



## **ESMERALDA AROSEMENA DE TROITIÑO**

**President of the Inter-American  
Court of Human Rights**

Good morning to all.

My respectful and supportive greetings, first, to the children and adolescents who are here today, significant players at this meeting.

I acknowledge the Inter-American Children's Institute and the Colombian Institute for Family Welfare for organizing these meetings, three events which are, no doubt, imbued with the need to recognize children as individuals, as holders of rights. My appreciation to all of our countries' representatives for being here.

Today we need to engage in reflection, hence my satisfaction at being with you here today, for the opportunity to share some thoughts which may give rise to this transformation in our countries.

My presentation poses a line that I have divided into 5 aspects, leading to a focus on the key challenges that, 30 years after the Convention, the States, civil society and organizations are facing in relation to national systems' responsibility regarding rights protection. I wish to identify a central point in this line: the transformation of paradigms and stereotypes; a social and cultural transformation with respect to recognizing, defending and enforcing the rights of children and adolescents; and an additional point: the key issues that it is necessary to evaluate and strengthen in protection systems, on the basis of the mission of the Inter-American Commission on Human Rights.

There are also 5 additional points in this regard, identified by the adolescents who presented their considerations on a single right: the right to participation, linked to the work engaged in by protection systems.

The first is, how do we stand regarding services providing from prevention to special attention required at various levels, including an emphasis on local levels? The second aspect involves investing in children; to what extent are we investing in our child protection systems? A third aspect is recognizing and addressing how we are handling inequities, discrimination, exclusion. A further aspect focuses on the most vulnerable factors when addressing violence in all of its forms; crime, citizen insecurity, public policies on repressing and criminalizing teenagers? Fifth, migration as a situation and circumstances that our children and adolescents are experiencing, which represents multiple violations of rights. It is not just about the right to migrate, but what the exercise of this right now involves for adolescents and children.

I should like to borrow the words of Luis Pedernera, in recognizing the Pan American Child Congress as a significant and necessary opportunity for the States here today, their representatives, to face the responsibility, to calmly or not so calmly reflect upon what their

commitment to the Convention on the Rights of the Child implies from the perspective of the States, from their political vision. A commitment that all of the countries of the continent, except one, have taken up, and I also respectfully and especially call upon that one country to sign our agreement, which represents a form of universal soul, a universal morality with regard to respecting and recognizing the rights of children and adolescents.

It is, therefore, an important opportunity we have today, because you are at this event, together with the children and youth, also a very important and major audience. Keep this in mind, in view of the need we have today for an analysis of the impact that the celebration of the Pan American Congress has had on the continent.

Based on these points, then, I now wish to identify challenges and achievements, because it is also valid to acknowledge the efforts of the States, as Luis has already pointed out, we were the first, our ratification was impressively swift. Likewise, this gave rise to a first impact on the evaluation of our domestic rules, legislative changes, and attempts to promote the adaptation of domestic legislation to the Convention.

I must admit that it was not an easy process. The first laws faced a number of challenges, we did not yet have access to all of the work that the General Comments of the Committee has generated to aid understanding and evolution of the rights of children as enshrined in the Convention. Initially, domestic legislation faced the difficulty of including new principles, but in an old structure.

This was what happened in my country, Panama. I had an opportunity with the development of the Family Code, even though we tried to adapt the language, it was not easy to transform the paradigm. So, what happened? We included the principles of the Convention, while maintaining the principles of the previous doctrine, which, basically, still referred to children and adolescents as minors, and still maintained their status as objects of protection by the State, society, etc.

The paradigm shift which is still today our key challenge is considering children and adolescents as rights holders. What does it mean to be holders of rights? It means that one has the possibility of exercising one's rights.

And that one must exercise them on one's own or for oneself. The Convention very wisely points out that children's age, maturity, and development should be taken into account; that is, the process of progressive autonomy through which children assume their obligations, duties and rights.

At this time of transformation of our legislation, which we must recognize as an achievement, we need to continue our evaluation, and we know that laws are not enough. We have also talked about the gaps between what the law says and the reality of the lives of boys and girls under these laws. We should, therefore, keep this in mind so that the States can achieve an effective vision of what the recognition of children as rights holders implies.

Moving on to an analysis of social transformations: we should recognize that there are rights; that these rights must be defended, but above all, institutions, this comprehensive protection system, is required to provide the mechanism for the enforcement of those rights, enforcement that children should and could carry out. This has been acknowledged by the Inter-American Court of Human Rights in its Advisory Opinion 17, of 2002, which it is important to understand, manage and use for this responsibility.

Why is this cultural transformation important? How does the adult world, the world of authority, the world of "adult institutions" connect? How do we relate to children, how does this contact take place? Thirty years after the signing of the Convention, we still face a challenge in terms of the participation of children and adolescents as individuals with a leading role in this participation. To listen; what are they saying to us, it is their vision, yes, but it is what we have to address, to see how we can work on this transformation with the thoughts of the children who are experiencing this world. So, the question I am leaving on the table is, how are we interacting with children and adolescents?

We are aware that they are rights holders, we are aware of what we want with this idea of their being rights holders, we are seeking their full, harmonious and comprehensive development; of all human capabilities, all of the dimensions they possess, social, emotional, physical, mental, spiritual, intimate; that is their comprehensive development.

What do we need in this transformation of the adult world in relation to the world of children? Miguel Silleros, a Chilean scholar who is very committed to the analysis of the progressive autonomy of children, pointed out that, "we adults need to recognize that the full development of children and adolescents is a collective asset of society, with which we are ensuring that citizenship is being constructed as from childhood".

Persons do not become citizens on their eighteenth birthday, as occurs in my country, this cannot be, we need to develop citizenship from childhood, constructive citizenship; responsible, ready, but the only way to do this is with their participation, that they be part of the collective group, of the community.

It has been noted here that children should be involved in public policy when we are determining the development of their lives, the handling of their sexuality. We do not want sexual and reproductive rights programmes to be established in schools. Why not? If we need those boys and girls, as well as protecting themselves, as well as being aware, to also have the possibility of developing their healthy and responsible sexuality.

It has also been said here, why must we transform this vision in cultural terms? Corporal punishment is still permitted, linked to the issue of discipline and the danger of regression. I have heard people ask how can we empower them with progressive autonomy, teachers, parents will lose all their authority; there is no identification, no awareness of what it means, this goes back to the point of building citizenship throughout childhood.

In the end, this is going to have an effect, and I place it at the end, as a result, not because I am going to develop children to be the men and women of tomorrow, as if what they are living today were not important; it is through what they are living today that they will achieve their full and comprehensive development. What they are living today, what we give them today, our respect for their rights, that is what will ensure their developing life.

There has been significant progress in many countries in banning corporal punishment, the States have recognized that they must explicitly prohibit violence and corporal punishment. There is still a way to go before this becomes a reality beyond the law, beyond what children are still experiencing today in practice. Statistics show the situation of violence against children, even in their own homes.

Another key aspect for the protection system, is that countries need to identify how it works, to make the concept of the system become public policy for children, from prevention to the enforceability of a violated right, through very specific assistance services. How is this being addressed?

We tend to focus on the large urban centres, and what is taking place in more remote areas, in the local area, where boys and girls are living, what is the response of the comprehensive protection system, which is not reaching those areas. We know what is happening, the evaluation of the Committee's report on the subject of protection systems tells us that local systems are still not being addressed appropriately and what is needed for effective management. This is connected directly with investment.

The fact is that resources fail to reach outlying and small municipalities in remote areas, they do not receive specialized care. Why not? There are many difficulties in this, but the first of them is the recognition that we must invest in children. Regarding investment in children, the Committee has made some very forceful remarks in General Comment 19. The Committee analysed the Convention and made a breakdown of investment, bolstering what it represents. In its article 45 it says that "the best interests of the child shall be a primary consideration in all actions concerning children", and on the basis of that principle there are still many things that we need to do.

What the Committee has done is give us the tools to identify what investment in children is, what it means, and I connect to article 19 of the American Convention and the consecration of human rights for all people, including children, the principle of the progressive realization of rights and the prohibition of regression. So, let us beware, certain rights may be undergoing a regressive process at the moment, under the threat of budget cuts, in violation of the Convention on the Rights of the Child, as well as of the American Convention on Human Rights.

I wish to stress the importance of focusing on the recognition of the person as a holder of rights, and the right to equality, human dignity, and non-discrimination, which violates the Convention and the American Convention.

And of bringing into question, or reflecting on the institutions and the system; how are we addressing these inequities? Are we aware of figures for these issues on our continent? Everyone knows the figures for their countries' poverty, exclusion, access to quality education, to the health system, etc.

Inequalities and discrimination, which in turn, can have a greater impact, doubled or tripled in some groups of children, on account of diversity, cultural diversity, different factors that do not make us different, but distinguish us, because we are women, indigenous girls have their own characteristics, but they are girls, they have a need for protection, as well as enhanced protection to which the Convention refers, which must be reinforced three or four times as strongly, as the Convention says.

Children with disabilities need special attention, but in terms of equality and sometimes this condition of vulnerability, what we do is attach labels. So, these are children and adolescents with this conception of equality.

Violence against children in the context of crime, repressive policies. An example of the violation of the principle of progressiveness and non-regression is the proposal of imprisonment for 70 years for children; what are we talking about? What is this? But it is happening in our countries, because of the policy of repression, political or on behalf of national security or public safety; children are the group we blame for the causes of crime.

And this principle, which will be evaluated next year; countries with the age of criminal responsibility established at 14 have brought it down to 12, and many States respond to the Committee's questions at these proposals by saying: "The Convention allows us to set the age at 12". And the Committee has said no. This is what it means, that it should not be less than 14 years old. But the issue of deprivation of liberty for 70 years, the child who commits an offence at 12, plus 70. What are we to do?

I conclude with the issue of migration, which today is a regional issue, not just for the Northern Triangle, it also occurs in the South, there is a reality of migrant children. I was on the southern border of the United States and what I saw there was really terrible, children were detained. They call them coolers. What is a cooler? A place where they keep them almost at freezing point.

The need for a human rights response to migrant children, today must be a challenge for the national protection system. The system is not the responsibility of the institution that you preside today, the system is the responsibility of all State institutions and of civil society. The migration system must be part of a human rights response on this issue, which requires a regional approach, there is no way to address it country by country.

At a hearing we had at the Inter-American Court there is a proposal for a transnational mechanism to address this issue, it is a call to the States that face the principal problem, whether of origin, destination, transit, each country may have a need for attention.

I conclude by expressing my thanks, and also place the Inter-American Commission at your disposal for technical cooperation for the analysis of different topics or complexities which you may be facing, in implementing protection systems when bills are proposed, when there are political positions in your countries, to provide information.

The Commission has a mechanism that we call "Charter" Article 41, for all countries that have ratified the Convention and have subscribed to the jurisdiction of the Inter-American Court, that involves asking for information to see if any draft law complies with our inter-American standards and to provide support to States for the construction of legislation that effectively meets these standards.