



# Inter-American Commission on Human Rights

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## INTRODUCTION

The Inter-American Commission on Human Rights has the honor to submit its report to the General Assembly, in compliance with the provisions of Article 52 f of the Charter of the Organization of American States.

This report contains three "sections": The first is a summary of its origin, structure and competence; the second contains the material indicated in Article 9 (bis) of the Statute of the Commission; and the third summarizes the activities of the Commission during the year.

Section One, in accordance with resolutions AG/RES. 171 (IV-O/74) and AG/RES. 246 (VI-O/76) of the General Assembly, includes a summary of its budget and its relations with other organs of the system and with regional and worldwide agencies of the same kind.

Section Two, in accordance with operative paragraph 4 of Resolution XXII of the Second Special Inter-American Conference, is divided into two parts: I - "A statement of progress achieved in realization of the goals set forth in the American Declaration" and II - "A statement of areas in which further steps are needed to give effect to the human rights set forth in the American Declaration."

In order to prepare Part I of Section Two, the Commission, on October 25, 1976, requested the governments of the member states of the Organization to transmit to it information on the progressive steps taken and the texts of laws promulgated and of judicial decisions and administrative acts issued during the years 1975 and 1976 in relation to the promotion and defense of the rights and duties of man set forth in the American Declaration. Five countries, Argentina, Brazil, Chile, Haiti, and the United States, had sent information concerning their legislation on matters of human rights, up to the time this report was prepared.

Section Three contains a detailed summary of the activities of the IACHR in connection with its 37<sup>th</sup>, 38<sup>th</sup> and 39<sup>th</sup> sessions, which permits an analysis of the work accomplished by it during the year 1976. In accordance with the desire expressed by the sixth regular session of the General Assembly, the Commission has not included in this report information on cases being processed (resolution AG/RES. 246 (VI-O/76)).

The considerable increase in the number of communications and denunciations of violations of human rights—an increase that had to be handled with practically the same staff and the same resources the Commission has had for the last five years—as well as the need for preparing special reports on the situation regarding these same rights in various countries in the hemisphere, prevented the Commission from continuing with the studies and projects mentioned in Article 26 of its Regulations.

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## SECTION ONE

### ORIGIN, STRUCTURE AND COMPETENCE OF THE COMMISSION

#### A. Creation of the Commission

The Fifth Meeting of Consultation of Ministers of Foreign Affairs, held in Santiago, Chile, in August 1959, adopted Resolution VIII, entitled "Human Rights," by which practical application was given to the principle of international protection of human rights, when it was resolved in Part II:

To create an Inter-American Commission on Human Rights, composed of seven members elected, as individuals, by the Council of the Organization of American States from panels of three names presented by the governments. The Commission, which shall be organized by the Council of the Organization and have the specific functions that the Council assigns to it, shall be charged with furthering respect for such rights.

In compliance with this mandate, the Council of the Organization of American States, in 1960, adopted the Statute of the Commission.

#### B. Organization of the Commission

In accordance with the terms of the Statute, the Commission is an "autonomous entity of the Organization of American States, the function of which is to promote respect for human rights" (Article 1), human rights being understood to be "those set forth in the American Declaration of the Rights and Duties of Man." (Article 2).

The Commission is composed of seven members, nationals of the member states of the Organization, who represent all the member countries of the Organization of American States and act in its name. (Article 3).

The members of the Commission are elected, for a term of four years, by the Permanent Council of the Organization, from panels of three persons proposed for the purpose by the governments of the member states. Only one national of any one state may be elected a member of the Commission. (Article 4).

The Chairman and Vice Chairman are elected by the members of the Commission by an absolute majority of the votes of its members and for a term of two years, and they may be reelected only once. (Article 6).

The permanent seat of the Commission is the General Secretariat of the Organization of

American States, although the Commission may move to the territory of any American state when it so decides by an absolute majority of votes and with the consent of the government concerned. (Article 11 c).

The Commission meets for a maximum of eight weeks a year, in one or two regular meetings, as decided by the Commission itself. It may also hold special meetings. (Article 11 b).

The Secretariat of the Commission is made up of the technical and administrative personnel appointed by the Secretary General of the Organization and is organized as a specialized functional unit under the direction of an Executive Secretary. (Articles 14 and 14 bis of the Statute).

## **C. Competence of the Commission**

### **1. Original powers**

The Statute adopted by the Council of the Organization in 1960 assigned the following functions and powers to the Commission. (Article 9):

- a) To develop an awareness of human rights among the peoples of America;
- b) To make recommendations to the Governments of the member states in general, if it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic legislation and, in accordance with their constitutional precepts, appropriate measures to further the faithful observance of those rights;
- c) To prepare such studies or reports as it considers advisable in the perform of its duties;
- d) To urge the Governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e) To serve the Organization of American States as an advisory body in respect of human rights.

### **2. Expansion of functions and powers**

The Second Special Inter-American Conference, which met in Rio de Janeiro in 1965, in its Resolution XXII, entitled "Expanded Functions of the Inter-American Commission on Human Rights", broadened the Commission's powers in the following terms:

#### RESOLUTION XXII

#### EXPANDED FUNCTIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

(operative paragraphs)

The Second Special Inter-American Conference,

RESOLVES:

1. To request the Inter-American Commission on Human Rights to conduct a continuing survey of the observance of fundamental human rights in each of the member states of the Organization.

2. To request the Commission to give particular attention in this survey to observance of the human rights referred to in articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man.

3. To authorize the Commission to examine communications submitted to it and any other available information, to address to the government of any American state a request for information deemed pertinent by the Commission, and to make recommendations, when it deems this appropriate, with the objective of bringing about more effective observance of fundamental human rights.

4. To request the Commission to submit a report annually to the Inter-American Conference or Meeting of Consultation of Ministers of Foreign Affairs. This report should include a statement of progress achieved in realization of the goals set forth in the American Declaration, a statement of areas in which further steps are needed to give effect to the human rights set forth in the American Declaration, and such observations as the Commission may deem appropriate on matters covered in the communications submitted to it and in other information available to the Commission.

5. In exercising the functions set forth in paragraphs 3 and 4 of this resolution, the Commission shall first ascertain whether the domestic legal procedures and remedies of a member state have been duly pursued and exhausted.

6. That the Chairman of the Commission may go to the Commission's headquarters and remain there for such time as may be necessary for the performance of his function.

7. That the secretariat services of the Commission shall be provided by a specialized functional unit, which shall be part of the General Secretariat of the Organization and shall be organized so as to have the resources required for performing the tasks entrusted to it by the Commission.

8. That the statutes of the Inter-American Commission on Human Rights shall be amended in accordance with the provisions of his resolution.

In compliance with this resolution, in 1966 the Commission incorporated the new functions approved by the Organization into its Statute, as Article 9 (bis).

It also amended its Regulations in order to adapt them to the carrying out of the new powers included in the Statute as amended, especially with regard to the examination and handling of communications or complaints on violations of human rights in the American countries.

In addition to maintaining the purely procedural provisions from the Regulations of 1960, the revised Regulations contain the following standards:

a) The Commission shall verify, as a condition precedent, whether the internal legal procedures and remedies of each member state have been duly applied and exhausted. (Article 54).

b) Establishes that a denunciation must be addressed to the Commission within six months following the date on which, as the case may be, the final domestic decision has been handed down or the signer of the communication has become aware that his recourse to domestic remedy has arbitrarily been hindered or the final domestic decision has been unjustly delayed. (Article 55).

c) Establishes a limit of 180 days counting from the date on which the denunciation was transmitted to a government in request of information, for that government to supply the pertinent data. If the government has not furnished the requested information within this period, the occurrence of the events denounced will be presumed to be true. However, the Commission may extend that term in cases in which it finds this justified. (Article 51).

d) If the occurrence of the violation is confirmed, the Commission shall prepare a report on the case and make appropriate recommendations to the government concerned. (Article 56).

e) If the government concerned does not, within a reasonable time, adopt the measures recommended, the Commission may make the observations it considers appropriate in the annual report it presents to the General Assembly of the Organization. (Article 57.1)

f) If the Assembly does not make any observations on the Commission's recommendations and if the government concerned has not yet adopted the measures recommended, the Commission may publish its report. (Article 57.2).

### **3. Amendment of the Charter**

The Protocol of Amendment to the Charter of the Organization, adopted in Buenos Aires in 1967 and ratified by all the member states, strengthened the juridical status of the Commission when it made the following provisions:

#### Article 51

The Organization of American States accomplishes its purposes by means of:

- a) The General Assembly;
- b) The Meeting of Consultation of Ministers of Foreign Affairs;
- c) The Councils;
- d) The Inter-American Juridical Committee;
- e) The Inter-American Commission on Human Rights;
- f) The General Secretariat;
- g) The Specialized Conferences; and
- h) The Specialized Organizations.

There may be established, in addition to those provided for in the Charter and in accordance with the provisions thereof, such subsidiary organs, agencies, and other entities as are considered necessary.

#### Article 112

There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

#### Article 150

Until the inter-American convention on human rights, referred to in Chapter XVIII, enters into force, the present Inter-American Commission on Human Rights shall

keep vigilance over the observance of human rights.

#### **4. American Convention on Human Rights**

The Convention referred to in Article 112 of the Charter of the Organization was approved in San José, Costa Rica, in November 1969. That Convention, which is in the process of being ratified, contains the pertinent provisions on the structure, competence, and procedure of the Commission. Up to December 31, 1976, the Convention has been ratified by Costa Rica and Colombia.

#### **D. Budget**

During the fiscal year 1975-76, without taking into consideration the fixed expenditures under the heading of personnel, the largest part of the budget was used for the meeting of the Permanent Subcommittee and three sessions of the CIDH, one of them a special session to carry out the mandates of the Assembly.

The following table shows the draft budget presented by IACHR for the fiscal year 1976-77, as well as that which was approved by the General Assembly at its sixth regular session.

	<b>Draft Budget</b>	<b>Approved Budget</b>
01 – Personnel	274.6	256.4
02 – Temporary posts	3.5	3.5
03 – Fellowships	26.0	--
04 – Travel	82.4	38.9
05 – Documents	67.1	22.2
06 – Equipment and supplies	1.5	1.5
08 – Performance contracts	15.2	--
09 – Other costs	<u>39.2</u>	<u>18.5</u>
Totals	489.3	338.0

The work of the Commission has been increasing in volume and in intensity due to the constant increase of denunciations of violations of human rights in various regions in the hemisphere and, as was already pointed out elsewhere, that increase in the work load has not been accompanied by a proportional enlargement of the means for handling it. The Commission still is limited to the staff and resources that it had several years ago. Fortunately, the Permanent Council of the Organization, at its meeting on October 5, 1976, authorized the Secretary General to accept a special contribution of \$102,000 made by the Government of the United States of America "to strengthen the activities of the Inter-American Commission on Human Rights" and requested him to present a draft budget for the use of this contribution by the Inter-American Commission on Human Rights.

The IACHR drafted a budget at its thirty-ninth session, which was approved by the Permanent Council on February 2, 1977.

#### **E. Relations with other organs of the system and with regional and worldwide agencies of the same kind**

The Commission maintains cooperative relations with the Inter-American Commission of Women, the Inter-American Children's Institute and the Inter-American Indian Institute. It also maintains cooperative relations with the United Nations Commission on Human Rights and the European Commission of Human Rights.

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## SECTION TWO

### PART I

#### **INFORMATION PROVIDED BY SOME GOVERNMENTS OF MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES ON THE "PROGRESS ACHIEVED IN REALIZATION OF THE GOALS SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN"**

##### Information provided by the Governments of Argentina, Brasil, Chile, Haiti, and the United States of America

In accordance with Article 9 (bis) of its Statute, the Inter-American Commission on Human Rights has, among other duties, that of submitting a report annually to the Inter-American Conference (now the General Assembly, Articles 51 and 52 f of the Charter of the OAS) or to the Meeting of Consultation of Ministers of Foreign Affairs. This report should include, among other matters, the following: "1) A statement of progress achieved in realization of the goals set forth in the American Declaration of the Rights and Duties of Man."

In order to comply with the aforementioned mandate, the Commission, through its Chairman, requested the governments of the member states to provide the information mentioned in the Introduction to this report.

Information was received from the Governments of Argentina, Brazil, Chile, Haiti, and the United States of America and is summarized below:

#### **ARGENTINA**

Law Nº 1.702 of the provinces of the Chaco, established a health control plan for schoolchildren that includes medical examination, laboratory control work, and keeping individual records for each student attending the educational institutions of the provinces.

By means of Law Nº 5.890, promulgated on November 6, 1975, the Province of Córdoba established within its jurisdiction a workday of no more than eight (8) hours from Monday through Friday, and of no more than four (4) hours on Saturday, with a weekly total not exceeding forty-eight (48) hours.

The Province of La Pampa approved Laws Nos. 680 and 681, under which pensions to the blind, deaf-mute, disabled, and handicapped, and old-age pensions, would be adjusted annually in relation to the cost-of-living increase in the previous year.

Various decisions of the Ministry of Labor (Nos. 125/75, 201/75 and 287/75, among

others) have granted legal status to labor unions and approved the statutes of a number of unions and professional associations.

Under Law Nº 21,312 published in the Official Bulletin of May 21, 1976, petitions for habeas corpus are admitted, in both its effects in favor of a person being held at the disposition of the Executive Branch under Article 23 of the Constitution; and Law Nº 21,449, published in the Official Bulletin of November 1, 1976, regulates the procedure for considering the situation of persons detained at the disposition of the Executive Branch who request authorization to leave the country, it being agreed that such a request may be brought 90 days after the date on which the arrest was ordered.

Resolution 3,168 of April 30, 1976, of the National Migration Office, regulates the status of political asylees.

Resolution 3,439 of May 12, 1976, of the National Migration Office, authorizes persons with temporary residence permits to enter and leave the country during the effective period in which their permits are valid.

Decree Nº 1,483, published in the Official Bulletin on September 2, 1976, provides a period of time for all foreign nationals residing illegally in the country who cannot return to their country of origin due to political, social, racial, or religious reasons, to report to the immigration authorities, in order to normalize their status under current immigration regulations.

Under Law Nº 5,878, the Province of Córdoba modified the organic law of the Federal Penitentiary Service in order that this service may fully carry out its functions of guarding, custody, and rehabilitation of prisoners being held in the various prisons throughout the province.

Under Decree Nº 3,116/75, the Province of Mendoza regulated the application of the progressive penitentiary system in its territory.

## **BRAZIL**

Among the most important activities of 1975 was the immunization of over 80 million persons against meningococcal meningitis, the eradication of malaria in six states with a population of nearly 6 million, and the establishment of a system for cholera prevention, which made it possible to keep the country free of this disease.

Under Law Nº 6,229 of July 6, 1975, the National Health System was established, enabling the government to adopt a pragmatic course of action to avoid duplication and competition between the mechanisms of organization and operation of the country's health services.

The Educational Credit Program, established by the Ministry of Education and Culture in coordination with the Caixa Econômica Federal and the banking system, provides for the investment of nearly one billion dollars in four years to aid students lacking financial resources. Due to the technical assistance provided in planning preschool education and in setting up the necessary infrastructure, in 1975 there was a 20% increase in the enrollment of preschool children from ages 4 to 6. With regard to elementary education, the government's efforts to reach a desirable level of fundamental education should be noted. In 1975 the average rate for the population from 7 to 14 years of age was about 84%, as against 71.6% in 1964. With regard to supplementary education and literacy programs for adults, it should be mentioned that in 1975, MOBIL (Brazilian Literacy Movement) reached 1,600,000 people. With regard to assistance provided to students, the following should be mentioned: the awarding of 113,465 scholarships in 1975, the provision of school lunches, which in 1975 benefited 83% of Brazilian cities and 11 million children, the supply of notebooks and school materials to 2 million students, and through the National Book Institute, the free distribution of 11.5 million texts to

needy students.

Decree N° 76,403 of October 1975 establishes the National Employment System (SINE), whose basic task is to serve as an intermediary between people seeking employment and production units in need of labor. The activities carried out by the National Commercial Apprenticeship Service (SENAC) and by the National Industrial Apprenticeship Service (SENA) were responsible for the vocational training of 900,000 workers.

Law 6,210 of June 4, 1975, revokes both the contributions on social security benefits and the suspension of retirement payments due to renewed employment.

Law 6,226 of July 14, 1975, establishes a system of reciprocal counting of time served between public service and private enterprise for the purposes of retirement.

Law 6,243 of September 24, 1975, defines the status of retired persons who go back to work and of insured persons who enter the social security program after age 60.

Law 6,260 of November 6, 1975, establishes social security benefits for rural employers and their family dependents.

The conditions for financing were reformulated, and new measures designed to make home ownership easier for a larger number of families, particularly lower income families, were implemented.

## **CHILE**

Decree Law N° 1,008, of May 8, 1975, amended Article 15 of the country's Political Constitution, making 5 days the maximum period for detention for crimes against the national security during emergency situations; in other cases, the term is forty-eight hours. It must be noted that Article 13 of Constitutional Act N° 4, published on September 13, 1976, extended the five-day period established in this decree law to 10 days.

Decree Law N° 1,009 of May 8, 1975, systematized standards on legal protection of procedural rights for those persons held for crimes against the national security, creating a more favorable and liberal treatment of them. Article 1 provided that during a state of siege, the agencies authorized to preventively detain persons presumed, with grounds, guilty of endangering the security of the state, shall be obliged to inform the immediate family of the person being held, within 48 hours of the detention.

Moreover, this complement and clarifies the change introduced in Article 15 of the Political Constitution by Decree Law 1.008, previously cited, prescribing that the detention may not last more than five days and after this period the person being detained shall be set free or remanded to the appropriate Court, or to the Minister of the Interior when it is a case of applying the special powers or a state of siege, in which case it shall be accompanied by a written report with all the background information. Moreover, it drastically sanctions the use of illegal pressures on those being detained.

Article 8 changed Decree Law N° 640 of September 10, 1974, limiting the operation of Military Courts in time of war to states of siege due to external or internal war, and in the degree of internal defense.

Decree Law N° 1,181 of September 11, 1975, put an end to the state of siege in degree of internal defense, establishing the state of siege in degree of internal security.

Supreme Decree of Justice N° 187 of January 26, 1976, regulates the standards aimed at guaranteeing the rights of those detained by virtue of a state of siege, set forth in Article 1 of Decree Law N° 1.009, summarized in the following manner: 1. Medical examination for those

detained upon entering as well as leaving detention establishments, with the purpose of determining whether they have been mistreated or subjected to undue pressures, in which case the Ministry of Justice will denounce the fact to the pertinent authority, who, within 48 hours, shall draw up the appropriate summary to determine who is responsible and proceed accordingly. 2. Inspections by the President of the Honorable Supreme Court and the Minister of Justice, without advance notice, to detention sites in connection with states of siege to verify strict compliance with the legal and regulatory standards in force over the rights of those detained, duly reporting to the respective authorities any irregularities they notice. 3. Arrests related to application of a state of siege may be made only with a prior written order from the head of the pertinent specialized security agency, which must indicate the name of the person arrested, of the arresting officer, place of imprisonment, date and time of the arrest, name, position and signature of the person who ordered this measure, and seal and stamp to authenticate the order. A copy of the order of arrest must be handed to the immediate family member that the person being detained indicates. In the case of entry and search, the appropriate written order to conduct the it shall be shown, and a copy of it given to the owner of the house or the occupant of the house searched, once the action is completed. 4. Through Supreme Decree of the Ministry of the Interior Nº 146, detention sites were set up at Puchuncaví in Valparaíso, Region V, Tres Álamos and Cuatro Álamos in Santiago, Metropolitan Region. 5. Decree 187 indicates the offices and employees in the respective regions who will take the steps necessary in providing the President of the Supreme Court, the Minister of Justice or the employee designated by him, as the case may be, all the means of support leading to the proper fulfillment of their duty.

Supreme Decree of Justice Nº 504 of April 30, 1975, states that punishment depriving one of his liberty or restricting it, imposed by the military courts, can be commuted to required departure from the country.

## **UNITED STATES OF AMERICA**

By virtue of Law 94-135 of November 28, 1975, the Older Americans Act of 1965 was amended, establishing several social service programs for senior citizens and prohibiting discrimination on account of age.

## **HAITI**

By Decree of the President of the Republic dated December 23, 1976, pardon was granted to 140 prisoners, some of whom were considered to be political prisoners. The names of those pardoned were published in "Le Moniteur", the official newspaper of the Republic of Haiti. Furthermore, this decree commuted the death sentence of several people to hard labor for no more than 15 years, and reduced the length of other persons' sentences to hard labor.

On December 24 of the same year, by a new decision of the President of the Republic, 24 more persons were freed. Their names appeared in a communication issued by the Ministry of Justice.

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The fact that the data requested by the Commission were sent, as well as the measures taken by the Governments of Argentina, Brazil, Chile, Haiti, and the United States of America, constitutes positive acts that show interest in the attainment of the goals of the American Declaration of the Rights and Duties of Man.

This information constitutes important elements that the Commission will take into account, at the appropriate time, in evaluating the effective exercise of human rights in a specific country, as has been done in relation to the same legal standards referred to now by the Government of Chile, which had already been analyzed in the Second Report on the Situation on Human Rights in Chile (OEA/Ser.1/V/II.37, doc. 19 corr. 1, pp. 6-19).

## **PART II**

### **AREAS IN WHICH STEPS ARE NEEDED TO GIVE EFFECT TO THE HUMAN RIGHTS SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN**

The first paragraph of the preamble of the Charter of the Organization of American States affirms that "...the historic mission of America is to offer to man a land of liberty, and a favorable environment for the development of his personality and the realization of his just aspirations." The third paragraph states that "...the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man."

Unfortunately, the situation in 1976 in the American countries as concerns respect for an effective protection of human rights does not allow us, generally speaking, to say that our hemisphere is remaining faithful to its historic mission and to these lofty ideals.

Numerous persons have lost their lives due to terrorist attacks, clashes with armed forces or police authorities or under circumstances that make presumable the intervention of paramilitary and parapolice groups tolerated, if not fostered, by the authorities.

There have already been many cases recorded of "missing persons", that is, persons who according to witnesses and other evidence have been detained by military or police authorities but whose detention is denied and whose location is unknown. Added to the illegal deprivation of freedom in these instances is the anguish of relatives and friends who do not know whether the missing persons are dead or alive and who are unable to avail themselves of the remedies established under law or to lend them material and moral assistance. The growing number of cases of this kind in several American countries is a reason for serious concern to the Commission and is, properly, one of the aspects of the situation in the area of human rights that has warranted very special attention by the Commission as well as the governmental and nongovernmental bodies which function in this area in one way or another.

The status of "missing" seems to be a comfortable expedient to avoid application of the legal provisions established for the defense of personal freedom, physical security, dignity and human life itself. In practice this procedure nullifies the legal standards established in recent years in some countries to avoid illegal detentions and the use of physical and psychological duress against persons detained.

It must not be forgotten that Article I of the American Declaration of the Rights and Duties of Man mentions the right to personal security immediately after the rights to life and to liberty. Every state has the clear duty to guarantee the security of all persons living in its territory, whether they be citizens or foreigners.

Another aspect of the problem which particularly concerns the Commission is the widespread practice of sophisticated means of torture in several American states. The spread of these means of repression is due to the lack of standards that would effectively protect persons detained or due to the fact that these standards are not applied in practice or, what is more serious, due to the intimidation of judges and high officials of the administration, who do not perform their duty of preventing these acts by investigating and punishing those responsible for such acts with all force.

An equally disturbing form of mistreatment of detainees is the lack or shortage of medical attention in jails and other detention centers, which has been repeatedly denounced and which in no few instances has led to the death or permanent harm of the victims of this

kind of violation.

Added to these problems, which warrant emphasis due to their serious nature, are others which, without compromising human life, physical security or dignity, touch on rights as basic as the right to liberty and to due process.

In this line of thinking, we must mention first of all the serious limitations on the right to a defense in some countries of our continent. According to information gathered by the Commission, in some countries the performance of attorneys in defense of human rights is obstructed or prevented by assaults against life, deprivation of freedom, exile, or every kind of threat or reprisal against them or their families. The Commission has specific denunciations by attorneys who have been victims of every kind of violence caused only by their active participation in the defense of persons detained for reasons of state security or for alleged violations against the public order.

In some instances the bar associations or similar organizations which have fulfilled their duty to defend their members' rights have also been subjected to threats and acts of violence.

The Commission has also received denunciations stating that in some instances judges have also been victims of these abuses and that they are also exposed to delayed promotions or even loss of their positions if they do not yield to the intentions of the executive authorities.

Unfortunately, these highly serious violations do not complete the list of acts that warrant special remarks in this part of our report.

The handing over of refugees to the authorities of their country of origin, in violation of the conventions on human rights and other accepted international humanitarian principles and standards, knowing that this involves serious risk to such persons and even endangers their very lives, is clearly an act that involves the responsibility of the authorities of the country that enables or allows such action, as well as that of the authorities of the country so requesting.

Added in some instances to the entire range of penalties that are being applied to the political dissidents is the loss of citizenship, with all the consequences thereof to the persons to whom it is applied and to the international community.

The frequency with which the exiling of nationals is resorted to, not as an option as established in some bodies of law but rather as an act forced upon the person and against which there is no recourse, in violation of the right to residence and movement established in Article VIII of the American Declaration of the Rights and Duties of Man, is reason for alarm and concern.

Mention should also be made of the policy followed by some states of not granting passports to their nationals, who then in most instances are able only to travel to and reside in bordering countries.

The Commission is not unaware that these and other violations occur in a context of acute ideological or, more generally, political conflicts and that some states have lived through a situation quite like a civil war or have been on the brink thereof.

Under such circumstances it is obvious that the standards established for normal times cannot be applied without serious risk to the maintenance of public order and state security, but, as the Commission has said so many times, application of the emergency decrees provided for in the constitutions and laws of many states cannot or should not result in the repeated violation of basic human rights.

Thus, for example, the declaration of a state of emergency or a state of siege cannot serve as a pretext for the indefinite detention of individuals, without any charge whatever. It is obvious that when these security measures are extended beyond a reasonable time they become true and serious violations of the right to freedom. Likewise, the indefinite prolonging of trials for crimes against public order and state security, which give rise in some instances to deprivation of the freedom of the accused for a longer period than the longest sentence he could receive, is a violation of the right to a fair trial provided for in Article XVIII of the American Declaration of the Rights and Duties of Man. It goes without saying that these emergency situations in no instance justify the application of torture, nor much less the loss of life except, in the latter instance, in application of the death penalty, if this penalty has been provided for under a law preceding the violation and has been imposed by the competent courts under due process in which the person convicted has had all the guarantees necessary for his defense.

It should be stated at this time that the states have not only the right but the duty to take the measures necessary to prevent acts of terrorism and violence. As the Commission has stated on other occasions, the governments cannot, without incurring serious responsibilities, act as simple spectators of the violence caused by one sector of the population against another.

The Commission's task in the area of human rights protection is possible due largely to the cooperation it receives from individuals, institutions and other entities that act in their respective countries in the defense of human rights. Without this cooperation, which enables the Commission to receive accurate information on specific cases of human rights violations, with all the requirements of our Regulations, it would be hardly possible to form a complete opinion on these cases and on the general status of human rights in the different countries of this hemisphere. Thus it observes with great concern the measures taken by some governments against some of these persons and institutions. It must be kept in mind in judging these acts and in assessing their seriousness that these measures have been taken against respectable individuals, institutions or entities which have acted out in the open in the territory of the states in which they reside or are located, which have bravely faced the misunderstanding of some persons and in no few instances have faced threats and acts of violence and have been subjected to measures that can be explained only as reprisals for their humanitarian efforts.

In this context, we can stress a favorable situation: the increase in and strengthening of private international associations truly devoted to fostering respect for the rights and freedoms established in universal and regional declarations, conventions and covenants on human rights.

## **RECOMMENDATIONS**

In view of the preceding considerations, the Commission reiterates, first of all, the recommendations contained in its earlier report<sup>1</sup> which continue to be very current, and, in addition, recommends:

1. That all the necessary measures be taken to prevent the security forces or other authorities from arresting and detaining persons without the knowledge of the competent authorities and of the relatives of the prisoner, so as to put an end to the so-called cases of "disappearance". Among these measures the following may be mentioned: close vigilance by the high officials and by the Judicial Branch over the actions of the security forces; periodic visits to the places described as illegal detention centers and imposition of severe sanctions on members of these forces who give an evasive reply to requests for information about persons they have detained.

2. That an effective policy be applied against torture, for which purpose everything possible should be done to enable the judges to investigate denunciations received

about these violations, without prejudice to the duties the administrative authorities themselves have to make the appropriate investigations and to impose the penalties established in the laws and regulations. Only through rigorous investigations, submission to trial, and the imposition of severe penalties on the persons responsible for these tortures will it be possible to put an end, or at least to limit, this abominable practice and prevent its recurrence.

3. That the detention centers and prisons be provided with the staff and the means necessary for giving adequate medical assistance to the prisoners or convicts and to authorize the transfer of these prisoners to public or private hospitals or clinics, outside of these centers, when the resources available there are not sufficient to ensure the treatment required by the patients.

4. That the necessary measures be taken to ensure the protection of lawyers and judges so that they may fully carry out their functions.

5. That the standards established in the Convention regarding the situation of refugees of which the state concerned is a member, be adhered to faithfully.

6. That an end be put to the increasingly generalized practice in some countries of canceling passports or denying the issuance or renewal of them to their nationals, for political reasons or for causes not contemplated in the pertinent legislation.

## **APPENDIX**

### **PART II 1**

#### **AREAS IN WHICH FURTHER STEPS ARE NEEDED TO GIVE EFFECT TO THE HUMAN RIGHTS SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN**

Very few changes have occurred in the period covered by this report in the situation described in general terms in Part II of the preceding report of this Commission.

If, on the one hand, there has been progress in some American countries in the field of economic, social, and cultural rights, on the other hand, insofar as the effective respect for an protection of civil and political rights is concerned, the most that can be said is that the general situation is not worse than in preceding years.

Violence continues to be an instrument used by groups or organizations bent on imposing their own political views by this means, or by government officials and agents, in some cases made worse by the fact that they operate as paramilitary or parapolice organizations.

In this climate of violence, the life, the liberty, and the security of the individual, that is to say, his basic rights as set forth in Article I of the American Declaration of the Rights and Duties of Man, are in constant danger and are frequently violated.

In this regard, the Commission is concerned with the view that the government is responsible only for violations committed by its officials or agents and that it could remain with its arms crossed in the face of attacks on these rights that are the result of armed struggle between enemy factions. The duty of the state is to guarantee the security of the population, and it would be failing in this duty, both by action and by omission. The state cannot remain indifferent in such a fundamental matter, and it must do everything in its power to effectively protect these rights.

Special reference should be made in this report to repeated denunciations that, in



several American countries, physical and mental pressures are applied to prisoners, without, apparently, the persons indicated as being responsible for the commission of these offenses against the dignity, and at times, the very life of the person, being submitted to trial, and eventually being punished with the severity called for by these crimes.

The Commission is also concerned about the fact that in some American countries either there are no adequate resources for protecting human rights or the exercise of these rights is impossible in fact, either because the detained person does not, in fact, have access to the protection agencies, or because of the inhibition of these agencies.

It is necessary to issue a clear and precise legal rules deciding how and with what effect one may have recourse to habeas corpus when persons have been arrested or confined through the exercise of "special powers", or "exceptional powers", or "immediate security measures", if the Constitution that should be applied does not contain express provisions to the contrary.

The advantages that would be derived from the enactment of a law that would clarify this point are infinite. The fact that, even in those cases, the Judge can force the arresting authority to bring the prisoner before him (which is what "habeas corpus" means), would enable one to determine the following (which is not always known):

1. Whether the person is still alive.
2. Whether he bears signs of having been tortured or subjected to physical or psychological pressures.
3. Where he is being detained.
4. What are the conditions of the detention site or prisoner camp to which the prisoner has been sent.
5. Whether he is being given cruel, inhuman, or degrading treatment.

The safeguarding of the institutions, of the integrity and sovereignty of the states, is an extremely important matter, which amply justifies the granting of special powers to certain organs of the government to be exercised in exceptional cases; but the protection of a person's liberty, integrity, and honor are also a primary function of law.

Finally, we find it useful to point out the importance of respect for conventions or customary rules with regard to asylum, the result of a long evolution in our hemisphere.

#### FINAL RECOMMENDATION

In order to try to reduce the violation of human rights resulting from the fact that in several American countries the whereabouts of hundreds or thousands of persons who have been arrested by the authorities is unknown, we consider it of the highest priority that the General Assembly of the Organization adopt a resolution based on the observations made by the Commission in Part II of this report.

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1 These recommendations are contained in the Appendix included at the end of this Part II.



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## SECTION THREE

### ACTIVITIES OF THE COMMISSION DURING 1976

The Inter-American Commission on Human Rights held three sessions during 1976, its thirty-seventh (special), thirty-eighth and thirty-ninth. These meetings took place at the headquarters of the Commission, the General Secretariat of the Organization of American States, Washington, D.C., USA.

#### A. Thirty-seventh session (special)

The Commission held its thirty-seventh session during the period March 8-12, 1976. The main purpose of this special session was to prepare the "Second Report on the Situation of Human Rights in Chile", in compliance with the provisions of resolution AG/RES. 190 (V-O/75), adopted by the General Assembly at its fifth regular session.

The following members of the Commission attended this session: Dr. Andrés Aguilar, Chairman (Venezuela); Dr. Carlos A. Dunshee de Abranches, Vice Chairman (Brazil); Professor Manuel Bianchi (Chile); Dr. Genaro R. Carrió (Argentina); Dr. Justino Jiménez de Aréchaga (Uruguay) and Mr. Robert F. Woodward (United States). Dr. Gabino Fraga (Mexico) was absent for reasons of health.

#### Resolution 190 of the General Assembly of the OAS

The General Assembly of the Organization of American States, at its plenary session held on May 19, 1975, adopted a resolution (AG/RES. 190) by means of which it decided, in operative paragraph 4:

To request the Inter-American Commission to secure, by all appropriate means, additional information, to consider that information, and to submit a report on the status of human rights in Chile to the next session of the General Assembly, ensuring that the Government of Chile has reasonable time to submit its own observations.

In implementation of the provisions of the aforesaid resolution, the Commission undertook the task of drafting a second report on the status of human rights in Chile, and it examined how the situation had evolved since August 2, 1974, the date on which the in situ observation referred to in its first report was completed.

Bearing in mind the General Assembly's request that it present to its sixth regular session a report that would be as up to date as possible, and also that the Government of Chile have a reasonable time in which to examine such document prior to debate on it by the Assembly, the Commission decided that the new report would cover the period between

August 2, 1974 and March 12, 1976.

#### Meeting of the Working Group to prepare the Draft Report

At its thirty-sixth session (October 1975), the Commission decided to establish a working group whose mandate was to prepare a draft report on the status of human rights in Chile. This group was composed of Dr. Abranches, who served as chairman, and Drs. Jiménez de Aréchaga, Carrió and Woodward.

The members of the working group met on March 3, 4 and 8, 1976, prior to the opening of the thirty-seventh session, at the headquarters of the Commission.

The group then submitted an oral report to the Commission on the progress of its work.

#### Hearing granted to the representative of the Government of Chile

At its thirty-seventh session, the Commission decided, at the petition of the Government of Chile, to grant a hearing to Ambassador Sergio Diez so that he might make a statement to the Commission. This meeting took place on March 10, 1976, at which time Ambassador Diez made a general statement on the situation of human rights in Chile.

#### Approval of the Second Report on the Situation of Human Rights in Chile and its submission to the Government of Chile and to the Secretary General of the OAS

At its session held on March 12, 1976, the Commission adopted the "Second Report on the Situation of Human Rights in Chile", and on March 31, 1976, sent one copy of the report to the Minister of Foreign Relations of Chile, and another copy to the Permanent Representative of Chile to the OAS, in order that the Chilean government might have a reasonable time in which to present its observations thereto.

On April 30, 1976, the Chairman of the Commission transmitted a copy of the above-mentioned report to the Secretary General of the OAS.

### **B. Thirty-eighth session**

The Commission held its thirty-eighth session from May 24 to June 4, 1976. The following members were present: Dr. Andrés Aguilar, Chairman; Dr. Carlos A. Dunshee de Abranches, Vice Chairman; Prof. Manuel Bianchi, Dr. Genaro R. Carrió, Dr. Gabino Fraga, Dr. Justino Jiménez de Aréchaga, and Mr. Robert F. Woodward. Most of this session was devoted to a case-by-case consideration of approximately 160 alleged violations of human rights in the member states.

#### Report on the Status of Human Rights in Cuba

The Commission published report on the status of human rights in Cuba in 1962, 1963, and 1967. In 1970, it prepared a "Second Report on the situation of political prisoners and their families in Cuba."<sup>1</sup> As of that year, the Commission continued to receive communications from individuals and organizations which alleged serious violations of basic human rights in that country.

These denunciations were processed according to the Regulations and, in each case, the Government of Cuba was asked to provide the relevant information. The Government did not reply to any of these requests.

At its thirty-fourth session (April 1974), the Commission, bearing in mind the fact that the denunciations contained not only complaints of an individual nature, but also dealt with

questions relating to the overall status of human rights in that country, decided to update the report published in 1970.

The draft of the new report, which was prepared by the Secretariat, was studied by the Commission during its thirty-fifth session (May 1975), and a rapporteur was designated to revise the draft in accordance with the modifications agreed upon by the Commission.

At its thirty-sixth session (October 1975), the Commission again took up its study of the draft, and examined the proposals of the rapporteur and other members.

At the thirty-eighth session, the rapporteur presented the final version of the draft, and the Commission unanimously approved the "Fifth Report on the Status of Human Rights in Cuba."<sup>2</sup>

By a note dated May 28, 1976, the report was transmitted to the Secretary General of the OAS, with the request that he transmit it to the Permanent Council of the Organization for the purposes it might deem pertinent. A copy was also sent to the Government of Cuba which, once again, remained silent.

The participants in the sixth regular session of the General Assembly of the Organization, which was held in Santiago, took cognizance of the "Fifth Report on the Status of Human Rights in Cuba", but it was not discussed because there was not sufficient time to include it on the agenda of that session of the General Assembly.

#### Observations of the Government of Chile on the Second Report on the Situation of Human Rights in Chile

The Commission, at its thirty-seventh session (March 1976), decided that the observations made by the Government of Chile on the Commission's report could be studied at its next regular session, if the Chilean government presented its observations in due time.

At its thirty-eighth session, the Commission considered the observations of the Government of Chile,<sup>1</sup> which had been received in the Secretariat on May 18, 1976, and came to the conclusion that they did not contribute any additional viewpoints that would justify amending its report.

#### Hearing granted to the representatives of the Government of Chile

Granting a request made by the Permanent Representative of Chile to the OAS on May 25, the Commission received Ambassador Diez and Dr. Miguel Schweitzer, Jr. on May 27. They provided additional information that they considered pertinent to the observations of the Government of Chile on the Second Report.

### **C. Sixth regular session of the General Assembly of the OAS**

The Commission was represented at the sixth regular session of the General Assembly of the OAS, held in Santiago, Chile, from June 4 to June 18, 1976, by its Chairman, Dr. Andrés Aguilar, by its Vice Chairman, Dr. Carlos A. Dunshee de Abranches, and by Mr. Robert F. Woodward, a member of the Commission.

Three items related to the IACHR appeared on the agenda of the Assembly: (a) the Annual Report of the Commission; (b) the Second Report on the Situation of Human Rights in Chile, prepared by the IACHR; and (c) "Means to promote respect for human rights and to facilitate cooperation by the member states for that purpose", a document presented by the Government of Chile. The First Committee of the General Assembly (Legal and Political Affairs) decided to deal with the three topics at the same time, without prejudice to the adoption of separate resolutions on the said topics.

The Chairman of the Commission introduced the Annual Report of the IACHR, and the "Second Report on the Situation of Human Rights in Chile", and provided the additional information requested of him.

The General Assembly, at its fourth plenary session held on June 17, 1976, adopted the three draft resolutions submitted to it by the First Committee; the texts of these resolutions are given below:

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION  
ON HUMAN RIGHTS<sup>1</sup>

THE GENERAL ASSEMBLY,

HAVING SEEN the annual report of the Inter-American Commission on Human Rights for 1975, presented to it by the aforementioned Commission (AG/doc.632/76); and

CONSIDERING:

That according to that report, on the one hand, progress has been made in some countries in the hemisphere in the area of economic, social, and cultural rights, and on the other, the situation regarding effective observance and protection of civil and political rights, taken as a whole, is not worse than in previous years; and that violence continues to be a tool used by groups or organizations engaged in imposing their own political choices, or by government officials and agents and, consequently, the fundamental rights of life, liberty, and personal security are in constant jeopardy and are frequently violated;

That the protection and safeguarding of human rights is one of the high purposes of the Organization of American States, and the observance of these rights is a source of friendship and solidarity among the member states, guaranteeing respect for human life and the dignity of man,

RESOLVES:

1. To take note of the report and to thank the Commission for the work it has been carrying out.

2. To recommend that the member states, taking into account Part II of the aforementioned report of the Inter-American Commission on Human Rights, continue to adopt and apply the appropriate measures and legislative provisions to protect and fully maintain human rights, in accordance with the "American Declaration of the Rights and Duties of Man."

SECOND REPORT OF THE INTER-AMERICAN COMMISSION  
ON HUMAN RIGHTS  
"THE STATUS OF HUMAN RIGHTS IN CHILE"<sup>1</sup>

WHEREAS:

This Assembly, at its fifth regular session adopted resolution AG/RES. 190 (V-O/75) operative paragraph 4 of which requested "the Inter-American Commission to secure, by all appropriate means, additional information, to consider that information, and to submit a report on the status of human rights in Chile" to this session of the General Assembly, "ensuring that the Government of Chile has reasonable time to submit its own observations";

The Inter-American Commission on Human Rights submitted its "Second Report on the Status of Human Rights in Chile" (AG/doc. 666/76) to this session;

The Government of Chile presented its observations on the aforementioned report, with a note dated May 13, 1976 (AG/doc. 667/76);

The conclusions reached in the Commission's report demonstrate that although there has been a "quantitative drop in affronts to certain fundamental human rights," some of the legal provisions aimed at preventing violation of those rights did not have appreciable beneficial effects;

Although both the general and specific observations furnished by the Government of Chile concerning the facts charged in some cases nullify the charges, in others they fail to clarify information received by the Commission on affronts to human rights;

Various delegations have made statements on the subject during the sixth regular session of the General Assembly of the Organization;

The protection and safeguarding of human rights is one of the high purposes of the Organization of American States, and the observance of these rights is a source of friendship and solidarity among the member states, guaranteeing respect for human life and the dignity of man; and

It is the mission of the Inter-American Commission on Human Rights to promote the observance and protection of human rights in every country of the Americas,

#### THE GENERAL ASSEMBLY

#### RESOLVES:

1. To make a special appeal to the Government of Chile to continue adopting and implementing the necessary procedures and measures for effectively preserving and ensuring full respect for human rights in Chile.

2. To request the Government of Chile to continue giving the Inter-American Commission on Human Rights all cooperation necessary to carry out its work and, at the same time, provide appropriate guarantees to persons or institutions that may provide information, testimony, or other types of evidence.

3. To express its appreciation to the Inter-American Commission on Human Rights for its "Second Report on the Status of Human Rights in Chile" and request it to continue considering the status of human rights in that country and to report on this subject to the seventh regular session of the General Assembly in the manner it deems advisable.

#### MEANS TO PROMOTE RESPECT FOR HUMAN RIGHTS AND TO FACILITATE COOPERATION BY THE MEMBER STATES FOR THAT PURPOSE<sup>1</sup>

THE GENERAL ASSEMBLY,

HAVING SEEN the document containing the note from the Ambassador, Permanent Representative of Chile, which proposes the inclusion of the topic "Means to Promote Respect for Human Rights and to Facilitate Cooperation by the Member States for that Purpose" (AG/doc. 620/76) and the document presented by the

same delegation to the sixth regular session of the General Assembly, entitled "Points to be considered in drawing up a draft resolution regarding the 'Means to Promote Respect for Human Rights and to Facilitate Cooperation by the Member States for that Purpose'" (AG/doc. 2/76); and

CONSIDERING:

That during the course of this Assembly other delegations proposed actions relating to the same topic,

RESOLVES:

1. To refer the aforementioned documents and background material to the Permanent Council of the Organization for study, and to request the Council to inform the General Assembly, at its seventh regular session, of the results of this study.

2. To request the Inter-American Commission on Human Rights to submit to the Permanent Council, for this purpose, its observations on the documents mentioned in this resolution.

**D. Thirty-ninth session**

The Commission held its thirty-ninth session from October 25 to November 5, 1976.

The following members participated in the session: Dr. Andrés Aguilar (Venezuela); Dr. Carlos A. Dunshee de Abranches (Brazil); Prof. Tom J. Farer (United States); Dr. Gabino Fraga (Mexico); Dr. Carlos García Bauer (Guatemala); Dr. José J. Gori (Colombia) and Dr. Fernando Volio Jiménez (Costa Rica), who were elected by the Permanent Council of the OAS at its meeting held on May 5, 1976, pursuant to Article 4 of the Statute of the Commission, for a term of four years beginning on June 20, 1976.

During this session, the Commission elected its officers, pursuant to the provisions of Article 6.c of its Statute: Drs. Aguilar and Abranches were reelected as Chairman and Vice Chairman, respectively, for a term of two years. Also elected were Prof. Farer and Dr. Fraga, as the third member of the Permanent Subcommittee and alternate member, respectively.

In addition to studying denunciations of alleged violations of human rights affecting large numbers of people, the Commission had to attend to many other tasks. The dramatic increase in the denunciations, and their gravity and frequency, gave rise to a careful study of the overall status of human rights in several countries, and in some cases, it was necessary to make a very detailed study of some important legal questions.

In implementation of resolution AG/RES. 243 (VI-O/76), adopted by the General Assembly at its sixth regular session, the Commission began the process of drafting the third report on the status of human rights in Chile. For this purpose, it prepared questionnaires to solicit detailed information both from the Government of Chile and from organizations in that country. The questionnaires were duly sent to the proper recipients.

Lastly, the Commission studied the general situation in the Americas, insofar as it pertains to the respect for and effective protection of human rights, and the means that could be used to improve this situation.

Other activities – Inter-American Yearbook on Human Rights

During this session, the Inter-American Yearbook on Human Rights, 1969-1970 was published as the third volume in the series.

This bilingual volume covers in great detail the American Convention on Human Rights and the Inter-American Specialized Conference on Human Rights, at which the Convention was approved and which met in San José, Costa Rica, in November 1969. It also contains the Protocol of Amendment to the Charter of the OAS, insofar as it pertains to human rights.

The volume also reports on the activities carried out by the Commission during 1969 and 1970, and contains the reports and studies prepared by it, as well as a bibliography on the subject of human rights. The publication comprises 542 pages, and was prepared by the Secretariat of the Commission.

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1	OEA/Ser.L/VI/II.23, doc. 6 rev. 1, May 7, 1970.
2	OEA/Ser.L/V/II.38, doc. 12, 25 May 1976.
1	See Observations made by the Government of Chile on the Second Report. OEA/Ser.P. AG/doc. 667/76.
1	AG/RES. 242 (VI-O/76).
1	AG/RES. 243 (VI-O/76).
1	AG/RES. 244 (VI-O/76).