truth and Reconciliation Commission* addressed different issues surrounding the question of residential schools in the 20th century and the recognition of experiences, aftereffects and consequences linked to what the victims went through. Newly set up, the *National Inquiry into Missing and Murdered Indigenous Women and Girls* will doubtless face numerous challenges. The issues, at once theoretical and methodological, the documentation of the cases as well as the changes to be brought both to institutional cultures and the fight against impunity processes, are all very telling. Beyond our own borders, we can see the impact of Canadian policies in terms of human rights in Latin America, for example (Canadian extractive corporations, safety and migratory policies, etc.). (Amnesty 2016, Ligue 2015, Aboriginal Women 2011).

5. The Collaborative Experience: an Inclusive Project

In view of this, what is being proposed is setting up a platform of exchanges and dialogue allowing Canadians (general public, decision makers, human rights defenders, Aboriginal authorities, etc.) to better understand the Latin-American experiences with regard to claims and denunciations of human rights violations, as well as policies and programs for the implementation of state obligations that seek to better promote and protect those rights.

What is being proposed is firstly (I) proceeding to a state of affairs seeking to not only identify scientific literature and pertinent institutional reports, but also to identify the issues and key players in the defence of human rights arena in Canada and Latin America. North-South, South—North discussions and exchanges will be structured and built upon the experiences and observations of the main stakeholders—women, Aboriginals, human rights defenders etc.- and will seek, in the middle term, to better integrate Canada within the IASPHR as well as to leverage the beneficial effects of the Latin-American experience for the protection of human rights in this country.

Secondly (II), the proposal is to consult Canadian stakeholders interested in a national debate on human rights in order to identify the main challenges faced by Canadian society in this regard. These will include officials from the federal and provincial governments, human rights organizations and defenders, Aboriginal authorities, attorneys, etc. This consultation will also raise awareness within the Canadian population through the sharing of information and acquisition of new knowledge, and the advantages of a better integration of Canada within the IASPHR. During this exercise, the misgiving and prejudices held by certain sectors of society—the Canadian legal community among them—as they pertain to the IASPHR will be considered. In allowing for a better understanding of the topics covered in the context of the consultation and, depending on the results of the research carried out previously (I), discussions will range from the protection of women's rights, Aboriginal peoples, migrants, the fight against terrorism, the exploitation of natural resources, economic, social and cultural rights, the fight against discrimination and the question of federalism. Three or four round tables of one or two days could be held in Quebec, Ontario, British Columbia and Northern Canada. Likewise, the researcher and accompanying team will provide a questionnaire to the stakeholders who were unable to participate in the consultations.

Thirdly (III), we propose inviting Latin-American experts and members of civil society (including organizations of human rights defenders and Aboriginal authorities, experts from the inter-American Commission and/or Court, Latin-American officials), to Canada so that they can illustrate their own experiences, fights, challenges, and victories in these political and social innovation fields, thanks to, among others, the tools supplied by the IASPHR. Guests will be particularly called upon to tackle the subjects discussed previously during the consultations (II). Canadian stakeholders who will have participated in those consultations will be invited to these presentations in order to exchange with their Latin-American peers. In the context of these activities, Canadian best practices and successes in terms of human rights protection will also be discussed in order to allow for profitable feedback to Latin-American peers as well. This approach will also provide the opportunity to create networks and a space for exchanges between Canadian and Latin-American participants, leading to a mutual enrichment of their reflections as well as allowing them to provide briefs about their advocacy and analysis work. These networks will, we hope, help make the outcomes achieved by the present project more sustainable. In order to increase the benefits of this event, we propose facilitating the participation of the people and groups previously consulted (II) but unable to be physically present at the conference, through the use of the UQAM's video conferencing technology and multimedia installations as well as filming and broadcasting the event over the web.

Finally, we fourthly (IV) propose, making concrete recommendations to the federal and provincial governments, as well as other stakeholders (bar associations, NGOs, Aboriginal authorities,

academics, etc.) regarding a greater integration of Canada within the IASPHR. Taking into consideration the needs identified during the consultations (I and II) and the experiences presented during the exchanges with our Latin-American peers (III), the results of the discussions between the various participants from Canada and Latin America will be used to establish these conclusions. This will also provide the opportunity of proposing channels of greater collaboration between Canadian and Latin-American communities in order to leverage the positive Canadian experiences in Latin-American and within the IASPHR. Moreover, the contributions of Latin-American experts will be integrated in a publication translated into French, English, Spanish, Cree and Inuktitut, and which will also be broadcast on a web platform that will share them together with the researcher's recommendations. Finally, a further proposal is to present these results to Canadian authorities (Global Affairs in Ottawa, Permanent Mission of Canada to the OAS in Washington), at the Inter-American Commission (Washington), as well as to those who participated in the consultations (Montreal, Ottawa, Vancouver and Northern Canada).

6. References

- Amnesty International Canada, Summary and recommendations: Submitted to the United Nations Committee on Economic, Social and Cultural Rights, 2016 Duhaime, Bernard, "Canada and the Inter-American Human Rights System: Time to Become a Full Player", in Gordon Mace Gordon and Jean-Philippe Thérien, dir, "Canada in the Americas: Making a Difference?", (2012) LXVII (3) Édition spéciale de Int'l J 639.
- Duhaime, Bernard, Gordon Mace, Jean-Philippe Thérien dir., "Protecting Human Rights in the Americas: The Inter-American Institutions at 60" (2011) Special Issue by the RQDI, 192 pp.
- Duhaime, Bernard, "Strengthening the protection of human rights in the Americas: a role for Canada?", in Monica Serrano, dir, *Human Rights Regimes in the Americas*, Tokyo, UN University Press, 2010, 84.
- Duhaime, Bernard, "Protecting Human Rights in the Americas: recent achievements and challenges" in Gordon Mace, Jean-Philippe Thérien and Paul Haslam, dir, *Governing the Americas: Regional Institutions at the Crossroads*, Boulder, Lynne Rienner Publishers, 2007, 131
- Quebec Native Women's Association, Mémoire sur la discrimination, 2011.
- Goldman, Robert K. "History and Action: the Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights." *Human Rights Quarterly* 31 (2009): 856-887.
- IACHR, Report No. 8/16, Case 11.661, Manickavasagam Suresh (Canada) 2016.
- IACHR, Report on Missing and murdered indigenous women in British Columbia, Canada, 2014.
- IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, 2000.
- Ligue des droits et libertés, Alternative Report submitted to the United Nations Committee on Economic, Social and Cultural Rights for the review of Canada, 2015.
- Sikkink, Kathryn. "Latin-American Countries as Norm Protagonists of the Idea of International Human Rights." *Global Governance* 20, no. 3 (2014): 389-404.
- Standing Senate Committee on Human Rights, *Enhancing Canada's Role in the OAS: Canada's adherence to the American Convention on Human Rights*, May 2003.
- Standing Senate Committee on Human Rights, *Canadian Adherence To The American Convention On Human Rights: It Is Time To Proceed*, Eighteenth Report, May 2005.