



# Inter-American Commission on Human Rights

Organization of American States

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## CHAPTER I

### INTRODUCTION

1. The 60th anniversary of the American Declaration of the Rights and Duties of Man and of the Universal Declaration of Human Rights was commemorated during 2008. These two instruments, along with the Charter of the Nations and the Charter of the Organization of American States, marked the beginning of a new era by placing the concept of human dignity and respect for the most basic rights of every person as the centerpiece of the national and international agendas.

2. Even though over the course of these six decades, progress has clearly been made toward strengthening and protecting human rights worldwide, and serious violations of human rights have been exposed and disavowed by the majority of states through their ratification of international instruments and their adoption, at the domestic level, of measures of protection, the ideals of 1948 are far from being fulfilled. Poverty, hunger, the continued failure to treat easily curable diseases, discrimination, illiteracy, torture, forced disappearance and injustice are still part of our contemporary reality and plague our region and other parts of the globe. Accordingly, the 60<sup>th</sup> anniversary of the American Declaration and Universal Declaration gives us cause to reflect more than to celebrate. It is an opportunity to renew the spirit that drove the authors of these important international instruments, to reflect upon the errors of the past and the progress achieved, and to rededicate to making human dignity, freedom, equality, justice and solidarity the main objective of States, and to cultivate the conditions that will enable every individual to realize his or her full potential and achieve happiness.

3. Such reflection is particularly relevant given the challenges that the member States of the region are currently confronting. One of the challenges that is increasing in importance is the citizen's security, as it directly affects the full enjoyment of the individual's basic rights. Insecurity is one of the main threats to the stability of the countries of the region and influences the member states' democratic, social and economic development.

4. This hemisphere has some of the highest rates of crime and social violence in the world. In Latin America and the Caribbean alone, the average murder rate in 2006 was 25.1 for every 100,000 inhabitants, which was double the average worldwide.<sup>[1]</sup> There is also a strong correlation between violence, high poverty rates, and the lack of access to basic services, health and education, which is still a problem for many people in the countries of the region. Generalizations that draw a direct relationship between poverty and crime ought not to be made, since much of the insecurity in the region is the product of phenomena like organized crime. Still, it has to be recognized that security is not an issue that can be addressed in isolation and that, when dealing with the problem of insecurity and applying public security-

related policies, a comprehensive approach is required, one that takes into account the various needs and dimensions of the communities hardest hit by violence.

5. The aforesaid demands effective measures from the Governments to prevent, to control and to reduce crime. Lack of social cohesion, a failure to satisfy basic needs, and the citizenry's mistrust of authorities are all factors that have contributed to the growing problem of general insecurity in the various countries of the region. Many of the policies that the states have adopted to take on the challenges of citizen security have not only failed to accomplish the goal of lowering crime rates, but have also exacerbated social violence, posing a direct threat to full respect for their citizens' human rights and at times even generating an atmosphere of distrust that is inimical to community life.

6. Indeed, the region has a long history of policies intended to combat public insecurity that are slanted more toward repression than prevention. These policies have combined harsh rhetoric with measures to toughen prison sentences, broaden the legal prerogatives of law enforcement, restrict or curtail fundamental rights, and others of the kind. Such policies have neglected the basic mission of preventing crime, rehabilitating criminals, redressing victims and, most especially, social intervention through public policies that guarantee greater access to public services, health and education for the people of the region. As a result, rather than reduce crime, these policies have unleashed enormous increases in the incidence of violence and have thereby eroded respect for people's human rights.

7. Plans to address the problem of citizen security in the region must be premised –always and without exception– upon the international law of human rights and international humanitarian law. For example, for concrete measures like modernizing law enforcement institutions, the emphasis must be on training in human rights, the adoption of international treaties on the subject, and the compulsory standards that those charged with the vital role of protecting citizen security must follow. The Commission has consistently recommended to the member States to take measures to teach human rights. Such measures serve a variety of purposes, among them, preventing a recurrence of abuses of authority by agents of the State and instilling a culture of respect for human rights not just in law enforcement institutions but in the general public as well. The states themselves have recognized the importance of “the cross-cutting integration of the provisions of international law in the institutional culture, doctrine, education, training and actions of the security forces.”<sup>[2]</sup>

8. In every democratic State, law enforcement plays a critical role in protecting citizens, their rights and their property. Accordingly, member States must pay particular attention to the training given to law-enforcement agents so that, educated in the provisions of the international law of human rights, they are able to perform their functions properly, reliably and constructively, with a view to restoring order in society. Similarly, enhanced professionalism and greater respect for human rights by law enforcement officers will help restore the citizenry's trust and confidence in its public officials and create an atmosphere conducive to peaceful coexistence.

9. The concern to address the problems of citizen security better and more effectively is reflected in various OAS initiatives, among them the First Meeting of Ministers Responsible for Public Security in the Americas, held in Mexico City, October 7 and 8, 2008, where a Commitment to Public Security in the Americas was adopted.<sup>[3]</sup> In that document, the ministers recognized that public security is the exclusive duty and obligation of the State, and highlighted the role that full respect for human rights and, especially, promotion of education, health and socio-economic development play in improving security conditions. In the Commitment, the member States also emphasized the need to promote and strengthen citizen and community involvement in the execution of public security plans and programs.

10. Given the obvious impact that citizen-security problems have on full observance of human rights, and in order to contribute to the public policy debate in this area,

the Inter-American Commission is currently preparing a report on the interrelationship between citizen security and human rights. The study's main objective is to help improve citizen security in the Americas, and specifically to identify and explain the applicable standards in this area so as to be able to make recommendations to the OAS member States on the adoption of effective policies in citizen security that are respectful of human rights.

11. The commitment of the states to creating the security conditions that will enable all persons to enjoy their rights to the fullest, as part of a comprehensive policy to afford equal access to education, health, jobs, and the citizens' active participation in designing and implementing these policies, should become a priority in the region. The Commission will continue its work of promotion and protection of human rights and will monitor these processes so that the ideals proclaimed 60 years ago become a reality in the hemisphere.

12. Likewise, in 2009 we will be celebrating the 50th anniversary of the Inter-American Commission on Human Rights. The anniversary undoubtedly offers an excellent opportunity to undertake a in-depth evaluation of the current situation of human rights in the region and on the specific measures required to strengthen the Inter-American system of human rights. For that purpose, the Commission makes itself available to the States and civil society to facilitate a constructive dialogue among the different stakeholders in the system. The results of this dialogue will be included in the IACHR annual report for 2009.

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## CHAPTER II

### LEGAL BASES AND ACTIVITIES OF THE IACHR DURING 2008

#### A. Legal bases, functions and powers

1. The Inter-American Commission on Human Rights ("IACHR" or "the Commission") is an autonomous organ of the Organization of American States (OAS), headquartered in Washington, D.C. Its mandate is prescribed in the OAS Charter, the American Convention on Human Rights and the Commission's Statute. The IACHR is one of the two bodies in the inter-American system responsible for the promotion and protection of human rights. The other is the Inter-American Court of Human Rights, whose seat is in San José, Costa Rica.

2. The IACHR consists of seven members who carry out their functions independently, without representing any particular country. Its members are elected by the General Assembly of the OAS for a period of four years and may be re-elected only once. The IACHR meets in regular and special sessions several times a year. The Executive Secretariat carries out the tasks delegated to it by the IACHR and provides legal and administrative support to the IACHR in carrying out its functions.

3. In April 1948, the OAS adopted in Bogotá, Colombia, the American Declaration of the Rights and Duties of Man ("American Declaration"), the first international instrument on human rights of a general nature. The IACHR was created in 1959 and held its first sessions in 1960.

4. In 1961, the IACHR began a series of visits to several countries to observe on-site the human rights situation. Since then, the Commission has made more than 105 visits to member States. Based in part on these on-site investigations, the Commission has, to date, published 75 country reports and special subject reports.

5. In 1965, the IACHR was expressly authorized to examine complaints or petitions related to specific cases of human rights violations. By 2008, the Commission has received thousands of complaints which brought the total number of cases and petitions to over 14,000. The final reports published by the IACHR on these individual cases can be found in the Commission's Annual Reports.

6. The American Convention on Human Rights was adopted in 1969 and it entered into force in 1978. As of December 2008, 24 member States were parties to the Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. The Convention defined the

human rights that the ratifying States had agreed to respect and guarantee. The Convention also created the Inter-American Court of Human Rights and established the functions and procedures of the Court and of the Commission. In addition to examining complaints of violations of the American Convention committed by States parties to this instrument, the IACHR has competence, in accordance with the OAS Charter and with the Commission's Statute, to consider alleged violations of the American Declaration by OAS member States that are not yet parties to the American Convention.

7. The principal responsibility of the IACHR is to promote the observance and defense of human rights in the Americas. In fulfillment of its mandate, the Commission:

- a) Receives, analyzes and investigates individual petitions alleging human rights violations pursuant to Articles 44 to 51 of the Convention, Articles 19 and 20 of its Statute and Articles 22 to 50 of its Rules of Procedure.
- b) Observes the general human rights situation in member States and, when it deems it appropriate, produces special reports on the existing situation on any member State.
- c) Conducts on-site visits to member States to carry out in-depth analyses of the general situation and /or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation encountered which is then published and submitted to the Permanent Council and to the General Assembly of the OAS.
- d) Promotes public consciousness with regard to human rights in the Americas. To that end, the Commission prepares and publishes studies on specific subjects such as, the measures that must be adopted to guarantee greater access to justice; the effect of internal armed conflicts on certain groups of citizens; the human rights situation of children, women, migrant workers and their families; the human rights situation of those persons deprived of liberty; the situation of human rights defenders; freedom of speech and the human rights of indigenous peoples, Afro-descendants and racial discrimination.
- e) Organizes and carries out visits, conferences, seminars and meetings with representatives from governments, academic institutions, non-governmental organizations and others, to disseminate information and to foster broader understanding of the work carried out by the inter-American system on human rights.
- f) Makes recommendations to OAS member States to adopt measures that contribute to the protection of human rights in the countries of the Hemisphere.
- g) Requests that member States adopt "precautionary measures" in accordance with the provisions of article 25 of its regulations, to prevent irreparable harm to human rights in grave and urgent cases. It can also request that the Inter-American Court order the adoption of "provisional measures" in cases of extreme gravity and urgency to prevent irreparable harm to persons, even if the case has not yet been considered by the Court.
- h) Submits cases to the inter-American Court of Human Rights and appears in court during litigation.
- i) Requests advisory opinions of the Inter-American Court in accordance with



the provisions of Article 64 of the American Convention.

8. Any person, group of persons, or non-governmental entities, legally recognized in one or more of the OAS member States, may petition the Commission with regard to the violation of any right protected by the American Convention, by the American Declaration or by any pertinent instrument in accordance with its provisions, its statute and its regulations. Also, under the provisions of Article 45 of the American Convention, the IACHR may consider communications from a State alleging rights violations by another State. The petitions may be filed in any of the four official languages of the OAS (Spanish, French, English or Portuguese), by the alleged victim of the rights violation or by a third party, and in the case of interstate petitions, by a government.

## **B. The Commission's Sessions in 2008**

9. During the period covered by this report, the Commission met on three occasions: from March 3 to 14, 2008, in its 131<sup>st</sup> Regular Session; from July 17 to 25, 2008, in its 132<sup>nd</sup> Regular Session, and from October 15 to 31, 2008, in its 133<sup>rd</sup> Regular Session. [\[1\]](#) During 2008, the Commission approved a total of 49 admissibility reports, 10 inadmissibility reports, and 4 friendly settlements. It also published 7 merits reports, as well as held 93 hearings and 70 working meetings.

### **1. 131<sup>st</sup> Regular Session**

10. The Inter-American Commission on Human Rights (IACHR) held its 131<sup>st</sup> Regular Session from March 3 to 14, 2008. During this session, the Commission elected its board of officers which is composed as follows: Paolo Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman. Commissioners Sir Clare K. Roberts, Víctor E. Abramovich, Paulo Sérgio Pinheiro, and Florentín Meléndez are also members of the IACHR. Dr. Santiago A. Canton has been the Executive Secretary of the IACHR since August 2001.

11. During this regular session, the Commission approved reports on individual cases and petitions and held 33 working sessions and 36 hearings, some relating to individual cases, petitions or to precautionary measures, and others relating to general or specific human rights situations. It also approved the report on its visit to the Republic of Haiti from April 16 to 20, 2007 and the "Guidelines for a Comprehensive Reparations Policy," a document delivered to the Republic of Colombia on March 13, 2008. 11. At the request of its Rapporteurship on the Rights of Persons Deprived of Liberty, the Commission adopted the Buenos Aires "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas," through Resolution 1/08 of March 13, 2008.

12. Also in this session, the Commission approved its 2007 Annual Report. The report was submitted to the 38<sup>th</sup> General Assembly of the Organization of American States (OAS), which was held in Medellín, Colombia from June 1 to 3, 2008.

13. On behalf of the IACHR, the President drew attention to the important role that the Commission plays as part of the inter-American system for protection of human rights, which, he noted, represents a vital mechanism to further the establishment of justice and the rule of law in the countries of this Hemisphere. In that connection he mentioned that more and more frequently national institutions employ international human rights standards and the jurisprudence of the regional system in their decision-making, using those norms as a baseline against which to assess and revise their own practice at the domestic level.

14. He said that the effectiveness of the IACHR reflects the high credibility of the system's organs. He added that as the legitimacy of the system continues to rise, individuals present an ever-increasing number of petitions before the Commission; civil society

and States request more hearings covering more diverse issues; the Commission carries out expanded thematic initiatives; and it receives additional mandates from the General Assembly.

15. The President drew attention to the fact that the activities and mandates of the Commission cannot be carried out without adequate financial and human resources. Those resources have not increased in proportion to the Commission's growing importance and role in the region; indeed, the regular budget allocated to the Commission by the member States has remained constant or even decreased in real terms since at least 1999. Accordingly, the President of the IACHR urged the member States gathered at the OAS General Assembly to adopt urgent measures to resolve the dire financial situation that the IACHR faces.

16. The Commission expressed its appreciation to all the member States that invited the Commission to visit, since such visits play an important role in enabling the Commission to monitor human rights in the Hemisphere. Such freedom of the Commission to visit and observe human rights conditions has historically been one of the most critical tools for ensuring the effectiveness of the inter-American human rights norms, even in the Hemisphere's darkest periods of repression.

17. In the course of its 131<sup>st</sup> regular session, the Commission expressed its concern, in view of information received during the hearings held during these sessions, about grave situations involving human rights violations in the region. The continued worsening of citizen insecurity; the discrimination suffered by Afro-descendants and indigenous peoples, as well as by poor people and women; the deterioration of economic, social, and cultural rights; grave obstacles to access to justice; difficulties in exercising freedom of expression; the persistent use of military justice for crimes that should be handled by civilian courts; and the impact the region's growing environmental deterioration has on human rights are just a few of the many problems on which the Commission received troubling information.

18. The working meetings produced significant advances, such as, for example, the signing of a [memorandum of commitment](#) concerning the situation of captive communities in Bolivia and progress toward reaching a friendly settlement in cases in Bolivia, Chile, and Mexico.

## **2. 132<sup>nd</sup> Regular Session**

19. The Inter-American Commission on Human Rights (IACHR) held its 132<sup>nd</sup> Regular Session from July 17 to 25, 2008. The IACHR held no public hearings or working meetings during the session because it was of an internal nature. The Commission approved a total of 39 reports on cases and petitions.

20. At its 132<sup>nd</sup> session the Commission also approved the document entitled "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights." The IACHR also approved a reform of Articles 15 and 12(1)(a) of its Rules of Procedure concerning rapporteurships and working groups and the powers of the Executive Secretary of the Commission, respectively.

21. Further to the foregoing, during the aforesaid session the Commission adopted resolutions 2/08 (concerning Article 17 of the Rules of Procedure); 3/08 (on Human Rights of Migrants, International Standards and the Return Directive of the EU); and 4/08 (in connection with Case 10.855, Pedro García).

22. In the framework of its 132<sup>nd</sup> session, the Commission also interviewed the finalists in the selection process for the new Special Rapporteur for Freedom of Expression, electing Colombian attorney Catalina Botero Marino, who took up her duties at the beginning of October 2008.

## **3. 133<sup>rd</sup> Regular Session**

23. The Inter-American Commission on Human Rights (IACHR) held its 133<sup>rd</sup> regular session from October 15 to 31, 2008. During the sessions, the Commission approved reports on cases and individual petitions, and held 57 hearings and 34 working meetings. The hearings encompassed issues that have a general impact on all the countries of the region, as well as specific issues related to one country or sub-region in particular. During this session the Commission held hearings on the rights of women, persons deprived of liberty, children, Afro-descendants, and indigenous peoples, among others. Hearings were also held on issues having to do with obstacles to obtaining access to justice; citizen insecurity; the rights of gays, lesbians, bisexuals, transsexuals, transvestites, and intersexuals; the situation of people who carry the human immunodeficiency virus (HIV); and economic, social, and cultural rights, among other topics.

24. During the aforementioned session, the Commission approved the projects entitled "Observations of the IACHR on the Rights of Persons of African Descent and Racial Discrimination in Colombia" and "Women's Right to a Life Free of Violence and Discrimination in Haiti." It also approved the second edition of the book entitled "The Rights of Children in the Inter-American System of Human Rights."

25. At a working meeting held in the course of the session, a friendly settlement agreement was reached between the government of Paraguay and the petitioners in the case involving the Kelyenmagategma Indigenous Community (Puerto Colón) of the Enxet People. In addition, important agreements were reached during working meetings with the government of Mexico and petitioners involving cases of disappearances and extrajudicial executions.

26. The IACHR received information in a public hearing on the impact caused by the four hurricanes that hit Haiti in August and September, and on the critical humanitarian crisis caused by the storms, particularly due to the loss of crops. The Commission also received the government of Bolivia in a hearing in which the latter provided information about the acts of violence that took place during the social conflicts of recent months and on the respective investigations undertaken. The Commission also received information during a hearing on the situation of children and adolescents in conflict with the law in Argentina, Brazil, Paraguay, and Uruguay.

27. During another hearing, the Commission received information about the impact that the construction of a wall in Texas, along the U.S.-Mexico border, has on the human rights of the residents of the area, in particular its discriminatory effects. The information received indicates that its construction would disproportionately affect people who are poor, with a low level of education, and generally of Mexican descent, as well as indigenous communities on both sides of the border. Furthermore, the IACHR continued to receive troubling information during this session about the situation of detainees in Guantánamo.

28. The IACHR also received information that the State of Colombia's Administrative Department of Security (DAS) conducted intelligence activities against opposition political leaders, national senators, and nongovernmental organizations. Hearings were also held on citizen insecurity in Venezuela and Mexico and there were several hearings on human rights defenders.

29. The Commission met during the session with the new United Nations Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, with the UN Secretary-General's Special Representative on Business and Human Rights, John Ruggie, and with the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya. In addition, for the first time a UN Rapporteur attended a working meeting of the IACHR; with the consent of the petitioners and the State, Professor Anaya participated in the meeting on precautionary measures for indigenous peoples in voluntary isolation in Peru.

## **C. Visits**

### **Argentina**

30. Commissioner Luz Patricia Mejía Guerrero, in her twin capacity as Rapporteur for Argentina and Rapporteur on the Rights of Women, traveled to Buenos Aires, Argentina on July 1, 2008, to take part in the *Conference on Democratic Reform and Human Rights in the Armed Forces* organized by the Center for Legal and Social Studies (CELS). As part of the visit, she also attended a working meeting organized by the Rapporteurship on the Rights of Women on July 2, 2008, with fifteen women experts from different sectors. The purpose of the meeting was to compile information on the situation of women in the sphere of political participation in Argentina with a view to its inclusion in the regional report that the Rapporteurship is preparing on the issue.

31. From August 20 to 22, 2008, the Rapporteur on the Rights of the Child, Paulo Sérgio Pinheiro, visited Buenos Aires, Argentina, where he met with government authorities and representatives of civil society organizations. During this visit, the Rapporteur made a presentation on the issue of "*Challenges for the Full and Effective Compliance in the Hemisphere of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*"; this was part of the Preparatory Meeting for the World Congress III on Sexual Exploitation which was held in the Argentine capital from August 19 to 22.

### **Bolivia**

32. The Commission conducted a visit to Bolivia from June 9 to 13, 2008, to gather information on the situation of a large number of families belonging to captive communities of the indigenous Guaraní people who continue to live in a state of bondage analogous to slavery, in Bolivia's Chaco region, in the Departments of Santa Cruz, Chuquisaca and Tarija. The IACHR delegation was led by Commissioner Luz Patricia Mejía Guerrero in her capacity as Rapporteur for Bolivia, and by Commissioner Víctor E. Abramovich, as Rapporteur on the Rights of Indigenous Peoples.

33. During the visit the Commission gathered information and received testimony that confirmed the continuing problem of debt bondage and forced labor in Bolivia's Chaco region and that the plight of the Guaraní people in this region had worsened since the last visit of the IACHR in November 2006.

34. This visit came about as a result of a Memorandum of Commitment signed on March 11, 2008, at the IACHR headquarters, during the Commission's 131<sup>st</sup> session, by the government of Bolivia, the Council of Guaraní Captains of Chuquisaca, and civil society organizations. In that agreement, the State made a commitment to adopt the protection measures needed to safeguard the personal integrity of all the Guaraní families, their leaders, and advisors. It also agreed to inform the Commission as to measures adopted and progress made in the process of restoring territories to the Guaraní people.

35. The Commission recognized the efforts made by the State to address this problem, and verified that the Bolivian State has attempted to carry out the regularization of lands in compliance with Law 1715 of 1996 and Law 3545 of 2006, both of which are related to a process of agrarian reform. However, it noted that enforcement of these laws has encountered obstacles created by various political and economic sectors that oppose their implementation in the region in question. This has even generated acts of violence that resulted in serious injury to a number of persons, as well as cases of kidnapping and torture. The IACHR condemned the gross human rights violations that are being committed against members of the Guaraní people and the obstruction by individuals of the implementation of public policies.

36. The IACHR urges the State to increase its institutional presence in the Bolivian

Chaco in order to guarantee access to the exercise of fundamental rights for these communities. The State should design these policies in consultation with the indigenous peoples, ensuring that the policies are compatible with their worldview and cultural identity.

37. The Commission has noted that another significant institutional problem with regard to administration of justice in Bolivia is the inactivity of the Constitutional Court due to an incomplete bench. This court performs an essential role in guaranteeing the application of the Bolivian Constitution and the rule of law, and has jurisdiction in various constitutional disputes related to laws on land ownership. The IACHR expresses its deep concern about this irregular situation and urges the National Congress to resolve it as soon as possible.

### **Brazil**

38. At the invitation of Special Secretariat for Human Rights of Brazil, the Inter-American Commission participated at the Fourteenth Meeting of High-Level Authorities of MERCOSUR and Associate States, held in Brasilia from November 10 to 12, 2008. The IACHR was represented by Commissioners Felipe González, Clare K. Roberts, and Víctor Abramovich, as well as Executive Secretary Santiago A. Canton. During the meeting, delegations of participating states and the IACHR delegation had a productive exchange of information concerning questions related to the functions of human rights promotion and protection in the Hemisphere. While in Brasilia, the Commission's delegation met with several senior Brazilian officials, including the country's Vice President, the Vice President of the Supreme Court of Justice, the Human Rights Committee of the Chamber of Deputies, and the Attorney General, among others. The Inter-American Commission also conducted a seminar at the University of Brasilia, on jurisprudence in the inter-American system.

### **Canada**

39. Commissioner Sir Clare K. Roberts, as Rapporteur for Canada, and the Chair of the Committee on Juridical and Political Affairs (CAJP) of the Permanent Council of the OAS, conducted a visit to Canada on April 21 and 22, 2008, in order to encourage accession by the Canadian State to the American Convention. In the course of the visit there were meetings with authorities of the Ministries of Foreign Affairs and Justice, Supreme Court, Border Services, Citizenship and Immigration, and the Canadian International Development Agency, as well as with representatives of civil society organizations.

### **Chile**

40. The Rapporteurship on the Rights of Persons Deprived of Liberty conducted an observation visit to Chile, from August 21 to 25, 2008. During the visit, the Rapporteur on the Rights of Persons Deprived of Liberty, Commissioner Florentín Meléndez, visited two juvenile detention centers (the San Joaquín Center for Provisional Internment of Minors, in Santiago, and "Tiempo Joven," in San Bernardo); three prisons operated under concession (the Santiago I Preventive Detention Center, the Rancago Prison Complex, and the Valdivia Prison Complex); two State-run centers (the South Santiago Prison Center and the Valparaíso Prison Complex); and women's detention centers (the Santiago Women's Prison Center and the women's sections of the Rancagua and Valparaíso prisons). The Rapporteur also met with high-level State authorities and representatives of civil society.

41. Following the observation visit to Chile, the delegation of the Rapporteurship participated in the Second Meeting of Authorities Responsible for Penitentiary and Prison Policies of the OAS Member States, held in Valdivia, from August 26-28, 2008.

### **Colombia**

42. From September 15 to 19, 2008, the Rapporteur on the Rights of the Child, Paulo Sérgio Pinheiro, visited Bogotá to meet with authorities in charge of childhood issues and

representatives of civil society, and also to take part in a seminar on "City, Conflict, and the Public Sphere: The Latin American Perspective," organized by UNICEF on from September 17 to 19. The Rapporteur also held meetings with representatives of the Attorney General's Office, the Ombudsman, the Office of the United Nations High Commissioner for Refugees, and the Alliance for Early Childhood, among other organizations.

43. In his dual role as Rapporteur for Colombia and Rapporteur on the Rights of Indigenous Peoples, Commissioner Victor E. Abramovich paid a working visit to the Republic of Colombia from November 17 to 21, 2008, accompanied by officials of the Commission's Executive Secretariat.

44. During the visit, Commissioner Abramovich held meetings with national and local officials, and went to Bogotá and the Department of Chocó. In Bogotá, he met with Foreign Affairs Minister Jaime Bermúdez Merizalde; Minister of Justice and the Interior Minister Fabio Valencia Cossio; officials of the Prosecutor General's Office; officials of the Attorney General's Office; President of the Supreme Court Francisco Ricaurte; and President of the Constitutional Court Humberto Sierra. During those meetings, the Rapporteur expressed his concerns over the application of the Justice and Peace Law, the bill on reparations to victims of armed conflict, and complaints about extrajudicial executions, as well as risks faced by human rights advocates, and the situation with the judiciary in Colombia. The Rapporteur also heard a variety of testimonies from university students, community activists, and members of civil society organizations concerning the human rights situation in Colombia and the growing number of threats made by the so-called Black Eagles and other illegal groups.

45. One of the main purposes for the Rapporteur's visit was to gather information on the situation of Afro-Colombians residing in the Jiguamiandó and Curvaradó River Basins, in the Department of Chocó, in response to a request by the Inter-American Court of Human Rights. The members of those communities are protected under provisional measures that the Inter-American Court of Human Rights adopted in 2003. The IACHR delegation visited a humanitarian zone located on collective lands on the banks of the Jiguamiandó River and held a series of meetings in the city of Riosucio. While visiting the humanitarian zone, the delegation gathered information and heard testimonies about acts of violence and intimidation carried out by illegal groups operating in the zone, and confirmed that the risk factors that led to the Court's intervention remained. The IACHR Rapporteur was updated on efforts by Colombian state authorities to provide protection for the communities and to enforce the physical return of the collective territory.

## **Jamaica**

46. The Commission conducted an *in loco* visit to observe the human rights situation in Jamaica, which took place December 1-5 at the invitation of the government. The IACHR delegation to Jamaica included Commissioners Paolo Carozza, Luz Patricia Mejía Guerrero, Felipe González, and Sir. Clare Roberts, as well as the IACHR Executive Secretary Santiago Canton and Secretariat staff. During its visit the Commission focused particular attention on the situation of citizen security in the country (including the operation of the criminal justice system and the conditions of persons deprived of liberty), and on the human rights of women, children, and persons suffering discrimination on the basis of their sexual orientation.

47. The IACHR observed an alarming level of violence in Jamaica that has affected all sectors of society for many years. The persistence of this widespread violence has had severely negative consequences for the human rights of the Jamaican people. The Commission's preliminary observations conclude that although the government has undertaken certain constructive efforts to address the problem, these remain insufficient. They are hampered by inadequate resources, a failure to sufficiently address the severe shortcomings of the security forces and the judicial process, and the lack of integral, effective policies to ameliorate the social conditions that generate the violence.

48. The profound social and economic marginalization of large sectors of the Jamaican population not only contributes to sustaining the high levels of violence, but also results in the poorest and most excluded sectors of the population being disproportionately victimized by the overall situation of insecurity. In the same way, the deep inequalities pervading Jamaican society exacerbate the State's failure to adequately protect and guarantee the human rights of women, children and other vulnerable groups. In particular, the IACHR found the violent persecution and fear to which gays and lesbians are subject in Jamaica to be deplorable.

49. The Commission's preliminary observations identify a number of other human rights issues of particular concern, including severe problems in the administration of justice, conditions of detention and incarceration, the treatment of the mentally disabled, and freedom of expression. In particular, the Commission urges the government of Jamaica to address immediately the inhuman conditions of detention that the IACHR observed at the lockup facility of the Hunts Bay police station.

50. During the visit, the Commission and *The Norman Manley Law School* signed an institutional cooperation agreement, under which they will deepen and strengthen their institutional cooperation ties in order to promote awareness of the inter-American human rights system in the Caribbean.

## **Paraguay**

51. Commissioner Florentín Meléndez, as Rapporteur on the Rights of Persons Deprived of Liberty conducted an observation visit to the Neuro-Psychiatric Hospital of Asunción, Paraguay, on September 11, 2008, to verify compliance with the precautionary measures granted by the IACHR on July 29, 2008 (PM 277/07).

52. In November 2008, Commissioner Pinheiro in conjunction with UNICEF-TARCO organized the first sub-regional consultation for Southern Cone Countries on public security and juvenile criminal justice, in Asunción, Paraguay.

## **United States**

53. On April 9, 2008, the Rapporteur on the Rights of Afro-Descendants and Against Racial Discrimination met with members of the United States Congress. In this context, Commissioner Sir Roberts discussed the challenges facing Afro-descendants in the region and proposed recommendations for improving their protection through legislative reforms and policies. He also took part in the roundtable organized by the Inter-American Dialogue and the Inter-American Foundation, which was held in Washington, D.C.

54. From September 29 to October 3, 2008, the Rapporteurship on Migrant Workers carried out a field visit to Texas, USA, where the great majority of detained immigrants are held. During this visit, the delegation of the Rapporteurship interviewed representatives of civil society organizations located in Texas and came into contact with more than 10 former immigrant detainees.

## **Uruguay**

55. On August 19, 2008, the Rapporteur on the Rights of the Child, Paulo Sérgio Pinheiro, visited Montevideo, Uruguay, where he met with representatives of the Ministry of Education and Culture, UNICEF, and the Committee on the Rights of the Child-Uruguay.

### **D. Activities of the Rapporteurships [\[2\]](#)**

#### **1. Rapporteurship on the Rights of Indigenous Peoples**

56. For the entities of the inter-American system, the respect and protection of the rights of indigenous peoples is a matter of special importance. In 1972, the Commission maintained that for historical reasons, and for moral and humanitarian principles, States had a sacred compromise to provide special protection for indigenous peoples. In 1990, the Commission established the Special Rapporteurship on the Rights of Indigenous Peoples with the purpose of focusing special attention on indigenous peoples in America who are particularly exposed to human rights violations because of their vulnerability, and to strengthen, give impetus and organize the Commission's activities in the area.

57. Since the 1980s, the Commission has systematically spoken on the rights of indigenous peoples in special reports;<sup>[3]</sup> and through the case system, in admissibility reports, in-depth reports, reports on friendly settlements, the mechanism of precautionary measures, as well as through orders and requests for provisional measures filed with the Inter-American Court.

58. In that sense, the Commission has expressed the need to demand special protection of the right of indigenous peoples to their lands, because the full exercise of that right not only implies the protection of an economic unit, but also the protection of the human rights of a community whose economic, social and cultural development is based on its relationship to the land. In the 1993 Report on the Human Rights Situation in Guatemala, the Commission stated:

From the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives.<sup>[4]</sup>

59. During 2008, the Rapporteurship on the Rights of Indigenous Peoples continued to carry out its activities in support of the system of individual petitions and of the study and processing of precautionary measures, cases and communications regarding the rights of indigenous peoples and/or its members. The Rapporteurship also continued with its promotional activities and to give advise to OAS member States.

60. The entities of the inter-American system for the promotion and protection of human rights have developed progressive laws that recognize the collective rights of indigenous peoples. The Inter-American Commission on Human Rights reiterates its concern with the difficulties in the implementation of its recommendations, as well as with compliance with judgment and provisional measures ordered by the Inter-American Court of Human Rights in cases where the victims are indigenous peoples. To that end, the Commission encourages the States to redouble their efforts to comply with the decisions of inter-American institutions concerning indigenous peoples. In that way, not only are specific groups of people recognized, protected and made whole but also a special way of life and the human diversity inherent in societies in the American continent are respected.

61. Likewise, the Rapporteurship reiterates its call on OAS member States to recognize and respect the right of indigenous peoples to their cultural identity, based on their close relationship to their ancestral lands and to the resources found there, not only because they are their primary means of subsistence but because they also play an integral role in their vision of the cosmos. On August 8, the International Day of the World's Indigenous People, the Rapporteurship issued Press Release No. 34/08, in which it urged the OAS member States to ensure that the human rights of indigenous peoples are respected and guaranteed, especially their rights to lands, territory, and natural resources, and to participation and consultation.

62. In this connection, the Rapporteurship acknowledges and appreciates the actions undertaken and implemented by many States that have legally recognized the traditional territories of indigenous peoples. Nevertheless, there remain significant weaknesses in actions geared toward protection, which leave indigenous peoples vulnerable especially to the interests of third parties in exploiting and extracting the natural resources located in



indigenous territories.

63. During 2008, the Rapporteurship on the Rights of Indigenous Peoples continued to carry out its activities in support of the system of individual petitions and of the study and processing of precautionary measures, cases and communications regarding the rights of indigenous peoples and/or its members. The Rapporteurship also continued to advise at public and private hearings on cases before the Inter-American Court of Human Rights involving the rights of indigenous peoples.

64. The Rapporteurship also continued with its promotion activities and to give advise to OAS member States and held a series of meetings at the Secretariat of the IACHR with petitioners, nongovernmental organizations, and indigenous peoples on the inter-American system and on cases and precautionary measures that concerned indigenous peoples' rights.

65. During the IACHR sessions held in 2008, several reports regarding the rights of indigenous peoples were approved and various hearings were held dealing with situations that had to do with the rights of indigenous peoples in different parts of the Hemisphere.

66. A visit was made to Bolivia from June 9 to 13, 2008, to gather information on the situation of a large number of families belonging to captive communities of the indigenous Guaraní people who continue to live in a state of bondage analogous to slavery, in Bolivia's Chaco region, in the Departments of Santa Cruz, Chuquisaca and Tarija. The IACHR delegation was led by Commissioner Luz Patricia Mejía Guerrero in her capacity as Rapporteur for Bolivia, and by Commissioner Víctor E. Abramovich, as Rapporteur on the Rights of Indigenous Peoples.

67. During the visit the Commission gathered information and received testimony that confirmed the continuing problem of debt bondage and forced labor in Bolivia's Chaco region and that the plight of the Guaraní people in this region had worsened since the last visit of the IACHR in November 2006. The delegation noted that the situation of bondage and forced labor in which the families of the Guaraní people live is an extreme manifestation of the discrimination that Bolivia's indigenous peoples and campesino communities have suffered historically and continue to suffer.

68. As part of its activities for the promotion of human rights and indigenous peoples, the Rapporteurship participated in the Seventh Meeting of the United Nations Permanent Forum on indigenous affairs, held on May 28 and 29, 2008. It also participated in a workshop on "Reparations for Indigenous Peoples" organized by the International Center for Transitional Justice, which was held in New York on September 21 and 22, 2008, and attended by indigenous leaders from Canada and the United States.

69. The Rapporteurship has also continued to advise the president of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples and took part in the Eleventh and Twelfth Meetings of Negotiations in the Quest for Points of Consensus of the OAS Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. In that regard, the Rapporteurship reiterates the importance of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly on September 13, 2007. In that context, the Commission encouraged OAS member States to maximize their efforts to adopt the American Declaration on the Rights of Indigenous Peoples and urged member States to consider the instrument approved by the UN as the baseline standard in their discussions and reflections on the inter-American draft. [\[5\]](#)

70. During the 133<sup>rd</sup> Regular Session, the Rapporteurship held a meeting of experts in human rights of indigenous peoples, the purpose of which was to discuss international norms on the obligation to protect the right to property of indigenous peoples, as well as to receive information to be used in the preparation of a thematic report. The meeting was attended by

the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya, as well as by independent experts, representatives of funding bodies, and notable indigenous leaders.

71. From November 17 to 21, 2008, the Rapporteur on the Rights of Indigenous Peoples conducted a working visit to the Republic of Colombia, where he had occasion to meet with the National Indigenous Organization of Colombia (ONIC) and receive information on killings and forced displacement of members of indigenous peoples and on the precarious food and health situation that threatens the right to survival of these peoples.

72. Finally, with the goal of strengthening the promotion and defense of the rights of indigenous peoples, in 2008 the IACHR hired attorney Leonardo Alvarado, a Chortí Maya from Honduras, for the position of specialist in human rights and indigenous rights law. In addition, attorney Ivonne Barrios, of the Quechua people of Bolivia, was selected for the scholarship program for indigenous lawyers, under which she would do a year's internship at the IACHR.

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<sup>[1]</sup> For further details about the Commission's sessions in 2008, see IACHR press releases 10/08, 32/08 and 46/08 at the Commission's web site: [www.cidh.org](http://www.cidh.org).

<sup>[2]</sup> The activities of the Special Rapporteurship for Freedom of Expression are included in Volume II of this Annual Report.

<sup>[3]</sup> See: Justice and Social Inclusion: Challenges to Democracy in Guatemala (2003); Fifth Report on the Human Rights Situation in Guatemala (2001); Third Report on the Human Rights Situation in Paraguay (2001); Second Report on the Human Rights Situation in Peru (2000); Third Report on the Human Rights Situation in Colombia (1999); Report on the Human Rights Situation in Mexico (1998); Report on the Human Rights Situation in Brazil (1997); Report on the Human Rights Situation in Ecuador (1997); Second Report on the Human Rights Situation in Colombia (1993); Fourth Report on the Human Rights Situation in Guatemala (1993); Second Report on the Human Rights Situation in Suriname (1985).

<sup>[4]</sup> IACHR, Report on the Human Rights Situation in Guatemala, 1993.

<sup>[5]</sup> See IACHR, Press Release 51/07, September 18, 2007.



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## IACHR ANNUAL REPORT 2008

### CHAPTER III

#### THE PETITION AND CASE SYSTEM

##### A. Introduction

1. This chapter refers to the work of the Inter-American Commission on Human Rights in 2008 in relation to the petition and case system.

2. Section B includes statistical tables on all the petitions received by the Commission in 2008, indicating the number of petitions received by country, as well as a comparison of the number of petitions received in 2008 in relation to each of the last eleven years. It also includes statistical information on the number of petitions it decided to transmit to the States, and the number of petitions being processed, also by country. The statistical information reflects as well the number of requests for precautionary requests received by the Commission in 2008, as well as the number of precautionary measures the Commission decided to grant during that same period. The statistics indicate how many reports on admissibility, inadmissibility, friendly settlement, archive, and the merits the Commission published in 2008. The section also includes statistical tables on the Commission's activity before the Inter-American Court. Finally, statistics are included on the number of hearings the Commission held in 2008.

3. Section C has two parts. The first, section C.1, contains an overview of the precautionary measures granted or extended by the IACHR in 2008, in relation to the various member States, under Article 25 of its Rules of Procedure. The precautionary measures are presented in alphabetical order of the States addressed in the requests, indicating the name of the person or persons on whose behalf they were requested, a summary of the information that was the basis for the request, the rights of the persons exposed to serious and imminent danger, and finally the date of the request and the name of the State referred to, as well as other relevant information.

4. The second part, section C.2, includes all the reports on which the Commission adopted a decision on admissibility, inadmissibility, the merits, or friendly settlement during the period covered by this report. This section contains a total of 70 reports that include 49 cases found admissible; 10 reports on petitions found inadmissible; 4 reports on friendly settlements; and 7 reports on the merits.

5. Section D includes an analysis of compliance by the States with the recommendations contained in the reports on individual cases published in the Annual Reports

for 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, in keeping with Article 46 of the Commission's Rules of Procedure.

6. Section E refers to the Inter-American Commission's work litigating before the Inter-American Court of Human Rights. It presents the provisional measures issued by the Court at the request of the Commission in cases of extreme gravity and urgency, under Article 63(2) of the American Convention on Human Rights; a synthesis of the Court's decisions; and a summary of the Commission's pleadings in the contentious cases. The provisional measures are also described in the order in which they were requested, and include the name of the person or persons on whose behalf they were sought, a summary of the facts and the rights involved, the date of the request, the name of the State in question, and the date on which the Court adopted the respective decision.

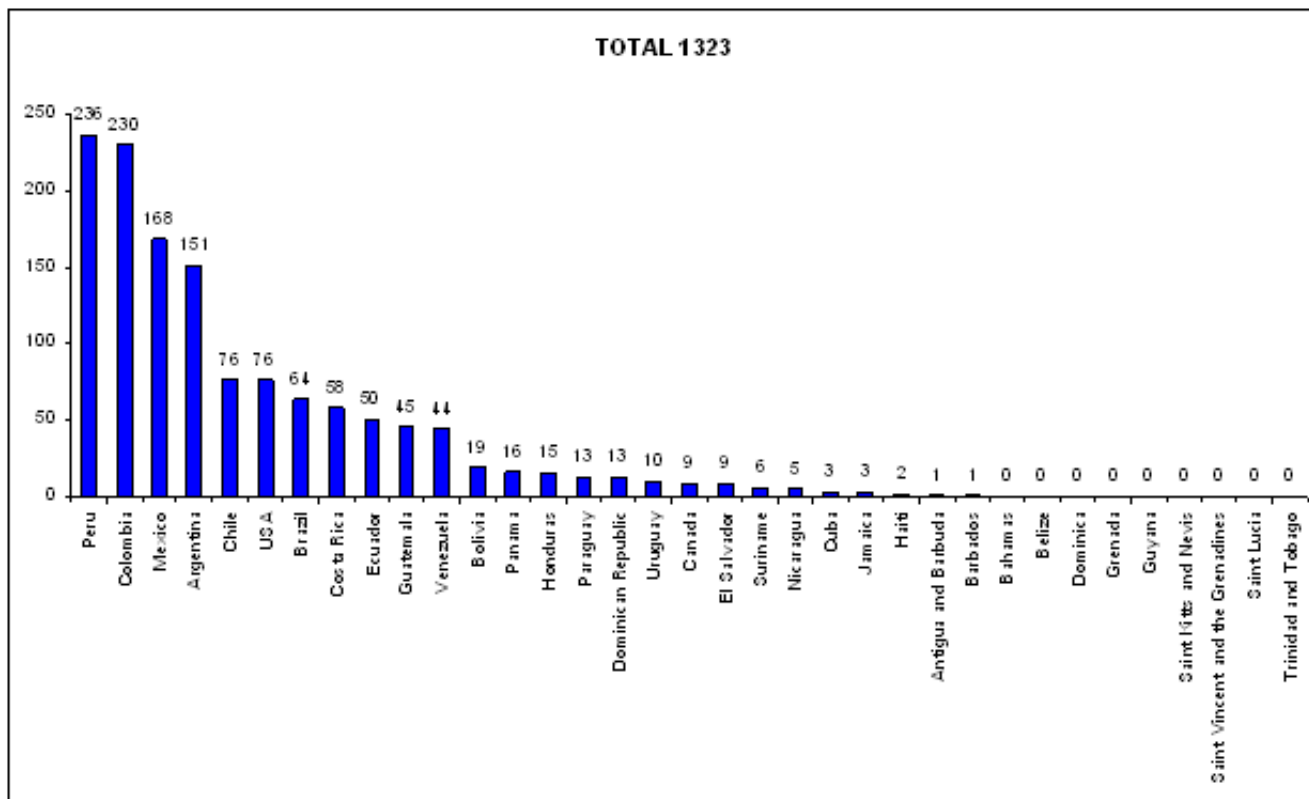
## B. Statistics

7. This chapter of the 2008 Annual Report contains statistical information to provide a general overview of the different activities carried out by the Inter-American Commission on Human Rights.

8. First it presents data concerning the cases and petitions being processed. These comprise the greater volume of the Commission's work. "Cases" is taken as meaning all those petitions declared admissible by means of a report on admissibility. "Petitions" is taken as meaning all those complaints that have been forwarded to the state involved but in which no report on admissibility has been issued.

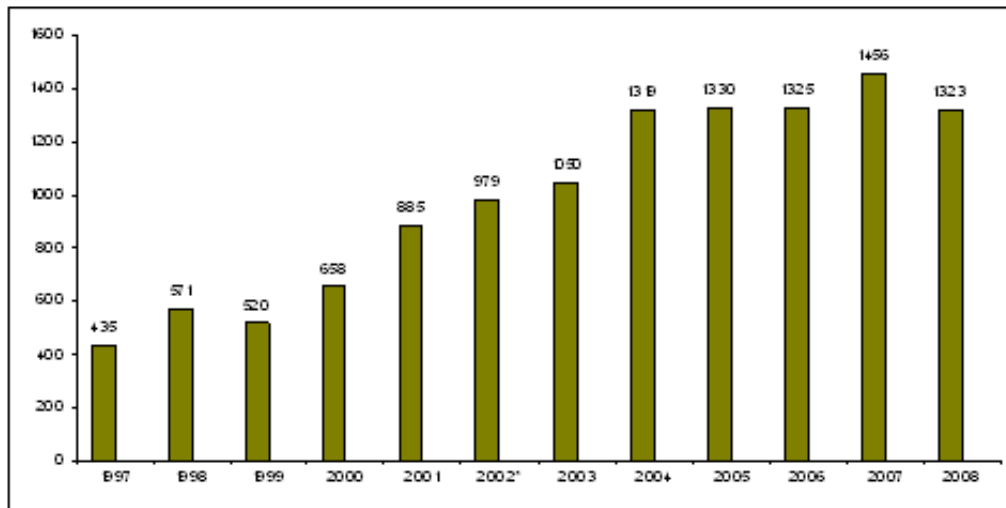
### 1. Petitions and cases

a. Total number of complaints received by country in the year 2008.



The preceding graph illustrates the total number of complaints received by the IACHR according to the OAS member States in respect of which the complaints were presented.

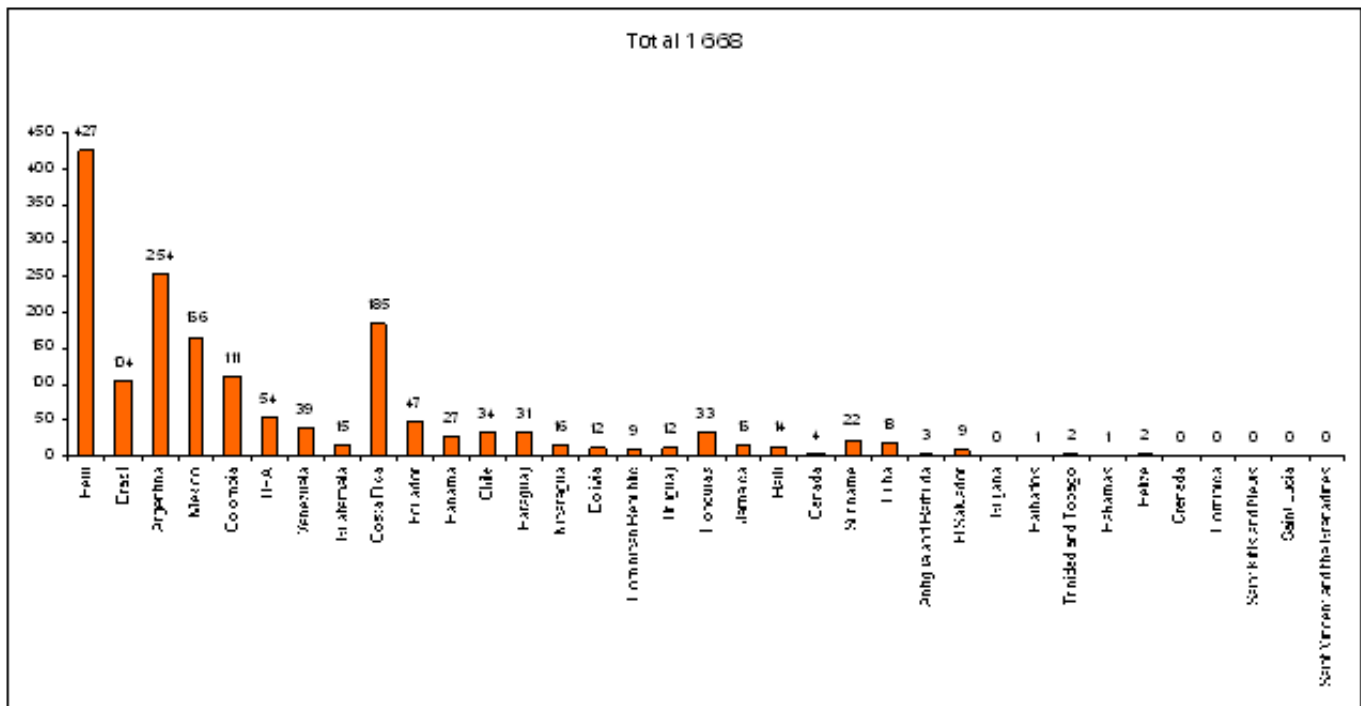
**b. Total number of complaints received by year.**



This graph illustrates the total number of complaints received by the Commission during the last eleven years. "Complaints" for the purposes of these statistics includes all complaints, presented in writing, concerning an alleged violation by an OAS member state of the Convention, the Declaration and/or other pertinent instrument.

\* In the year 2002, the Commission received 3,783 complaints in addition to those represented in the graph, which refer to the human rights situation of persons affected by various banking measures ("corralito") in Argentina.

**c. Total number of complaints evaluated by country during 2008.**





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## IACHR ANNUAL REPORT 2008

### CHAPTER III - THE PETITION AND CASE SYSTEM (Continuation)

#### C. Individual petitions and cases before the Inter-American Commission on Human Rights

##### 1. Precautionary measures granted by the IACHR in 2008

9. Article 25 of the Commission's Rules of Procedure establishes the mechanism for precautionary measures. The provision states that in serious and urgent cases, and wherever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons. If the Commission is not in session, the President or, in his absence, one of the Vice-Presidents shall consult with the other members, through the Executive Secretariat, on the application of this provision. If, because of the circumstances, it is not possible to consult within a reasonable period of time, the President or, as need be, one of the Vice-Presidents shall make the decision on behalf of the Commission and shall inform its members immediately. In accordance with the established procedure, the IACHR may request information from the interested parties concerning any matter related to the adoption and observance of the precautionary measures. In any event, the granting of such measures and their adoption by the State shall not constitute any prejudgment on the merits of the case.

10. The following is a summary of the precautionary measures granted in 2008, listed according to the member state concerned. It should be noted that the number of precautionary measures granted does not reflect the number of persons protected by their adoption; as will be seen below, many of the precautionary measures the Commission granted are for the purpose of protecting more than one person and, in some cases, groups of persons such as communities or indigenous peoples.

#### COLOMBIA

##### **PM 113/07 *Corporación para la Paz y el Desarrollo Social (CORPADES)* [Corporation for Peace and Social Development]**

11. On March 14, 2008, the IACHR granted precautionary measures for Fernando Quijano, Carlos Mario Arenas, Teresa Muñoz Lopera, Alberto Manzo Monsalve, Dillier Fernando Vásquez Rúa, Santiago Quijano, and Marín Alonso Velásquez, members of the *Corporación para la Paz y el Desarrollo Social* (CORPADES). The request seeking precautionary measures alleges that the members of this organization are targets of threats and assaults, allegedly committed

by illegal groups. The Commission asked the Colombian state to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report the measures taken to conduct a judicial inquiry into the facts that necessitated the adoption of precautionary measures. The Commission continues to monitor the situation.

PM 141/08 Yolanda María Velásquez Osorio, her family, the *Corporación Social*, and the *Asociación de Mujeres por la Equidad y el Género Semillas de Paz* [Association of Women for Gender Equity, Seeds of Peace]

12. On June 19, 2008, the IACHR granted precautionary measures for Yolanda María Velásquez Osorio, her family, members of the *Corporación Social* and members of the *Asociación de Mujeres por la Equidad y el Género Semillas de Paz* [Association of Women for Gender Equity, Seeds of Peace]. The request seeking precautionary measures alleges that Mrs. Velásquez Osorio was the victim of death threats and kidnapping attempts and that members of the "Semillas de Paz" organization had been victims of violence, harassment and threats. The Commission asked the Colombian State to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report the measures taken to conduct a judicial inquiry into the facts that prompted the adoption of precautionary measures. The Commission continues to monitor the situation.

**PM 228/07 Rafael Marulanda López and other members of the *Red de Apoyo en Derechos Humanos y Defensoría Social***

13. On September 4, 2008, the IACHR granted precautionary measures for Rafael Marulanda López, Diego Fernando Meneses García and Jairo Ortega Osorio, members of the *Red de Apoyo en Derechos Humanos y Defensoría Social* [Human Rights Support Network and People's Ombudsman's Office] in Colombia. The request seeking precautionary measures alleges that the members of this organization had received death threats and that on July 16, 2008, the lifeless body of Guillermo Rivera was found, showing signs of torture. Mr. Rivera had been an advisor to the organized labor groups on whose behalf the *Red de Apoyo*. The Commission requested that the Colombian state adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries of the provisional measures, and report the measures taken to conduct a judicial inquiry into the events that warrant enforcement of precautionary measures. The Commission continues to monitor the situation.

**PM 117/08 Hugo Antonio Combariza Rodríguez**

14. On September 24, 2008, the IACHR granted precautionary measures on behalf of Hugo Antonio Combariza Rodríguez. The request seeking precautionary measures alleges, *inter alia*, that Mr. Combariza Rodríguez had received threats because of his representation of victims of the armed conflict in proceedings being conducted under the Justice and Peace Law in the city of Cúcuta and that he was shot on April 25, 2008. On May 28, 2008, the Commission requested the State to provide information on the situation in question. After examining the information supplied by both parties, the Commission decided to grant precautionary measures in which it asks the Colombian state to adopt the measures needed to guarantee the life and physical integrity of the beneficiary and to report the measures taken to conduct a judicial inquiry into the events that prompted the adoption of precautionary measures. The Commission continues to monitor the situation.

**PM 269/07 Iván Velásquez Gómez**

15. On December 22, 2008, the IACHR granted precautionary measures on behalf of an Auxiliary Justice in the Criminal Chamber of the Colombian Supreme Court, Iván Velásquez Gómez, who was serving as coordinator of an "Investigative Support Commission" to establish the possible links between members of Colombia's National Congress and paramilitary organizations. The request seeking precautionary measures states, *inter alia*, that state agents were alleged to be targeting Justice Velásquez, who was allegedly being threatened

because of his role in the so-called "parapolitics" trials, and that the protective measures previously established for him were not sufficient. On February 22, 2008, the IACHR instituted the process of requesting information from the State concerning the degree of the threat facing Justice Iván Velásquez and the security measures arranged for him. After examining the information supplied by the parties on the circumstances under which Auxiliary Supreme Court Justice Iván Velásquez Gómez must perform his functions, the Commission decided to grant precautionary measures and asked the State to guarantee the life and physical integrity of Iván Velásquez Gómez, to arrange, jointly with the beneficiary and the petitioners, the measures to be taken, and to report the steps intended to remove the threat factors that warrant enforcement of precautionary measures. The Commission continues to monitor the situation.

#### **PM 93/08 María del Rosario González de Lemos**

16. On December 22, 2008, the IACHR granted precautionary measures for an Auxiliary Justice in the Criminal Chamber of Colombia's Supreme Court, María del Rosario González de Lemos, who has actively participated in the prosecution of members of the Colombian National Congress accused of having ties to paramilitary organizations. The request seeking precautionary measures states, *inter alia*, that Justice González de Lemos was being threatened because of her role in the so-called "parapolitics" trials and that the previously established protective measures were allegedly inadequate. On May 19, 2008, the IACHR instituted the process of requesting information from the State on the threat level in the case of Justice María del Rosario González de Lemos and the security arranged for her. After examining the information supplied by both parties on the circumstances under which Justice María del Rosario González de Lemos must perform her functions, the Commission decided to grant the request for precautionary measures and accordingly asked the State to guarantee the justice's life and physical integrity, to arrange with her and the petitioners the measures to be adopted, and to report to the Commission on the measures intended to eliminate the risk factors that warrant enforcement of the precautionary measures. The Commission continues to monitor the situation.

#### **CUBA**

#### **PM 320/08 Yordis García Fournier**

17. On December 5, 2008, the IACHR granted the request seeking precautionary measures for young Yordis García Fournier. The Commission's decision was based on a request for precautionary measures in which it was alleged that Mr. Yordis García Fournier had been subjected to mistreatment in the Combinado de Guantánamo prison, where he was allegedly being held in a punishment cell with no clothes and in very bad health. Given the particulars of this case, the IACHR asked the Cuban state to adopt the measures necessary to guarantee the life and physical integrity of Yordis García Fournier, to provide him proper medical attention in keeping with the international standards for the treatment of persons deprived of their liberty and to inform the Commission of the measures taken to implement the precautionary measures. The State has not responded to the precautionary measures' request.

#### **DOMINICAN REPUBLIC**

#### **PM 195-08 Emildo Bueno *et al.***

18. On July 31, 2008, the IACHR granted the request for precautionary measures on behalf of Emildo Bueno Orguís, Dielal Bueno, Minoscal De Olis Oguiza, Gyselle Baret Reyes and Demerson De Olis Baret. The request seeking precautionary measures alleges that these individuals, born in the Dominican Republic of parents of Haitian origin, have been threatened and have been the targets of acts of violence, presumably in retaliation for the legal actions brought to obtain papers identifying them as Dominican citizens. The Commission asked the Dominican Republic to take the measures necessary to protect the lives and physical integrity of the beneficiaries and to report what measures are being taken to conduct a judicial inquiry



into the facts that prompted the adoption of precautionary measures. The Commission continues to monitor the situation.

## **GUATEMALA**

### **PC 61/08 Alberto López Pérez, Víctor Manuel Gómez Mendoza and their families**

19. On April 3, 2008, the IACHR granted the request for precautionary measures for Messrs. Alberto López Pérez, Víctor Manuel Gómez Mendoza and their respective families. The request seeking precautionary measures alleges that Messrs. López Pérez and Gómez Mendoza had been the targets of threats, acts of intimidation and attacks as a result of their union activities. The Commission requested that the State of Guatemala adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and their families, and report on the measures adopted to conduct a judicial inquiry into the events that prompted the adoption of precautionary measures. The Commission continues to monitor the situation.

### **PM 148/08 JRP and family**

20. On July 16, 2008, the Commission granted the request for precautionary measures for Mr. JRP and five members of his family, several of whom are children whose identity will remain confidential. The request seeking precautionary measures alleges, *inter alia*, that Mr. JRP and his family had received death threats because he brought a case alleging corruption of minors and coercion involving conduct affecting his daughter, a minor. The Commission asked the Guatemalan state to take the measures necessary to preserve the life and physical integrity of the beneficiaries. The Commission continues to monitor the situation.

### **PM 295/08 José Pelicó Pérez and his family**

21. On November 3, 2008, the IACHR granted the request for precautionary measures on behalf of Mr. José Pelicó Pérez and his family. The request seeking precautionary measures alleges that the beneficiaries have been receiving threats and have been followed since April 2008, presumably because of Mr. Pelicó Pérez' work as an investigative journalist with the *Centro de Reportes Informativos sobre Guatemala* (CERIGUA) [Center of News Reports on Guatemala]. The request states further that on October 5, 2008, Mr. Pelicó's wife and son had been threatened with a firearm. Given the situation, the IACHR asked the Guatemalan state to take the measures necessary to preserve the life and physical integrity of the beneficiaries and to report the measures taken to conduct a judicial inquiry into the events that warranted the adoption of precautionary measures. The Commission continues to monitor the situation.

## **GUYANA**

### **PM 254/07 AW**

22. On February 12, 2008, the IACHR granted the request for precautionary measures for the child AW, whose identity will be kept confidential because of her age. The request seeking precautionary measures alleges, *inter alia*, that in 2002 a family member had handed the beneficiary over to an orphanage; even though members of the child's biological family tried to adopt her, she was put up for adoption and given to another couple in 2004. The request alleges that the beneficiary is being abused in her adoptive home. The Commission asked the Guyana State to immediately check the beneficiary's situation, report to the Commission and adopt measures to protect the life and physical integrity of the beneficiary. The Commission continues to monitor the situation.

## **HAITI**

### **PM 181/07 Lovinsky Pierre-Antoine**

23. On February 28, 2008, the IACHR granted a request seeking precautionary measures for human rights defender Lovinsky Pierre-Antoine. The request alleges that on August 12, 2007, Mr. Lovinsky Pierre-Antoine was stopped as he was returning from a meeting with a foreign delegation conducting an investigation in Haiti. Since then, his whereabouts are unknown. On September 21, 2007, the Commission requested information from the State concerning the situation of Mr. Lovinsky Pierre-Antoine and repeated its request on December 31, 2007. In view of the situation and since the deadlines for submitting the requested information had passed, the Commission decided to grant the requested precautionary measures and asked the Haitian state to take the measures necessary to establish Lovinsky Pierre-Antoine's whereabouts, guarantee his life and physical integrity, and report the measures taken to conduct a judicial inquiry into the facts that prompted the adoption of precautionary measures. The Commission continues to monitor the situation.

#### **PM 144/08 Detainees at Toussaint Louverture Police Station in Gonaïves**

24. On June 16, 2008, the IACHR granted precautionary measures for the persons being held at the Toussaint Louverture Police Station in Gonaïves. The request seeking precautionary measures alleges, *inter alia*, that twelve minors in custody were co-mingled with the adult population and persons carrying HIV. The Commission asked the Haitian state to take the measures necessary to protect the lives and physical integrity of all persons deprived of their liberty in the Toussaint Louverture Police Station, to provide them with food, medical care and proper sanitation, and to transfer children deprived of their liberty to suitable detention facilities. The Commission continues to monitor the situation.

### **HONDURAS**

#### **PM 210/08 Marlon Cardoza and other members of the CEPRES Association**

25. On August 27, 2008, the IACHR granted a request for precautionary measures for Marlon Cardoza, Dennis Castillo and Josué Hernández Cardona, members of the *Asociación Centro de Educación y Prevención en Salud, Sexualidad y Sida* (CEPRES) [Center for Education in Health, Sexuality and AIDS Prevention Association]. The request for precautionary measures alleged that Messrs. Cardoza, Castillo and Hernández Cardona were the targets of threats and harassment. It also alleged that on June 10, 2008, Martín Girón, a founding member of the organization, was murdered. It also asserted that during that year, 27 persons from Honduras' lesbian, gay, bisexual and transgender community had been murdered. The Commission asked the Honduran state to guarantee the life and physical integrity of the beneficiaries and to report the measures taken to conduct a judicial inquiry into the events that warrant enforcement of precautionary measures. The Commission continues to monitor the situation.

#### **PM 135/07 Public Prosecutor Luis Javier Santos and his children**

26. On October 14, 2008, the IACHR granted the request seeking precautionary measures for public prosecutor Luis Javier Santos and his children. The request for precautionary measures alleges, *inter alia*, that Public Prosecutor Luis Javier Santos is being threatened because of his work on various corruption cases in the city of San Pedro Sula. On August 21, 2007, the IACHR requested information from the Honduran State concerning the security of public prosecutor Luis Javier Santos. After considering the information supplied by both parties on the circumstances under which Public Prosecutor Luis Javier Santos performs his functions and concerning an attempt made against his life, the Commission decided to adopt precautionary measures and requested the Honduran State to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report the measures taken to conduct a judicial inquiry into the events that warrant enforcement of the precautionary measures. The Commission continues to monitor the situation.

#### **PM 303/08 Gabriel Zambrano, Carlos Murillo, Danilo del Arca and Carminda Pérez**

27. On December 12, 2008, the IACHR granted precautionary measures for Gabriel Zambrano, Carlos Murillo, Danilo del Arca and Carminda Pérez, community leaders in the town of Villanueva, Department of Cortés. The request for precautionary measures alleges that the afore-named leaders are the targets of threats and attacks because of their activities to reclaim land. A number of community leaders from the area have allegedly been killed recently. The Commission asked the Honduran state to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report the steps taken to conduct a judicial inquiry into the events that warrant enforcement of precautionary measures. The Commission continues to monitor the situation.

## **MEXICO**

### **PM 265/07 MAA and her daughters**

28. On February 12, 2008, the IACHR granted the request for precautionary measures for MAA and her three daughters, whose identities are being kept confidential because of their age and the nature of the allegations made. The request seeking precautionary measures alleges that one of the girls had been the victim of a number of acts involving sexual abuse. The request states that when the problems were reported to the competent authorities, the girl was allegedly abducted between August 28 and 29, 2007, and that the family had allegedly been the target of harassment to get them to withdraw their complaint. On December 19, 2007, the Commission asked the State to provide information on the situation. After considering the additional information supplied by both parties, the Commission decided to ask the Mexican state to take the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report what measures have been taken to conduct a judicial inquiry into the facts in this case that warrant enforcement of precautionary measures. The Commission continues to monitor the situation.

### **PM 147/08 Luz Estela Castro Rodríguez et al.**

29. On June 13, 2008, the IACHR granted the request seeking precautionary measures for Marisela Ortiz Rivera, María Luisa García Andrade, Karla Michell and David Peña, members of the organization called "*Nuestras Hijas de Regreso a Casa*" [Our Daughters Home Again], for Luz Estela Castro Rodríguez, Alma Gómez Caballero, Rossina Urgana Barri, Gabino Gómez Escárcega, Adriana Carmona López, Minerva Maesse, Monserrat González, Irma Villanueva, Flor Gómez, Alberto Rodríguez, Beatriz Gómez, Consuelo Ramos, Ema Martínez, Flor Gómez, Imelda Ruiz, Inti Gómez, Ivonne Gómez, José A. Hernández, Karim Rivera, Laura Aragón, Leonilla Gómez, Luz María Reyes, María de la Luz Nájera, Manuel E. Gómez, María Elena Estevané, Pablo E. Gómez, Rosa Ema Carmona, Norma Ledezma, Silvia Madrigal, Verónica Nava, Yolanda Gómez and Zoila Espino, all members of the "*Centro de Derechos Humanos de la Mujer*" [Women's Human Rights Center] and for their immediate families. On June 9, 2008, the Commission received a communication from the Permanent Mission of Mexico to the OAS in which the Mexican State reports that a number of human rights organizations are concerned over threats made against those on whose behalf they work and asks the Commission to consider implementation of precautionary measures. In response, the Commission granted precautionary measures with a view to guaranteeing the lives and physical integrity of the beneficiaries and asked the State to report the measures taken to shed light on the facts. The Commission continues to monitor the situation.

### **PM 113/08 177 Inhabitants of the Community of Santo Domingo Ixcatlan**

30. On May 19, 2008, the IACHR granted the request for precautionary measures for 60 inhabitants of the municipality of Santo Domingo Ixcatlan in the state of Oaxaca. The request seeking precautionary measures alleges that the people of the town of Santo Domingo have been victims of serious acts of violence committed by lawless armed groups with ties to local authorities. The request further alleges that on April 30, 2008, 40 armed men killed

Gustavo Castañeda Martínez, Melesio Martínez Robles and Inocencio Medina Bernabé, who were burned to death and dismembered. The request names 60 witnesses, relatives and friends of the victims, said to have received death threats from the alleged perpetrators. The Commission asked the Mexican state to take the measures necessary to guarantee the life and physical integrity of the 60 people on whose behalf the precautionary measures were granted, and to report what measures have been taken to conduct a judicial inquiry into the events that prompted adoption of precautionary measures. On June 8, 2008, the Commission decided to amplify the precautionary measures to cover another 117 inhabitants of Santo Domingo Ixcatlan who had allegedly received death threats. The Commission continues to monitor the situation.

#### **PM 102/08 Rafael Rodríguez Castañeda**

31. On July 3, 2008, the IACHR granted a request for precautionary measures to preserve journalist Rafael Rodríguez Castañeda's right to access information. The request seeking precautionary measures is associated with petition P492/08 which alleges, *inter alia*, that the courts' refusal to provide access to leftover ballots, unused ballots, ballots declared to be valid and those nullified in the election held on July 2, 2006, before those ballots were destroyed, is a violation of Article 13 of the American Convention. The Commission asked the Mexican state to suspend plans to destroy the ballots until it is able to rule on the merits of the petition filed by Rafael Rodríguez Castañeda. The granting of precautionary measures does not imply any prejudgment on the merits of the complaint. The Commission continues to monitor the situation.

#### **NICARAGUA**

##### **PM 277/08 Vilma Núñez de Escorcía**

32. On November 11, 2008, the IACHR granted a request for precautionary measures for human rights defender Vilma Núñez de Escorcía and the members of the *Centro Nicaragüense de Derechos Humanos* (CENIDH) [Nicaraguan Human Rights Center]. The request seeking precautionary measures alleges that Mrs. Núñez de Escorcía and the members of the CENIDH are targets of public accusations and harassment by public officials because of their work as defenders of human rights. The Commission asked the Nicaraguan state to take the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report what steps it has taken to conduct a judicial inquiry into the facts that necessitated the adoption of precautionary measures. The Commission continues to monitor the situation.

#### **PARAGUAY**

##### **PM 277-07 Patients at the Neuropsychiatric Hospital**

33. On July 29, 2008, the IACHR granted a request for precautionary measures on behalf of the patients at the Neuropsychiatric Hospital. The request seeking precautionary measures alleges that acts of physical violence and sexual abuse have been committed against the hospital's patients. It also alleges that effective measures have not been taken to investigate the violence and protect the patients. After requesting information from the parties several times, the Commission learned that in May and June 2008, the deaths of two patients were reported, as well as sexual abuse and violence at the hospital. The Commission asked the Paraguayan state to take the measures necessary to protect the lives and physical integrity of the beneficiaries, and especially to prevent additional acts of physical violence and sexual abuse inside the hospital. It also asked the State to report the measures taken to investigate the facts. The Commission continues to monitor the situation.

#### **PERU**

##### **PM 103/08 Francisco Soberón Garrido and other members of APRODEH**

34. On May 21, 2008, the IACHR granted precautionary measures for human rights defenders Francisco Soberón Garrido, Juan Miguel Jugo Viera and other members of APRODEH. The request seeking precautionary measures alleges that various state agencies had made statements and taken measures intended to intimidate APRODEH, particularly Francisco Soberón Garrido and Juan Miguel Jugo Viera, the executives of that institution. The request also states that, starting in April 2008, a number of APRODEH members had been the target of threats and other forms of harassment. The Commission asked the Peruvian state to take the measures necessary to guarantee the life and physical integrity of the beneficiaries and to report on the measures taken to prevent administrative and judicial means from being used to obstruct the human rights work done by APRODEH. The Commission continues to monitor the situation.

## **UNITED STATES**

### **PM 240/07 Orlando Cordia Hall**

35. On July 7, 2008, the IACHR granted precautionary measures on behalf of Orlando Cordia Hall, who was given the death penalty for the alleged commission of a crime in 1994. The petition attached to the request seeking precautionary measures alleges that in general, there is racial bias in the application of the death penalty in the United States and that, in this particular instance, the judgment delivered in the case was based on questionable evidence about conduct that did not appear in the indictment. The allegation is that the United States is responsible for violation of Articles II, XVIII, and XXVI of the American Declaration. The Commission asked the United States to refrain from executing the death sentence until it has had an opportunity to issue its decision on the petitioner's claim of an alleged violation of the American Declaration. The Commission continues to monitor the situation.

### **PM 149/08 Boniface Nyamanhindi**

36. On August 18, 2008, the Commission granted the request seeking precautionary measures for Boniface Nyamanhindi, a national of Zimbabwe being held in a detention facility operated by the Immigration and Customs Enforcement Agency. The request seeking precautionary measures states that if deported to his native country, Mr. Nyamanhindi would face the threat of torture and cruel treatment because of his membership in an opposition party. The Commission asked the United States to take the measures necessary to prevent Mr. Nyamanhindi from sustaining irreparable harm as a result of his deportation. The Commission continues to monitor the situation.

### **PM 211/08 Djamel Ameziane**

37. On August 20, 2008, the IACHR granted the request for precautionary measures for Mr. Djamel Ameziane. The request for precautionary measures alleges that Mr. Ameziane was detained by United States agents in Kandahar, Afghanistan in January 2007 and taken to the United States Naval Base at Guantánamo. According to the information received by the Commission, Mr. Ameziane was allegedly tortured and subjected to cruel, inhumane and degrading treatment during his incarceration. The request also alleges that he was in danger of being deported to his native country, Algeria, where he might be subjected to cruel, inhumane and degrading treatment. The Commission asked the United States to immediately take the measures necessary to ensure that Mr. Ameziane is not subject to torture or to cruel, inhumane or degrading treatment while in its custody and to make certain that he is not deported to any country where he might be subjected to torture or other mistreatment. The Commission continues to monitor the situation.



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## IACHR ANNUAL REPORT 2008

### CHAPTER III - THE PETITION AND CASE SYSTEM (Continuation)

#### D. Status of compliance with the recommendations of the IACHR

38. Complete compliance with the decisions of the Inter-American Commission is essential for ensuring that human rights have full force in the OAS member states, and for helping strengthen the Inter-American system for the protection of human rights. With that in mind, the IACHR, in this section, analyzes the status of compliance with the recommendations in the reports adopted by the Commission in the last seven years.

39. In this regard, the OAS General Assembly, in its resolution AG/RES. 2409 (XXXVIII-O/08), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," urged the member states to follow up on the recommendations of the Inter-American Commission on Human Rights (operative paragraph 3.b) and to continue to take appropriate action in connection with the annual reports of the Commission, in the context of the Permanent Council and the General Assembly of the Organization (operative paragraph 3.c). Likewise, in its resolution AG/RES. 2407 (XXXVIII-O/08), "Strengthening of Human Rights Systems pursuant to the mandates arising from the Summits of the Americas," it reaffirmed the intent of the OAS to continue taking concrete measures aimed at implementing the mandates of the Third Summit of the Americas, including follow-up of the recommendations of the Inter-American Commission on Human Rights (operative paragraph 1.b), and instructed the Permanent Council to continue to consider ways to promote the follow-up of the recommendations of the Inter-American Commission on Human Rights by member states of the Organization (operative paragraph 3.e).

40. Both the Convention (Article 41) and the Statute of the Commission (Article 18) explicitly grant the IACHR the authority to request information from the member states and to produce such reports and recommendations as it considers advisable. Specifically, Article 46 of the IACHR Rules of Procedure, which took effect on May 1, 2001, provides the following:

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations. 2. The Commission shall report on progress in complying with those agreements and recommendations as it deems appropriate.

41. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 46 of its Rules of Procedure, the IACHR requested information from the States on compliance with the recommendations made in the reports published on individual cases included in its annual reports from 2000 through 2007.

42. The table the Commission is presenting includes the status of compliance with the recommendations made by the IACHR in the cases that have been decided and published in the last seven years. The IACHR notes that compliance with different recommendations is meant to be successive and not immediate and that some recommendations require a reasonable time to be fully implemented. The table, therefore, presents the current status of compliance, which the Commission acknowledges as being a dynamic process that may evolve continuously. From that perspective, the Commission evaluates whether or not compliance with its recommendations is complete and not whether it has been started.

43. The three categories included in the table are the following:

- total compliance (those cases in which the state has fully complied with all the recommendations made by the IACHR. Having regard to the principles of effectiveness and fully observed those recommendations where the state has begun and satisfactorily completed the procedures for compliance);
- partial compliance (those cases in which the state has partially observed the recommendations made by the IACHR either by having complied with only one or some of them or through incomplete compliance with all of them);
- compliance pending (those cases in which the IACHR considers that there has been no compliance with the recommendations because no steps have been taken in that direction; because the state has explicitly indicated that it will not comply with the recommendations made; or because the state has not reported to the IACHR and the Commission has no information from other sources that would suggest otherwise).

CASE	TOTAL COMPLIANCE	PARCIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.307, Report N° 103/01, María Merciadri de Morini (Argentina)	X		
Case 11.804, Report N° 91/03, Juan Ángel Greco (Argentina)		X	
Case 12.080, Report N° 102/05, Sergio Schiavini and María Teresa Schnack (Argentina)		X	
CASES 12.067, 12.068 and 12.086, Report N° 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)			X
Case 12.053, Report N° 40/04, Maya indigenous communities of the Toledo District (Belize)			X
Case 12.475, Report N° 97/05, Alfredo Díaz Bustos (Bolivia)		X	
Case 12.516, Report N° 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia)	X		
Petition No. 269-05, Report N° 82/07, Miguel Angel Moncada Osorio y James David Rocha Terraza (Bolivia)	X		
Petition No. 788-06, Report N° 70/07, Víctor Hugo Arce Chávez (Bolivia)	X		
Case 12.051, Report N° 54/01, Maria da Penha Maia Fernandes (Brazil)		X	
CASES 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 y 11.417, Report N° 55/01, Aluísio Cavalcante <i>et al.</i> (Brazil)		X	
Case 11.517, Report N° 23/02, Diniz Bento da			X

Silva (Brazil)		
Case 10.301, Report N° 40/03, Parque São Lucas (Brazil)		
Case 11.289, Report N° 95/03, José Pereira (Brazil)		X
Case 11.556, Report N° 32/04, Corumbiara (Brazil)		X
Case 11.634, Report N° 33/04, Jailton Neri da Fonseca (Brazil)		X
Cases 12.426 y 12.427, Report N° 43/06, Raniê Silva Cruz, Eduardo Rocha da Silva and Raimundo Nonato Conceição Filho (Brazil)		X
Case 12.001, Report N° 66/06, Simone André Diniz (Brazil)		X
Case 11.771, Report N° 61/01, Samuel Alfonso Catalán Lincoleo (Chile)		X
Case 11.715, Report N° 32/02, Juan Manuel Contreras San Martín <i>et al.</i> (Chile)	X	
Case 12.046, Report N° 33/02, Mónica Carabantes Galleguillos (Chile)	X	
Case 11.725, Report N° 139/99, Carmelo Soria Espinoza (Chile)		X
Petition 4617/02, Report N° 30/04, Mercedes Julia Huenteaño Beroiza <i>et al.</i> (Chile)		X
CASE 12.142, Report N° 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile)	X	
<u>Case 11.654</u> , Report N° 62/01, Riófrío Massacre (Colombia)		X
<u>Case 11.710</u> , Report N° 63/01, Carlos Manuel Prada González and Evelio Antonio Bolaño Castro (Colombia)		X
<u>Case 11.712</u> , Report N° 64/01, Leonel de Jesús Isaza Echeverry (Colombia)		X
<u>Petition 11.141</u> , Report N° 105/05, Villatina Massacre (Colombia)		X
<u>Petition 10.205</u> , Report N° 53/06, Germán Enrique Guerra Achuri (Colombia)		X
Case 12.009, Report N° 43/08, Leydi Dayán Sánchez (Colombia)		X
Case 12.448, Report N° 44/08, Sergio Emilio Cadena Antolinez (Colombia)		X
Case 12.476, Report N° 67/06, Oscar Elias Biscet <i>et al.</i> (Cuba)		X
Case 12.477, Report N° 68/06, Lorenzo Enrique Copello Castillo <i>et al.</i> (Cuba)		X
<u>Case 11.421</u> , Report N° 93/00, Edison Patricio Quishpe Alcívar (Ecuador)		X
<u>Case 11.439</u> , Report N° 94/00, Byron Roberto Cañaverl (Ecuador)		X
<u>Case 11.445</u> , Report N° 95/00, Angelo Javier	X	



Ruales Paredes (Ecuador)		
<a href="#">Case 11.466</a> , Report N° 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)	X	
<a href="#">Case 11.584</a> , Report N° 97/00, Carlos Juela Molina (Ecuador)	X	
<a href="#">Case 11.783</a> , Report N° 98/00, Marcia Irene Clavijo Tapia, (Ecuador)	X	
<a href="#">Case 11.868</a> , Report N° 99/00, Carlos Santiago and Pedro Andrés Restrepo (Ecuador)	X	
<a href="#">Case 11.991</a> , Report N° 100/00, Kelvin Vicente Torres Cueva (Ecuador)	X	
<a href="#">Case 11.478</a> , Report N° 19/01, Juan Clímaco Cuéllar <i>et al.</i> (Ecuador)	X	
<a href="#">Case 11.512</a> , Report N° 20/01, Lida Angela Riera Rodríguez (Ecuador)	X	
<a href="#">Case 11.605</a> , Report N° 21/01, René Gonzalo Cruz Pazmiño (Ecuador)	X	
<a href="#">Case 11.779</a> , Report N° 22/01, José Patricio Reascos (Ecuador)	X	
<a href="#">Case 11.992</a> , Report N° 66/01, Dayra María Levoyer Jiménez (Ecuador)		X
<a href="#">Case 11.441</a> , Report N° 104/01, Rodrigo Elicio Muñoz Arcos <i>et al.</i> (Ecuador)	X	
<a href="#">Case 11.443</a> , Report N° 105/01, Washington Ayora Rodríguez (Ecuador)	X	
<a href="#">Case 11.450</a> , Report N° 106/01, Marco Vinicio Almeida Calispa (Ecuador)	X	
<a href="#">Case 11.542</a> , Report N° 107/01, Angel Reiniero Vega Jiménez (Ecuador)	X	
<a href="#">Case 11.574</a> , Report N° 108/01, Wilberto Samuel Manzano (Ecuador)	X	
<a href="#">Case 11.632</a> , Report N° 109/01, Vidal Segura Hurtado (Ecuador)	X	
<a href="#">Case 12.007</a> , Report N° 110/01, Pompeyo Carlos Andrade Benítez (Ecuador)	X	
<a href="#">Case 11.515</a> , Report N° 63/03, Bolívar Franco Camacho Arboleda (Ecuador)	X	
<a href="#">Case 12.188</a> , Report N° 64/03, Joffre José Valencia Mero, Priscila Fierro, Zoreida Valencia Sánchez, Ivonne Rocío Valencia Sánchez (Ecuador)	X	
<a href="#">Case 12.394</a> , Report N° 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos (Ecuador)	X	
<a href="#">Petition 12.205</a> , Report N° 44/06, José René Castro Galarza (Ecuador)	X	
<a href="#">Petition 12.207</a> , Report N° 45/06, Lizandro Ramiro Montero Masache (Ecuador)	X	
<a href="#">Petition 12.238</a> , Report N° 46/06, Myriam Larrea Pintado (Ecuador)	X	

Petition 533-01, Report N° 47/06, Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)	X	
Case 12.028, Report N° 47/01, Donnason Knights (Grenada)	X	
Case 11.765, Report N° 55/02, Paul Lallion (Grenada)	X	
Case 12.158, Report N° 56/02, Benedict Jacob (Grenada)	X	
Case 11.625, Report N° 4/01, María Eugenia Morales de Sierra (Guatemala)	X	
Case 9207, Report N° 58/01, Oscar Manuel Gramajo López (Guatemala)	X	
Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay <i>et al.</i> ; Case 10.799 Catalino Chochoy <i>et al.</i> ; Case 10.751 Juan Galicia Hernández <i>et al.</i> and Case 10.901 Antulio Delgado, Report N° 59/01 Remigio Domingo Morales <i>et al.</i> (Guatemala)	X	
Case 9111, Report N° 60/01, Ileana del Rosario Solares Castillo <i>et al.</i> (Guatemala)	X	
Case 11.382, Report N° 57/02, Finca "La Exacta" (Guatemala)	X	
Case 11.312, N° 66/03, Emilio Tec Pop (Guatemala)	X	
Case 11.766, Report N° 67/03, Irma Flaquer (Guatemala)	X	
Case 11.197, Report N° 68/03, Community of San Vicente de los Cimientos (Guatemala)	X	
Petition 9168, Report N° 29/04, Jorge Alberto Rosal Paz (Guatemala)	X	
Petition 133/04, Report N° 99/05, José Miguel Mérida Escobar (Guatemala)	X	
Case 10.855, Report N° 100/05, Pedro García Chuc (Guatemala)	X	
Case 11.171, Report N° 69/06, Tomas Lares Cipriano (Guatemala)	X	
Case 11.658, Report N° 80/07, Martín Pelicó Coxic (Guatemala)	X	
Case 12.264, Report N° 1/06, Franz Britton (Guyana)		X
Case 11.335, Report N° 78/02, Guy Malary (Haiti)		X
CASES 11.826, 11.843, 11.846 and 11.847, Report N° 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)	X	
Case 12.069, Report N° 50/01, Damion Thomas (Jamaica)	X	
Case 12.183, Report N° 127/01, Joseph Thomas (Jamaica)	X	
Case 12.275, Report N° 58/02, Denton Aitken (Jamaica)	X	
Case 12.347, Report N° 76/02, Dave Sewell	X	

(Jamaica)		
Case 12.417, Report N° 41/04, Whitley Myrie (Jamaica)		X
Case 12.418, Report N° 92/05, Michael Gayle (Jamaica)	X	
Case 12.447, Report N° 61/06, Derrick Tracey (Jamaica)		X
Case 11.565, Report N° 53/01, González Pérez sisters (Mexico)		X
Case 12.130, Report N° 2/06, Miguel Orlando Muñoz Guzmán (Mexico)		X
PETITION 161-02, Report N° 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)	X	
Case 11.381, Report N° 100/01, Milton García Fajardo (Nicaragua)	X	
Case 11.506, Report N° 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)		X
Case 11.800, Report N° 110/00, César Cabrejos Bernuy (Peru)	X	
Case 11.031, Report N° 111/00, Pedro Pablo López González <i>et al.</i> (Peru)	X	
Case 11.099, Report N° 112/00, Yone Cruz Ocalio (Peru)	X	
CASES 10.247 <i>et al.</i> , Report N° 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru)	X	
Case 12.035; Report N° 75/02, Pablo Ignacio Livia Robles (Peru)	X	
Case 11.149, Report N° 70/03, Augusto Alejandro Zúñiga Paz (Peru)	X	
Case 12.191, Report N° 71/03, María Mamerita Mestanza (Peru)	X	
Case 12.078, Report N° 31/04, Ricardo Semoza Di Carlo (Peru)	X	
Petition 185-02, Report N° 107-05, Roger Herminio Salas Gamboa (Peru)	X	
Case 12.033, Report N° 49/06, Rómulo Torres Ventocilla (Peru)	X	
Petition 711-01 <i>et al.</i> , Report N° 50/06, Miguel Grimaldo Castañeda Sánchez <i>et al.</i> (Peru); Petition 33-03 <i>et al.</i> , Report N° 109/06, Héctor Núñez Julia <i>et al.</i> (Peru); Petition 732-01 <i>et al.</i> , Report 20/07 Eulogio Miguel Melgarejo <i>et al.</i> ; Petition 758-01 <i>et al.</i> , Report N° 71/07 Hernán Atilio Aguirre Moreno <i>et al.</i> ; Petition 494-04 (Peru)	X	
Case 9903, Report N° 51/01, Rafael Ferrer Mazorra <i>et al.</i> (United States)		X
Case 12.243, Report N° 52/01, Juan Raul Garza (United States)		X
Case 11.753, Report N° 52/02, Ramón Martínez Villarreal, (United States)	X	
Case 12.285, Report N° 62/02, Michael Domingues (United States)	X	
Case 11.140, Report N° 75/02, Mary and Carrie Dann (United States)		X
Case 11.193, Report N° 97/03, Shaka Sankofa (United States)	X	

Case 11.204, Report N° 98/03, Statehood Solidarity Committee (United States)		X
Case 11.331, Report N° 99/03, Cesar Fierro (United States)	X	
Case 12.240, Report N° 100/03, Douglas Christopher Thomas (United States)	X	
Case 12.412, Report N° 101/03, Napoleon Beazley (United States)	X	
Case 12.430, Report N° 1/05, Roberto Moreno Ramos, (United States)	X	
Case 12.439, Report N° 25/05, Toronto Markkey Patterson (United States)	X	
Case 12.421, Report N° 91/05, Javier Suarez Medina (United States)	X	
Case 11.500, Report N° 124/06, Tomás Eduardo Cirio (Uruguay)	X	
Petition 12.555, Report N° 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)		X

**Case 11.307, Report No. 103/01, María Merciadri de Morini (Argentina)**

44. On October 11, 2001, the Commission approved the friendly settlement in the case of María Merciadri de Morini when it adopted Report 103/01. In summary, the petition objected to the application of Law 24,012 (the "Quota Law") and the decree that implemented it, which addressed the inclusion of women candidates on electoral ballots.

45. The friendly settlement report indicated that on December 28, 2000, Decree No. 1246 was issued to guarantee the effective participation of women in the lists of candidates for national elective office. The petitioner stated that it adequately addressed the fundamental aspects of her complaint before the IACHR.

46. Based on what was stated, the IACHR concludes that the friendly settlement agreement has been implemented.

**Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)**

47. On October 22, 2003, by Report No. 91/03, the Commission approved a friendly settlement agreement in the case of Juan Ángel Greco. In summary, the petitioners alleged that on June 25, 1990, Mr. Greco, 24 years of age, was illegally detained and mistreated when he sought to obtain police assistance when lodging a complaint regarding an assault. The petitioners indicated that while Mr. Greco was detained at the police station in Puerto Vilelas, province of Chaco, there was a fire in his cell in circumstances that were not clarified that led him to suffer serious burns. In addition, they argued that the police were responsible for provoking the fire and for delaying the transfer of the victim to the hospital for several hours. Mr. Greco was hospitalized until his death on July 4, 1990, and buried, according to the petitioners' complaint, without an adequate autopsy. The petitioners also noted that the state did not perform an adequate investigation to clarify the facts adduced, with which it denied the family its right to have justice done, and to obtain compensation.

48. In this agreement the State agreed to the following:

1. Provide economic reparation to the family members of Juan Ángel Greco in the sum of three hundred thousand pesos (\$300,000) that shall be paid to Mrs. Zulma Basitanini de Greco in the amount of thirty thousand (\$30,000) per month in the time period specified in point 3 of the present item, that amount comprising material damages, moral damages, lost wages, costs, fees and any other classification that would arise from the responsibility assumed by the Province of Chaco.

2. Provide the petitioners and the Inter American Commission on Human Rights

2. Provide the petitioners and the Inter-American Commission on Human Rights, through the Office for Human Rights of the Foreign Ministry, a legalized and certified copy of two cases for which the Province of Chaco has requested reexamination.

3. Within the framework of its competences, encourage the reopening of the criminal case and the corresponding investigations.

4. Direct the reopening of the administrative case N° 130/91-250690-1401 once the criminal case has been reopened.

5. Commit itself, in the framework of its competences, to ensuring that the victim's family members have access to the judicial and administrative investigations."

6. Publish the agreement in the principle written press sources of the nation and the Province of Chaco."

7. Continue pursuing legislative and administrative measures for the improved protection of Human Rights. Specifically, it was placed on record that a draft law creating a Criminal Prosecutor's Office for Human Rights has been developed and transmitted to the Provincial Chamber of Deputies for its study and approval.

8. Strengthen the work of the Permanent Commission for Control of Detention Centers, created by Resolution No. 119 of the Ministry of Government, Justice and Labor of the Province of Chaco, on February 24, 2003.

9. Further emphasize the work of the Organ of Institutional Control (O.C.I) created by Article 35 of the Organic Police Law of the Province of Chaco N° 4.987, directing it toward the more effective protection of human rights on the part of the Provincial Police. At the initiative of the Executive, the Provincial Counsel for Education and Promotion of Human Rights created by Law N° 4.912 was constituted in the sphere of the Chamber of Deputies. The representatives of the distinct intervening organs and powers have already been designated and convoked.

49. In 2008, the Commission requested up-to-date information from both parties. In this respect, in communications of July 17 and December 19, 2008, the State referred the IACHR to the report of April 3, 2008, prepared by the General Bureau of the Institutional Oversight Organ of the Police of the Province of Chaco for the Provincial Bureau for the Defense of Democracy and the Citizen of the Province of Chaco, on the steps taken in the administrative summary proceeding initiated in the case of the Principal Police Commissioner Juan Carlos Escobar, the Deputy Police Commissioner Adolfo Eduardo Valdez, and the First Sergeant Number 2065 Julio Ramón Obregón, for the purpose of establishing whether there was disciplinary liability on their part on the occasion of the detention of Juan Ángel Greco and his subsequent death.

50. The petitioners presented letters of August 13 and December 5, 2007, in which they indicated to the IACHR that five years had elapsed since the friendly settlement agreement and 18 years since the death of Juan Ángel Graco without any criminal and/or disciplinary sanction being imposed to date on anyone in connection with the events that unfolded from June 25 to July 4, 1990, which caused the victim's death. In addition, the petitioners reported that the point of the agreement regarding access to the criminal and administrative proceedings had not been implemented, nor had they received the certified and legalized copy of the two cases in which the province of Chaco has sought reconsideration. They concluded that the information provided by the State is incomplete and does not make it possible to supervise the implementation of the commitments assumed by the State in the friendly settlement agreement.

51. Based on the available information, the Commission has already considered implemented those aspects of the agreement related to monetary compensation, and those related to its publication. Nonetheless, based on the information submitted by the parties in 2008, it appears that the aspects related to the duty to investigate and punish the persons responsible for the violation of the human rights of Juan Ángel Greco, and those related to access of the victim's family members to the judicial and administrative investigations, have yet to be carried out.

52. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part.

agreement has been implemented in part.

**Case 12.080, Report No. 102/05, Sergio Schiavini and María Teresa Schnack (Argentina)**

53. On October 27, 2005, by Report 102/05, the Commission approved a friendly settlement agreement in the case of Sergio Schiavini and María Teresa Schnack. In summary, the petitioners had made arguments referring to the responsibility of the State for the death of Sergio Andrés Schiavini, on May 29, 1991, during a confrontation between members of the Police of the Province of Buenos Aires and a group of assailants who held several persons hostage, including the young Schiavini. The petitioners stated as injuries inflicted by grievous conduct on the part of the State the excessive use of force during the exchange of fire; the denial of judicial protection and judicial guarantees; and the acts of persecution to which María Teresa Schnack has been subjected since the death of her son, Sergio Schiavini, for giving impetus to the investigation.

54. In the friendly settlement agreement, the State recognized its responsibility for "the the facts of what transpired in the aforementioned jurisdiction and the attendant violation of the rights and guarantees recognized by the American Convention on Human Rights as described in Admissibility Report No. 5/02, adopted by the IACHR during its 114th regular session."

55. According to that agreement, the State undertook as follows:

1. The parties agree to set up an "ad-hoc" Arbitration Tribunal to determine the amount of economic reparation due Sergio Andrés Schiavini's heirs, in keeping with the rights acknowledged to have been violated and the applicable international standards. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert, the national State shall propose a second, and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.

2. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to participate in the discussions of the procedure. In representation of the national State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.

3. The parties agree to form a technical working group, in which the Government of the Province of Buenos Aires shall be invited to participate, to carry out the studies

and take such other steps as may be necessary to submit for the consideration of the Legislature and, where appropriate, the competent federal authorities, the following initiatives, aimed at implementing the necessary measures to bring existing law into harmony with international standards, in accordance with point 2 of the Act dated November 11, 2004:

a) Draft legislative reform bill making it mandatory, with no exceptions, to perform an autopsy in all cases of violent or criminally suspicious deaths. It will also prohibit members of the security forces from being involved in this process with respect to facts in which they have participated;

b) Draft reform of the Criminal Procedures Code of the Nation granting a victim's relatives the right to choose to designate their own expert before the autopsy is performed;

c) Analysis of the legislation in force on the procedures followed by the forensic medical office to evaluate possible modifications that could contribute to ensuring transparency and effectiveness in its performance;

d) Draft reform of the Criminal Procedures Code of the Nation to incorporate the

violation of human rights as grounds for review;

e) Draft reform of the Criminal Procedures Code of the Nation incorporating the violation of human rights as grounds for the immediate suspension or interruption of the statute of limitations;

f) Evaluation of domestic law concerning hostage-taking and the use of force to bring it into harmony with international standards in accordance with principle No. 3 of UN Resolution 1989/65;

g) Proposal that, in the event that the appeal for review in the Schiavini case filed by the Provincial Office of the General Prosecutor before Chamber 111 of the Criminal Court of Cassation of Buenos Aires Province is unsuccessful, a "Truth Commission" is established at the federal level to help effectively safeguard that right;

h) Development of draft reforms setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that include the establishment of a specific entity with jurisdiction in the decision-making process—including the institution of "friendly settlement"—and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights.

4. The Government of the Argentine Republic pledges to facilitate the activities of the working group and make available the technical support and facilities it requires in order to perform its task. It also pledges to periodically inform the Inter-American Commission on Human Rights regarding the outcomes of the task entrusted to the technical group and invites the Commission to participate actively in evaluating the draft reforms, as well as the follow-up and evolution of these initiatives.

5. The Government of the Argentine Republic pledges to publish this agreement in the Official Gazette of the Argentine Republic, in the newspapers "La Unión" of Lomas de Zamora, "Clarín", "La Nación," and "Página/12", once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

56. The Ad Hoc Arbitration Tribunal to Determine Pecuniary Reparations in the Case of Schiavini against the State of the Argentine Republic, constituted in the context of the friendly settlement agreement and made up of arbitrators Víctor Manuel Rodríguez Rescia, Marcelo López Alfonsín, and Fabián Omar Salvioli, issued its award on December 4, 2006, and read its arbitral decision in an oral and public hearing held in the city of Buenos Aires that same day.

57. The Commission evaluated the process for reaching the arbitral decision, as well as the decision issued in relation to pecuniary reparations in the case. In addition, in a communication of October 25, 2007, the petitioners reported that a credit was deposited into the beneficiaries' bank accounts, in the amount agreed upon by the Ad Hoc Tribunal for the pecuniary reparations. Accordingly, the State has carried out the aspects of the agreement related to monetary compensation.

58. In November 2008 the Inter-American Commission requested up-to-date information from the parties in follow up to its Report 102/05. In a communication of January 9, 2009, the Argentine State reiterated to the IACHR the information regarding compliance with the pecuniary aspects of the agreement. As for the non-pecuniary measures of reparation and non-repetition, the State reported holding several meetings with the petitioners to design a specific agenda for this year 2009 whose essential objectives are focused on forming a Truth Commission and evaluating the normative measures in the agreement, particularly those referring to the implementation of an internal procedure for regulating the processing of petitions and cases in the international arena.

59. The petitioners, in a communication of July 2, 2008, confirmed enforcement of the arbitral award that determined the pecuniary reparation. As for the other measures included in the agreement, they mentioned a working meeting held to design an agenda to go forward in implementing the various measures agreed upon, in particular referring to the designation of the

implementing the various measures agreed upon, in particular referring to the designation of the experts who will constitute the Truth Commission. They also indicated that while initiatives were being considered aimed at implementing an internal procedure for regulating how petitioners and cases before the regional human rights system are to be handled. Finally, they reported that they had heard nothing new from the State on the various bills introduced by COFAVI among the measures for making improvements.

60. In view of the foregoing, the Commission concludes that the friendly settlement agreement has been carried out in part.

**Cases 12.067, 12.068 and 12.086, Report N° 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)**

61. In Report N° 48/01 of April 4, 2001, the Commission concluded that the State was responsible for: a) violating Articles I, XVIII, XXV and XXVI of the American Declaration by sentencing Messrs. Edwards, Hall, Schroeter and Bowleg to a mandatory death penalty; b) violating Messrs. Edwards', Hall's, Schroeter's and Bowleg's rights under Article XXIV, of the American Declaration, by failing to provide the condemned men with an effective right to petition for amnesty, pardon or commutation of sentence; c) violating Messrs. Hall's, Schroeter's and Bowleg's rights under Articles XI, XXV, and XXVI of the American Declaration, because of the inhumane conditions of detention to which the condemned men were subjected; d) violating Messrs. Edwards', Hall's, Schroeter and Bowleg's rights under Articles XVIII, and XXVI of the American Declaration, by failing to make legal aid available to the condemned men to pursue Constitutional Motions; and e) violating Messrs. Schroeter's and Bowleg's rights to be tried without undue delay under Article XXV of the Declaration.

62. The IACHR issued the following recommendations to the State:

- Grant Messrs. Edwards, Hall, Schroeter and Bowleg, an effective remedy which includes commutation of sentence and compensation;
- Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration.
- Adopt such legislative or other measures as may be necessary to ensure that the right to petition for amnesty, pardon or commutation of sentence is given effect in The Bahamas.
- Adopt such legislative or other measures as may be necessary to ensure that the right to an impartial hearing and the right to judicial protection are given effect in The Bahamas in relation to recourse to Constitutional Motions.
- Adopt such legislative or other measures as may be necessary to ensure that the right to be tried without undue delay is given effect in The Bahamas.
- Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment and the right not to receive cruel, infamous, or unusual punishment are given effect in The Bahamas.

63. On November 8, 2002, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report N° 48/01. The State has not responded. On December 18, 2002, the Petitioners in Case 12.067, Michael Edwards, wrote to the Commission and reported it that they had written to the Attorney General of The Bahamas asking what steps the State would be taking in response to the Commission's findings and recommendations. To date they are still awaiting a response from the Attorney General of The Bahamas. On December 18, 2002, the Petitioner in Case 12.062, Omar Hall, wrote to the Commission and reported it that despite enquiries made to the Bahamian Government, she has not received any information concerning what steps the State has taken to commute Mr. Hall's death sentence or otherwise put into effect the Commission's recommendations made in Report N° 48/01. With regard to Case 12.086, Brian Schroeter and Jeronimo Bowleg, the Petitioners wrote to the Commission and reported it



DIAN SCHMIDT and JERONIMO DOWIEG, the PETITIONERS wrote to the Commission and reported it that they were currently attempting to verify which, if any, of the recommendations contained in Report N° 48/01, has been complied with by the State.

64. By communications of July 2, 2004 and November 9, 2004, January 04, 2007, November 02, 2007, and November 3<sup>rd</sup> 2008, the Commission requested information from the State about compliance with the recommendations set forth in Report N° 48/01, pursuant to Article 46.1 of the Commission's Rules of Procedure. The Commission has not received any responses from the State to these communications.

65. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending.

**Case 12.053, Report N° 40/04, Maya indigenous communities of the Toledo District (Belize)**

66. In its October 12, 2004 Report N° 40/04, the Commission concluded that the State was responsible for: a) violating the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, without detriment to other indigenous communities, and to delimit, demarcate and title or otherwise established the legal mechanisms necessary to clarify and protect the territory on which their right exists; b) violating the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified and protected, in the absence of effective consultations with and the informed consent of the Maya people; c) violating the right to equality before the law, to equal protection of the law, and to nondiscrimination enshrined in Article II of the American Declaration to the detriment of the Maya people, by failing to provide them with the protections necessary to exercise their property rights fully and equally with other members of the Belizean population; and d) violating the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people, by rendering domestic judicial proceedings brought by them ineffective through unreasonable delay and thereby failing to provide them with effective access to the courts for protection of their fundamental rights.

67. The IACHR issued the following recommendations to the State:

1. Adopt in its domestic law, and through fully reported consultations with the Maya people, the legislative, administrative, and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices, and without detriment to other indigenous communities.
2. Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.
3. Repair the environmental damage resulting from the logging concessions granted by the State in respect of the territory traditionally occupied and used by the Maya people.

68. On February 1, 2006, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report N° 40/04. The Petitioners responded to the Commission by letter of March 01, 2006, stating that the State of Belize had so far failed to comply with the Commission's recommendations. The Petitioners also requested the Commission to grant precautionary measures aimed at enforcing compliance of the recommendations. In July 2006,

the Commission considered the Petitioners' request and declined to grant precautionary measures.

69. On November 2, 2007, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report N° 40/04. The Petitioners responded to the Commission by letter of November 30, 2007, stating that the State of Belize had so far failed to comply with the Commission's recommendations. However, the Petitioners informed the Commission of a judgment of the Supreme Court of Belize delivered on October 18, 2007, that "found that Belize is obligated not only by the Belize Constitution but also by international treaty and customary international law to recognize, respect, and protect Maya customary land rights." The Petitioners added that the judgment was "significantly informed throughout by the 2004 final report of the Inter-American Commission on Human Rights". The Petitioners stated that leasing, logging, and oil exploration activities have continued on Maya lands in the Toledo District, despite the Supreme Court judgment and the Commission's recommendations contained in Report N° 40/04.

70. On September 2, 2008, the State presented a document called "Report on the measures taken by the Government of Belize to comply with the recommendations of the Inter-American Commission on Human Rights as set forth in Report No. 40/04". Belize mentions in that report that it has carried out efforts guided by its obligation to comply with the IACHR's recommendations in the case and also with the judgment of the Supreme Court in the case of *Cal et al v The Attorney General et al*. The State highlights the fact that in the Cal case the Chief Justice considered the Report of the Commission; that the recommendations of the Commission and the judgment of the Supreme Court contain similar provisions with respect to delimiting, demarcating, titling or otherwise protecting Mayan communal property based on customary use and practice. However, it also notes that the Case before the IACHR involved the entire Maya Indigenous communities in the Toledo District, while the Cal case was brought by only two Maya communities in the Toledo District: the Santa Cruz and Conejo villages. The State adds that for practical reasons, it focused only at the time only on the implementation of the Cal judgment, but it notes that the Maya Leaders alliance had widened its claim and filed a class action suit in June 2008, which seeks to have the Court recognize the Mayas' customary land rights of thirty eight villages in the Toledo District.

71. The report goes on to mention attempts by the Government of Belize at "delimiting, demarcating, titling or otherwise protecting Mayan communal property rights based on customary use and practices", including meetings held on December 2007 and January 2008, but clarifies that "the attempts failed". According to the State, such failure could be attributed to a lack of information by the affected Community, the intervention by Maya organizations and the disagreement regarding common boundaries. Further, it mentions that after the general elections and the change of government, the parties in this case met on April 10<sup>th</sup> 2008 and agreed to develop a framework for the implementation of the Cal judgment. Among the interim measures adopted by the Government of Belize, a blanket cease-and-desist order was issued by the Attorney General on March 27, 2008 with respect to land in the Toledo District. Shortly after the measure was reconsidered because it had the effect of a shut-down on land-related activities in the Toledo District, the timber industry was completely halted with serious economic implications, and the laborers --most of whom belong to the Maya communities of the Toledo District-- suddenly found themselves out of their jobs. The order was modified to apply only to lands in the villages of Santa Cruz and Conejo, and according to the State of Belize the parties continued communication despite not reaching a consensus.

72. As regards the mitigation of damage to the environment caused by logging, the State informs that the Forestry Department of Belize had reported a change in the situation in 2004 that resulted in the IACHR's recommendations. Among other things, it mentions that there are only three long-term license holders operating in the Toledo District, and that no new long-term licenses have been issued since the first directive of the Attorney General of March 2008. The State also expresses that the Forestry Department is working in a partnership with Toledo Maya-based NGOs and the private sector in the Toledo Healthy Forest Initiative, with the aim of moving away from conventional logging and engage in sustainable forest practices using

international standards. Finally, Belize reaffirms its commitment to "continued discussions and dialogue with the Maya people of Belize in order to implement the ruling of the Supreme Court of Belize and to comply with the recommendation of the Inter-American commission of Human Rights".

73. On October 27, 2008, the IACHR held a hearing with both parties in this matter in order to receive information on compliance with its recommendations. The petitioners stated that the Maya Leaders Alliance has been trying to engage the Government elected in February 2008 in conversations concerning compliance with the Supreme Court judgment. According to the petitioners, the actions of the Government were initially "quite encouraging" in that "it acknowledged that the judgment had implications for all Maya lands in Toledo District, not just the two that brought the lawsuit" and that it "took a concrete, effective step to protect Maya customary rights, and issued a directive suspending leasing, permitting, and other land dealings in Toledo, until further notice, pending the implementation process". The petitioners state that there was "an abrupt about-face" just weeks after the directive was issued, whereby the directive was "effectively revoked" by "limiting its application to the claimant villages of Conejo and Santa Cruz, and leaving the lands of the 36 other Maya villages in Toledo District unprotected and vulnerable to exploitation by third parties". According to the petitioners, the lack of protective measures has resulted in "numerous infringements, violations, and expropriations of Maya lands". The Maya Leaders Alliance filed an action in the Supreme Court of Belize asking that it maintain the status quo in the Maya lands of the Toledo District until the Government "enacts a legal or administrative framework to recognize and protect Maya land rights".

74. On November 3, 2008, the IACHR sent a letter to both parties in this case to request information on compliance with the recommendations of its report. The State responded on November 25, 2008 reiterating the content of its report dated September 2, 2008. The petitioners presented their observations on December 3, 2008, which include the assertion that "the State has not complied, even minimally, with the recommendations of the Inter-American Commission on Human Rights". The petitioners consider that the statements by Belize during the hearing before the IACHR are encouraging, but that in practical terms the State "continues to behave as if those rights do not exist and do not merit effective protection", and they quote authorities expressing that they would only apply the Cal decision to other Maya villages if they bring their respective cases before the Supreme Court of their country.

75. With respect to the delimitation of the lands of the Maya people, the petitioners hold that the State has made no efforts yet, even in the villages of Santa Cruz and Conejo, where they were ordered to do so by the courts of Belize. They further state that the members of the Maya villages throughout the District have started to demarcate their own boundaries in agreement with the neighboring villages, so once the Government develops a mechanism it will be relatively easy because the boundaries will already be clarified. The petitioners also add that despite its initial actions during 2008 mentioned above, the State "continues to treat Maya land as unburdened land for the purposes of issuing leases, grants and concessions for natural resource exploitation, including logging and oil concessions", and they list several specific examples.

76. As to the IACHR recommendation on repairing environmental damage, the petitioners admit that "there has been some respite to the large-scale logging" but consider that this is not attributable to the State of Belize. However, they mention that logging continues on a smaller scale and that in some communities this is negatively affecting Maya hunting and fishing activities. According to the petitioners, in the absence of affirmative steps by the authorities of Belize, the Maya themselves have been taken action to minimize the environmental damage from logging, such as creating co-management organizations, supporting ecological and conservation efforts. The petitioners conclude by requesting that a IACHR delegation conduct an on-site visit to Belize in order to observe the situation.

77. On the basis of the information supplied by both parties, the Inter-American Commission observes that despite some important efforts, compliance with the aforementioned recommendations remains pending. Accordingly, the Commission encourages both parties to

continue efforts to engage and reach agreements that may contribute to a positive advance toward compliance.

**Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)**

78. On October 27, 2005, by Report No. 97/05, the Commission approved a friendly settlement agreement in the case of Alfredo Díaz Bustos. In summary, the petitioner alleged that Mr. Alfredo Díaz Bustos was a Jehovah's Witness in respect of whom the State violated the right to conscientious objection to military service, directly affecting the right to freedom of conscience and religion. In addition, the petition indicated that Mr. Díaz Bustos suffered discrimination based on his status as a Jehovah's Witness given that the very Law on National Defense Service of Bolivia established inequality between Catholics and those who follow other religions, such that exemption from military service was possible for Catholics, but not for others. The petitioner also alleged that the Bolivian State had violated the right to judicial protection of the alleged victim since, by final judgment of the Constitutional Court, it was established that the matters concerning the right to conscientious objection to compulsory military service cannot be submitted to any judicial organ.

79. In the friendly settlement agreement, the State undertook to:

- a. Give Alfredo Díaz Bustos his document of completed military service within thirty (30) working days after he submits all the required documentation to the Ministry of Defense;
- b. Present the service document free of charge, without requiring for its delivery payment of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not;
- c. Issue, at the time of presentation of the service record, a Ministerial Resolution stipulating that in the event of an armed conflict Alfredo Díaz Bustos, as a conscientious objector, shall not be sent to the battlefield nor called as an aide;
- d. Include, in accordance with international human rights law, the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces;
- e. Encourage, together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service;

80. After studying the information in the record, the Commission had concluded in its annual reports for 2006 and 2007 that items 1, 2, and 3 of the agreement were being carried out, but not items 4 and 5.

81. In this respect, on December 17, 2007, the petitioner presented a brief communication in which he reported that the new Bolivian Constitution did not include among the rights listed the right to "conscientious objection" and that accordingly the State continued to be in breach of items (d) and (e) of the friendly settlement agreement. Subsequently, on June 4, 2008, a communication was received from the petitioner by which he reported that the Proposed Law on Compulsory Military Service was being debated in the National Congress, and asked the Commission to call on the Bolivian State to incorporate the right to conscientious objection into the new constitutional text.

82. On November 3, 2008, the Commission asked the parties to provide updated information implementation of the agreement. The State did not present any response to this request. On January 13, 2009, the petitioner submitted a document reporting that the Draft Constitution that was the subject of the referendum of January 25, 2009, did not include any reference to conscientious objection.

83. On January 21, 2009, the Commission received a communication from the State

83. On January 21, 2009, the Commission received a communication from the State, informing that even though the conscientious objection is not included in the Constitution, the proposed law on Compulsory Military Service is currently being debated by the Parliament, and that it is expected to be widely discussed with the participation of all the interested parties. The State also noted that on May 2, 2008, it ratified the Iberoamerican Convention on Rights of Youth, which in its Article 12 establishes that: "1. Youth have the right to make conscientious objection towards obligatory military service. 2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service." It added that this ratification implies an incorporation of the conscientious objection to internal law and announced the presentation of a future report on this matter. The Commission awaits such report in order to evaluate compliance with items d) and e) of the friendly settlement agreement.

84. Based on the information available, the IACHR concludes that the friendly settlement agreement has met with partial compliance.

**Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia)**

85. On October 27, 2005, by Report No. 98/05, the Commission approved a friendly settlement agreement in the case of Raúl Zavala Málaga and Jorge Pacheco Rondón.

86. In the friendly settlement agreement, the State undertook as follows:

1. Contract Jorge Pacheco Rondón for the ODESUR Project;
2. Reinstate Raúl Zavala Málaga as head of sports infrastructure with rank [Item] No. 13, as of January 3, 2005.

87. For their part, Jorge Pacheco Rondón and Raúl Zavala Málaga agreed to:

1. Formally and expressly discontinue all legal action taken, on a national level, with the Fifth Court for Preliminary Criminal Proceedings, and internationally, with the Inter-American Commission on Human Rights.
2. Refrain from undertaking any future judicial or extrajudicial action pertaining to compliance with Administrative Resolution SSC/IRJ/139/2003 of August 28, 2003.

88. On November 1, 2007, the Commission asked the parties for updated information on implementation of the agreement. On November 13, 2007, the petitioner submitted a brief communication reporting that "as all the recommendations made by the IACHR have been carried out in their entirety, no additional observation whatsoever is in order." The Commission did not receive any response from the State.

89. Based on the information provided, the Commission concludes that the friendly settlement was agreement carried out in its entirety by the parties.

**Petition 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia)**

90. On October 15, 2007, by Report No. 82/07, the Commission approved a friendly settlement agreement in the case of Miguel Angel Moncada Osorio and James David Rocha Terraza. In summary, the petitioner alleged that the State was responsible for the violation of the rights of the alleged victims to judicial guarantees, to have access, on equal conditions, to public office in their country, and to judicial protection, established at Articles 8, 23, and 25, of the American Convention on Human Rights, due to the non-enforcement of an amparo judgment issued on their behalf by the Superior Court of Justice of La Paz.

91. In the friendly settlement agreement, the State undertook as follows:

- a) To pay to James David Rocha Terraza the sum of B. 55,392.12 corresponding to pay

accrued for fiscal year 2004 according to the Act of Reconciliation of Accrued Remuneration signed on January 12, 2006 by the interested party and the Ministry of Services and Public Works (today the Ministry of Public Works, Services and Housing). This payment shall be made in three installments, in the months of June, July and August 2007, by the 15th day of each month. From this amount, equivalent to B. 55,392.12, James David Rocha Terraza authorizes the Ministry of Public Works, Services and Housing to withhold the amount of B. 6,750, representing the salary he received between June 16 and July 31, 2005 for services provided to the National Fund for Regional Development. That sum of B. 6,750 will be withheld from the third installment, corresponding to the month of August 2007. Subsequently, the Ministry of Public Works, Services and Housing will transfer this amount of B. 6,750 to the National Fund for Regional Development, and will deliver a legalized receipt for that amount to Mr. James David Rocha Terraza and to the Ministry of Foreign Relations and Worship.

b) To pay to Miguel Angel Moncada Osorio the sum of B. 64,761.90 corresponding to pay accrued for fiscal year 2004 according to the Act of Reconciliation of Accrued Remuneration signed on January 12, 2006 by the interested party and the Ministry of Services and Public Works (today the Ministry of Public Works, Services and Housing). This payment shall be made in three installments, in the months of June, July and August 2007, by the 15th day of each month.

92. By communication received on November 12, 2007, the Bolivian State reported on the payment of checks to Messrs. Moncada and Rocha for salary accrued during fiscal year 2004, noting that it had carried out the friendly settlement agreement. For their part, on January 25, 2008, the petitioners reported that they did not have any observation on the case, and that they were "fully in agreement with the implementation of the agreement."

93. Based on the information presented, the Commission concludes that the friendly settlement agreement was fully implemented.

#### **Petition 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia)**

94. On July 27, 2007, by Report No. 70/07, the Commission approved a friendly settlement agreement in the case of Víctor Hugo Arce Chávez. In summary, the petitioner argued that the State was responsible for violating the rights of the alleged victim to judicial guarantees, to have access in general conditions of equality to public office in his country, and to judicial protection, established at Articles 8, 23, and 25 of the American Convention on Human Rights for failure to enforce an amparo judgment issued on his behalf by the Superior Court of La Paz.

95. Through the friendly settlement agreement the State undertook to carry out the following measures:

##### **PECUNIARY MEASURES**

a) To pay Víctor Hugo Arce Chávez the sum of Bs 988 (nine hundred eighty-eight bolivianos) to make up for the difference owed to him for his Christmas bonus of the year 2002. This payment must be made within five days of the signature of this document.

b) To pay Víctor Hugo Arce Chávez the sum of Bs 3,440 (three thousand four hundred and forty bolivianos) to complete the infant nursing subsidy owed to him on account of the birth of his son Hugo Alberto Arce Cano. This payment must be made within five days of the signature of this document.

c) To pay Víctor Hugo Arce Chávez the sum of Bs 11,228 (eleven thousand two hundred and twenty-eight bolivianos) as the difference owed to him on account of his position in the career ladder and his years of service for the period between January 2002 and September 2006, and for payments to the Future of Bolivia Pension Fund Office for the period between January and September of 2002. This payment must be made within five days of the signature of this document. The payments into the fund shall be the responsibility of police officer Víctor Hugo Arce Chávez once he receives

the sum from the Physical Security Battalion.

d) To pay Víctor Hugo Arce Chávez the sum of Bs 5,000 (five thousand bolivianos) in damages for pain and suffering caused to him and his next of kin. This payment must be made within five days of the signature of this document.

#### **NON-PECUNIARY MEASURES**

e) The Battalion and the National Police shall abstain from taking any measure against police officer Víctor Hugo Arce Chávez in reprisal for the international complaint filed by him against the Bolivian State. Likewise, any present or future investigation and/or disciplinary procedure against police officer Víctor Hugo Arce Chávez shall be conducted under strict adherence to the guarantees of due process provided for by the internal rules of the National Police, the laws of the Nation, the Constitution, and the American Convention on Human Rights.

g) To add to the personal file of police officer Víctor Hugo Arce Chávez, a copy of Decision 359/2002, handed down by the Second Civil Chamber of the Superior Court of Justice of La Paz, a copy of Constitutional Judgment 1239/2002-R, a copy of this compromise agreement, and a copy of the Report on Friendly Settlement that the Inter-American Commission on Human Rights may approve. The first three documents shall be added to his personal file within five days of the signature of this agreement. The copy of the Report on Friendly Settlement of the IACHR shall be added to the file within ten days of its notification to the Bolivian State by the IACHR.

96. On November 3, 2008, the Commission asked the parties to provide information on implementation of the friendly settlement agreement. By communication received on December 5, 2008, the petitioner indicated that he was in conformity with the agreement his representatives reached with the Bolivian State. The State asked for an extension to respond, which was granted to it by the IACHR. By communication of January 2, 2008, the State indicated that each of the commitments assumed pursuant to Article 49 of the American Convention had been faithfully implemented.

97. Based on the foregoing, the Commission concludes that the friendly settlement agreement has been fully implemented.

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## IACHR ANNUAL REPORT 2008

### CHAPTER III - THE PETITION AND CASE SYSTEM

#### **E. Petitions and cases submitted to the Inter-American Court of Human Rights**

##### **1. Provisional measures**

776. Article 63(2) of the American Convention on Human Rights provides that in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

777. The following is a summary of the 40 provisional measures in force during the period covered by this report, according to the country ordered to implement them. The number of measures required from the states does not tally with the number of persons those measures were intended to protect.

##### **a. Argentina**

##### **Millacura Llaipén *et al.***

778. On June 20, 2006, the Commission submitted a request to the Inter-American Court seeking provisional measures to require the State protect the life and physical integrity of María Leontina Millacura Llaipén, her children Marcos and Valeria Torres, her son-in-law Juan Pablo Caba; Gerardo Colín; Patricio Oliva; Tamara Bolívar; Walter Mansilla; Silvia de los Santos; Verónica Heredia; Miguel Ángel Sánchez; and Viviana and Sonia Hayes. Mrs. Millacura Llaipén is a petitioner in a case submitted to the Commission and at the time of the acts alleged in her petition and in her quest for justice, she, her next of kin and her attorneys have been the targets of intimidation and aggression.

779. By order dated February 6, 2008, the Court again called upon the State, *inter alia*, to immediately adopt all measures necessary to protect the rights to life and to physical integrity of the beneficiaries named by the Commission. During the course of the year, the Commission presented information and comments related to these provisional measures, as ordered by the Court. The full text of the order in question is available at the following link: [http://www.corteidh.or.cr/docs/medidas/millacura\\_se\\_03\\_inq.doc](http://www.corteidh.or.cr/docs/medidas/millacura_se_03_inq.doc)

#### **Mendoza Prisons**



780. In 2008, the Commission presented information and comments related to these provisional measures ordered by the Court on November 22, 2004. The main purpose of those measures is to protect the life and integrity of all persons held in custody in the Mendoza Provincial Prison and those in the Gustavo André Unit at Lavalle, as well as every person found within the walls of those facilities.

781. A public hearing was held on December 4, 2008, during the Court's XXXVII special session, which took place in Mexico City. In attendance were the Commission, the representatives of the beneficiaries and the Argentine State. The Inter-American Court convoked the hearing in order to receive information on i) how the provisional measures ordered in this case might be affected by the friendly settlement purportedly reached by the Argentine State and the petitioners in case No. 1231/04 "Inmates at Mendoza Penitentiary" being processed before the Inter-American Commission; ii) events subsequent to the Court's Order of November 27, 2007 that posed a threat to the life and physical integrity of the beneficiaries of the provisional measures ordered by the Court; iii) the effectiveness of the measures the State adopted to protect the beneficiaries during the period that the Court order was in effect; and iv) whether the situation of the extreme gravity and urgency that necessitated these provisional measures in order to prevent irreparable damage to persons still persists. The order convoking the hearing in question is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza\\_se\\_06.doc](http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza_se_06.doc).

## **b. Barbados**

### **Tyrone DaCosta Cadogan**

782. On October 31, 2008, the Commission submitted a request to the Court seeking provisional measures to protect the life and physical integrity of Mr. Tyrone DaCosta Cadogan, a prisoner on death row in Barbados, until such time as the Inter-American Court rules on the violations alleged by the Commission in the application it filed with the Inter-American Court that same day. On November 4, 2008, the President ordered urgent measures on Mr. Cadogan's behalf and asked the State and the other parties to submit their comments, which have been reported in due course. On December 2, 2008, the Court *en banc* confirmed the President's order and ordered provisional measures on behalf of Mr. Cadogan. The order is available at: [http://www.corteidh.or.cr/docs/medidas/Tyrone\\_se\\_02\\_ing1.doc](http://www.corteidh.or.cr/docs/medidas/Tyrone_se_02_ing1.doc)

## **c. Brazil**

### **Urso Branco Prison**

783. In 2008, the Commission presented writings and comments in connection with the provisional measures ordered on June 18, 2002, on behalf of the persons held in custody in the José Mario Alves Detention Center –known as the "Urso Branco Prison"– for the purpose of preventing further deaths among the inmate population there.

784. The Commission underscored the need for a public hearing into this matter, so that the parties might give their arguments or explanations as to why the action taken thus far has not been enough to guarantee the life and physical safety of the inmates.

785. On May 2, 2008, the Court issued an order in which it confirmed the State's obligations vis-à-vis these provisional measures, with the exception of the obligation to investigate, which in its opinion should be reserved for a possible contentious proceeding.

786. The order in question is available at the following link: [http://www.corteidh.or.cr/docs/medidas/urso\\_se\\_06\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/urso_se_06_ing.doc).

## **Febém Tatuapé Complex**

787. In 2008, the Commission presented its periodic comments on the State's reports concerning the measures that the Court ordered on November 17, 2005, at the

reports concerning the measures that the Court ordered on November 17, 2005, at the Commission's request, to protect the life and physical integrity of all children and adolescents resident in the FEBEM Tatuapé Complex, as well as that of all those within the complex.

788. According to the Order of its President of June 10, 2008, the Court held a public hearing in connection with these provisional measures on August 13, 2008, during its XXXV special session, which took place in Montevideo, Uruguay. Participating were the Commission, the representatives of the beneficiaries and those of the Brazilian State. During that hearing, the Court requested specific information from the State concerning the location and situation of the beneficiaries of the provisional measures who were still within the Casa Foundation (formerly FEBEM).

789. Having reviewed the information supplied by the State and the comments made by the representatives of the beneficiaries and by the Inter-American Commission, on November 25, 2008 the Court issued an order in which it decided to lift the provisional measures.

790. The order in question is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/febem\\_se\\_06.doc](http://www.corteidh.or.cr/docs/medidas/febem_se_06.doc).

### **Araraquara Penitentiary**

791. In 2008 the Commission presented periodic reports to the Court containing its comments on the Brazilian State's reports on the provisional measures the Court had ordered at the Commission's request, to protect the life and physical integrity of the persons on whose behalf the measures were adopted when they were inmates at the penitentiary in Araraquara.

792. Pursuant to the June 10, 2008 Order of the President, the Court held a public hearing on August 13, 2008, during its special session in Uruguay. The purpose of the hearing was to receive the arguments of the parties regarding the provisional measures ordered in this matter. Then, on November 25, 2008, the Court ordered that the provisional measures called for in its orders of July 28, 2006 and September 30, 2006, for inmates at the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo, be lifted. The text of the order is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/araraquara\\_se\\_05.pdf](http://www.corteidh.or.cr/docs/medidas/araraquara_se_05.pdf)

## **d. Colombia**

### **19 Merchants**

793. Throughout 2008, the Commission submitted periodic comments on the reports that the State filed in connection with these provisional measures. The Court ordered these measures on September 3, 2004, in response to a request from the Commission and for the purpose of protecting the life and physical integrity of Mrs. Sandra Belinda Montero (next of kin of two victims in the case; see "Contentious Cases," below) and her family. In its most recent report, the State requested that the order requiring provisional measures be lifted. It was the Commission's understanding, however, that given the nature of the events that prompted the order requiring provisional measures and because those events were linked to the case, the extreme gravity and urgency persisted. It therefore requested that the Court keep the order requiring provisional measures in place.

794. On November 26, 2008, the President of the Court issued an order in which she convened the Inter-American Commission, the State of Colombia and the representatives of the victims' next of kin and of the persons for whom the provisional measures had been ordered, to appear for a private hearing to be held at the seat of the Inter-American Court of Human Rights on January 20, 2009. The hearing will be held to give the Court an opportunity to obtain additional information from the State concerning compliance with the judgment delivered in this case. The Court will also hear the comments from the Commission and the representatives of the victims' next of kin on this issue and compile information on the implementation and effectiveness of the provisional measures ordered in this matter and

implementation and effectiveness of the provisional measures ordered in this matter and concerning the State's request that the provisional measures be lifted. The order in question can be viewed (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/supervisiones/comerciantes\\_26\\_11\\_08.doc](http://www.corteidh.or.cr/docs/supervisiones/comerciantes_26_11_08.doc).

### **Álvarez et al.**

795. In 2008 the Commission submitted to the Court its periodic comments on the reports presented by the Colombian State on the provisional measures ordered in this matter. The measures were ordered at the Commission's request, for the purpose of protecting the physical integrity of the members of the Association of Relatives of Detainees-Disappeared Persons of Colombia. The Court originally ordered these provisional measures on July 22, 1997.

796. On February 4, 2008, the Court held a public hearing at its seat in San José, Costa Rica, to receive up-to-date information from the parties concerning implementation of these measures. Participating were the Commission, the representatives of the beneficiaries and the Colombian State.

797. On February 8, 2008, the Court issued an order in which it confirmed the State's obligations with regard to these provisional measures. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/alvarez\\_se\\_18\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/alvarez_se_18_ing.doc).

### **Caballero Delgado and Santana**

798. On February 4, 2008, the Court held a public hearing at its seat in San José, Costa Rica, concerning the provisional measures ordered in this matter. In attendance were the Commission, the representatives of the persons on whose behalf the measures were ordered, and the Colombian State. On February 6, the Court decided to call upon the State to maintain and adopt any measures necessary to protect the life and personal integrity of María Nodelia Parra and Gonzalo Arias Alturo. The text of the order can be viewed at the following link: [http://www.corteidh.or.cr/docs/medidas/caballero\\_se\\_08\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/caballero_se_08_ing.doc). For the remainder of the year, the Commission continued to present its comments on the Colombian State's reports on these measures.

799. It is worth noting that it was December 7, 1994 when the Court first ordered provisional measures in this case at the Commission's request, to protect some of the witnesses who, in the case being litigated before the Court at the time (see below), were giving testimony concerning the responsibility of agents of the State.

### **San José de Apartadó Peace Community**

800. These measures were ordered by the President of the Court, at the Commission's request, on October 9, 2000, to protect the physical integrity of the members of the San José de Apartadó Peace Community and of persons providing it services.

801. On February 6, 2008, the Inter-American Court issued an order in which it decided, *inter alia*, to reiterate to the State that it should maintain the measures adopted and issue forthwith those necessary to effectively protect the life and physical integrity of all members of the Peace Community of San José de Apartadó. The full text of that order is available at: [http://www.corteidh.or.cr/docs/medidas/apartado\\_se\\_08\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/apartado_se_08_ing.doc). Throughout 2008, the Commission submitted to the Court its comments on the reports that the State and the representative of the beneficiaries submitted concerning these measures.

### **Community Council of Jiguamiandó and the Curbaradó families**

802. At the Commission's request, the Court ordered these measures on March 6, 2003, for the purpose of protecting the right to life of the members of the Community Council of the Jiguamiandó and the Curbaradó families and their right to continue to live in their territory. In 2008, the Commission submitted its regular comments to the reports presented by the State

and by the beneficiaries' representatives.

803. On February 5, 2008, the Court held a public hearing on this matter at its seat in San José, Costa Rica, to give the parties an opportunity to present information on the following questions: a) the measures taken to protect the life and physical integrity of all members of the Community Council of Jiguamiandó and the Curbaradó families; b) the measures taken to ensure that the persons for whom these measures were ordered are able to continue to live in the locations where they now reside, without any form of coercion or threat; c) the special protection for the so-called "humanitarian refugee zones" set up by the beneficiary communities; d) establishment of the safety and security conditions necessary to ensure that those members of the beneficiary communities who have been forced to move, are able to return home or to the "humanitarian refugee zones" that those communities have set up; e) creation of a permanent oversight and communication mechanism in the so-called "humanitarian refugee zones", and f) identifying all the people who are members of the families for whom the provisional measures were ordered and representation for the families that request it.

804. On that same day, the Inter-American Court issued an order in which it requested the Inter-American Commission to state its position on all the persons who are the beneficiaries of the provisional measures, pursuant to operative paragraph 16 of the order. The order in question is available at the following link: [http://www.corteidh.or.cr/docs/medidas/jiguamiando\\_se\\_07\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/jiguamiando_se_07_ing.doc).

805. To comply with the Court's order, a Commission delegation headed by the Commissioner Rapporteur for Colombia traveled to that country from November 17 through 21, 2008, and visited a humanitarian refugee zone located in collective territories along the banks of the Jiguamiandó River. He also held a number of meetings in Riosucio. During its visit to the humanitarian zone, the delegation received information and testimony about acts of violence and intimidation committed by lawless groups operating in the area and found that the risk factors that prompted the Court to intervene are still present. These communities have been adversely affected by the palm oil businesses that have set up in the area where the families live. The IACHR Rapporteur was told of the measures taken by the Colombian authorities to protect the communities and bring about tangible restitution of the collective territory.

806. On February 5, 2008, the Court issued another order in which it decided, *inter alia*, to keep the measures it had adopted in place and order forthwith any other measures necessary to effectively protect the lives and physical integrity of the beneficiaries. The text of that order is available at [http://www.corteidh.or.cr/docs/medidas/jiguamiando\\_se\\_06\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/jiguamiando_se_06_ing.doc).

### **Giraldo Cardona**

807. At the Commission's request, the Court ordered measures in the matter of Giraldo Cardona on October 28, 1996, to protect the life and physical integrity of the members of the Meta Civic Committee of Human Rights and to enable them to continue their work. The beneficiaries were alleged to have been victims of threats, harassment and persecution. On November 29, 2006, the Court issued an order in which it reiterated that the provisional measures ordered for the beneficiaries remained in effect. That order is available at: [http://www.corteidh.or.cr/docs/medidas/giraldo\\_se\\_09\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/giraldo_se_09_ing.doc).

808. In 2008, the Commission regularly submitted comments on the reports filed by the State in connection with these measures.

### **Gutiérrez Soler**

809. In 2008, the Commission periodically submitted comments on the State's reports concerning the measures that the Court ordered in this case on March 11, 2005, which were intended to: a) protect the life, physical integrity and personal liberty of Mr. Ricardo Gutiérrez Soler and his family, namely: his mother, Mrs. María Elena Soler de Gutiérrez; his children, Luisa Fernanda Gutiérrez Reyes, Paula Camila Gutiérrez Reyes, Leonardo Gutiérrez

Rubiano, Leydi Caterin Gutiérrez Peña, Sulma Tatiana Gutiérrez Rubiano, Ricardo Alberto Gutiérrez Rubiano and Carlos Andrés Gutiérrez Rubiano; and Mrs. Yaqueline Reyes; and b) protect the life, physical integrity and personal liberty of Mr. Wilson Gutiérrez Soler and his son Kevin Daniel Gutiérrez Niño, in the event the latter two returned to Colombia. See "Contentious Cases," below.

810. On December 3, 2008, the President of the Court issued an order in which she convened the Inter-American Commission, the Colombian State and the representatives of the victim and his next of kin to a private hearing, to be held at the seat of the Inter-American Court on January 20, 2009. The hearing will be an opportunity for the Court to receive information from the State on its compliance with the judgment delivered in the contentious case; to hear the comments of the Inter-American Commission and the representatives of victims' next of kin on the State's information; and to receive information on the provisional measures implemented, their effectiveness, and the possibility of their being lifted. The order convoking the hearing is available (in Spanish) at [http://www.corteidh.or.cr/docs/asuntos/qutierrez\\_03\\_12\\_08.doc](http://www.corteidh.or.cr/docs/asuntos/qutierrez_03_12_08.doc).

### **Mapiripán Massacre**

811. In 2008, the Commission periodically submitted comments on the State's reports concerning the measures originally ordered by the President of the Court on February 4, 2005, for the State to take the necessary measures to protect the lives and physical integrity of Carmen Johana Jaramillo Giraldo, Esther Pinzón López, Sara Paola Pinzón López, María Teresa Pinzón López, Yur Mary Herrera Contreras, Zully Herrera Contreras, Maryuri Caicedo Contreras, Nadia Marina Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johana Marina Valencia Sanmiguel, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, Roland Andrés Valencia Sanmiguel, Ronald Mayiber Valencia Sanmiguel, Luis Guillermo Pérez, Nory Giraldo de Jaramillo, Marina San Miguel Duarte, Viviana Barrera Cruz, Luz Mery Pinzón López, and Mariela Contreras Cruz. See "Contentious Cases," below.

812. On May 3, 2008 the President of the Court issued an order in which she called upon the State of Colombia to maintain in force the provisional measures and upon the representatives, to submit as soon as practicable, any comments pending submission, and, in particular, the concrete information on the situation of the beneficiaries. She also called upon the State to submit, no later than June 9, 2008, a report on the implementation of the provisional measures. The Commission continued presenting its comments.

813. On November 26, 2008, the President of the Court issued an order in which she convened the Inter-American Commission, the Colombian State and the representatives of the victims' next of kin for a private hearing, to be held at the seat of the Inter-American Court on January 20, 2009. At the hearing, the Court will hear the State's report concerning compliance with the judgment delivered in the contentious case and the comments of the Inter-American Commission and the representatives of the victims' next of kin on the State's report. It will also receive information on the implementation and effectiveness of the provisional measures it ordered and the possibility of their being lifted. The order convoking the hearing is available (in Spanish) at [http://www.corteidh.or.cr/docs/asuntos/mapiripan\\_26\\_11\\_08.doc](http://www.corteidh.or.cr/docs/asuntos/mapiripan_26_11_08.doc).

### **Mery Naranjo et al.**

814. By an order dated July 5, 2006, the Court required the State, *inter alia*, to adopt the measures necessary to protect the rights to life and to physical integrity of Mery Naranjo Jiménez and her family and to investigate the acts perpetrated against her and Mrs. María del Socorro Mosquera Londoño. Mrs. Naranjo and Mrs. Mosquera are human rights defenders and community leaders in the city of Medellín. Because of the work they do, the two women have been threatened and attacked by agents of the State and civilians identified with paramilitary groups.

815. On January 31, 2008, the Court issued an order in which it confirmed the State's obligations with respect to these provisional measures. The text of the order can be

viewed at the following link: [http://www.corteidh.or.cr/docs/medidas/naranjo\\_se\\_03\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/naranjo_se_03_ing.doc).

816. As ordered by the Court, in 2008 the Commission supplied information and its comments on these provisional measures.

### **Kankuamo Indigenous People**

817. In 2008, the Commission regularly presented its comments on the State's reports concerning the measures ordered on July 5, 2004, for members of the Kankuamo indigenous people, to protect their lives, physical integrity, cultural identity and special relationship to their ancestral lands.

818. Pursuant to the October 7, 2008 order of its President, the Court held a public hearing in Mexico on December 4, 2008, to hear the parties' arguments concerning the provisional measures ordered in the present matter. The text of the order is available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/kankuamo\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/kankuamo_se_03.pdf)

### **e. Dominican Republic**

#### **Haitians and Dominicans of Haitian origin in the Dominican Republic**

819. In 2008 the Commission expressed concern over the lack of information. It also submitted its periodic comments to the State's reports on the measures adopted for the beneficiaries of the provisional measures ordered, all of whom are Haitians or Dominicans of Haitian origin subject to the jurisdiction of the Dominican Republic and who face the threat of collective "expulsion" or "deportation." The Court ordered those measures on August 18, 2000.

820. On February 2, 2006, the Court issued an order in which it expanded the scope of the protective measures ordered back on August 18, 2000, and resolved that the State was to keep the measures already ordered in place and make immediate provision for any other measures needed to effectively protect the beneficiaries' lives and physical integrity. The text of the order is available at: [http://www.corteidh.or.cr/docs/medidas/haitianos\\_se\\_06\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/haitianos_se_06_ing.doc).

### **f. Ecuador**

#### **Sarayaku Indigenous People**

821. In 2008, the Commission submitted its comments on the State's reports concerning the measures ordered by the Court on June 6, 2004, on behalf of the members of the Kichwa people of Sarayaku, intended to protect their lives, physical integrity, their right to freedom of movement and their special relationship to their ancestral lands. In its comments the Commission specifically observed that the situation that justified the adoption of provisional measures still exists, particularly the need to remove explosive materials from the indigenous people's lands.

822. The measures were confirmed on June 17, 2005, subsequent to a public hearing held with the parties in Asunción, Paraguay, on May 11, 2005. The orders in question are available at the following links: [http://www.corteidh.or.cr/docs/medidas/sarayaku\\_se\\_02.doc](http://www.corteidh.or.cr/docs/medidas/sarayaku_se_02.doc) (in Spanish) and [http://www.corteidh.or.cr/docs/medidas/sarayaku\\_se\\_01\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/sarayaku_se_01_ing.doc).

### **g. El Salvador**

#### **Gloria Giralt de García Prieto et al.**

823. In 2007, the Commission submitted periodic comments to the Court on the Salvadoran State's reports regarding the measures ordered by the Court on September 26, 2006 at the Commission's request. The provisional measures were ordered to protect the lives and physical integrity of some of Mr. Ramón Mauricio García Prieto Giralt's next of kin and some

and physical integrity of some of his family members. Such a measure shall be taken by the Court and some of his legal advisors and members of the Human Rights Institute of the Central American University. These measures are in connection with the case being litigated at the Court and decided by the Court in its judgment on preliminary objections, merits, reparations and costs, dated November 20, 2007 (see "Contentious Cases", below). The text of the order for these provisional measures is available at: [http://www.corteidh.or.cr/docs/medidas/qiralt\\_se\\_03\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/qiralt_se_03_ing.doc).

824. Concerning the fact that the provisional measures remained in force subsequent to the issuance of the judgment on the merits, see, also, the judgment on interpretation that the Court delivered on November 24, 2008.

#### **Major Meléndez Quijano *et al.***

825. In 2008, the Commission submitted to the Court periodic comments on the Salvadoran State's reports on the provisional measures the Court ordered on May 12, 2007 at the Commission's request. The text of the order of provisional measures is available at: [http://www.corteidh.or.cr/docs/medidas/melendez\\_se\\_02\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/melendez_se_02_ing.doc).

826. In the comments it submitted to the Court, the Commission recognized the fact that the State is providing protective measures to the attorneys representing Major Meléndez and his next of kin and has taken note of the procedures followed with a view to providing these measures of protection. The Commission, however, believes the State has to implement concrete measures to protect Major Meléndez and his next of kin, as ordered by the Court. This has not happened thus far.

#### **h. Guatemala**

##### **Bámaca Velásquez**

827. In 2007, the Commission submitted information and comments on the provisional measures originally ordered on June 30, 1998, and whose purpose today is to protect the life and physical integrity of the following persons: Santiago Cabrera López, Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmenlinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado, Carlos Alfonso Cabrera, José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and other members of the Bámaca Velásquez family who make their permanent home in Guatemala; Emerita Mendoza, Wendy Pérez Álvarez, Sulni Madeli Pérez Álvarez, José Oswaldo Pérez Álvarez, Jacobo Álvarez, José Pioquinto Álvarez, Alez Javier Álvarez, Germán Aníbal de la Roca Mendoza, Kevin Otoniel de la Roca Mendoza, Blanca Noelia Meléndez, Aron Álvarez Mendoza and his family and other members of the family of Mr. Otoniel de la Roca Mendoza who make their permanent home in Guatemala, pursuant to the terms of the Court's most recent order, issued on March 11, 2005, confirming that the measures are to remain in force. See "Contentious Cases," below.

828. On November 11, 2008, the President of the Court issued an order in which she convened the Inter-American Commission, the State of Guatemala and the representatives of the victim's next of kin, for a private hearing that will be held at the seat of the Inter-American Court on January 20, 2009. The hearing will provide the Court with an opportunity to compile information from the parties in connection with the request that the provisional measures be lifted; to gather information from the State concerning its compliance with the judgments delivered on the merits and on reparations and costs in the present case, and to hear the comments that the Inter-American Commission and the representatives of the victims and beneficiaries may have in this regard. The order convoking the hearing in question is available (in Spanish) at the following address: [http://www.corteidh.or.cr/docs/medidas/bamaca\\_se\\_09.doc](http://www.corteidh.or.cr/docs/medidas/bamaca_se_09.doc).

#### **Carpio Nicolle**

829. In 2008, the Commission supplied information and comments in connection

829. In 2006, the Commission supplied information and comments in connection with the provisional measures ordered in this case since July 4, 1995. The purpose of the measures was, *inter alia*, to protect the lives and physical integrity of Mrs. Martha Arrivillaga de Carpio and Mrs. Karen Fischer and of Messrs. Jorge and Rodrigo Carpio Arrivillaga, Abraham Méndez García and his wife and children, and of the adolescents Rodrigo and Daniela Carpio Fischer, should they return to Guatemala. See "Contentious Cases," below.

830. On November 18, 2008, the Court convoked the Commission and the other parties to a private hearing at the seat of the Court in San José, Costa Rica, on January 20, 2009. The purpose of the hearing will be to discuss the State's request that the measures be lifted, and issues related to the performance of the judgment delivered in this case. The text of the order can be viewed at the following link: [http://www.corteidh.or.cr/docs/medidas/carpio\\_se\\_13.pdf](http://www.corteidh.or.cr/docs/medidas/carpio_se_13.pdf)

### **Guatemalan Forensic Anthropology Foundation**

831. At the Commission's request, on July 4, 2006 the Court ordered provisional measures to protect the life and physical integrity of the members of the Guatemalan Forensic Anthropology Foundation and the next of kin of its Executive Director, Mr. Fredy Armando Peccerelli Monterroso. Since then, the Commission has presented its comments on the information supplied, and has requested the Court to order the State to implement, immediately and effectively, all measures necessary to protect the life and physical integrity of the beneficiaries. The text of the July 4 order is available at: [http://www.corteidh.or.cr/docs/medidas/antropo\\_se\\_02\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/antropo_se_02_ing.doc).

### **Helen Mack *et al.***

832. In 2008, the Commission submitted periodic comments on the State's reports. The provisional measures were ordered on August 26, 2002, to protect the life and physical integrity of the family of Mrs. Myrna Mack Chang and the members of the Myrna Mack Foundation, Mrs. Iduvina Hernández and Mr. Jorge Guillermo Lemus Alvarado and their families. See "Contentious Cases," below.

### **Plan de Sánchez Massacre (Community Studies and Psychosocial Action Team "ECAP")**

833. In 2008, the Commission presented its comments on the State's reports concerning these measures, which are related to the petition lodged on October 15, 2006, by the Human Rights Legal Action Center, asking the Court to adopt provisional measures to ensure Guatemala's protection of the lives and physical integrity of the members of the NGO "Community Studies and Psychosocial Action Team" (ECAP), who are assisting with the process of securing reparations for the victims and survivors of the Plan de Sánchez Massacre (see "Contentious Cases," below). On November 25, 2006, the Court issued an order fully confirming the order of October 20, 2006, in which the President of the Court granted the requested measures. The text of the orders can be found at: [http://www.corteidh.or.cr/docs/medidas/plandesanchez\\_se\\_04.doc](http://www.corteidh.or.cr/docs/medidas/plandesanchez_se_04.doc) (in Spanish) and [http://www.corteidh.or.cr/docs/medidas/plandesanchez\\_se\\_05\\_%20ing.doc](http://www.corteidh.or.cr/docs/medidas/plandesanchez_se_05_%20ing.doc).

834. In December 2008, the Commission submitted its comments on the information reported by the representatives to the effect that "the extreme gravity and urgency and need to avoid irreparable damage, which were the circumstances that necessitated the adoption of these measures for each of the beneficiaries, no longer obtain; this is a function of the various changes that the organization was obliged to make to avoid threatening situations, but which to some degree have impaired its ability to accomplish its objectives of furthering the cause of justice and providing psychosocial support to the victims of the internal armed conflict." Based on that information, especially the statements the representatives made regarding their security, the Commission was of the view that the representatives' assertions were reasonable given the facts of the case.



## **Raxcaco et al.**

835. In 2008, the Commission continued to submit its periodic comments on the State's reports concerning the provisional measures that the Court ordered in this matter on August 30, 2004, to stay the execution of the death penalty that the Guatemalan courts imposed on Bernardino Rodríguez Lara (the current beneficiary). The provisional measures are intended to protect his life and physical integrity until such time as the proceedings on his case within the inter-American system are completed.

836. According to the Order of the President of March 28, 2008, the Court held a private hearing at its seat in San José, Costa Rica on May 8, 2008, to receive up-to-date information from the parties concerning the implementation of these measures. It also wanted to hear the parties' arguments on a request to expand the measures, and information on compliance with the judgments the Court delivered in the cases of *Raxcacó Reyes v. Guatemala* and *Fermín Ramírez v. Guatemala*. Present for the hearing were the Commission, the representatives of the victims and beneficiaries, and the Guatemalan State.

837. On May 9, 2008, the Court issued an order in which it confirmed the State's obligations vis-à-vis these provisional measures. It also decided that the measures need not be expanded to include other persons sentenced to death in Guatemala since, under the judgment delivered in the *Case of Raxcacó Reyes* Guatemala is not to execute anyone until the necessary amendments have been introduced in the law. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/Raxcaco se 07 ing.doc](http://www.corteidh.or.cr/docs/medidas/Raxcaco_se_07_ing.doc).

### **i. Haiti**

#### **Lysias Fleury**

838. In 2008, the Commission submitted its comments on the provisional measures that the Court ordered in this matter back on June 7, 2003. These provisional measures were to protect the life and physical integrity of Lysias Fleury, a human rights defender who reported having been arrested on June 24, 2002, without a court order, and then detained and beaten by police and civilians. The Commission has previously expressed its concern over the State's failure to comply with its duty to report to the Court on the implementation of the provisional measures. In August 2008, the Commission petitioned the Court to expand the provisional measures so that they would protect Mr. Fleury's wife and children as well. The text of the pertinent orders is available at the following links: [http://www.corteidh.or.cr/docs/medidas/fleury se 01 ing.doc](http://www.corteidh.or.cr/docs/medidas/fleury_se_01_ing.doc) and [http://www.corteidh.or.cr/docs/medidas/fleury se 02 ing.doc](http://www.corteidh.or.cr/docs/medidas/fleury_se_02_ing.doc).

839. On November 25, 2008 the Court issued an Order where it decided that: (i) the provisional measures decided by the Inter-American Court have become ineffective because he has left Haiti, without detriment to whatsoever the Inter-American Commission may consider pertinent while processing his case; and (ii) To reject the request to expand the provisional measures to Mr. Fleury's next of kin. The text is available at the following link: [http://www.corteidh.or.cr/docs/medidas/fleury se 03 ing1.pdf](http://www.corteidh.or.cr/docs/medidas/fleury_se_03_ing1.pdf)

### **j. Honduras**

#### **López Álvarez et al.**

840. In 2008, the Commission submitted its comments on the provisional measures the Court ordered on September 21, 2005, to protect the life and physical integrity of Mr. Alfredo López Álvarez, Mrs. Teresa Reyes Reyes and Mrs. Gregoria Flores Martínez, and the latter's mother and children. The beneficiaries had appeared at a hearing held by the Court on June 28, 2005, as witnesses in the case of *López Álvarez et al.* See "Contentious Cases," below. The order is available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/lopez se 01.doc](http://www.corteidh.or.cr/docs/medidas/lopez_se_01.doc).

## **Kawas Fernández**

841. At the request of the representatives of the victim and her next of kin in the case of *Kawas Fernández*, which is now before the Inter-American Court, on November 29, 2008 the Court issued an order for provisional measures in which it called upon Honduras to adopt forthwith whatever measures are needed to effectively protect the life and physical integrity of Dencen Andino Alvarado and to guarantee that he will not be persecuted or threatened for testifying in the investigation conducted by the authorities into the murder of Blanca Jeannette Kawas Fernández. The order in question is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/kawas\\_se\\_01.doc](http://www.corteidh.or.cr/docs/medidas/kawas_se_01.doc).

## **k. Mexico**

### **Pilar Noriega *et al.* (previously the Miguel Agustín Pro Juárez Human Rights Center *et al.*)**

842. The Court ordered the provisional measures in this matter on April 20, 2004, to protect the life and physical integrity of attorneys Pilar Noriega García, Bárbara Zamora López and Leonel Rivero Rodríguez; Mr. Eusebio Ochoa López and Mrs. Irene Alicia Plácido Evangelista, parents of Digna Ochoa y Plácido, and her siblings Carmen, Jesús, Luz María, Eusebio, Guadalupe, Ismael, Elia, Estela, Roberto, Juan Carlos, Ignacio and Agustín, all of whom carry the surname Ochoa y Plácido. These provisional measures were ordered when the provisional measures ordered on November 30, 2001, to protect the members of the Miguel Agustín Pro Juárez Human Rights Center were lifted. The provisional measures originally ordered were in response to the violent death of Digna Ochoa y Plácido on October 19, 2001, at her office in Mexico City. A message had been left beside her body containing an overt threat against the members of the PRODH because of their work in defense of human rights.

843. On February 5, 2008, the Commission and the other parties attended a public hearing at the seat of the Court, held to discuss these measures. The following day, the Court issued an order in which it lifted the measures with respect to some of the beneficiaries, but left them in place in the case of Mr. Leonel Rivero Rodríguez and his family. The text is available at the following link: [http://www.corteidh.or.cr/docs/medidas/noriega\\_se\\_04\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/noriega_se_04_ing.pdf)

### **Leonel Rivero *et al.***

844. After the Order of February, 2008, the Tribunal identified the measures as "Leonel Rivero *et al.*", instead of Pilar Noriega *et al.* On November 25, 2008, the Court lifted the provisional measures ordered for these last beneficiaries. With that, the provisional measures ordered in this matter have been closed. The text of the Order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/rivero\\_se\\_01\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/rivero_se_01_ing.pdf)

## **I. Peru**

### **Gómez Paquiyauri**

845. At the Commission's request, the Court ordered provisional measures in the *Case of Gómez Paquiyauri* (see "Contentious Cases," below) to protect the life and physical integrity of the following: Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri, Jacinta Peralta Allccarima, Ricardo Emilio, Carlos Pedro, and Marcelina Haydée, all by the surname Gómez Paquiyauri, and the minor Nora Emely Gómez Peralta. The Court also decided to order the State to adopt forthwith the measures necessary to protect the life and physical integrity of Mr. Ángel del Rosario Vásquez Chumo and the members of his family.

846. On May 3, 2008, the Court issued an order in which it lifted the provisional measures it had ordered on May 7, 2004 and September 22, 2006, for the following persons: Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri, Ricardo Emilio Gómez Paquiyauri, Carlos Pedro Gómez

Paquiyauri, Marcelina Haydée Gómez Paquiyauri, Jacinta Peralta Allcarima and Nora Emely Gómez Peralta. The text of the order is available at: [http://www.corteidh.or.cr/docs/medidas/gomez\\_se\\_03\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/gomez_se_03_ing.doc).

### **Castro-Castro Prison**

847. On January 30, 2007 and January 29, 2008, the Court issued two Orders where it dismissed the request of the representatives for provisional measures. The Commission held that "it [had taken] cognizance of the important information furnished by the representatives regarding this situation. Nonetheless, it considered that some of the referred matters could be discussed within the context of the oversight of compliance with the judgment delivered by the Inter-American Court on November 25, 2006, and that other matters do not necessarily bear direct relation to the facts discussed and decided by the Tribunal." Likewise, it noted that "[n]otwithstanding the foregoing, [the Commission] will remain vigilant of the development of this delicate situation at the domestic level." The text of the Orders is available at the following links: [http://www.corteidh.or.cr/docs/medidas/castro\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/castro_se_01.pdf)  
[http://www.corteidh.or.cr/docs/medidas/castro\\_se\\_02\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/castro_se_02_ing.pdf)

### **Ramírez Hinostrroza *et al.***

848. In 2008, the Commission continued to submit its comments regarding the measures the Court ordered in this case back on September 21, 2004, to protect the life and physical integrity of Mr. Luis Alberto Ramírez Hinostrroza, his family and his attorneys. The text of the most recent order, dated May 17, 2007, is available at: [http://www.corteidh.or.cr/docs/medidas/Ramirez\\_se\\_02\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/Ramirez_se_02_ing.doc).

### **m. Trinidad and Tobago**

#### **James *et al.***

849. In 2008, the Commission did not receive any information concerning the State's implementation of the provisional measures ordered in this case. The latter are in part related to the Case of Hilaire, Constantine and Benjamin *et al.* (see below) and were ordered back on May 27, 1998.

### **n. Venezuela**

#### **Carlos Nieto Palma *et al.***

850. In 2008, the Commission submitted information and comments in connection with the provisional measures that the Court had ordered on July 9, 2004, at the Commission's request. The measures were ordered in order to protect the life, physical integrity, freedom of expression and right of association of Carlos Nieto Palma, a human rights defender working as Coordinator General of a nongovernmental organization called *Una Ventana a la Libertad*, and to protect the lives and physical integrity of his family.

851. On August 5, 2008, the Court issued another order in which it reiterated to the State its instruction to keep the measures in place and to order forthwith any and all measures necessary to effectively protect the life, physical integrity and liberty of Carlos Nieto Palma, and the life and physical integrity of Yvonne Palma Sánchez. The Court also asked Mr. Nieto Palma to report whether the conditions of extreme gravity and urgency and the necessity of avoiding irreparable damage that warranted the adoption of these provisional measures still obtained. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/nieto\\_se\\_04\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/nieto_se_04_ing.doc).

### **Eloisa Barrios *et al.***

852. In 2008 the Commission submitted to the Court information and comments concerning the provisional measures ordered in this matter. At the Commission's request. the

concerning the provisional measures ordered in this matter. At the Commission's request, the Court ordered provisional measures on November 23, 2004, to protect the life and physical integrity of the following persons: Eloisa Barrios, Jorge Barrios, Rigoberto Barrios, Oscar Barrios, Inés Barrios, Pablo Solórzano, Beatriz Barrios, Caudy Barrios, Carolina García and Juan Barrios, all eye witnesses and/or complainants in the investigations into the murder of Narciso Barrios. The parties alleged to be responsible for the murder are agents of the State. In 2005, while the provisional measures were in effect, Rigoberto Barrios was shot nine times and killed.

### ***El Nacional and Así es la Noticia***

853. During 2008, the Commission submitted information and comments to the Court in connection with the July 6, 2004 provisional measures the Court ordered in this matter at the Commission's request. The measures were intended to protect the life, physical integrity and freedom of expression of the employees of the *El Nacional* and *Así es la Noticia* media outlets. On November 25, 2008, the Court issued an order lifting the provisional measures in question. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/elnational\\_se\\_021.doc](http://www.corteidh.or.cr/docs/medidas/elnational_se_021.doc).

### ***Guerrero Galluci and Martínez Barrios***

854. In 2008, the Commission submitted information and comments on the provisional measures that the Court ordered on July 4, 2006, in response to the Commission's request seeking measures for Mrs. María del Rosario Guerrero Gallucci and Mr. Adolfo Segundo Martínez Barrios. In its order, the Court instructed the State to adopt forthwith the provisional measures necessary to protect the rights to life and to physical integrity of Mrs. Guerrero Gallucci and Mr. Martínez Barrios; to investigate the facts necessitating the adoption of provisional measures, and to take the appropriate steps to ensure that the measures are planned and implemented in conjunction with the beneficiaries or their representatives. On November 29, 2007, the Court issued an order by which it decided: and (i) To lift the provisional measures ordered by the Court in favor of Mr. Adolfo Segundo Martínez-Barrios; (ii) to reaffirm to the State the provision that it must continue to implement the measures it may have adopted, and that it must adopt forthwith those that may be necessary to protect effectively the rights to life and to humane treatment of Ms. Guerrero-Gallucci; (iii) To call upon the State to perform all relevant actions so that the measures of protection ordered herein are planned and implemented with the participation of the beneficiary thereof or her representatives. The text is available in the following link: [http://www.corteidh.or.cr/docs/medidas/querrero\\_se\\_02\\_inq.pdf](http://www.corteidh.or.cr/docs/medidas/querrero_se_02_inq.pdf)

### ***Liliana Ortega et al.***

855. The Commission received no information from the State in 2008 concerning implementation of the provisional measures ordered back in 2002 on behalf of Liliana Ortega and other members of the nongovernmental organization *Comité de Familiares de Víctimas de los sucesos de Febrero-Marzo de 1989* (COFAVIC) [Committee of Relatives of the Victims of the February-March 1989 Events]. In February 2008, the beneficiaries petitioned the Court to hold a hearing in this case.

### ***Luis Uzcátegui***

856. In 2008, the Commission continued to submit its comments on the State's reports on the implementation of the provisional measures the Court ordered for Mr. Luis Uzcátegui back in November 2002. The Court's most recent order in this matter, dated May 4, 2004, is available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/venezuela\\_se\\_016.doc](http://www.corteidh.or.cr/docs/medidas/venezuela_se_016.doc).

### ***Luisiana Ríos et al.***

857. In 2008, the Commission submitted information and comments in connection with the provisional measures the Court ordered for Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, all of whom work for *Radio Caracas Televisión*

MONTROY, LAURA CASTELLANOS and ARGENTIS OLIVE, all of whom work for *Radio Caracas Televisión* (RCTV) (see "Contentious Cases," below).

### **Marta Colomina**

858. In 2008, the Commission continued to submit information and comments related to the provisional measures ordered for Marta Colomina. On July 4, 2006, the Inter-American Court issued an order in which it decided to lift the protective measures in the case of Mrs. Liliana Velásquez. In that order, it also found that the State had failed to comply with the duty to provide the Court with detailed, specific reports on the implementation of the Court-ordered measures; it reiterated to the state that it must, without delay, adopt any and all measures necessary to protect Mrs. Marta Colomina's life, physical integrity and freedom of expression; it also ordered the State to continue to involve the beneficiary in the planning and implementation of the protective measures and keep her informed of the progress made with the measures ordered.

### **The case of the "La Pica" Judicial Detention Center (Monagas)**

859. In 2008, the Commission submitted to the Court its periodic comments on the Venezuelan State's reports concerning the provisional measures requested by the Commission and ordered by the Court on February 9, 2006, to protect the lives and physical integrity of the inmates at the "La Pica" Judicial Detention Center at Monagas.

860. The Court's most recent order in this matter is dated July 3, 2007. The text of the order can be viewed at: [http://www.corteidh.or.cr/docs/medidas/lapica\\_se\\_03\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/lapica_se_03_ing.doc).

### **"Globovisión" Television**

861. In 2008, the Commission submitted information and comments related to the provisional measures the Commission requested and the Court ordered in this matter on September 4, 2004. The provisional measures ordered are intended to safeguard and protect the life, physical integrity and freedom of expression of the journalists, executives and other employees at Globovisión, and that of any other persons inside the facilities of that media outlet or who may be directly associated with its news operations.

862. On January 29, 2008, the Inter-American Court issued an order in which it reconfirmed its decision to dismiss a request made by the beneficiaries' representatives to expand the scope of the order so that it would apply to issues not covered in the original order. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/globovision\\_se\\_04\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.doc).

### **Penitentiary Center of the West-Central Region (Uribana Prison)**

863. In 2008, the Commission submitted periodic comments to the Court concerning the Venezuelan State's reports on the measures requested by the Commission and ordered by the Court on February 2, 2007. The measures were ordered to protect the lives and physical integrity of the inmates at the Penitentiary Center of the Central Western Region, known as "Uribana." The text of the order for provisional measures is available at the following link: [http://www.corteidh.or.cr/docs/medidas/centro\\_se\\_01\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/centro_se_01_ing.doc)

### **Yare I and Yare II Capital Region Penitentiary**

864. In 2008, the Commission submitted to the Court its periodic comments on the reports filed by the Venezuelan State in connection with these provisional measures. The latter were requested by the Commission and ordered by the Court on March 30, 2006, to protect the lives and physical integrity of the inmates at the Yare I and Yare II Capital Region Penitentiary. The Court's most recent order in this matter is dated November 30, 2007, and is available at: [http://www.corteidh.or.cr/docs/medidas/penitenciarioregion\\_se\\_01\\_ing.doc](http://www.corteidh.or.cr/docs/medidas/penitenciarioregion_se_01_ing.doc).

## **El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center**

865. On December 17, 2007, the Inter-American Commission on Human Rights filed a request with the Inter-American Court seeking provisional measures, requesting the Court to order the Venezuelan State to protect the inmates at the El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center, and those who visit or work at that prison facility. The Commission's request was driven by the presence of grave and imminent danger of irreparable harm to the lives and the personal integrity of inmates, prison staff and visitors. The Commission observed that in 2006, 86 inmates had been killed and 198 injured in various incidents of violence inside the facility; in 2007, 51 inmates had died and 101 had been injured. The Inter-American Commission had therefore concluded that the insecurity and violence inside the prison were a severe threat. As of the date of approval of this report, the order from the Court is still pending.

866. On February 8, 2008, the Inter-American Court ordered the Venezuelan State to take provisional measures to protect the lives and personal integrity of all the inmates at the El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center, and to take particular care to prevent injuries and deaths resulting from violence. The order in question is available at the following link: [http://www.corteidh.or.cr/docs/medidas/rodeo\\_se\\_01\\_inq.doc](http://www.corteidh.or.cr/docs/medidas/rodeo_se_01_inq.doc).

### **Humberto Prado and his immediate family**

867. On May 16, 2007, the Commission filed a request with the Court seeking provisional measures to protect the lives and physical integrity of human rights defender Humberto Prado and his immediate family, and Mr. Prado's right to pursue his work of defending and promoting human rights in Venezuela in his capacity as Director of the Venezuelan Observatory of Prisons.

868. On July 13, 2007 and November 29, 2007, the Court informed the parties of its decision to keep the matter under study and to then reassess Mr. Prado's situation to decide whether provisional measures were in order.

869. The Commission is currently awaiting updated information from Mr. Prado's representatives and the Court's decision in this matter.

## **2. Contentious Cases**

### **a. Argentina**

#### **Case of Bayarri**

870. On July 16, 2007, the Commission filed an application with the Court in case 11,280, Juan Carlos Bayarri, in which it alleged that the Argentine Republic had violated articles 7 (right to personal liberty), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights, in conjunction with Article 1(1) (obligation to respect rights) thereof, by its unlawful and arbitrary arrest of Mr. Juan Carlos Bayarri in the province of Buenos Aires, Argentina, on November 18, 1991, his torture at the hands of police officers, his detention in preventive custody for almost 13 years, and the subsequent denial of justice.

871. On October 30, 2008, the Court delivered a judgment in which it dismissed the State's preliminary objections and held that Argentina had violated, to the detriment of Mr. Bayarri, the rights recognized in articles 7(1), 7(2) and 7(5) (right to personal liberty), 5(1) and 5(2) (right to humane treatment), 8(1), 8(2) and 8(2)(g) (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Article 1(1) (obligation to respect rights) thereof, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. In the judgment it delivered, the Court set the reparations it deemed appropriate.

872. The full text of the judgment is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_187\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_187_esp.pdf).

### **Case of Bueno Alves**

873. On March 31, 2006, the Commission filed an application with the Court in case 11,425, in which it alleged that Argentina was responsible for violation of articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in relation to Article 1(1) thereof, by virtue of the fact that Juan Francisco Bueno Alves was tortured while in state custody and subsequently denied proper protection and a fair trial in the judicial system.

874. On May 11, 2007, the Inter-American Court delivered a judgment in which it found that the State had violated articles 5, 8, and 25 of the American Convention, in conjunction with Article 1(1) thereof. In that judgment, the Court set the reparations that it deemed appropriate.

875. On October 23, 2008, the Court forwarded to the Commission and to the victim's representatives the State's first report on compliance with the judgment delivered in this case, so that both parties might make whatever comments they deemed pertinent.

### **Case of Bulacio**

876. In 2008, the Commission continued to submit its periodic comments on the State's compliance with the reparations ordered by the Court in the judgment delivered on September 18, 2003, specifically concerning the investigations pending at the domestic level, the punishment of those responsible for the acts committed in this case, and on the adoption of legislative or any other measures necessary to bring the domestic legal system in line with international human rights provisions and to make them fully effective as a means of guaranteeing that such violations do not recur.

877. On August 14, 2008, during the Court's XXXV special session, which took place in Montevideo, Uruguay, a private hearing was held on the Argentine State's compliance with the judgment delivered in the Bulacio case. Participating were the Commission, the representatives of the victims and their family, and the Argentine State.

878. On November 26, 2008, the Court issued an order instructing the Argentine State to take all measures necessary to promptly implement the pending measures of reparations ordered by the Court in the September 18, 2003 judgment on the merits, reparations and costs, and reiterated in its order of November 17, 2004. The text of that order is available (in Spanish) at [http://www.corteidh.or.cr/docs/supervisiones/bulacio\\_26\\_11\\_08.doc](http://www.corteidh.or.cr/docs/supervisiones/bulacio_26_11_08.doc).

### **Case of Cantos**

879. In 2008, the Commission continued to present its periodic comments on the State's compliance with the measures ordered by the Court in its November 28, 2002 judgment on the merits, reparations and costs and in its November 2005 order for compliance. In its 2005 order, the Court decided to keep open the proceeding for monitoring compliance with the aspects pending fulfillment in this case, namely the obligations to refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time; to set a reasonable sum for the fees regulated in Argentine Supreme Court case C-1099; to pay the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago del Estero, and to lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees.

### **Case of Garrido and Baigorria**

880. On November 27, 2007, the Court adopted an order monitoring compliance in which it instructed the State to adopt all measures necessary for prompt compliance with the reparations ordered in the judgment of August 27, 1998, that were still pending implementation, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights; and requiring the State to submit, by no later than February 15, 2008, a detailed report indicating all the measures adopted to implement the pending reparations ordered by the Court. In particular, the State was instructed to report to the Court on the results of the meeting and to provide, if possible, a timetable and action program covering compliance with the items pending from the reparations judgment issued in this case. The text of the order in question is available at the following link: [http://www.corteidh.or.cr/docs/supervisiones/garrido\\_27\\_11\\_07\\_ing.doc](http://www.corteidh.or.cr/docs/supervisiones/garrido_27_11_07_ing.doc).

881. In 2008, the Commission continued to submit its periodic comments on the State's compliance with the reparations ordered by the Court in its judgment on reparations, delivered on August 27, 1998.

### **Case of Kimel**

882. This case concerned the criminal prosecution and subsequent conviction and sentence of a one-year suspended prison sentence and payment of twenty thousand pesos in damages ordered against the historian, journalist, and writer Eduardo Kimel, author of the book *La Masacre de San Patricio*, which describes irregularities in the investigation into the murder of a group of Palotine clerics during the military dictatorship. The conviction was handed down in a libel suit brought by a former judge whose actions in the investigation were criticized in the book.

883. Having weighed the evidence that the parties introduced during the case and the arguments they made, and the Argentine State's acknowledgement of responsibility, the Court rendered its judgment on May 2, 2008. The text of that judgment is available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.doc). In its judgment, the Court held that the rights to a fair trial within a reasonable period, to freedom of thought and expression, and to freedom from *ex post facto* laws, protected under articles 8(1), 13(1) and 13(2) and 9 of the Convention, in conjunction with article 1(1) and 2 thereof, were violated to the detriment of Mr. Eduardo Kimel. The Court also decided to admit the representatives' waiver of rights regarding the right to a hearing by an impartial and independent court protected under Article 8(1), the right to appeal the judgment to a higher court protected under Article 8(2)(h) and the right to judicial protection recognized in Article 25 of the American Convention on Human Rights. The Court also ordered various measures of reparation.

### **b. Barbados**

#### **Case of Boyce et al.**

884. In this case, the Court held that the State had violated articles 4(1) and 4(2) (the right to life), 5(1) and 5(2) (the right to humane treatment), and 8 (the right to a fair trial) of the American Convention on Human Rights, in conjunction with Article 1(1) (the obligation to respect rights) and Article 2 (domestic legal effects) thereof, to the detriment of Messrs. Lennox Boyce, Jeffrey Joseph, Fredrick Benjamin Atkins, and Michael Huggins. It also held that the State had failed to comply with Article 3 of the Convention in relation to articles 1(1), 4(1), 4(2) and 25 (right to judicial protection). The Court delivered its judgment on November 20, 2007, the text of which is available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_boyce\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_boyce_ing.pdf).

885. The State of Barbados has yet to submit the report ordered in the judgment, in which it is to recount the measures taken to comply with that judgment, including formal commutation of the death sentence imposed on Mr. Michael McDonald Huggins.

### **Case of Tyrone DaCosta Cadogan**



886. On October 31, 2008, the Commission filed an application in Case No. 12,645, Tyrone DaCosta Cadogan v. Barbados, and sought provisional measures from the Court to protect the victim's life and physical integrity. The case concerns the mandatory application of the death penalty that the Supreme Court of Barbados ordered in 2005 against Mr. Tyrone DaCosta Cadogan, in violation of basic human rights protected by the American Convention on Human Rights. In its application the Commission argued that the State of Barbados is responsible for violation of the rights to life, to humane treatment and to judicial guarantees, to the detriment of Tyrone DaCosta Cadogan. The text of the application is available in the following link:

<http://www.cidh.oas.org/demandas/12.645%20Cadoqan%20Barbados%2031%20oct%202008%20ENG.pdf>

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## IACHR ANNUAL REPORT 2008

### CHAPTER IV

#### HUMAN RIGHTS DEVELOPMENTS IN THE REGION

##### INTRODUCTION

1. The Inter-American Commission on Human Rights continues its practice of including in its Annual Report to the General Assembly of the Organization of American States a chapter on the situation of human rights in member countries of the Organization, based on the competence assigned to it by the OAS Charter, the American Convention on Human Rights, and the Commission's Statute and Rules of Procedure. This practice has served the purpose of providing the OAS updated information on the human rights situation in those countries that had been the subject of the Commission's special attention; and in some cases, to report on a particular event that had taken place or was emerging or developing at the close of its reporting cycle.

##### CRITERIA

2. The Annual Report of the IACHR for 1997 set forth five criteria pre-established by the Commission to identify the member states of the OAS whose human rights practices merited special attention and which consequently should be included in its Chapter IV.

3. The first criterion encompasses those states ruled by governments that have not come to power through popular elections, by secret, genuine, periodic, and free suffrage, according to internationally accepted standards and principles. The Commission has repeatedly pointed out that representative democracy and its mechanisms are essential for achieving the rule of law and respect for human rights. As for those states that do not observe the political rights enshrined in the American Declaration and the American Convention, the Commission fulfills its duty to inform the other OAS members states as to the human rights situation of the population.

4. The second criterion concerns states where the free exercise of the rights set forth in the American Convention or American Declaration have been, in effect, suspended totally or in part, by virtue of the imposition of exceptional measures, such as state of emergency, state of siege, suspension of guarantees, or exceptional security measures, and the like.

5. The third criterion to justify the inclusion in this chapter of a particular state is when there is clear and convincing evidence that a state commits massive and grave

violations of the human rights guaranteed in the American Convention, the American Declaration, and all other applicable human rights instruments. In so doing, the Commission highlights the fundamental rights that cannot be suspended; thus it is especially concerned about violations such as extrajudicial executions, torture, and forced disappearances. Thus, when the Commission receives credible communications denouncing such violations by a particular state which are attested to or corroborated by the reports or findings of other governmental or intergovernmental bodies and/or of respected national and international human rights organizations, the Commission believes that it has a duty to bring such situations to the attention of the Organization and its member states.

6. The fourth criterion concerns those states that are in a process of transition from any of the above three situations.

7. The fifth criterion regards temporary or structural situations that may appear in member states confronted, for various reasons, with situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. This criterion includes, for example: grave situations of violations that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences for human rights; or grave omissions in the adoption of the provisions necessary for the effective exercise of fundamental rights.

8. On the basis of the criteria set forth above, the Commission has decided to include four member states: Colombia, Cuba, Haiti, and Venezuela.

## **COLOMBIA**

9. As in previous years, the situation in the Republic of Colombia in 2008 falls within the framework of the criteria set forth in the introduction of Chapter IV of the Annual Report of the Inter-American Commission on Human Rights (IACHR). In the case of Colombia this framework is relevant in particular as regards to the continued existence of circumstantial or structural situations that, for various reasons, seriously and gravely affect the enjoyment and exercise of the basic rights enshrined in the American Convention on Human Rights. Consequently, the Commission has adopted the following considerations on the matter, in accordance with the procedure set out in Article 57(1)(h) of its Rules of Procedure,<sup>[1]</sup> for their inclusion in its Annual Report. The preliminary version of this report was transmitted to the Republic of Colombia on January 6, 2009, for its observations. On February 6, 2009, the State submitted its observations, the pertinent parts of which have been included in this report.<sup>[2]</sup>

10. The IACHR is keenly aware of the complex situation in Colombia after five decades of violence and its impact on the civilian population. It is also aware of the effect of drug trafficking on the use of violence and of the State's endeavors to combat that problem. In spite of these challenges, the Colombian State has made commendable efforts to move forward with pacification through the demobilization of armed actors, investigate crimes perpetrated during the conflict, and protect its citizens.

11. *Inter alia*, attention should be drawn to the continued efforts under the "Protection Program for Human Rights Defenders, Trade-Unionists, Journalists, and Social Leaders"<sup>[3]</sup> whose coverage in 2008 extended to almost 9000 persons belonging to 16 vulnerable groups and 13 communities at risk,<sup>[4]</sup> and whose importance the IACHR has underscored in previous reports. The IACHR has also become aware of the institutionalization of mechanisms specifically devoted to agreeing upon protective measures for beneficiaries of precautionary measures extended by the Commission and provisional measures ordered by the Inter-American Court. The IACHR reiterates the need to continue strengthening the protection mechanisms created by such programs.

12. It is also relevant to highlight the engagement of civil society in the important debate on the public policies for the reparation to the victims of the armed conflict and the

scope of the mechanisms under discussion. The Commission will dedicate a section below to this issue.

13. The Commission notes, however, that alongside initiatives to promote and protect human rights, such as the one cited above, the effects of the armed conflict are still being felt and continue to affect the most vulnerable sectors of the civilian population. Manifestations of violence persist alongside efforts to demobilize outlawed armed groups and to administer justice, which need to show results in terms of effectiveness, comprehensive redress, and elimination of factors of violence.

14. Consequently, based on information received from the State and civil society both in Colombia,<sup>[5]</sup> and at its headquarters,<sup>[6]</sup> the IACHR has drawn up a list of comments on the human rights situation in Colombia in 2008. Particular reference is made to progress made and obstacles encountered in the process of demobilizing armed participants and the development and enforcement of the applicable legal framework, the persistence of systematic violations of the right to life and humane treatment, the situation of ethnic groups, and the situation of human rights defenders, social leaders, and justice sector operators.

## **I. THE DEMOBILIZATION OF ARMED GROUPS AND JUDICIAL INVESTIGATION AND REPARATION OF CRIMES PERPETRATED IN THE FRAMEWORK OF THE CONFLICT**

15. The agreements reached by the government of President Álvaro Uribe Vélez and the leaders of the United Self-Defense Forces of Colombia (hereinafter "the AUC") led to the collective demobilization of 31,664<sup>[7]</sup> individuals identified as members of 34 units of the AUC, with international verification by the OAS Mission to Support the Peace Process in Colombia (hereinafter the "MAPP/OAS"). The government has also engaged in dialogue with other armed guerrilla groups, some of which have joined the collective demobilization process.<sup>[8]</sup> The legal framework of the process, established, *inter alia*, by Law 975 of 2005 ("Justice and Peace" Law),<sup>[9]</sup> provides a series of procedural benefits and reduced penalties for those who, having been involved in the commission of crimes, participate in the demobilization process.<sup>[10]</sup>

16. Since 2004, the IACHR has followed the dismantling of illegal arms structures and, in particular, the enforcement of the legal framework designed to ensure the truth, justice, and reparation for victims of the conflict as a fundamental part of its advisory role for the OAS member states, the General Secretariat of the Organization, and the MAPP/OAS.<sup>[11]</sup> Following, the IACHR describes the challenges pending with respect to dismantling armed structures, administration of justice, and reparation of damages caused to the victims of the conflict.

### **A. Dismantling of armed structures and reintegration**

17. Official figures indicate that, 49,176 members of illegal armed groups (AUC, FARC, ELN) were demobilized between 2002 and 2008. This figure includes both those who demobilized collectively and the approximately 17,500 persons connected with paramilitary or guerrilla groups who individually handed over their weapons.<sup>[12]</sup> In spite of these figures and based on information released by the armed forces on captures and deaths in action of members of paramilitary and guerrilla groups, illegal armed groups remain active in Colombia.

18. Indeed, despite efforts to disband the armed structure of the AUC, illegal armed groups continue to be involved in acts of intimidation and violence committed against vulnerable populations, community leaders, and human rights defenders. In 2008, the IACHR has received complaints about groups that operate under the names of *Nueva Generación*, in the northern zone; *Autodefensas Gaitanistas* and *Renacer* in the banana-growing region; and *Águilas Negras* in various parts of the country. In his reports to the Permanent Council of the Organization of American States, the Secretary General of the Organization has identified the existence of acts of violence subsequent to the demobilizations, according to information

obtained in the field by the MAPP/OEA. According to these reports, this situation involves a variety of processes: (1) Regrouping of demobilized combatants into criminal gangs that exert control over specific communities and illegal economic activities; (2) holdouts who have not demobilized; and (3) the emergence of new armed players and/or the strengthening of those that already existed in areas abandoned by demobilized groups. [\[13\]](#)

19. In its last report in 2008, the MAPP/OAS identified instances of rearming in 153 municipalities along a corridor that extends eastward from Urabá through south Córdoba, Bajo Cauca, south Bolívar, Barrancabermeja and a number of outlying municipalities, and south Cesar, before reaching Ocaña, in Norte de Santander. [\[14\]](#) These are areas where the United Self-Defense Forces of Córdoba and Urabá originally emerged and consolidated as the United Self-Defense Forces of Colombia a little over a decade ago. It is also where the *Bloques Minero* and *Central Bolívar* operated. The MAPP/OAS Mission also recorded activities by illegal groups in the departments of Caquetá, Casanare, Guajira, Magdalena, Meta, Nariño and Vichada.

20. In its reports, the MAPP/OAS Mission highlights to the Department of Cordoba as one of the areas where violations of the right to life have increased most notably in 2008. The Mission also notes that of the 125 municipalities in the Department of Antioquia, 62 saw an increase in the number of homicides in the first half of 2008. The MAPP/OAS reported a reshuffling of middle-echelon commanders and local leaders of illegal groups (the so-called *Oficina de Envigado* and its armed wing, *Los Paisas*) in the city of Medellin, which coincided with a 31.9% increase in murders between January and June 2008 in that city compared to the previous year. [\[15\]](#) Another factor mentioned was the activities of the armed group commanded by Daniel Rendón Herrera, alias *Don Mario* (brother of Freddy Rendón, alias *El Alemán*, the leader of the demobilized *Bloque Élmer Cárdenas*), which is troubling the Urabá communities in Antioquia with acts of intimidation, violence, recruitment, extortion, and drug trafficking. The MAPP/OAS Mission has also expressed particular concern at the situation in Ocaña, Catatumbo, Sur de Bolívar and Sierra Nevada de Santa Marta (in the Departments of Cesar and Guajira) where the presence of armed groups operating outside the law continues to trouble the population. [\[16\]](#)

21. In its reply, the State refers to actions taken by the Office of the Prosecutor, including 74 investigations involving 573 people. It mentioned 43 cases in the trial phase with 225 defendants and convictions against 93 people making up these groups. It also states that the National Unit for Human Rights and IHL had tried 74 people for their alleged ties to the *Águilas Negras*, 49 of whom were part of *Oficina de Envigado*. It also indicated that 27 members of the *Los Machos* group and 12 from *Los Rastrojos* group had been tried, among other people. [\[17\]](#)

21.

22. For its part, the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*) has identified the Departments of Antioquia, Cesar, Córdoba, Magdalena and Santander as regions where the undertaking given by demobilized combatants not to reoffend on pain of exclusion from benefit programs has not been met in full. [\[18\]](#)

23. As regards reintegration in civilian life of those who have relinquished their arms, the MAPP/OAS has noted that of the 31,651 persons who had collectively demobilized as of August 2008, 23,008 have participated actively in the psychosocial activities that are part of the reintegration programs. There are reports, however, that in a number of departments, including Cauca, Córdoba, Santander, and Norte de Santander, groups of demobilized fighters continue to offend while participating in said programs. Around 7,000 demobilized AUC combatants, including captured reoffenders and those who have not been located following demobilization, are not taking part in the reintegration programs. [\[19\]](#)

24. The MAPP/OAS has also reported that between the start of the collective mobilization process in 2004 and September 2008, 1,658 demobilized combatants have died, most of them as homicide victims. [\[20\]](#) As officially recorded by the Office of the Procurator

General of the Nation (*Procuraduría General de la Nación*), demobilized combatants had been used in military and intelligence operations classified as activities of cooperation with the security forces, for which they receive payment. In this connection, the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*) has noted that these operations “expose them and their families to greater danger and that, therefore, the authorities responsible are not legally justified in recognizing and paying these persons for their participation in the aforementioned operations as activities of cooperation with the security forces, even if they have agreed and are willing to do so, as it runs contrary to the purposes of reintegration in civilian life and the obligation of the State to ensure their safety, life, and well-being as well as their reintegration for the good of peace.”<sup>[21]</sup> Accordingly, the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*) has urged the Ministry of Defense to ensure that all measures connected with payment of financial benefits for cooperation with the security forces exclude payments to demobilized combatants for their direct and active participation in military and intelligence operations.<sup>[22]</sup> The IACHR will be on the alert for any information on the review of the Ministry of Defense’s policies in this regard, in response to the directives of the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*).

25. In its observations, the State reported that, in response to the recommendation of the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*), the Ministry of Defense had said that, in its view, the norms of the Geneva Conventions and the Additional Protocols thereto did not “... bar the right of a person to provide voluntary assistance to public officials ..., his freedom to benefit economically ... and to collaborate in the dismantling of an illegal armed group that may undermine sovereignty, independence, territorial integrity, and constitutional order.” Consequently, this body does not consider that the participation of demobilized persons as field scouts is a violation of international humanitarian law<sup>[23]</sup>.

## **B. Enforcement of the legal framework: Situation of demobilized combatants who seek to benefit from the Justice and Peace Law**

26. Of the 31,664 persons who demobilized between November 2003 and mid 2006, 3,431 declared their interest in applying for the benefits of the Justice and Peace Law. However, 1,189 applicants decided not to go through with the process because the Prosecutor's Office had no record of complaints against them.<sup>[24]</sup> In these cases the opportunity has been lost to collect information that could lead to the clarification of thousands of crimes which have gone unreported for reasons such as fear and destruction of evidence.

27. Of the more than 2,000 applicants who continue with the process, 1,142 have given voluntary statements to the Unit for Justice and Peace of the Office of the Prosecutor General.<sup>[25]</sup> During the voluntary statements, demobilized applicants for the benefits of the Law must declare under oath their commitment to fulfill the eligibility requirements established in the Law.<sup>[26]</sup> Approximately 500 applicants<sup>[27]</sup> are still rendering voluntary statements, prior to establishing the criminal conduct, issuing charges and the formal accusation that precedes the trial phase.<sup>[28]</sup>

28. Although measures have been adopted to increase the number of available staff<sup>[29]</sup>, this has not lessened the institutional challenge facing the Office of the Prosecutor as regards taking voluntary statements, verifying compliance with eligibility requirements, and bringing charges consistent with the alleged responsibility of the accused ahead of the trial stage. The extent of the task is reflected in the fact that the information collected in the voluntary statements taken in 2007 and 2008 has led to the exhumation of approximately 1,700 bodies, one third of which have been identified.

29. One of the strategies employed by the Prosecutor’s Office in order to expedite the referral of the matter to the trial stage consists on issuing partial charges only, on the

basis of facts already verified, while the rest of the confession is under verification[30]. This was the strategy in the proceedings against William Salazar Carrascal alias "El Loro", the only applicant that up to this date is in the trial phase. However, for the time being no sentences have been handed down in accordance with the Justice and Peace Law.

30. The process has faced other tangible obstacles during 2008. In particular, the decision to extradite an important number of well known paramilitary leaders, some of whom were linked to the investigations of the so called "para-politics".

31. In April, 2008, the Supreme Court issued a decision on the impact of extradition upon the enforcement of the Law of Justice and Peace. In that opportunity the Court indicated that members of illegal armed groups should not be extradited before the process of reparation of victims has been completed. Specifically, it said that "[...] there are higher reasons for examining the legitimacy of an extradition which may ultimately abridge the rights of victims, inasmuch as it would prevent fulfillment of the constitutional purposes of the criminal proceeding, in that it affects the legitimate expectations that propel the victims of punishable conduct to seek to uphold their right to the truth, justice, and reparation, whereas the extradition of a demobilized combatant to face charges abroad for less serious offenses than those to which they are confessing before the Colombian courts, ends up being a form of impunity." [31]

32. However, on May 7, 2008, Carlos Mario Jiménez, alias "Macaco", an AUC leader who had invoked the benefits of the Justice and Peace Law, was extradited to the United States. His extradition proceeding was reactivated on the grounds that he had continued to offend after his demobilization. [32] Although initially, in response to an action for protection filed by one of the victims, the Sectional Council of the Judicature of Cundinamarca postponed Macaco's extradition until his part in the proceeding had been completed and reparation to the victims made, the Disciplinary Chamber of the Superior Council of the Judicature decided to overturn said decision with the argument that "extradition and the Justice and Peace Law are not mutually exclusive institutions because the former in some measure, as the ruling of the lower court states, prevents realization of the rights enshrined in Article 4 of Law 975 of 2005 (truth, justice, and reparation); on the contrary, it could in a given situation become an important means for attaining those rights." [33]

33. Subsequently, on May 12, 2008, the President issued a series of resolutions (137-149) which ordered the reactivation of the extraditions of a number of AUC leaders: Diego Fernando Murillo Bejarano, alias "Don Berna"; Francisco Javier Zuluaga Lindo, alias "Gordo Lindo"; Manuel Enrique Torregrosa Castro; Salvatore Mancuso Gómez, alias "El Mono" or "Triple Cero"; Diego Alberto Ruiz Arroyave; Guillermo Pérez Alzate, alias "Pablo Sevillano"; Ramiro Vanoy Murillo, alias "Cuco Vanoy"; Juan Carlos Sierra Ramírez, alias "El Tuso"; Martín Peñaranda Osorio, alias "El Burro"; Edwin Mauricio Gómez Luna; Rodrigo Tovar Pupo, alias "Jorge 40"; Hernán Giraldo Serna, alias "El Patrón"; Nodier Giraldo Giraldo, and Eduardo Enrique Vengoechea Mola. These leaders had also invoked the benefits of the Justice and Peace Law. Likewise, the grounds cited for reactivating the extradition proceedings was that they had continued to offend after their demobilization. On May 14, 2008, President Uribe announced that "no crime committed in Colombia by the 13 (*sic*) demobilized combatants of the Self-Defense groups extradited last Tuesday to the United States will remain unpunished [...] [w]e have agreed with the United States that all assets surrendered by the extradited individuals as a result of the decisions of the North American courts will be used to provide compensation to the victims in Colombia. It has also been agreed that the Colombian state and people will be afforded every opportunity to access the evidence in these trials in the United States, in order to carry out the necessary investigations and so obtain the evidence needed for the trials in Colombia." [34]

34. On May 14, 2008, the IACHR made public its concern about the impact of the extradition of the AUC leaders on the clarification of serious crimes perpetrated during the armed conflict in Colombia. [35] The Commission noted that the extradition affects the Colombian State's obligation to guarantee victims' rights to truth, justice, and reparations for

the crimes committed by the paramilitary groups; impedes the investigation and prosecution of such grave crimes through the avenues established by the Justice and Peace Law in Colombia and through the Colombian justice system's regular criminal procedures; and closes the door to the possibility that victims can participate directly in the search for truth about crimes committed during the conflict, and limits access to reparations for damages that were caused. Finally, the Commission observed that this action also interferes with efforts to determine links between agents of the State and these paramilitary leaders in the perpetration of human rights violations. The Colombian Government made explicit its rejection of the IACHR's press communiqué arguing that "it failed to reveal the truth ... as far it was issued without consideration of the Colombian State's arguments or the recurring statement by both the Governments of Colombia and the United States" on their commitment towards cooperation in the area of judicial proceedings, plea bargaining and seizures.[\[36\]](#)

35. On October 23, 2008, in the framework of its 133rd Regular Session, the Commission held a public hearing in order to receive information on the impact of these extraditions on clarification of crimes perpetrated in the conflict and reparation of the damages caused to victims.[\[37\]](#) At the hearing, the Colombian State disclosed the text of a note from the US State Department which expressed willingness to facilitate the continuous participation of the 15 extradited persons in the Justice and Peace proceedings, in keeping with the domestic law of the United States and the procedures provided in international treaties on judicial cooperation.[\[38\]](#) The note also invited the Colombian judicial authorities to formulate the appropriate requests for cooperation through those channels. For their part, the representatives of civil society organizations said at the hearing that although the Colombian government has underscored the existence of special agreements with the government of the United States to ensure the continuity of the proceedings for human rights violations perpetrated by the extradited persons, the Ministry of the Interior and Justice reportedly confirmed that the cooperation provided for between the two countries is only based on the general mechanisms contained in the Inter-American Convention on Mutual Assistance in Criminal Matters.[\[39\]](#)

36. As to the continued progress of the Justice and Peace proceedings in practice, the voluntary statement hearings of Salvatore Mancuso resumed by teleconference in November 2008 – six months after the extraditions. Other hearings by this means have reportedly been scheduled. Furthermore, the Ministry of Foreign Affairs confirmed to the IACHR the existence of agreements with the United States Government whereby the extradited persons would be returned to face Colombian justice once they had served their drug trafficking convictions in that country. The Colombian State has referred to the good will of the Government of the United States to return the extradited paramilitaries once they serve in full their conviction for drug trafficking in that country.[\[40\]](#) However, up until now there is no news regarding any specific agreements conditioning plea bargaining in the United States to collaboration with the process of Justice and Peace.

37. In point of fact, the measures the State refers to in its observations are the appointment of a judicial attaché to the U.S. Embassy in Bogotá and exchanges of notes between the ministries in July 2008 "to facilitate mechanisms for information exchange so that judicial action and proceedings may continue."[\[41\]](#)

38. Quite apart from any additional obstacles that victims might face in accessing the mechanisms under the Justice and Peace Law, the reasoning behind the extradition decision adopted by the executive branch raises questions about the conditions for accessing the benefits established by that law.[\[42\]](#) The natural consequence of failure to honor the pledge not to reoffend after demobilization ought to be exclusion from the reduced penalty benefits provided in the Justice and peace Law and attendant prosecution in the regular jurisdiction. In the case of the 15 paramilitary leaders extradited on account of their post-demobilization conduct, however, the decision to accord precedence to proceedings to clarify drug-related crimes in a foreign jurisdiction, with a promise of the future enforcement of the Justice and Peace Law once the penalties in the USA had been served, is out of step with the logic of



gaining access to procedural benefits in exchange for putting aside weapons and collaborating with justice.

### **C. Participation of witnesses and victims in judicial proceedings under the Justice and Peace Law**

39. Towards the end of 2008, close to 180,000 victims<sup>[43]</sup> had registered in the Justice and Peace process and almost 11,000 had taken part in voluntary statement hearings,<sup>[44]</sup> following the publication of more than 3,000 notices to attend.<sup>[45]</sup> In its observations, the State refers to the publication of 3,265 edicts; the strategy for the dissemination of posters, flyers, and information via the Internet and a free call line; and contact with victims through 183 workshops at which 37,983 people were given appropriate guidance and attention.<sup>[46]</sup> In spite of progress in terms of victims' involvement in the process, a large percentage of victims have not received proper guidance, particularly in areas where the National Commission for Reparations and Reconciliation has no regional offices or has not carried out activities for security reasons, such as the Departments of Caquetá, Guaviare, Vichada, Casanare, and Arauca.<sup>[47]</sup> Also of concern is the institutional capacity of public defenders to provide adequate advisory services to the thousands of victims who have already registered.

40. The victims have encountered a number of obstacles to their participation. First, the impossibility of questioning, either directly or through their representatives, those who hope to benefit from Law 975, on the facts of interest to them during the different phases of the open hearings. The questioning of the victims is reserved for the second phase of the oral hearings, but takes place through an indirect mechanism, since the proposed questions are included in a questionnaire that is given to members of the CTI, who in turn transmit it to the Prosecutor. This indirect mechanism seriously restricts the possibility of using questioning of the victim as an appropriate means of ascertaining the truth of the facts. Moreover, the Office of the Prosecutor loses a valuable opportunity to compare the different accounts and to move toward verification of compliance with the legal requirements for access to benefits. Second, difficulties in access to legal advice and representation during court proceedings. Also of concern is the institutional capacity of public defenders to provide suitable advice to the thousands of victims already registered. In its observations, the State confirms that legal guidance and psychosocial support had probably been provided to 38,000 of the 180,000 victims.<sup>[48]</sup>

41. In the case of victims actively involved in the process, their security has been seriously compromised or directly affected by the actions of illegal armed groups. The IACHR continues to receive information about acts of violence and intimidation against victims of the conflict who reside in theaters of operations of armed groups designed to prevent them from participating in the justice and peace process,<sup>[49]</sup> or to silence their grievances regarding lands seized by paramilitary groups.<sup>[50]</sup>

42. The MAPP/OAS Mission has drawn attention to the negative effects of the paramilitary presence and the absence of control of the security forces in certain parts of the country, such as small towns and villages in Bajo Cauca and the Department of Córdoba.<sup>[51]</sup> The situation would appear to be similar in south Cesar, where fear inspired by the presence of illegal armed groups with links to powerful families in the area impairs the ability of victims to participate in the Justice and Peace process.<sup>[52]</sup>

43. The IACHR has been informed that the "Victim and Witness Protection Program under Law 925 of 2005" has received more than 400 requests for protection,<sup>[53]</sup> 108 of which have been accepted.<sup>[54]</sup> It should be mentioned that the Constitutional Court ordered the Ministry of the Interior and Justice and the Office of the Prosecutor General to adapt the program in line with "a comprehensive protection strategy for victims and witnesses in trials concerning serious or systemic criminality."<sup>[55]</sup>

#### **D. Creation of reparation mechanisms for damages to victims of the armed conflict**

44. In previous reports, the IACHR has expressed its concern that the Justice and Peace Law places upon the perpetrators and, in some cases, the units to which they belonged, sole responsibility for paying reparations.<sup>[56]</sup> In that regard, it considered that, beyond the available criminal justice machinery, the State should define a policy on reparations designed to resolve injury caused by paramilitary violence, consistent with its budgetary possibilities, and based on the standards of international human rights law, by providing streamlined and low-cost administrative mechanisms for accessing economic reparations programs. This should be without prejudice to other forms of intangible reparations, collective reparations, and social programs and services that might be established for the population affected during the conflict.<sup>[57]</sup>

45. In December 2007, the government of Colombia sent the IACHR a request for advice on the implementation of an administrative reparations program in Colombia.<sup>[58]</sup> In response, the IACHR provided the advisory services requested in the form of a document entitled *Principal Guidelines for a Reparations Policy*, which was published in February 2008.<sup>[59]</sup> In its *Guidelines* the IACHR notes, *inter alia*, that a reparations policy ought to ensure the right of victims to comprehensive reparation for damages caused both by illegal armed groups and by the acts or omissions of state agents, based on measures that offer restitution, compensation, rehabilitation, and satisfaction. The IACHR also mentioned that said policies should be guided by the principle of comprehensiveness and conform to the parameters established by the inter-American system in reparations awarded in similar situations, which have been partially adopted in the recent case law of Colombian contentious-administrative tribunals.

46. The Commission also said that the administrative reparations proceeding ought not to preclude a contentious-administrative legal action that seeks to establish the legal responsibility of the State, nor should it involve abandonment of the action for reparations. Victims' right to bring legal action in the contentious-administrative forum to determine the responsibility of the State for gross violations committed by paramilitary elements ought to be preserved, as has been the finding in precedents of the Council of State. The State could always include in the award the compensation it would pay under the administrative reparations program.<sup>[60]</sup>

47. On April 22, 2008, the Colombian government adopted Decree 1290/08 "which creates the program on individual reparation through administrative proceedings for victims of organized armed groups operating outside the law." The purpose of the Decree was to "grant a set of individual reparation measures for any persons who prior to [its] enactment might have had their fundamental rights violated by the actions of organized armed groups operating outside the law" which have demobilized in accordance with the legal framework contained in the Justice and Peace Law.<sup>[61]</sup>

48. The IACHR deems it positive that the State has launched, through Decree 1290, an administrative program for reparations, which would involve a budgetary outlay of about 4 billion dollars. In the view of the IACHR, this program is an improvement over the reparation mechanisms established in the Justice and Peace Law and enables the victims to avoid the inconveniences and obstacles of court proceedings, even though that alternative path is open to them if they prefer to take it.

49. The mechanism proposed by the Decree only covers victims of demobilized armed groups and it is essentially based on a compensation plan with fixed parameters measured in minimum wages. The Decree creates an Administrative Reparations Committee.<sup>[62]</sup> As of November 2008, the Committee had received 147,500 victim accreditation application forms.<sup>[63]</sup>

50. In 2007 a bill was submitted to Congress with the aim of comprehensively addressing the right of victims of the armed conflict to reparation. The proposed law

“introducing protection measures for victims of the violence” was passed by the Senate of the Republic after a lengthy debate, which included discussions on issues such as the universe of victims, the responsibility of the State, and fiscal restrictions.<sup>[64]</sup> On September 30, 2008, the IACHR received a communication from the Coordinator of Presenters of this bill, Representative Guillermo Rivera, in which he requested the IACHR to issue an opinion on the matter.

51. The IACHR responded to this request with a communication dated October 20, 2008, in which it stated that the reparations bill ought to ensure the right of victims to comprehensive reparation for damages caused both by illegal armed groups and by the acts or omissions of state agents, based on measures that offer restitution, compensation, rehabilitation, and satisfaction. It further indicated that a bill of this type should take into account the effects of the conflict on the ownership and possession of individual and collective lands, and aim to create expeditious and effective mechanisms to ensure the restitution of lands to victims of dispossession. The IACHR also noted that use of the mechanism provided in the law should not preclude the administrative channels established by Decree 1290 of 2008 or those contemplated in the Justice and Peace Law. Finally, the Commission noted that the adoption by legislative means of reparation mechanisms at the disposal of victims could strengthen the legitimacy of the administrative reparation programs created by the State.<sup>[65]</sup>

52. Some days later, following a debate, the First Committee of the Chamber of Representatives approved the bill with a series of substantive modifications that were fiercely criticized by Colombian civil society organizations and the international community.<sup>[66]</sup>

53. The IACHR takes a positive view of the discussions on public policies on reparations for victims of the armed conflict. However, with respect to the parliamentary debate on the bill on reparation for victims, it should be noted that the bill excludes administrative reparation programs for victims of human rights violations committed by agents of the State by requiring them first to exhaust judicial remedies and setting a ceiling on compensation for this reparation mechanism. The IACHR, through its Rapporteur for Colombia, expressed its concern to the authorities regarding the difference in treatment between victims of illegal conduct perpetrated by groups operating outside the law and those perpetrated by agents of the State, a difference that could end up being discriminatory. Apart from this, the Rapporteur indicated that the ceiling foreseen under the draft legislation adversely affects the principle of comprehensive reparations, which constitutes a step backwards in terms of the rights such victims can exercise today. In the meeting with the Minister of Interior and Justice,<sup>[67]</sup> this official expressed the government’s intention to put forward before Congress an amendment to the bill designed to eliminate compensation ceilings and to institute abbreviated judicial procedures for cases of this type.<sup>[68]</sup>

54. Be that as it may, implementation of a legally established reparations program should be accompanied by a commitment on the part of Colombian society to the victims of the conflict, the kind of commitment that would be facilitated by broad and in-depth preliminary consultations, follow-up and evaluation to give it stability and to enable it to sustain itself over the course of time.

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<sup>[1]</sup> Article 57 of the IACHR’s Rules of Procedure provides that: “1. The Annual Report presented by the Commission to the OAS General Assembly shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in the Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1(h) of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the interested State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission.” Rules of Procedure of the Inter-

American Commission on Human Rights (approved by the Commission at its 109th special session, held from December 4 to 8, 2000; amended at its 116th regular session, held from October 7 to 25, 2002, and at its 118th regular session, held from October 6 to 24, 2003).

[2] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009.

[3] Created in 1997, this Protection Program was a partnership of government and civil society, to protect certain sectors of the population at particular risk from the actions of the armed outlaw groups as regards their rights to life, integrity, freedom, and personal security. The objectives of the Program are: (1) To strengthen government agencies at the national, regional, and local levels so as to enable them to undertake joint, coordinated, integrated and permanent measures to prevent human rights violations and to protect the rights of inhabitants of targeted at-risk communities; (2) To strengthen the traditional organizational structures, traditional authorities, and social organizations of the targeted at-risk communities so that they can develop initiatives, make proposals, coordinate with public authorities, and become involved in the implementation, follow-up, and oversight of measures aimed at preventing violations and protecting human rights and international humanitarian law; and (3) To re-establish or improve the relationship between the State and the community for the purpose of coordinating, developing, monitoring, and evaluating the preventive and protective measures proposed in the action plans.

[4] The budget for the program in 2008 was US\$ 4 million. Figures provided by the Minister of Interior and Justice at the meeting at his office in Bogotá on November 19, 2008.

[5] The IACHR Rapporteur for Colombia, Víctor E. Abramovich, accompanied by members of the Executive Secretariat, conducted a visit to Bogotá and the department of Chocó from November 17 to 22, 2008, where he received information from agencies of the State, community representatives and civil society organizations. See Press Release 54/08 at <http://www.cidh.oas.org/Comunicados/English/2008/54.08eng.htm>.

[6] The IACHR received information from the State as well as from civil society organizations in the framework of the hearing held in the course of its 131st and 133rd sessions. The audio and video recording of the hearings are available at <http://www.cidh.org/Audiencias/seleccionar.aspx>. The IACHR also requested and received information in writing, in keeping with its authority under Article 41 of the American Convention.

[7] The State has reported that this figure is the result of an updating of the records of demobilized persons by the Office of the High Commissioner for Peace. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, p. 3.

[8] The Colombian State has continued its efforts to reach agreements on the demobilization of other illegal armed groups. In 2008, the MAPP/OAS Mission noted the demobilization of various adult members of the *Ejército Revolucionario Guevarista*, a dissident faction of the National Revolutionary Army (ELN) that was operating in the Municipality of Carmen de Atrato, Department of Chocó. The Office of the High Commissioner for Peace notes that there are a total of 36 demobilized persons in this group. The dismantling of this insurgent group has come in the framework of a new strategy of the national government designed to engage regional structures –*bloques* and *frentes*– in dialogue, in view of the difficulty of initiating talks with top commanders at the national level.

[9] For more than a year and a half, the demobilization, surrender of weapons and re-assimilation into civilian life proceeded under the system for individual and collective demobilization instituted by Decree 128 of 2003, which contained regulations for implementing Law 418 of 1997, extended and amended by Law 584 of 1999 and Law 782 of 2002 on reincorporation into civil society. On June 22, 2005, the Congress of the Republic passed Law 975 (2005), which entered into force once the president signed it on July 22, 2005. On December 30, 2005, Decree No. 4760 of the Ministry of the Interior and Justice was issued, which regulates certain aspects of Law 975 related to the deadlines for investigating those seeking to avail themselves of the benefits of the law – Article 4- and introducing the principle of timeliness for third parties involved with the possession, holding, transfer, and, in general, ownership of illicit goods handed over to make redress to victims –Article 13. On September 29, 2006, Decree No. 3391 was published, which partially regulated Law 975 (2005), Ministry of the Interior and Justice, Decree No. 3391 (2006), September 29, 2006, “Partially regulating Law 975 (2005).”

[10] When the constitutionality of Law 975 was challenged in a case before the Constitutional Court, the latter ruled that Law 975 was in general terms constitutional and spelled out conditions for making certain that its provisions were compatible with the Constitution. Among the parameters for interpretation established by the Constitutional Court were rules to protect victims' participation in the process and to give them access to full reparations. The judgment also clarifies the obligation to enforce the reduced prison sentence stipulated therein and to introduce legal consequences, such as loss of benefits, if demobilized personnel claiming benefits under the law should withhold information from the judicial authorities. The judgment also made clear that paramilitary activity is a common crime. In short, demobilized personnel who committed crimes during the armed conflict and who apply for the benefits of Law 975 will have to cooperate with justice so that the victims' rights to the truth, to justice, to reparations, and to non-repetition can be realized. Constitutional Court, Case D-6032, Judgment C-370/06, made public on July 13, 2006.

[11] OAS Permanent Council, Resolution CP/859 (1397/04) “Support to the Peace Process in Colombia”, operative paragraph 3. OEA/Ser. G CP/RES. 859 (1397/04) of February 6, 2004. See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, of February 26, 1999; *Report on the Demobilization Process in Colombia* OEA/Ser.L/V/II.120 Doc. 60, of December 13, 2004; *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia, 2006*. OEA/Ser/L/V/II. 125 Doc. 15, August 1, 2006. IACHR, “Report on the Implementation of the Justice and Peace

Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings. OEA/Ser.L/V/II.129 Doc. 6, October 2, 2007. See also Chapter IV of the IACHR annual reports for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

[12] Figures received at the meeting with officials of the Office of the High Commissioner for the Social and Economic Reintegration of Armed People and Irregular Groups in Bogotá on November 19, 2008.

[13] See Sixth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), OEA/Ser.G/CP/doc.4075/06, February 16, 2006. See also Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), OEA/Ser.G/CP/doc.4148/06, August 30, 2006; Eighth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), OEA/Ser.G/CP/doc.4176/07, February 14, 2007; Ninth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), July 3, 2007; Tenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 31, 2007; Eleventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), June 25, 2008; Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[14] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[15] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[16] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[17] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 5.

[18] Office of the Procurator General of the Nation (*Procuraduría General de la Nación*), Directive 0013 of June 16, 2008, pp. 5 and 6. [http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva\\_0013.pdf](http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva_0013.pdf).

[19] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[20] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[21] Office of the Procurator General of the Nation (*Procuraduría General de la Nación*), Directive 0013 of June 16, 2008, pp. 5 and 6. [http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva\\_0013.pdf](http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva_0013.pdf).

[22] Office of the Procurator General of the Nation (*Procuraduría General de la Nación*), Directive 0013 of June 16, 2008, pp. 5 and 6. [http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva\\_0013.pdf](http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva_0013.pdf).

[23] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, pages 6 and 7.

[24] National Prosecutors' Unit for Justice and Peace, Information in process of consolidation and verification, as of July 14, 2008). See also, International Crisis Group "Correcting Course: Victims and the Justice and Peace Law in Colombia", Latin America Report No. 29, 30 October, 2008. In its observations, the State gives the figure of 1,195 applicants who had not expressed their willingness to go through with the process. It does not clarify its source. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 7.

[25] National Prosecutors' Unit for Justice and Peace, Information in process of consolidation and verification, as of November 27, 2008). See also, International Crisis Group, "Correcting Course: Victims and the Justice and Peace Law in Colombia", Latin America Report No. 29, 30 October 2008.

[26] In any case, this declaration must be considered in light of the obligation of the judicial authorities and other State agencies to reliably verify compliance with the requirements in order to be eligible for the reduced penalty benefits contained in Law 975. Ministry of the Interior and Justice, Decree 423 of February 16, 2007 "Which introduces rules governing Articles 10 and 11 of Law 975 of 2005 (Justice and Peace Law)". See Article 6. Oath of compliance with the eligibility requirements.

[27] National Prosecutors' Unit for Justice and Peace, Information in process of consolidation and verification, as of July 1, 2008). See also, International Crisis Group "Correcting Course: Victims and the Justice and Peace Law in Colombia", Latin America Report No. 29, 30 October, 2008.

[28] See Procuraduría Delegada para la Prevención en Materia de Derechos Humanos y Asuntos Étnicos *Basic Concepts on the Justice and Peace Law and the Victim's Rights*, February, 2008, page 18.

[29] In its observations, the State says that, beginning in January 2008, 2,166 new posts had been

created in the Prosecutor's Office (418 prosecutors, 545 investigators, and 1,203 posts for support and administrative staff) to conduct investigations on justice and peace, human rights violations, breaches of IHL, and property seizures, and to reinforce the victim and witness protection program. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, pages 7 and 8.

[30]

Supreme Court, Criminal Cassation Chamber, Process 29560, May 28, 2008 (Case of William Salazar Carrascal, alias "El Loro").

[31] Supreme Court of Justice, Decision of April 10 2008. Reproduced at <http://www.radiosantafe.com/2008/04/10/corte-suprema-notifica-que-no-habra-extradicion-de-paramilitares-sino-cumplen-con-reparacion-de-victimas/>.

[32] Presidency of the Republic of Colombia. *Beneficiarios de Justicia y Paz que reincidan serán extraditados*. May 7, 2008, <http://web.presidencia.gov.co/sp/2008/mayo/07/10072008.html>.

[33] Superior Council of the Judicature, Tribunal of Judicial Discipline, Judgment of May 6, 2008, Reporting Judge, Angelino Lizcano Rivera.

[34] Presidency of the Republic of Colombia. Remarks of President Uribe at a graduation ceremony for second lieutenants of the National Police, May 14, 2008, <http://web.presidencia.gov.co/sp/2008/mayo/14/10142008.html>.

[35] IACHR, Press Release 21/08, "IACHR expresses concern about extradition of Colombian paramilitaries", Washington, D.C., May 14, 2008.

[36]

Communication without number from the Permanent Mission of Colombia to the OAS, of May 14, 2008, signed by the then Minister of Foreign Affairs Fernando Araújo Perdomo, in which the Government explains the reasons behind its rejection of the IACHR press communiqué. In this communication the State "regrets that the IACHR ignore the rights of the citizens *vis-a-vis* the criminals" and urges the Commission "to understand these measures ... and refrain from following the designs (*hacerle el juego*) of those men who wish to avoid their responsibilities before justice by seeking protection under the benefits of the Law of Justice and Peace".

[37] Hearing on Extraditions of paramilitaries and the rights of victims in Colombia, held on October 23, 2008 in the framework of the 133<sup>rd</sup> Regular Session of the Inter-American Commission on Human Rights. <http://cidh.org:81/Audiencias/seleccionar.aspx>.

[38] Communication of the US State Department of October 23, 2008, to the Permanent Mission of Colombia to the Organization of American States.

[39] Official Letter OFI8-29763-ACI-0120 from the Ministry of the Interior and Justice in response to the right of petition of the *Comisión Intereclesial de Justicia y Paz*. October 1, 2008 in a document presented by civil society organizations at the hearing on Extraditions of paramilitaries and the rights of victims in Colombia, October 23, 2008, p. 3.

[40] Information supplied by the Minister of Foreign Affairs during the meeting at his office in Bogotá on November 19, 2008. See also, Communication without number from the Permanent Mission of Colombia to the OAS, of May 14, 2008, signed by the then Minister of Foreign Affairs Fernando Araújo Perdomo, in which the Government mentions that "any plea bargaining in the United States shall be conditional upon cooperation with the victims' rights to truth, justice and reparation."

[41] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 10.

[42]

The State has described the extradited paramilitary leaders as "...criminals that after taking advantage of a peace negotiation continued to commit crimes and to risk the lives and security of the Colombian people [...] and they intended to avoid their responsibilities before justice by using their application to benefit from the Justice and Peace Law". The Government also confirmed that "the decision to extradite these individuals was taken after evaluating their conduct after the demobilization". Communication without number from the Permanent Mission of Colombia to the OAS, of May 14, 2008, signed by the then Minister of Foreign Affairs Fernando Araújo Perdomo.

[43] Figure provided by the State in its observations. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 13.

[44] Decree 315 of 2007 provides that victims have the right of access, both personally and directly, or through their attorney, to the taking of statements, formulation of indictments and charges and other procedural steps in the context of Law 975, relating to the events that caused the damage. Ministry of the Interior and Justice, Decree 315 of February 7, 2007, governing the intervention of victims in the investigation stage of Justice and Peace proceedings under Law 975 of 2005". 19. The victims, however, have encountered a series of obstacles to their participation. First, the impossibility of questioning those seeking to benefit from Law 975, whether directly or through their representatives, about matters of interest to them in the different phases of the voluntary statement hearing. Questioning by victims is confined to the second phase of the hearing, but it takes place through an indirect mechanism, where the questions are incorporated into a form that is delivered to members of the CTI, who in turn deliver it to the prosecutor. This indirect mechanism severely restricts the possibility of the victim to use questioning as a suitable means of obtaining the truth of the facts. Moreover, the prosecution thereby loses a valuable strategy for comparing the voluntary depositions and verifying compliance

with the legal requirements for access to benefits. Second, the victims encounter difficulties in securing legal counsel and representation in judicial proceedings.

[45] National Prosecutors' Unit for Justice and Peace, Information in process of consolidation and verification, as of July 14, 2008).

[46] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 12.

[47] See Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[48] Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 13.

[49] On September 24, 2008, the IACHR granted precautionary measures on behalf of Hugo Antonio Combariza Rodríguez. The request for precautionary measures alleged that Mr. Combariza Rodríguez had received threats as a result of his involvement in criminal trials taking place in the framework of the Justice and Peace Law, and that on April 25, 2008, he was the target of an attack with a firearm. The Commission requested the State of Colombia to adopt the measures necessary to protect the life and safety of the beneficiary and to provide information on judicial steps taken to get to the bottom of the facts that gave rise to the adoption of precautionary measures. IACHR, Annual Report 2008, Chapter III, Precautionary Measures.

[50] Benigno Gil was murdered on November 22, 2008, in Chigorodó, Antioquia. Officials of the National Commission for Reparations and Reconciliation of Antioquia suggested that the motive was to put an end to several land claim proceedings initiated by 1,200 peasant farmers in Urabá. [http://www.eltiempo.com/colombia/antioquia/ARTICULO-WEB-PLANTILLA\\_NOTA\\_INTERIOR-4684874.html](http://www.eltiempo.com/colombia/antioquia/ARTICULO-WEB-PLANTILLA_NOTA_INTERIOR-4684874.html)

[51] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[52] The MAPP/OAS Mission reports that in the Municipality of San Martín, Cesar Department, municipal officials refuse to write in forms dealing with complaints reported by victims the names of possible perpetrators with blood or marriage ties to certain families whose members hold public office. Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[53] Ministry of the Interior and Justice, Decree 3570 of September 18, 2007, the purpose of which is "to protect the lives, well-being, freedom, and security of those under threat or at risk as a direct result of their involvement as victims or witnesses in the Justice and Peace process."

[54] Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), February 9, 2009.

[55] Constitutional Court, Judgment T-496 of 2008, Reporting Judge Jaime Córdoba Triviño, para. 10.8.2.

[56] Payment of reparations will be effected via the Reparations Fund administered by the Presidential Agency for Social Action and Cooperation and the State will take on the obligation to make reparation jointly and severally pursuant to Law 975 of 2005 and its enabling regulations issued in decrees.

[57] *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*. OEA/Ser/L/V/II. 125 Doc. 15, August 1, 2006, para. 99.

[58] Note DM/VAM/DDH 63682/3408 of the Ministry of Foreign Affairs of Colombia of December 7, 2007.

[59] IACHR *Principal Guidelines for a Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008, <http://cidh.org:81/pdf%20files/Lineamientos%20principales%20para%20una%20política%20integral%20de%20reparaciones.pdf>.

[60] IACHR *Principal Guidelines for a Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008, numeral 7. <http://cidh.org:81/pdf%20files/Lineamientos%20principales%20para%20una%20política%20integral%20de%20reparaciones.pdf>.

[61] Article 1 of Decree 1290/08, "which creates the program on individual reparation through administrative proceedings for victims of organized armed groups operating outside the law".

[62] The Administrative Reparations Committee was created on July 10, 2008, and composed of the Ministry of the Interior, National Commission for Reparations and Reconciliation, Acción Social, victims' representatives, the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*), the Ombudsman, and representatives of the International Organization for Migration. Information provided at the meeting with the Minister of the Interior and Justice, Fabio Valencia Cossio on November 19, 2008, during the working visit of the Rapporteur for Colombia, Víctor E. Abramovich, from November 18 to 21, 2008 in Colombia.

[63] Meeting with the Minister of the Interior and Justice, Fabio Valencia Cossio on November 19, 2008,

during the working visit of the Rapporteur for Colombia, Víctor E. Abramovich, from November 18 to 21, 2008 in Colombia.

[64] Law 044 of 2008 Chamber 157 of 2007 Senate.

[65] Communication of October 20, 2008, from the IACHR to Representative Guillermo Rivera, Coordinator of Presenters of the draft Reparations Law under consideration in the Congress of Colombia.

[66]

Press release of the Office of the UN High Commissioner for Human Rights in Colombia of November 14, 2008, '*ONU Derechos Humanos en Colombia deplora un proyecto de "ley de víctimas" discriminatorio*'; Press release of the Working Group on the Draft Victims Law, '*El proyecto de Ley de Víctimas empeoró su situación legal*'; Press release of Corporación REINICIAR of November 14, 2008 '*El Gobierno descuartizó el proyecto de Ley de Víctimas*'; Press release of the National Committee for Victims Belonging to Community-Based Organizations of November 12, 2008 '*Denuncia que Uribe y su bancada desnaturalizaron el Proyecto de Ley de Víctimas*'; Press release of the Centre for Justice and International Law of November 14, 2008 '*CEJIL lamenta oposición del Gobierno colombiano al reconocimiento del derecho de las víctimas*'. See also, Ciurlizza, Javier '*El riesgo de aprobar una mala ley de víctimas*', article published in Revista Semana.com on November 14, 2008.

[67] Meeting with the Minister of the Interior and Justice, Fabio Valencia Cossio on November 19, 2008, during the working visit of the Rapporteur for Colombia, Víctor E. Abramovich, from November 18 to 21, 2008 in Colombia.

[68] See IACHR, Press Release 54/08 at <http://www.cidh.org/Comunicados/Spanish/2008/54.08sp.htm>.





# Inter-American Commission on Human Rights

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## IACHR - ANNUAL REPORT 2008

### CHAPTER IV - HUMAN RIGHTS DEVELOPMENTS IN THE REGION

#### CUBA

##### I. JURISDICTION FOR OBSERVING AND EVALUATING THE SITUATION OF HUMAN RIGHTS IN CUBA

145. The Commission's jurisdiction to observe the situation of human rights in member states derives from the OAS Charter, the Commission's Statute, and its Rules of Procedure. According to the Charter, all Member States undertake to respect fundamental individual human rights which, in the case of States not parties to the Convention, are those rights established in the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"), which is a source of international obligations<sup>[204]</sup>. The Statute charges the Commission with paying particular attention to the observance of the human rights recognized in Articles I (the right to life, liberty, personal security and integrity), II (the right to equality before law), III (the right to religious freedom and worship), IV (the right to freedoms of investigation, opinion, expression and dissemination), XVIII (the right to a fair trial), XXV (the right of protection from arbitrary arrest), and XXVI (the right to due process of law) of the American Declaration when exercising its jurisdiction vis-à-vis countries that are not parties to the Convention<sup>[205]</sup>.

146. On January 14, 2009, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

147. Cuba has been a Member State of the Organization of American States since July 16, 1952 when it deposited its instrument of ratification of the OAS Charter. The Commission has maintained that the Cuban State "is juridically answerable to the Inter-American Commission in matters that concern human rights" since "it is a party to the international instruments that were initially established in the American Hemisphere for the purpose of protecting human rights" and because Resolution VI of the Eighth Meeting of Consultation<sup>[206]</sup> "excluded the Cuban government, not the Cuban State, from participation in the Inter-American system<sup>[207]</sup>." In this regard, the IACHR stated:

[...] has always considered that the purpose of the Organization of American States in excluding Cuba from the Inter-American system was not to leave the Cuban people without protection. That Government's exclusion from the regional system in no way means that is no longer bound by its international human rights obligations<sup>[208]</sup>.

148. By virtue of its jurisdiction, the IACHR has observed and evaluated the situation of human rights in Cuba in special reports,<sup>[209]</sup> in Chapter IV of the Annual Reports,<sup>[210]</sup> and by means of the case system.<sup>[211]</sup> The IACHR has also asked the Cuban State on several occasions to adopt precautionary measures for protecting the lives and personal integrity of Cuban citizens.<sup>[212]</sup>

149. Pursuant to the criteria established by the IACHR in 1997 for identifying States whose practices in the area of human rights deserve special attention, the situation of human rights in Cuba falls under the criteria numbers one and five. insofar as the political rights enshrined in the American

...and where the essential elements of the free society, based on the personal rights enshrined in the American Declaration are not observed and structural conditions that seriously and gravely affect the enjoyment and practice of fundamental rights established in the American Declaration persist.

150. In 2008, the Commission has observed and evaluated the situation of human rights in Cuba and decided to include in this chapter of its annual report considerations related to the situation of political rights of Cubans; guarantees of due process of law and independence of the judiciary; detention conditions for political dissidents; restrictions on the freedom of expression; restrictions on freedom of association; the situation of human rights defenders; women's rights, and children's rights. In addition, consideration is given to the economic and commercial sanctions imposed on the Cuban Government, reiterating that they should be eliminated because they tend to aggravate restrictions on the effective exercise of economic, social and cultural rights by the Cuban people.

151. In preparing this report, the Commission has obtained information from international agencies, civil society organizations, and the Cuban government via the official web site of the Ministry of Foreign Affairs of Cuba. Furthermore, at a public hearing held during its 133<sup>rd</sup> regular session, the Commission received information on the situation of political prisoners in Cuba, in particular regarding trade union members deprived of liberty.<sup>[213]</sup> The Commission notes the scarcity of information available on human rights in Cuba from sources both on the island or abroad.

## **II. PRELIMINARY CONSIDERATIONS**

152. Cuba has not responded to any of the communications that the Commission has sent it regarding its annual reports,<sup>[214]</sup> processing of cases, and precautionary measures, which are instruments to which the IACHR has recourse in performing the functions by which to protect human rights. The absence of information constitutes an obstacle to the work of the Commission and is incompatible with the duties of the State.

153. In view of the foregoing, the Commission believes it especially important to engage the Cuban state in dialogue, in order to follow up on the matters proceeding before the inter-American system, which particularly affect the human rights of persons under Cuban jurisdiction. Accordingly, the Commission reiterates its commitment to work with the Cuban state and calls for dialogue so as to contribute to the advancement and strengthening of human rights in that country.

154. With respect to the economic and trade embargo imposed by the United States on Cuba since 1961, the IACHR reiterates its position regarding the impact of such sanctions on the human rights of the Cuban people and, therefore, insists that the embargo be lifted.<sup>[215]</sup> However, the economic embargo in place on Cuba does not free the State of its duty of meeting its international obligations, nor does it excuse it for the violations of the American Declaration described in this report.

## **III. SITUATION OF HUMAN RIGHTS IN CUBA**

### **A. Positive Aspects and Overall Progress**

155. In the process of evaluating the situation of human rights, the Commission acknowledges a series of accomplishments by the State of Cuba. In that connection, it lauds the fact that on February 28, 2008 the Cuban Government signed the United Nations International Covenant on Civil and Political Rights and the United Nations International Covenant on Economic, Social and Cultural Rights.

156. The Commission acknowledges the important achievements met in Cuba in relation to the Millennium Development Goals established by the United Nations.

Cuba is a medium income country that belongs to the group of countries with high human development (ranked 51 out of 177). According to national reports, it has already achieved three of the eight MDGs: universal elementary education; gender equality; and reduction of infant mortality (Goals 2, 3 and 4). It is believed that three more MDGs can be achieved by 2015: eradicate extreme poverty and hunger; improve maternal health and fight against HIV/AIDS and other diseases (Goals 1, 5 and 6).

The Government also believes it can probably meet the last two Goals related to environmental sustainability and world development alliances. However, the human development indices broken down by zones show a certain degree of heterogeneity

development indices broken down by zones show a certain degree of heterogeneity, wherefore the Government gives priority to the eastern regions of the country as far as development strategies are concerned.[\[216\]](#)

157. Regarding maternal health, the Commission acknowledges that, according to the information available, 100% of births in the country are attended by skilled personnel.[\[217\]](#) Also, the maternal mortality ratio is 45 maternal deaths per 100,000 live births, which is a lower figure than the average for Latin America (190).[\[218\]](#)

158. As to the country's economic development, the report of the United Nations and the Ministry for Foreign Investment and Economic Cooperation indicates the following:

In the last two years we have seen dynamic international tourism, diversification of trade relations, particularly with Venezuela and China, and increased nickel exports, as well as the export of biotechnology and pharmaceutical products. The economy was also stimulated by exports of professional services and the expansion of construction.

Cuba is going through a decentralization process of social services, meeting the challenge of combining efficiency, financing and quality in its response to local demands and characteristics. However, it continues to be necessary to streamline the use of resources, develop capacities for local production, and strengthen management techniques. Despite the measures adopted to correct territorial imbalances, there are still differences in living conditions in different regions of the country. That is why there is a need to continue to encourage production, social and service investment, and facilitate the strengthening of local and national capabilities.

The subject areas defined in the 2008-2012 Program are: a) Local human development; b) Natural disasters and risk; c) Environment and energy for sustainable development; and d) Prevention and fight against HIV/AIDS. In addition, the UNDAF includes the subject of food security, with which the UNDP will cooperate by promoting local human development.[\[219\]](#)

159. In addition, the Commission has observed that on June 20, 2008,[\[220\]](#) the European Union (EU) unanimously agreed to lift diplomatic sanctions against the Cuban regime that had been in place since 2003, in recognition and support of the changes towards a liberalization made by the Cuban government.

## **B. Structural conditions that seriously impair full enjoyment of human rights in Cuba**

160. Restrictions on political rights, freedom of expression and dissemination of ideas have created, over a period of decades, a situation of permanent and systematic violations of the fundamental rights of Cuban citizens, which is made notably worse by the lack of independence of the judiciary. In this section the Commission addresses these issues in the following order: i) political rights; ii) guarantees of due process of law and independence of the judiciary; iii) detention conditions for political dissidents; iv) restrictions on the freedom of expression; v) freedom of association; vi) human rights defenders; vii) the situation of women's rights; and, viii) the situation of children's rights.

### **1. Political Rights**

161. The organs of the inter-American system have held that political rights are human rights of fundamental importance and are intimately associated with an array of other rights that make the democratic game possible.[\[221\]](#) Thus, the Inter-American Court of Human Rights found that,

[...] The right to vote it is one of the elements *sine qua non* for the existence of democracy and one of the ways by which citizens freely express their will and exercise the right to participate in government. This right implies that citizens may, on an equal footing, directly decide and freely elect those who will represent them in decisions on public affairs." The Court also held that [P]articipation in government through the exercise of the right to be elected presupposes that citizens may put themselves forward as candidates on an equal basis and hold elected positions in public office if they receive the necessary amount of votes to do so.[\[222\]](#) In that connection, the Court noted that the American Convention prohibits suspension of this right even in a state of emergency.[\[223\]](#)

162. In a similar vein, the Commission has held that, *inter alia*, the existence of free elections, independent and effective powers and branches of government, and unbridled respect for freedom of expression, among others, are fundamental aspects of democracy that cannot be assessed in isolation from one another. From that perspective, full assurance of human rights is not possible

without effective and unrestricted recognition of the right of individuals to form and participate in political groups.

163. Regarding the restriction of political rights, the Cuban State has said that

The restrictions for some political rights in Cuba, that have been set out by law, have been the bare minimum needed to guarantee the protection of the right to free determination, peace and life of all the people, as an answer to the growing anti-Cuban aggressiveness of the empire.[\[224\]](#)

164. Similarly, regarding the right of free expression the Cuban Government maintains that

The Cuban people only restrict the "freedom" of opinion and expression of those few who would sell their services as mercenaries to the policy of hostility, aggression and genocidal blockade of the United States government against Cuba. By applying such restrictions, Cuba is acting by virtue of not just its national legislation, but also the numerous international human rights instruments and successive resolutions passed by the United Nations General Assembly which have demanded respect for the free determination of peoples and the cease of the economic, commercial and financial blockade being applied by the government of the United States against Cuba.[\[225\]](#)

165. The Commission finds that one of the main reasons for drafting the instant report is the absence in Cuba of free elections based on internationally accepted standards, which violates the right to political participation established in Article XX of the American Declaration of the Rights and Duties of Man, which provides

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

166. Article 3 of the Democratic Charter signed in Lima, Peru on September 11, 2001, defines the elements that make up a democratic system of government:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms; access to and the exercise of power in accordance with the rule of law; the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people; the pluralistic system of political parties and organizations; and the separation of powers and independence of the branches of government.

167. The American Declaration and the Democratic Charter reflect a broad conception of representative democracy which, by definition, rests on the sovereignty of the people, and in which the functions through which power is exercised are carried out by persons chosen in free elections that represent the will of the populus. In the Commission's estimation those elements are not present in Cuban elections, which are noted precisely for a lack of plurality and independence as well as the absence of a framework of free access to a diversity of information sources. In light of the aforementioned international standards (*supra*, pars.16, 17, and 21), the Commission reiterates that the lack of free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people,[\[226\]](#) violates the right of the Cuban people to political participation. The Commission also notes that in spite of its reiterated recommendations to the State to reform the legal system that it has in force in order to attain unobstructed observance of human rights in Cuba, there are persistent systematic practices that violate freedom of expression, assembly, and association which continue to be supported by constitutional and criminal law provisions, and which will be addressed in the sections analyzed hereinbelow.

## **2. Guarantees of Due Process of Law and Independence of the Judiciary**

168. In 2008, the Commission continued to receive troubling information about the structural lack of independence and impartiality in the courts; and the absence of judicial and fair trial guarantees in the prosecution of persons sentenced to death as well as persons considered political or ideological dissidents, something particularly serious given the use of summary proceedings.

169. According to the case law of the inter-American system, all organs that exercise

functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process. The American Declaration provides that every person is entitled to recourse before the courts,[\[227\]](#) to protection from arbitrary arrest[\[228\]](#), and to due process of law.[\[229\]](#) Those rights are a part of what are known as the guarantees of due legal process and represent the minimum guarantees recognized with respect to all individuals in judicial proceedings of all kinds.

170. The American Declaration also provides that every human being has the right to liberty[\[230\]](#) and that no persons may be deprived of their liberty except in the cases and according to the procedures established by pre-existing law.[\[231\]](#) Furthermore, under the American Declaration, every individual who has been deprived of liberty has the right to have the legality of that detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released.[\[232\]](#) In addition, every person accused of an offense has the right to be given an impartial public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.[\[233\]](#)

171. Moreover, the Inter-American Court considers that the right to be tried by an impartial and independent judge or court is a fundamental guarantee of due process. In other words, it must be ensured that the judge or court hearing a case does so based on the utmost objectivity. Furthermore, the independence of the Judiciary from the other State powers is essential for the exercise of judicial functions.[\[234\]](#) In a recent decision, the Court ruled that

[O]ne of the principal purposes of the separation of public powers is to guarantee the independence of judges. Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions.[\[235\]](#)

Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action.[\[236\]](#)

172. The Court also found that the impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.[\[237\]](#)

173. For the European Court of Human Rights, the impartiality of the judge is composed of subjective and objective elements. The subjective impartiality of the judge must be presumed until there is proof to the contrary. Objective impartiality, on the other hand, requires the court to offer sufficient guarantees to dispel any doubts about impartiality in the proceeding.[\[238\]](#)

174. With respect to the guarantees of independence and impartiality, it should be noted that Article 121 of the Constitution of Cuba provides,

The courts constitute a system of state bodies, established with functional independence from all other systems, and subordinated only to the National Assembly of People's Power and the Council of State.

175. Thus, the Commission notes that the subordination of the courts to the Council of State, chaired by the head of State, means that the judiciary is directly dependent on instructions handed down by the executive branch of government. In the opinion of the Commission, this dependence on the executive branch precludes the possibility of an independent judicial branch able to deliver guarantees for the enjoyment of human rights.

176. According to information received in 2008, the Cuban courts persist in trying dissidents in accordance with political and ideological criteria in expedited summary proceedings as,[\[239\]](#) for example, in the trial and conviction in 2008 of Julián Antonio Monés Borrero who was arrested and charged with "attack on an authority" on September 30, 2008 in the province of Guantánamo.

According to information received, Monés is said to have been charged with assaulting an Interior Ministry official during a public gathering in September. On November 26, 2008, the Municipal Tribunal of Baracoa, Province of Guantánamo, sentenced Julián Antonio Monés Borrero to three years in prison. The appeals court upheld the sentence on December 12, 2008.

177. In this connection, the Commission finds that the lack of observance of fair trial guarantees is particularly troubling in summary proceedings because they do not offer the accused the basic guarantees necessary to exercise their right to mount an adequate legal defense. In that regard, in Case 12.477 (Lorenzo Enrique Copello Castillo *et al.*)<sup>[240]</sup> the IACHR concluded that the Cuban State violated Article XVIII and Article XXVI of the American Declaration when it convicted three people without due process of law, and sentenced them to the death penalty, given that Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac were executed by a firing squad after an expedited summary proceeding without the right to a legal defense, legal impartiality and independence, among others. In adopting the Report on the Merits, the Commission made reference to the expedited summary proceeding in which Messrs. Copello, Sevilla, and Martínez were convicted and sentenced to death:

Because the right to life and to freedom are considered basic human rights, it is essential that any person who is arrested has access to adequate judicial process within a reasonable period during which the appropriate arguments and evidence can be studied seriously, all of which requirements must be even more rigorous in cases where the persons are accused of crimes punishable by the death penalty.

The trial against Messrs. Copello, Sevilla, and Martínez began on April 5, 2003 and finished on April 11, 2003, during which time they were even sentenced to death. In this regard, in order to determine whether the length of the trial was reasonable or not, the Commission must take into account the complexity of the matter, the part played in the trial by the accused, and the conduct of the judicial authorities.

From the information provided by the petitioners, and the content of public statements by the Ministry of Foreign Affairs of Cuba, and from the judgment of first instance dated April 8, 2003 by the People's Provincial Court of the City of Havana, it is clear that the proceedings in which the alleged victims were tried was an expedited summary trial, in which the most serious punishment envisaged by Cuban legislation was imposed, i.e. the death penalty.

Although Articles 479 and 480 of the Cuban Law of Criminal Process envisage the possibility of holding an expedited summary proceeding, the law itself only envisages it in the case of exceptional circumstances.

The Cuban Law of Criminal Process stipulates that in the case of an expedited summary trial, the competent Court may, in as far as it judges necessary, reduce the periods for processing prior proceedings, the oral hearings, and the appeal.

In an expedited summary trial, the competent Court may, insofar as it deems necessary, reduce the time periods for preliminary proceedings, oral hearings and appeals.

With regard to the power granted by Section 480 to Cuban courts of justice, the Commission observes that the decision to apply an exceptional proceeding is left to those who dispense justice in the case in question; therefore, the decision of how long the time periods should be for all phases of the trial, including preliminary matters, the trial itself and appeals, are all also left to the judge to decide."<sup>[241]</sup>

178. Based on the factual and legal considerations contained in Merits Report 68/06 in Case 12.477, the IACHR recommended the Cuban State to adopt the measures necessary in order to adapt its laws, proceedings, and practices in line with international human rights law. In particular, the Commission recommended the Cuban State to reform the criminal law to ensure the right to justice and the right to a regular process, as well as to reform its Constitution to ensure the independence of its judiciary. It also recommended to make compensation to the families of the victims for the material and psychological damage they have suffered by virtue of the violations of the American Declaration established in the report and to adopt all measures necessary to ensure that similar events may not occur again, in accordance with the duty of the State to protect and guarantee human rights.

179. As regards the death penalty, the Criminal Code of Cuba provides this punishment for crimes against state security; the peace and international law; public health; life and physical integrity; the normal development of sexual relations; the normal development of children and adolescents. and

the normal development of sexual relations, the normal development of children and adolescents, and property. By way of illustration, under the title that deals with crimes against state security, the statutory offences for which the death penalty is the maximum punishment are as follows: Acts against the Independence or Territorial Integrity of the State; Promotion of Armed Action against Cuba; Armed Service against the State; Aiding an Enemy; Espionage; Rebellion;[\[242\]](#) Sedition; Usurpation of Political or Military Control; Sabotage; Terrorism; Hostile Acts against a Foreign State; Genocide; Piracy; Mercenary Activities; Apartheid;[\[243\]](#) and other acts against state security. Capital punishment is also provided for the following statutory offences: Illicit Production, Sale, Solicitation, Trafficking, Distribution, and Possession of Drugs, Narcotics, Psychotropic Substances, and Other Substances with Similar Effects;[\[244\]](#) Murder;[\[245\]](#) Rape;[\[246\]](#) Pederasty with Violence;[\[247\]](#) Corruption of Minors;[\[248\]](#) Robbery with Violence, or Intimidation of Persons.[\[249\]](#)

180. Further to the foregoing, the Commission received general information indicating that a significant number of statutory offenses that carry the death sentence, particularly where offenses against state security are concerned, are worded in excessively open-ended or ambiguous terms. This could lead to the imposition of disproportionate penalties and enormous arbitrariness that could rule out any possibility of an effective defense for the individual before the authorities.[\[250\]](#) The Commission notes that since 2000, the death penalty has been imposed in Cuba only in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac (the victims in the above-cited case) were executed.

181. Nonetheless, the Commission considers that the imposition of capital punishment requires the existence of an independent judiciary, in which the judges exercise a high degree of scrutiny and where fair trial guarantees are observed. In this regard, the Inter-American Court has held,

[C]apital punishment is not *per se* incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment. [\[251\]](#) First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.[\[252\]](#) Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.[\[253\]](#) Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.[\[254\]](#)

182. Accordingly, the Commission reiterates that the absence of an independent system for the administration of justice in Cuba, coupled with the lack of fair trial guarantees and the use of summary proceedings, undermines the fundamental rights of persons sentenced to death. This means that the death penalty for political crimes is a latent threat.

183. In sum, the Commission urges the Government of Cuba to bring its procedures into line with international standards of due process, to ensure that individuals who have recourse to the courts in order to determine their rights and responsibilities, enjoy minimum legal guarantees in exercising their defense. The Commission believes that the existing legal framework does not comply with Cuba's international obligations in this regard. The full currency of the judicial guarantees enshrined in the American Declaration depends on the existence of an independent and autonomous Judiciary and on the application of clear and specific rules that do not permit arbitrary abuses of authority.

184. Finally, it should be noted that on April 28, 2008, the State Council of the Cuban Government decided to commute the death sentence of several convicts and re-sentence them to life imprisonment or 30 years in custody, except for three people who were sentenced to death for having allegedly committed crimes of terrorism. Although information is not available on the identity of the people whose death sentences were commuted, according to the information received by the IACHR, approximately 30 people would be on death row in Cuba and would have benefited from the government's decision,[\[255\]](#) most of whom were convicted of common crimes.

185. On the above date, Raul Castro, President of Cuba, explained[\[256\]](#) that the decision to commute the sentences did not mean abolishing the death penalty from the Criminal Code, and he added, "even though our laws provide for the death penalty, because of the specific reasons that have already been explained and fully justified, Cuba understands and respects the arguments of the international movement in favor of its abolishment or moratorium. That is why our country has not voted against such initiatives at the United Nations."[\[257\]](#)

186. The Inter-American Commission values the decision made by the State Council to commute the death penalty for those who had been sentenced to such a grave and irrevocable punishment and hopes that the measure extends to all those who have been sentenced to death. However, it reiterates its observation to the effect that the continued presence on the law books of the death penalty as a punishment for a significant number of statutory offences whose wording is open-ended or ambiguous, combined with the use of criminal proceedings that do not offer sufficient fair trial guarantees inasmuch as they are carried out in a summary manner, without trustworthy defense counsel and with juries of doubtful independence and impartiality, are in violation of internationally recognized instruments and case law on protection of human rights.

### **3. Detention Conditions for Political Dissidents**[\[258\]](#)

187. In 2008 the Commission continued to receive information about prison conditions for political dissidents in Cuba, in particular on degrading treatment by prison authorities of persons branded as political opponents.[\[259\]](#) In that connection, the former political prisoner Pedro Pablo Álvarez made the following statement to the IACHR on October 28, 2008:

There are hundreds of political inmates who are currently being held in inhumane Cuban jails designed by the dictatorship in Havana to silence the truth. These men and women are cruelly and systematically being deprived of their most basic rights of liberty and the ability to freely express their thoughts, without being shown any respect for their personal dignity whatsoever.[\[260\]](#)

188. On October 21, 2006 the Commission resolved to convey to the State and to the petitioners' representatives,[\[261\]](#) to publish and to include in its Annual Report to the OAS General Assembly its Report on Merits No. 67/06 in Case 12.476 (Oscar Elías Biscet *et al.*) which deals with political dissidents who were arrested and tried in expedited summary proceedings during the so-called "Black Spring" operation in 2003, under Article 91[\[262\]](#) of the Cuban Criminal Code, and Law 88 on the Protection of Cuba's National Independence and Economy, for actions related to the exercise of such basic freedoms as freedom of thought, conscience, belief and speech, and the right of peaceful assembly and free association. The sentences ranged from 6 months to 28 years in prison. At a public hearing held by the IACHR, the former political prisoner Pedro Pablo Álvarez referred to the reasons why the victims in Case 12.476 were arrested and the way in which the trials to which they were subjected were conducted:

Everyone knows about the horrific offensive unleashed by the authorities in Havana against seventy-four men and one woman in the so-called Black Spring of 2003 when we were arrested, absurdly charged with associating with a foreign power for the purpose of overthrowing the government and the Revolution.

I would like to clarify that there was not even one single case among the seventy-five of us who were arrested during that operation against whom any evidence was presented of having ties or concrete plans to violently overthrow the government in Cuba, with the complicity of any foreign force or power that might have intentions of invading the island. All of it was a fallacy of the Cuban government. They are perfectly aware of the civil and pacific nature of the Opposition Movement in our country.

We were tried in expedited summary proceedings without being afforded the due legal process that are guarantees in a Legal State, as provided in so many UN and OAS Declarations, Pacts and/or Conventions. We were barely allowed to speak with our defense attorneys. In my particular case, I was only allowed to talk for ten minutes just moments before the trial began. The sentence requested by the prosecution in my case was life imprisonment and, in the end, I was sentenced to imprisonment for a term of twenty-five years. [\[263\]](#)

189. It should be noted that in Report 67/06, the IACHR concluded that the State of Cuba violated several articles of the American Declaration, including Articles I, II, IV, VI, XX, XXI, XXII, XXV, and XXVI to the detriment of the victims in the case; that it violated Article V with respect to eight of the victims; Article X to the detriment of 14 victims, and Article XVIII with regard to 73 victims. The Commission further concluded that the State did not violate Articles IX, XI and XVII of the American Declaration to the detriment of the victims.[\[264\]](#)



190. The IACHR also recommended that the State of Cuba:

1. Order the immediate and unconditional release of the victims in this case, overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt any measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
3. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.
4. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights .[\[265\]](#)

191. According to information received by the IACHR, by 2008, 20[\[266\]](#) victims in Case 12.476 have been released from prison under the Cuban "extrapenal licence" mechanism (parole)[\[267\]](#) on the grounds that they were seriously ill,[\[268\]](#) and Rafael Millet Leyva was released on December 19, 2006.

192. In February 2008, four victims in Case 12.476 received extrapenal licence: José Gabriel Ramón Castillo[\[269\]](#), Pedro Pablo Álvarez, Alejandro González Raga and Omar Pernet, subject to the condition they leave Cuba and go to Spain. The other victims are still in prison. The Commission considers that while the release was a positive step, the State has not complied in full with the recommendations contained in Report on Merits 67/06.

193. Under the American Declaration of the Rights and Duties of Man, all individuals have the right to humane treatment during the time they are in custody.[\[270\]](#) In several of its reports, the Commission has addressed the topic of detention conditions in Cuba.[\[271\]](#) The Commission is of the view that the State's responsibility with regard to the human treatment of persons held in its custody is not confined to the negative obligation to refrain from practicing torture or mistreating such persons. Since prisons are places where the state has total control over the life of the prisoners, its obligations towards them include the control and security measures required to preserve the life and protect the integrity of persons deprived of liberty.

194. According to information received by the IACHR,[\[272\]](#) the prison authorities – either directly or with the assistance of other convicts -- continue to mistreat political prisoners: they are subjected to beatings and attacks, kept in isolation for long periods, and they are not provided with the medical assistance needed for the illnesses they suffer. In addition, they are held in prisons far away from their home towns in order to make visiting difficult; family visits are restricted or denied; foodstuffs or medicines sent by their relatives are restricted or denied; and they are kept from meeting with officials from international human rights bodies. This leads to a serious deterioration in the physical and/or mental health of imprisoned dissidents.[\[273\]](#) At a public hearing held by the IACHR on October 28, 2008, the former political prisoner Pedro Pablo Álvarez said the following about the prison conditions:

We are kept in isolation for thirty-six days, each of us having to share with three other prisoners our four-person cells that were so small that the four of us could not stand up at the same time, lights were on day and night, a minimum ration of food, and subjected to nearly constant interrogation with threats and insults. Later the vast majority of the seventy-five of us were moved to prisons that were far away from our home towns. In my case, I was sent with another seven brothers in the struggle to a prison in Canaleta in the province of Ciego de Avila, some five hundred kilometers from Havana. We were subjected to solitary confinement for one year. The cells were very small – approximately 1.3 meters wide by 2.4 meters long, the head or the provision for physiological needs and bathing were all in the cell. The routine was very strict. Visiting time was every three months and conjugal visits were allowed every five months. The food was terrible, there was hardly any protein. Survival was thanks to the relatives who came every three months at great sacrifice to themselves to bring loads of food. In these cases our families suffer greater punishment because in Cuba, with the scarcity of food and with ever more precarious transportation options, and with the scant financial resources, this task is heroic. On top of all this, the harassment, the families of

financial resources, this task is heroic. On top of all this, the harassment the families of political prisoners are subjected to that, in many cases, includes losing jobs and the government does not allow them to exercise any independent work. In other words, they are refused work permits for self-employment.

Once this initial phase is over, the next one begins that is only worse: living in the outposts with all kinds of characters: murderers, rapists, unscrupulous thieves, crazy people and sex maniacs, etc., most of whom are manipulated by the prison authorities and, of course, the government security officers, too. They are sometimes used by security to punish or threaten an inmate.

For five years and seven months the torture and mistreatment – sometimes physical and at all times psychological – have been constant. It is not only visited upon the prisoners but also on the prisoners' families. For example, our children suffer discrimination and insults in school just because they are related to a political prisoner. Our wives and mothers, our fathers, our sisters and brothers and other relatives who take care of us are rejected by members of the community or in their workplaces. Today, some of these men are still being unfairly held in jail hundreds of kilometers from their families, under conditions that endanger their lives and their health. Some of them have chronic illnesses and are not provided medical care, and without medicine and with inadequate nutrition they are unable to get well. This situation is made worse in most of the cases because the prisoners are old and should not be jailed under such inhuman conditions and it becomes more difficult for them to tolerate such a cruel and inhumane prison system.[\[274\]](#)

195. Several of the victims in Case 12.476 have health problems that have emerged or been aggravated during their detention, without the provision of adequate medical care.[\[275\]](#) The IACHR received information on the deterioration of the health in jail of six of the nine trade union members[\[276\]](#) convicted in 2003 for their participation in organizations of the independent Cuban workers movement: Horacio Julio Piña Borrego, Victor Rolando Arroyo Carmona, Adolfo Fernández Sainz, Alfredo Felipe Fuentes, Luis Milán Fernández and Blas Giraldo Reyes.[\[277\]](#)

196. With regard to the health of Blas Giraldo Reyes, according to the information received, he had several health problems, most notably arterial hypertension, hemorrhoids, diabetes, degenerative osteoarthritis with hardening of cartilage, chronic indigestion, kidney and liver problems.[\[278\]](#) The IACHR was informed that Blas Giraldo Reyes Rodríguez was checked into the provincial Camilo Cienfuegos hospital and was later transferred to the prison infirmary and is currently at the outpost.[\[279\]](#)

197. The Commission has previously expressed its concern regarding the large number of convicts who suffer from chronic visual, renal, cardiac and pulmonary ailments and are not given appropriate medical attention, including several prisoners of advanced years. Moreover, the IACHR is aware that the prison authorities prevent the relatives of imprisoned political dissidents from supplying them with medicines needed to treat their illnesses and that are not provided by the Government.

198. The Commission reiterates that the State has not observed the United Nations' Standard Minimum Rules for the Treatment of Prisoners[\[280\]](#) and the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.[\[281\]](#)

199. In 2008 the Commission has continued to receive information on the grave conditions of arrest suffered by the victims in Case 12.476, especially in the case of Normando Hernández González, director of the *Colegio de Periodistas Independientes* in Camaguey and Jorge Luis García Paneque, director of the agency *Libertad*.

200. In the case of Normando Hernández González, according to information received in 2008, he was transferred to the "Carlos J. Finlay" Military Hospital in Havana where he received medical treatment due to the several health complications he had experienced while imprisoned in an isolation cell at prison Kilo 7.[\[282\]](#) With regard to Jorge Luis García Paneque, the Commission was informed that the prison authorities had continued to deny Mr. García Paneque access to the medicines he needed for his deteriorated health.

201. The Commission has also received reports that Iván Hernández Carrillo from the agency *Patria* is suffering from chronic illnesses that have worsened due to lack of adequate medical care. In July 2008, journalist Juan Carlos Herrera Acosta started a hunger strike to demand better jail conditions: he covered his mouth shut in protest. According to information received, his health has also

conditions, he sewed his mouth shut in protest. According to information received, his health has also deteriorated since the time of his arrest.[\[283\]](#)

202. The Commission reiterates to the State of Cuba its recommendation that it immediately release the victims in Case 12.476.

203. In addition, with reference to prisoners of conscience not included in the group of the dissidents detained during the so-called "Black Spring" operation, on February 28, 2007 the Commission granted precautionary measures to protect the life and person of Mr. Francisco Pastor Chaviano, who suffered serious injuries to his face and head as a result of beatings meted out by prison guards.[\[284\]](#) At the public hearing on "The Situation of Jails in Cuba"[\[285\]](#) held on July 20, 2007 during the IACHR's 128<sup>th</sup> regular session, one of Francisco Pastor Chaviano's daughters gave testimony on her father's situation. On August 10, 2007 the Commission was told that Francisco Pastor Chaviano had been released from prison. The IACHR appreciated the decision by the Cuban Government to release Francisco Pastor Chaviano. Nonetheless, the Commission notes that the recourse of release of prisoners for humanitarian reasons continues to be implemented on a discretionary basis without following clear, objective, egalitarian criteria imposed by independent judges.[\[286\]](#)

204. At the same time, the IACHR notes that Mr. Jorge Luis García Pérez Antúnez, imprisoned in 1990, was released from jail on April 22, 2007 upon completion of his entire prison sentence. The IACHR was told that Mr. García Pérez Antúnez suffered frequent beatings at the hands of other inmates and that the authorities had threatened that he would never leave prison alive; for that reason, on November 21, 2006 it granted precautionary measures on his behalf.[\[287\]](#) On July 20, 2008 Mr. García Pérez Antúnez was arrested violently by the political police force in the city of Matanzas. When he was arrested he was with his wife, Iris Pérez Aguilera, and other opponents of the Cuban government, participating in a public protest demonstration against the arrest of activist Mario Pérez Aguilera.

205. At the same time, the Commission reiterates its concern at what are known as "acts of repudiation" carried out against political dissidents, consisting of harassment and intimidation carried out by members of groups of government supporters such as the Committee for the Defense of the Revolution and the People's Rapid Response Brigade.[\[288\]](#) These acts ignore the human dignity and liberty owed to all persons, irrespective of their political ideas, and they are in breach of the American Declaration of the Rights and Duties of Man.

206. The Commission received information on the mistreatment that relatives of political dissidents suffer for the mere fact of being related to them. As an example, the Commission was told that the children of political prisoners are discriminated against and insulted at school. Their wives, mothers, fathers, sisters and brothers, and other relatives who take care of the political prisoners are rejected by members of the community or in their workplaces.[\[289\]](#)

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[\[204\]](#) I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paragraphs 43-46.

[\[205\]](#) IACHR Statute, Article 20(a).

[\[206\]](#) The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of Foreign Affairs Ministers to serve as the Advisory Body in applying the Inter-American Reciprocal Assistance Treaty, Punta del Este, Uruguay, January 22-31, 1962, Meeting Documents", Organization of American States, OAS/Ser.F/II.8, doc. 68, pp 17-19.

[\[207\]](#) IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 3-7. See also IACHR Annual Report 2001, Chapter IV, Cuba, paragraphs 3-7. IACHR, Report on the Status of Human Rights in Cuba, Seventh Report, 1983, paragraphs 16-46.

[\[208\]](#) IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraph 7.a.

[\[209\]](#) See IACHR, Special Reports for the following years: 1962; 1963; 1967; 1970; 1976; 1983.

[\[210\]](#) See: IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007.

[211] See: IACHR, Report on Merits No. 47/96, Case 11.436, Remolcador "13 de marzo", October 16, 1996; IACHR, Report on Merits No. 86/99, Case 11.589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña and Pablo Morales, September 29, 1999; IACHR, Admissibility Report No. 56/04, Petition 12.127, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR Admissibility Report No. 57/04, Petitions 771/03 and 841/03, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Admissibility Report No. 58/04, Petition 844/03, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Report on Merits No. 67/06, Case 12.476, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Report on Merits No. 68/06, Case 12.477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

[212] When notified of an IACHR decision, the Cuban State does not respond or sends a note stating that the Inter-American Commission on Human Rights does not have jurisdiction, and the Organization of American States does not have the moral authority to analyze Cuban matters.

[213] See video of the public hearing on "Situation of imprisoned union members in Cuba" held on October 28, 2008 at: <http://www.cidh.org/audiencias/seleccionar.aspx>.

[214] See IACHR, Six Report on the Situation of Political Prisoners in Cuba. OEA/Ser.L/V/II.48 Doc.7, Section A. December 14, 1979. Available at <http://cidh.org/countryrep/Cuba79eng/intro.htm>.

[215] On October 30, 2007 the United Nations General Assembly passed resolution A/RES/62/3 on "The Need to End the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba." See [www.un.org](http://www.un.org).

[216] United Nations and the Ministry for Foreign Investment and Economic Cooperation: Action Plan for the Country Program between the Government of Cuba and the UNDP 2008-2012. [http://www.undp.org/cu/documentos/CPAP\\_Cuba\\_2008\\_2012\\_PNUD.pdf](http://www.undp.org/cu/documentos/CPAP_Cuba_2008_2012_PNUD.pdf).

[217] United Nations Population Fund, Status of the World Population 2008.

[http://www.unfpa.org/swp/2008/includes/images/odf\\_swp/notes\\_indicators\\_full.pdf](http://www.unfpa.org/swp/2008/includes/images/odf_swp/notes_indicators_full.pdf)

[218] United Nations Population Fund, Status of the World Population 2008.

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[http://www.mex.ops-oms.org/documentos/cit/dia\\_mujer/GIG%20y%20mortalidad%20materna.pdf](http://www.mex.ops-oms.org/documentos/cit/dia_mujer/GIG%20y%20mortalidad%20materna.pdf).

[219] United Nations and the Ministry for Foreign Investment and Economic Cooperation: Action Plan for the Country Program between the Government of Cuba and the UNDP 2008-2012.

[http://www.undp.org/cu/documentos/CPAP\\_Cuba\\_2008\\_2012\\_PNUD.pdf](http://www.undp.org/cu/documentos/CPAP_Cuba_2008_2012_PNUD.pdf).

[220] Cuba – Conclusions of the Council. The Council has adopted the following conclusions: "The Council takes note of the changes made to date by the Cuban Government. The Council supports the changes as they pertain to liberalization in Cuba and encourages the Government to make them.

The Council has made a call to the Cuban Government to effectively improve human rights by, among others, granting unconditional release to all political prisoners, including those who were detained and convicted in 2003. This continues to be a fundamental priority for the EU. It also makes a call to the Cuban Government to provide international humanitarian organizations with access to Cuban prisons. The Council has also made a call to the Cuban authorities to ratify and apply the International Pact on Civil and Political Rights and the International Pact on Economic, Social and Cultural Rights that were signed recently, and has again urged the Cuban Government to fulfill its commitment to human rights that it showed by signed those human rights Pacts.

The Council has confirmed its renewed commitment to the Common Position of 1996 and the relevance thereof; in addition, it has reaffirmed its determination to continue its dialog with the Cuban authorities, as well as with representatives of civil society and the democratic opposition, in accordance with the policies of the EU, in order to promote respect for human rights and real progress toward a pluralistic democracy. The Council has emphasized that the EU will continue to offer practical support to all sectors of society for peaceful change in Cuba. The EU has redoubled its call to the Cuban Government to grant freedom of information and expression, including Internet access, and has invited the Cuban Government to cooperate in this matter.

The EU reiterates the right of Cuban citizens to make completely independent decisions about their future and remains available to contribute positively to the development of all sectors of Cuban society, as well as through cooperation instruments for development.

As was stated in the Council's conclusions on June 18, 2007, the EU continues to be willing to resume a global and open dialog with Cuban authorities on all matters of mutual interest. Since June 2007 there have been bilateral ministry level debates between the EU and Cuba on the possibility of initiating such a dialog. This dialog process should include all potential spheres of cooperation, including the political, human rights, economic, scientific, and cultural sectors, and it should be reciprocal, unconditional, non-discriminatory, and aimed at obtaining results. Within the framework of this dialog, the EU shall express to the Cuban Government its point of view on democracy, universal human rights, and fundamental liberties. The Council has reaffirmed that its policy for EU contacts with the democratic opposition continues to be valid. During high level visits, they should always broach topics related to human rights; if appropriate, part of the visits will include meetings with the democratic opposition.

The Council has, therefore, agreed to continue the aforementioned global political dialog with the Cuban Government. In this context, the Council has agreed to lift the 2003 measures that have already been suspended, in order to facilitate the political dialog process and to allow full use of the Common Position of 1996 instruments.

On the occasion of the annual review of the Common Position, the Council shall proceed in June 2009 to evaluate its relationships with Cuba, including the efficacy of the political dialog process. After that date, the dialog shall continue if the Council decides that it has been effective, taking into particular account the elements that are included in the second paragraph of these conclusions." See: EUROPEAN UNION COUNCIL/10590/08 (Press 169)/ (OR. En)/ PRESS RELEASE/ Session No. 2881 of the Council/ Agriculture and Fishing/ Luxemburg, June 23 and 24, 2008.

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/es/agricult/101771.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/es/agricult/101771.pdf)

[221] I/A Court H.R. *Case of Castañeda-Gutman*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184.

[222] I/A Court H.R. *Case of Castañeda-Gutman*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 148.

[223] Article 27 (Suspension of Guarantees), paragraph 2, of the American Convention on Human Rights provides, "The foregoing provision does not authorize any suspension of the following articles: [...], and 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights." See also, I/A Court H.R., *Case of Castañeda-Gutman*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184 and I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34; and I/A Court H. R., *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 191.

[224] In Chapter 9, "White Book 2007", published on the official web page of the Cuban Ministry of Foreign Affairs

[http://www.cubaminrex.cu/Derechos%20Humanos/Articulos/ConsejoDerechosHumanos/Libro\\_Blanco/inicio.html](http://www.cubaminrex.cu/Derechos%20Humanos/Articulos/ConsejoDerechosHumanos/Libro_Blanco/inicio.html)

[225] See Chapter 9, "White Book 2007", published on the official web page of the Cuban Ministry of Foreign Affairs, *idem*.

[226] Article 3 of the Inter-American Democratic Charter provides that essential elements of representative democracy are the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, [and] the pluralistic system of political parties and organizations.

[227] American Declaration, Article XVIII.

[228] American Declaration, Article XXV.

[229] American Declaration, Article XXVI.

[230] American Declaration, Article I.

[231] American Declaration, Article XXV.

[232] American Declaration, Article XXV.

[233] American Declaration, Article XXVI.

[234] I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 145; *Case of Herrera Ulloa*, judgement of July 2, 2004. Series C No. 107, para. 171.

[235] I/A Court H.R. *Case of Apitz-Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.

[236] I/A Court H.R. *Case of Apitz-Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

[237] I/A Court H.R. *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 146.

[238] ECHR, *Piersack v. Belgium*, Judgment of 1 October 1982, Series A, Nº 5.

[239] Title X of Law Nº 5 (Law of Criminal Process) passed by the National Assembly of People's Power of the Republic of Cuba on August 13, 1967, sets out the provisions governing the so-called expedited summary proceeding:

Article 479: Should it be advisable owing to exceptional circumstances, the Attorney General may petition the President of the Supreme People's Court and the latter order that an expedited summary proceeding be used to prosecute criminal offenses under the jurisdiction of any of the courts of justice, except for those that are under the jurisdiction of the Municipal People's Tribunals.

Article 480: In expedited summary proceedings the terms set forth in this law for processing preliminary hearings, the oral trial, and appeals are reduced to the extent that the competent court considers necessary.

[240] IACHR, Report on Merits No. 68/06, Case 12.477, Lorenzo Enrique Copello *et al.*, October 21, 2006.

[241] IACHR, Report on Merits No. 68/06, Case 12.477, Lorenzo Enrique Copello *et al.*, October 21, 2006, paragraphs 87-92.

[242] Article 98: 1. Anyone who takes up arms in order to accomplish by force any of the following aims shall be liable to a penalty of 10 to 20 years of imprisonment or **death**: a) to prevent, albeit temporarily, the superior organs of the State and Government from carrying out any of their functions; b) to change the economic, political, and social regime of the socialist state; c) to change in any way the Constitution or the system of government recognized therein.

2. Anyone who engages in any act to promote armed insurrection, shall be liable to the same penalty if it come about; if not, the penalty shall be four to 10 years of imprisonment.

[243] Article 120: 1. A penalty of 10 to 20 years of imprisonment or **death** shall be imposed on any persons who, in order to bring about or maintain the domination by one racial group of another, and in pursuit of policies of extermination, segregation, and racial discrimination: a) deny the members of the latter group the right to life and freedom through murder; gross assault on their physical or psychological integrity, liberty, or dignity; torture or cruel, inhuman, or degrading punishment or treatment; arbitrary detention and unlawful imprisonment; b) impose on the group any measures of a legislative or other nature designed to impede their participation in the political, social, economic, and cultural life of the country and to deliberately create conditions that obstruct their full development, refusing their members fundamental rights and liberties; c) divide the population according to racial criteria, creating

reservations and gnettos, prohibiting marriage between members of different racial groups, and expropriating their property; ch) exploiting the members of the group as a labor force, in particular by subjecting them to forced labor.

1. 2. If the act consists of persecuting or otherwise harassing organizations and persons who oppose or combat apartheid, the penalty shall be 10 to 20 years of imprisonment.

2. 3. Liability for the acts provided in the preceding paragraphs is enforceable irrespective of the country in which the culprits act or reside and its scope, regardless of the motive, includes private individuals, members of organizations and institutions, and representatives of the State.

[244] Cuban Criminal Code, Article 190.

[245] Cuban Criminal Code, Article 263.

[246] Cuban Criminal Code, Article 298.

[247] Cuban Criminal Code, Article 299.

[248] Cuban Criminal Code, Article 310.

[249] Cuban Criminal Code, Article 327.

[250] According to the State of Cuba, the death penalty is imposed in exceptional circumstances and only for the most serious crimes. The Cuban Criminal Code provides as follows:

Article 29.1. The death penalty is exceptional in nature and shall only be imposed by the court in the most serious cases that involve offenses for which it is provided.

2. The death penalty shall not be imposed on persons under 20 years of age or on women who were pregnant when they committed the crime, or who are pregnant at the time of sentence is passed.

3. The death penalty is carried out by firing squad.

[251] Cf. *Restrictions to the Death Penalty* (Arts. 4(2) and 4(4) American Convention on Human Rights), *supra* note 7.

[252] Cf. *Case of Hilaire, Constantine and Benjamin et al. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 106, and *Case of Raxcacó Reyes, supra* note 37, para. 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra* note 7, para. 55.

[253] Cf. *Case of Hilaire, Constantine and Benjamin et al., supra* note 42, paras. 103, 106 and 108, and *Case of Raxcacó Reyes, supra* note 37, para. 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra* note 7, para. 55.

[254] I/A Court H.R., *Case of Boyce et al. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, par. 50. Cf. I/A Court H.R., *Case of Fermín Ramírez, supra* note 37, para. 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra* note 7, para. 55, and *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 135.

[255] Statement of Elizardo Sánchez, president of the Cuban Commission on Human Rights and National Reconciliation. See <http://ipsnoticias.net/nota.asp?idnews=88250>

[256] See: Speech of the Second Secretary of the Central Committee of the Cuban Communist Party, Raúl Castro Ruz, conclusions of the VI Plenary of the Central Committee of the CCP, which took place in the Palace of the Revolution, Havana, April 28, 2008. <http://www.cubaminrex.cu/archivo/Raul/2008-04-28.htm>.

[257] Cuban President Raul Castro added in this regard: "What they will receive, as applicable, is life imprisonment except for those that committed their crime prior to the establishment of this punishment in the Criminal Code, to whom will apply a sentence of 30 years in prison. Some convicts spent several years waiting for the State Council to make their pronouncement.

This situation has been caused primarily by the policy that has been in effect since 2000 of not imposing any punishment of this type that was interrupted in April 2003<sup>16</sup> [sic] to put an immediate stop to the wave of over 30 attempts and plans to hijack planes and boats that were encouraged by United States policy during the war they recently initiated in Iraq.

Most of the convicts committed the most serious of common crimes, essentially, against life. They are crimes for which, if we were to re-try them, it would be difficult not to impose the same sentence. We also know that the majority opinion of our people in these cases is in favor of keeping it.

We have three defendants whose cases are still awaiting appeal before the People's Supreme Court that will be heard soon.

One Salvadoran and one Guatemalan, for terrorist acts in the bombing of hotels in 1997, one of which caused the death of Italian tourist Fabio di Celmo, both financed and orchestrated by the infamous criminal Luis Posada Carriles, who, today, walks free in the streets of Miami.

We also have the case of a Cuban from the United States, who murdered comrade Arcilio Rodríguez García during the infiltration of an armed terrorist commando in the Caibarien zone.

I can only state that among our prerogatives the final decision of the State Council will not contradict the aforementioned policy. I am talking about the three cases mentioned earlier. [...]

It does not mean that we should eliminate capital punishment from the Criminal Code. On several occasions we have discussed the subject and the prevailing criterion has always been that under current circumstances we cannot disarm ourselves given an empire that does not cease to harass and assault us. [...]

Even though our laws provide for the death penalty, because of the specific reasons that have been explained and fully justified, Cuba understands and respects the arguments of the international movement in favor of its abolition as meritorious. That is why our country has not voted against such initiatives at the United Nations.

abolishment of moratorium. That is why our country has not voted against such initiatives at the United Nations.

See: Speech of the Second Secretary of the Central Committee of the Cuban Communist Party, Raúl Castro Ruz, conclusions of the VI Plenary of the Central Committee of the CCP, which took place in the Palace of the Revolution, Havana, April 28, 2008. <http://www.cubaminrex.cu/archivo/Raul/2008-04-28.htm>

[258] The Government of Cuba denies the term "dissidents" in reference to the victims of Case 12.476. In the report entitled "White Book 2007" published on the official web page of the Cuban Ministry of Foreign Affairs, it says: "The campaign that persists even now, in which several governments that are customers of the empire have cynically, actively and complicitly joined, has utilized sophisticated methods of false information developed by the Nazi-fascist services, repeatedly referring falsely to the mercenaries who were justly punished as "dissidents", "peaceful political opposition", "Human Rights Defenders" or "independent journalists, librarians and unionists." The intent is to make it look like the mercenaries had been punished "arbitrarily and unfairly" for the simple act of "peacefully exercising their rights of freedom of expression, opinion and association." See "White Book 2007" as cited.

[259] Statement of Pedro Pablo Álvarez at the public hearing before the IACHR on the "Situation of imprisoned union members in Cuba," held on October 28, 2008. Available at: <http://www.cidh.org/audiencias/seleccionar.aspx>.

[260] Statement of Pedro Pablo Álvarez at the public hearing before the IACHR on the "Situation of imprisoned union members in Cuba," held on October 28, 2008. Available at: <http://www.cidh.org/audiencias/seleccionar.aspx>.

[261] The Cuban State and the petitioners' representatives were notified of the Report on Merits No. 67/06 on November 1, 2006. See IACHR, Press Release No. 40/06, "IACHR announces two reports on Human Rights violations in Cuba" dated November 1, 2006.

[262] Section 91 of the Cuban Criminal Code: Any person who, in the interest of a foreign Government, commits an act for the purpose of diminishing Cuba's governmental independence or territorial integrity, shall be subject to punishment of no less than ten to twenty years of imprisonment or death.

[263] Statement of Pedro Pablo Álvarez at the public hearing before the IACHR on the "Situation of imprisoned union members in Cuba," held on October 28, 2008. Available at: <http://www.cidh.org/audiencias/seleccionar.aspx>.

[264] See complete report at <http://www.cidh.org>.

[265] See complete report at: <http://www.cidh.org>.

[266] In 2004, the following persons were granted extrapenal licence: Osvaldo Alfonso, Margarito Broche Espinosa, Carmelo Díaz Fernández, Oscar Espinosa Chepe, Orlando Fundadora Álvarez, Edel José García Díaz, Marcelo López Bañobre, Roberto de Miranda, Jorge Olivera Castillo, Raúl Rivero Castañeda, Martha Beatriz Roque Cabello, Julio Valdés Guevara, Miguel Valdés Tamayo (died January 10, 2007), Manuel Vásquez Portal. In 2005, Mario Enrique Mayo Hernández and Héctor Palacio Ruiz were granted extrapenal licence. In 2008, José Gabriel Ramón Castillo, Pedro Pablo Alvarez, Alejandro González Raga and Omar Pernet were granted extrapenal licence.

[267] The Criminal Code of Cuba provides: "Section 31.2: The sentencing court may grant persons sentenced to prison extra-penal license for the duration deemed necessary, when there is good reason and subject to the filing of an application. It may also be granted by the Ministry of the Interior, in extraordinary cases, provided notice is given to the President of the People's Supreme Court." "Section 31.4: The duration of extra-penal licenses and of furloughs from the detention facility shall be credited to the duration of the prison sentence provided that the recipient of the benefit, during the time the license or furlough is in force, displays good behavior. The reductions of sentence granted to the convict during his or her service of the sentence shall also be credited to its duration."

[268] See: Video of public hearing on "Case 12.476 Oscar Elías Biscet *et al.*, Cuba (follow-up of recommendations)" held on October 10, 2007, cited above. According to the State of Cuba, for "strictly humanitarian" reasons, 16 persons were granted extra-penal license. See: Chapter 5, "White Book 2007," published on the official web page of the Cuban Ministry of Foreign Affairs, cited above.

[269] On November 7, 2006 the IACHR received a request for precautionary measures lodged on behalf of José Gabriel Ramón Castillo. According to the request, he was at imminent risk, he was not being given food or medical attention. The request also reported that he was being physically mistreated and he was not being allowed to receive medications that his family brought for him. On November 22, 2006 the IACHR asked the State to release him and to take any protective measures necessary until his release. IACHR, *Annual Report 2006*, Chapter IV, paragraph 67.

[270] American Declaration, Article XXV.

[271] IACHR, *Annual Report 1995*, Chapter V, paragraph 71; IACHR, *Annual Report 1994*, Chapter IV, page 168; IACHR, *Annual Report 2004*, Chapter IV, paragraphs 59-66; IACHR, *Annual Report 2005*, Chapter IV, paragraphs 76-81; IACHR, *Annual Report 2006*, Chapter IV, paragraphs 65-70.

[272] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR during a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; *The New Herald*, published on August 21, 2008.

[273] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; *The New Herald*, published on August 21, 2008.

[274] Statement of Pedro Pablo Álvarez at the public hearing before the IACHR on the "Situation of imprisoned union members in Cuba," held on October 28, 2008. Available at: <http://www.cidh.org/audiencias/seleccionar.aspx>.

[275] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; *The New Herald*, published on August 21, 2008.

[276] The trade unionists tried and convicted in 2003 are: Pedro Pablo Álvarez Ramos, Horacio Julio Piña Borrego, Víctor Rolando Arroyo Carmona, Adolfo Fernández Sainz, Alfredo Felipe Fuentes, Luis Milán Fernández, Blas Giraldo Reyes Rodríguez, Carmelo Díaz Fernández and Oscar Espinosa Chepe. Pedro Pablo Álvarez Ramos, Carmelo

Díaz Fernández and Óscar Espinosa Chepe were the beneficiaries of medical parole. See the video of the public hearing on "The situation of union members deprived of liberty in Cuba" held on July 20, 2007, cited above.

[277] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; The New Herald, published on August 21, 2008.

[278] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008. The New Herald, published on August 21, 2008.

[279] Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008.

[280] The Inter-American Commission has indicated on numerous occasions that the United Nations' Standard Minimum Rules for the Treatment of Prisoners can be understood to mean adequate references to minimum international standards for the humane treatment of inmates, including the basic standards of housing, hygiene, medical treatment and physical exercise. See IACHR, report No. 27/01, case 12.183, Jamaica, paragraph 133; report No. 47/01, case No. 12.028, Grenada, paragraph 127; report No. 48/01, case 12.067, Bahamas, paragraph 195; report No. 38/00, case No. 11.743, Grenada, paragraph 136.

[281] IACHR, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

[282] Human Rights First. Human Rights Defenders Cases-Cuba. [http://www.humanrightsfirst.org/defenders/hrd\\_cuba/hrd\\_cuba\\_gonzalez.htm](http://www.humanrightsfirst.org/defenders/hrd_cuba/hrd_cuba_gonzalez.htm).

[283] RWB. "On the Eve of the Legislative Session, Reporters Without Borders Recalls the Dramatic Fate of Incarcerated Journalists." Published on January 17, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=25094](http://www.rsf.org/article.php3?id_article=25094). PEN/IFEX. "Journalist Normando Hernández González Removed from Hospital, Returned to Prison, Held in Complete Isolation in Life-Threatening Conditions". Published on May 20, 2008. E-mail received from the Office of the Special Rapporteur for freedom of Expression. CPJ. "The CPJ is Concerned for the Health of an Imprisoned Cuban Journalist on Hunger Strike." Published on July 30, 2008. Available at: <http://cpj.org/2008/07/cpj-concerned-about-health-of-imprisoned-cuban-jou.php>. RWB. "Reporters Without Borders Concerned for the Health of a Journalist Who Has Been in Prison for Five Years." Published on August 1, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=28038](http://www.rsf.org/article.php3?id_article=28038).

[284] Precautionary measures number 19-07 on behalf of Francisco Pastor Chaviano were granted by the IACHR on February 28, 2007. According to information received by the IACHR, the beneficiary was the target of serious injury to his face and head due to attacks and beatings at the hands of prison guards. In addition, the IACHR was informed that Mr. Chaviano suffers from a duodenal ulcer, arthritis, and respiratory problems, as a direct result of the detention conditions in which he is being held. In addition, in February 2007, the beneficiary's wife announced that he had been diagnosed with a 70% obstruction of the arteries and ischemia which, if not addressed through surgery could, in conjunction with his aggressive pulmonary tumor, lead to his death in prison.

[285] See: video of public hearing on "The situation of union members deprived of liberty in Cuba" held on July 20, 2007, cited above.

[286] IACHR, Annual Report 2007, Chapter IV, Cuba, paragraph 118.

[287] Precautionary measures number 306-06 on behalf of Jorge Luis García Pérez Antúnez were granted by the IACHR on November 21, 2006.

[288] The Committees for Defense of the Revolution emerged in 1960 and constitute the largest mass organization in Cuba. The People's Rapid Response Brigades were created in 1991. The task of both is to collectively oversee activities deemed to be counter-revolutionary and to confront any supposed sign of opposition to the government. See <http://www.amnesty.org/en/library/asset/AMR25/001/2006/en/dom-AMR250012006es.pdf>, [http://www.vanguardia.co.cu/index.php?tpl=design/secciones/lectura/historia.tpl.html&newsid\\_obj\\_id=8571](http://www.vanguardia.co.cu/index.php?tpl=design/secciones/lectura/historia.tpl.html&newsid_obj_id=8571), [http://www.tiempo21.cu/hipertextos/comites\\_defensa\\_revolucion.htm](http://www.tiempo21.cu/hipertextos/comites_defensa_revolucion.htm).

[289] Testimony of Pedro Pablo Álvarez before the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; Latin American Commission for Human Rights and Freedoms for Workers and Peoples. Information presented to the IACHR in a public hearing on "The situation of union members deprived of liberty in Cuba" held on October 28, 2008; The New Herald, published on August 21, 2008.





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## IACHR - ANNUAL REPORT 2008

### CHAPTER IV - HUMAN RIGHTS DEVELOPMENTS IN THE REGION

#### HAITI

##### I. INTRODUCTION

247. The Commission decided to include a report on the situation of human rights in Haiti in its 2008 Annual Report pursuant to the persistence of temporary and structural situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention.

248. In its recent reports on Haiti,[\[348\]](#) the Commission has examined the human rights situation generally and has consistently expressed its concern for the grave situation of human rights and, in particular, the loss of civilian life due to armed gang violence, the inability of the State to guarantee public security, the lack of accountability for perpetrators, the absence of an effective legal remedy for victims, excessive periods of pretrial detention, poor prison conditions, and the incapacity of the State to provide basic social services to the majority of the population. The Commission has consistently emphasized the impact of such conditions on vulnerable groups, especially women, children, human rights defenders, and journalists.

249. Haiti was characterized in 2008 by significant political instability, and suffered a series of natural disasters that were devastating, all of which compounded Haiti's already difficult human rights challenges. Haiti experienced five months of political instability following the removal by the Senate of then Prime Minister Jacques Edouard Alexis from office. This decision occurred, in part, as a result of public demonstrations in several cities to protest the increase in the price of basic food staples, especially rice. On September 5, the legislature approved the appointment of Michelle Pierre-Louis as Prime Minister. Although the phase of political instability came to a close, the government was charged with taking immediate and long-term measures to address the food shortage and with responding to the humanitarian crisis caused by the four consecutive hurricanes that swept through Haiti between August and September.

250. The four hurricanes – Fay, Gustav, Hanna, and Ike – caused devastation in the country, especially in the town of Gonaïves and the South/South-East region, and significantly exacerbated the already grave human rights problems. Many schools were destroyed by the hurricanes and those left standing became temporary shelters for Haitians made homeless by the hurricanes. Authorities declared that the hurricanes caused 326 deaths, 50 missing, 286 injured and 850,000 homeless.[\[349\]](#) The United Nations Stabilization Mission in Haiti (MINUSTAH) estimated the damage to be at least 1 billion USD.[\[350\]](#) Areas such as Saint Marc and Gonaïves were isolated by the destruction of roads and bridges. Police stations, courts and jails, especially in Gonaïves,

were damaged. In mid-October, there were still 10,000 people living on roofs, in tents or in fragile shacks in Gonaïves. Given Haiti's limited resources, the impact of the hurricanes presented an additional challenge for the State to meet the immediate needs of the population.

251. Haiti's social and economic situation remains extremely fragile, creating a serious risk to citizen security, and further obstructing Haitians' access to an effective administration of justice. The impact of political instability coupled with the domestic food crisis and the severe damage caused by the hurricanes presented Haiti with new challenges and worsened social and economic conditions. For example, the Commission received numerous accounts from people living in and outside of Port-au-Prince that due to the food crisis, more and more families were unable to afford to send their children to school.[\[351\]](#)

252. Although the public security situation improved slightly from that of 2007, 2008 was characterized by periods of heavy violence and numerous acts of kidnapping. At the same time, the National Police continued to function with limited resources and state institutions remained weak, resource deficient, and in need of structural reforms and both immediate and long-term assistance. The Commission remains concerned as well by the profound deficiencies in the administration of justice.

253. During 2008, the Commission continued to closely monitor the human rights situation in Haiti, paying particular attention to the State's efforts to provide adequate public security and specific measures to strengthen and reform the Haitian National Police. The Commission also closely observed developments in the design and implementation of plans to strengthen and reform State entities and institutions charged with the administration of justice and the rule of law.

254. The Commission has prepared this section of Chapter IV of its 2008 Annual Report in accordance with Article 57(1)(h) of its Rules of Procedure and has based its analysis on information obtained during its on-site visits and session hearings described below as well as on other reliable, publicly-available sources. On January 13, 2009, the Commission sent the State a draft copy of the present section of Chapter IV, in accordance Article 57(1)(h), and asked it to submit its observations on the section within thirty days. The State did not submit observations within that time limit.

255. The Commission's primary sources of information for its assessment include a working visit in May 2008 by members of the Executive Secretariat to obtain information on children in Haiti and to conduct a training seminar with State entities and civil society members on the rights of the child. Furthermore, the Commission held several hearings on Haiti during its 131<sup>st</sup> and 133<sup>rd</sup> regular periods of sessions, where advocates and representatives of the State shared information about the current conditions and developments in the country, including the situation of the Haitian justice system, impunity, and violence against women and girls.

## **II. SUMMARY OF KEY EVENTS IN HAITI DURING 2008 RELATIVE TO HUMAN RIGHTS**

256. As noted above. Haiti experienced renewed instability when the Senate issued a vote of no confidence in then Prime Minister Jacques Edouard Alexis due to claims that his government failed to adopt measures to address the rising cost of food staples[\[352\]](#) and failed to prevent ensuing violence from erupting across the country. As a result, between the months of April and August, the post of Prime Minister remained vacant despite President Preval's numerous proposals for candidates for Prime Minister. Due to this political impasse, the Government was largely prevented from pursuing its normal course of business. Specifically, a conference of high-level donors was postponed and a number of aid projects were suspended. Furthermore, key bills, such as the draft 2008 revised budget, could not be submitted to parliament.[\[353\]](#) The special legislative commissions charged with reviewing the qualifications of candidates eventually approved Ms. Michelle Pierre-Louis' and her *politique generale* or statement of government policy, which emphasized national economic growth and poverty-reduction. On September 5, 2008, she was appointed Prime Minister after receiving a majority vote in both legislative chambers

257. The four hurricanes that struck Haiti between August and September caused severe flooding, death, injuries, homelessness and destruction, including widespread crop damage. As a result, the government declared a state of emergency on September 9. On September 12, 150,000 persons were reported living in temporary shelters.<sup>[354]</sup> As many schools were being used as temporary shelters for the homeless, the start of classes was postponed from September to October. The hurricanes exacerbated the food shortage causing food prices to rise by 70%.<sup>[355]</sup>

258. The Commission notes that the situation in Haiti, namely the social and economic conditions continued to deteriorate during 2008, especially with the rise in global energy and food prices. Reports indicate that the number of Haitians affected by food insecurity rose from 500,000 in 2007 to 2.5 million in 2008. A recent study shows that Haiti's food comes from local production (43%), international food aid (5%), and food imports (52%).<sup>[356]</sup> More than 80% of the rice consumed in Haiti is imported and 100% of fuel is imported.<sup>[357]</sup> In addition, 2008 was marked by Haiti's trade deficit increasing, inflation doubling, and the value of the gourde weakening by 10%.

259. Overall, the security and human rights situation in 2008 remained a serious concern for the Commission due to sustained levels of deadly violence. This year was marked by numerous cases of kidnapping, rape, murder, and abusive treatment by gangs, similar to those reported in 2007. While the Haitian National Police, with the support of MINUSTAH, continued its efforts to combat violent crime and to apprehend suspected criminals, the judiciary was not able to respond effectively or swiftly due to a lack of resources, support, and sufficient planning on how to handle the influx of persons in the criminal justice system. While ongoing measures to strengthen the National Police are necessary, the sustainability of improvements in the security situation will depend on the judiciary's ability to respond effectively.

260. Over the past year, developments at the national level have also been accompanied by the presence of MINUSTAH, which was initially authorized for six months beginning on June 1, 2004, and whose mandate has since been extended on numerous occasions, including most recently an extension effective until October 15, 2009.<sup>[358]</sup> Recently, a United Nations Resolution requested MINUSTAH to improve efforts in the implementation of the National Police Reform Plan, and to continue providing technical support to the Government to reform its rule of law institutions. The resolution also announced the deployment of 16 maritime patrol boats to support Haiti's Coast Guard and called on MINUSTAH to provide technical expertise to support Government efforts to pursue an integrated border management program. In addition, the resolution called for MINUSTAH forces of up to 7,060 troops of all ranks and for a total of 2,091 police. According to public activity reports, MINUSTAH has engaged in a variety of initiatives to implement its mandate.

261. With respect to Haiti's participation in the Caribbean Community (CARICOM), Haiti's Parliament ratified the Revised Treaty of Chaguaramas in October of 2007 and Foreign Minister Jean Renald Clerisme presented the published Notice of Ratification to the Chairman of the Caribbean Community Council of Ministers, on February 7, 2008, clearing the way for the country's full participation in the Single Market and Economy (CSME).<sup>[359]</sup> CARICOM has also embarked on a special and targeted intervention to assist Haiti in improving efficiency and professionalism in its Public Sector.<sup>[360]</sup> In addition, the Caribbean Forum of African, Caribbean, and Pacific (ACP) States (CARIFORUM) and the European Commission, recently signed a Financing Agreement totaling US\$ 2.45 million to support the Caribbean Region in the Sustainable Management of its Energy Resources.<sup>[361]</sup>

262. For its part, the General Assembly of the OAS adopted Resolution AG.RES.2424 (XXXVIII)-O/08,<sup>[362]</sup> during its 37th regular session convened from June 1-3, 2008 in Medellin, Colombia. Therein, the General Assembly commended the adoption of the National Growth and Poverty Reduction Strategy Paper (DSNCRP), as well as the efforts to implement it as a framework for the social and economic policy of the Haitian Government and for international

framework for the social and economic policy of the Haitian Government and for international cooperation with Haiti. The resolution committed the OAS to support to the Government in its efforts to reform and reinforce state institutions, in particular, the justice system, the Haitian National Police, and the penitentiary system. Finally, the resolution urged Haiti's partners, including international financial institutions, to continue to coordinate with the Haitian Government, in support of the principles expressed in the Paris Declaration, on channels and procedures for the delivery of aid.

263. Haiti has experienced serious challenges to its capacity to protect human rights due to political instability and the continuing humanitarian crisis. The Commission encourages the international community to continue supporting Haiti as the Government confronts these challenges and, specifically, help it achieve progress and national development, promote human rights and tackle longstanding weaknesses in state institutions. Specifically, the Commission reiterates the importance of maintaining and enhancing state-sponsored efforts to ensure long-term peace and stability, an effective judiciary and access to basic social services.

### **III. ACTIVITIES OF THE IACHR CONCERNING HAITI DURING 2008**

264. During 2008, the Commission continued to closely monitor the human rights situation and to emphasize the importance of the role of the state in addressing longstanding weaknesses in the areas of administration of justice, public security and respect for social and economic rights. In addition, the Commission continued to monitor and report on the situation of vulnerable groups, including women, children, and human rights defenders.

265. From May 27 to 31, 2008, members of the Executive Secretariat conducted an advance fact-finding visit to Haiti to obtain information on the situation of the rights of the child in anticipation of that scheduled on-site visit by the Commission's two Rapporteurs. Secretariat staff met with a range of actors including with representatives of the Institute for Social Welfare and Research, the Ministry of Social Affairs, Haitian and international NGOs, UNICEF, and MINUSTAH's sections on child protection, human rights and justice. The Secretariat staff visited the state-run shelter for children in Carrefour, outside of Port-au-Prince, and Gonaïves. The specific issues that appeared to be the most significant included: the right to identity, social and economic rights (education, food, and health), children in conflict with the law, and violence against children.

266. In an effort to maintain an active engagement in Haiti --to further promote the Inter-American Human Rights system and to enhance human rights protection-- the Executive Secretariat, together with UNICEF-Haiti, organized a training seminar for approximately 30 government officials and members of civil society on the rights of the child and the Inter-American Human Rights system.

267. Following its visit to Haiti in May, the Commission received and granted a request for precautionary measures on behalf of all the detainees being held at the Gonaïves prison facility due to extremely poor conditions. The communication to the Government made a specific request for urgent measures to be adopted in favor of children being held with adults, persons suffering from serious and/or contagious illnesses, and women and elderly persons. The Commission has not received a response from the State on this matter, nor has it received updated information from the parties on the conditions of persons deprived of liberty in Gonaïves following the hurricanes that swept through in August and September, and which severely affected the town of Gonaïves.

268. The Commission considered the situation in Haiti during its 131<sup>st</sup> and 133<sup>rd</sup> regular periods of sessions in March and October 2008, respectively. At the conclusion of these sessions, the Commission issued press releases including a specific reference on the situation in Haiti.[\[363\]](#)

269. Based on its visits and other activities relating to Haiti during 2008 and its observations on the human rights situation in Haiti in previous years, the Commission continues to monitor key areas of concern including public security, the administration of justice, the rule

of law, impunity, rights of vulnerable persons and social and economic conditions. It is important to note that many of these problems are long-standing and deeply rooted, stemming from structural deficiencies and institutional weaknesses resulting from a history of political crisis, authoritarian regimes and corrupt institutions. Accordingly, state institutions would benefit from serious evaluation, strategic and long-term planning, and structural reforms in order to effectively respond to the widespread nature of human rights violations occurring daily.

#### **IV. OBSERVATIONS ON THE SITUATION OF HUMAN RIGHTS IN HAITI DURING 2008**

270. During 2008, the Commission observed serious challenges that affected Haiti's capacity to pursue its national economic and development agenda and that further prevented it from fully protecting the civil, political, social and economic rights of the Haitian people. The year was dominated by serious concerns over the dire social and economic conditions in the country and by the humanitarian crisis that resulted after the hurricanes, prompting the Government to declare a State of Emergency. On this point, the Commission observes that Prime Minister Pierre-Louis has prioritized the implementation of a national policy of poverty reduction and economic growth. The National Growth and Poverty Reduction Strategy Paper, recently adopted by the Government of Haiti, is the principal mechanism outlining national development goals and strategic policies in the economic, governance and social sectors. The implementation of the Strategy Paper is significant in terms of the future of Haiti's development and of ensuring that adequate financial assistance is channeled accordingly.<sup>16</sup> In this connection, it is expected that the international community and international financial development institutions will contribute support for the implementation of the Strategy Paper.

271. Additionally, the Commission notes the outpouring of assistance to Haiti by the international community following the four hurricanes. In particular, the Commission commends the efforts of a long-term and preventative nature to address the food crisis in Haiti and the related environmental degradation in the country.

272. Weaknesses in the administration of justice and impunity for human rights violations remain primary concerns. The government continues to face significant challenges in ensuring conditions of peace and security in the country over the long term. According to the President of the Republic, Rene Preval, the combination of the drug trade in Haiti, corruption in state institutions and poor social and economic conditions have cultivated high levels of criminality and impunity.<sup>[364]</sup> The Commission observes the State's ongoing efforts to tackle these issues and emphasizes the need to allocate resources to the planning and implementation of effective state policies, legislation and mechanisms in these areas. The problems defining the human rights situation in Haiti will require long-term institutional reforms and sustained international assistance. For this reason, the Commission encourages relevant State institutions supported by the international organizations working in Haiti, notably MINUSTAH and related UN agencies, to maintain their efforts to reinforce the Haitian National Police and the judiciary, and especially to develop a comprehensive approach to ensuring sustainable peace and security, including domestic job creation and the development of national industries.

273. In this connection, due to an imbalance in the allocation of resources, financial support, technical assistance and training between the national police and the judiciary (national police receiving the majority of the budget under the Ministry of Justice and Public Security), the judiciary has not had the adequate capacity or resources to respond promptly or effectively, resulting in a backlog of cases and the unprecedented number of persons in detention in Haiti's prison facilities, the majority of whom have been detained arbitrarily and for excessive periods. The Commission recommends that additional resources, equipment and adequate infrastructure be provided to the judiciary in order for it to function adequately and for criminal cases to be handled promptly and effectively.

##### **A. Public Security**

274. Over the years, the situation of public security in Haiti has been among the Commission's principal concerns. In particular, the Commission has consistently expressed

concern over the frequent acts of deadly violence and the ineffective control that security forces maintain over certain sectors of Port-au-Prince and the provinces. While Haiti has previously witnessed high levels of political violence during times of political transition, acts of criminal violence, such as kidnapping, rape, murder, beatings and destruction of property have become common occurrences in recent years. According to MINUSTAH, there were 413 reported murders and 70 cases of public lynchings in Haiti during 2008.

275. Specifically, during the first six months of 2008 the number of kidnappings increased, as an average of 30 people per month were reportedly victims of kidnapping. Thereafter, MINUSTAH reported 42 kidnappings from the beginning of June to the middle of August. In June, hundreds of people protested in the capital of Port-au-Prince against the problem of kidnapping. Official figures for all of 2008 are not yet available, however, the current figures appear lower than those of 2006 (722 kidnappings) and similar to that of 2007 (293 kidnappings).

276. The Commission also received information that the illicit drug and arms trade continues to thrive with little government control. In this regard, the Commission notes that in 2007, the State took the initiative to organize a regional conference in the Dominican Republic, which resulted in the Santo Domingo Declaration. The Declaration reflected commitment by the States to adopt measures to combat the illicit drug trade. The Commission has not received updated information about the outcome of this initiative and its implementation in Haiti, but it takes this opportunity to encourage the State of Haiti to adopt policy, legislative, administrative, judicial and other measures to give effect to the Declaration.

277. More precisely, an essential aspect of guaranteeing security is the need to reinforce the Haitian National Police force. Equally important is the provision of sufficient resources, training and equipment to the judiciary in order to enable it to respond effectively to the cases that confront it. During 2008, the HNP continued to demonstrate efforts to respond to criminal violence, despite limited resources and a relatively young and inexperienced force. Reports indicate that 930 arrests warrants were executed by the Haitian National Police during the months of June to August 2008.[\[365\]](#) With the technical support of MINUSTAH, the implementation of a program to vet human rights abusers and to tackle corruption in the force continued. The vetting progressed slowly, however: in August, 2,350 files in which 360 officers were suspected of wrongdoing were pending decision before an independent commission.[\[366\]](#) After issuing a recommendation on a case, this commission transfers it to the Superior Council of the Haitian National Police for a final decision; however, the commission has not yet been established. Consequently, the officers suspected of wrongdoing remain on the force.

278. Another aspect critical to ensuring public security and preventing recurring crime is the ability of the justice system to function effectively and ensure criminal accountability for perpetrators. The justice system remains weak, under-resourced, ill-equipped and under-staffed, as previously noted in the Commission's report on the administration of justice and the Commission's observations following the visit by the Country Rapporteur in April 2007. In this connection, the Commission continues to be concerned with the State's failure to allocate sufficient resources to the judiciary in order to reinforce its capacity, and improve the administration of and access to justice. This includes reconstruction and reorganization of the courts, the allocation of material and equipment, and ongoing training, while at the same time, addressing labor conditions for members of the judiciary.

279. Finally, the Commission acknowledges that the United Nations Stabilization Mission in Haiti has demonstrated a strong commitment to ensuring conditions of peace and security in the country since the creation of its mandate in 2004, and has undertaken notable efforts to improve the public security situation by supporting the HNP in its efforts to prevent crime, and by placing greater emphasis on institution strengthening and reform of the police and the judiciary. Such efforts complement more long-term programs carried out by the UN agencies, such as the United Nations Development Program, in the area of the rule of law and support to the prison administration. In effect, MINUSTAH retains a robust presence in the country and continues to provide support to Haiti's disarmament program.

## **B. Administration of Justice**

280. The sources available to the Commission indicate that during 2008, the State, with support from the international community, maintained its efforts to address select deficiencies in the judicial system. Notably, this year registered a significant achievement with the adoption of a set of laws on the independence of the judiciary, progress towards the establishment of the magistrate's school and the Superior Council on the Judiciary, and the conclusion of the work of the special commission to address the problem of prolonged pretrial detention.

281. Specifically, the magistrates' school has developed its academic curriculum and drafted its internal rules. During July and August of 2008, while the principal school facility was being renovated, a group of justices of the peace was identified and selected for a preliminary training session in July.<sup>[367]</sup> Similarly, efforts to set up the Superior Judicial Council were also planned.<sup>[368]</sup> However, with respect to achievements in the area of judicial reform, the Commission did not receive updated information about the outcome or progress made by the special commission on judicial reform and the role of the Secretary of State on Justice.

282. Overall, the Commission affirms its previous findings that the justice system remains extremely inefficient and slow, and continues to suffer from fundamental weaknesses that include the lack of independence of the judiciary, corruption and misapplication of the law.<sup>[369]</sup> In addition, a severe shortage of resources for judges, magistrates, courts, and the police have resulted in prevalent due process violations, such as the prolonged detention of individuals before they are brought before a judge. While the Commission previously reported that corruption across the public sector is widespread,<sup>[370]</sup> the Commission hopes that the adoption of the laws to establish the Superior Council of Magistrates, the School of Magistrates and the Statute on Magistrates, will result in marked improvements in this area, as they will include a procedure to enforce a professional code of conduct and to sanction acts of corruption or breaches of judicial integrity.

283. With respect to the larger issue of judicial reform and the longstanding problem of lack of independence of the judiciary, the Commission continued to receive information on State initiatives. The Commission received information that, following the development of a plan of action by the Ministry of Justice in 2007, a special commission on judicial reform was established. This commission, which includes the participation of civil society, constitutes a sign of progress toward much needed judicial reform. Furthermore, three bills on the independence of the judiciary, the status of judges and constitutional procedures for appointment, terms and removal from office were adopted by parliament in 2008. The Commission is particularly encouraged by the adoption of these legal instruments and hopes that equal importance is given to their effective implementation. The Commission recognizes the importance of initiatives adopted by the Government of Haiti to promote judicial reform, and calls on the international community to support these initiatives with the technical assistance and resources that are needed to implement profound changes in the judicial system.

284. The Commission continues to be concerned about reports of arbitrary arrests and detentions, as well as the abuse of force at the time of arrest. The Commission notes that the carrying out of arbitrary arrests and detentions is not a new problem in Haiti. Accordingly, while recognizing the need to apprehend dangerous criminals to ensure public security for the population, the Commission emphasizes the prohibition against arbitrary arrests and detentions enshrined in Article 7 of the American Convention, and it reiterates the State's obligation to ensure that its efforts to investigate and prosecute crimes are undertaken through demonstrably fair and effective procedures that conform to international standards of due process, including a detainee's right to be promptly notified of the charge or charges against him and to be brought promptly before a judge.

285. In this connection, the problem of persons in prolonged pretrial detention in Haiti continues to be a primary concern of the Commission. On September 11, 2008, 8,077 persons were reportedly being held in detention facilities across Haiti, and only 1,478 of these were serving criminal sentences. Thus more than 80% of persons deprived of liberty in Haiti

were serving criminal sentences. Thus more than 60% of persons deprived of liberty in Haiti were being held in pretrial detention.<sup>[371]</sup> To address this problem, a special commission on prolonged pretrial detention was launched in 2007, and it issued a report with its findings and recommendations in 2008. The special commission sought to reduce the number of persons in prolonged pretrial detention by reviewing the files of detainees and dispensing with certain cases, especially those that were minor or appeared unfounded or in which the period of pretrial detention had surpassed the sentence that would have been imposed for the crime charged. This procedure would be implemented in Haiti's largest prison, the National Penitentiary, and subsequently replicated in other prisons. Accordingly, the special commission reportedly decided to release 892 detainees between June 2007 and March 2008 during its review process.

286. The IACHR recognizes the value of adopting urgent measures such as the creation of the special commission on prolonged pretrial detention to respond to the critical situation of persons deprived of liberty in Haiti, and urges the Government, with the support of the international community, to adopt measures to improve the situation of prolonged pretrial detention pursuant to the special commission's recommendations. At the same time, the Commission stresses that fundamental and/or structural reforms must be made to ensure that persons deprived of liberty are guaranteed their right to fair trial and judicial guarantees.

287. With respect to prison conditions, the Commission received information that reflected a situation that has progressively deteriorated since last year. In June 2007, the Rapporteur on Persons Deprived of Liberty expressed alarm with respect to the deplorable situation in the National Penitentiary, characterized by unprecedented conditions of overcrowding. This situation was aggravated by an outdated structure in a state of disrepair, and extremely poor health and sanitary conditions, and the lack of access to potable water, adequate food or medical attention. At the time, information provided to the Commission by prison guards indicated that these factors had resulted in frequent deaths in this facility. The Commission received information that while 3,800 persons were being held in the National Penitentiary in Port-au-Prince in June 2008,<sup>[372]</sup> the number of prison wardens remained at 22 for the entire facility. This created a ratio of one warden for every 170 detainees, which is far below relevant international standards. Although acts of violence and poor conditions in prisons are not new problems in Haiti, the Commission observes a worrisome deterioration in the situation of persons deprived of liberty in terms of overcrowding and failure to provide for the basic needs of detainees.

288. The Commission therefore strongly reiterates its call for the State to ensure that persons subject to detention or imprisonment are not subjected to conditions that fail to satisfy minimum international standards for the treatment of detainees, and that they are not the victims of violence or other ill-treatment at the hands of state agents or other inmates. These specialized standards include the UN Standard Minimum Rules for the Treatment of Prisoners and the Commission's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

289. The growing number of detainees has directly affected the State's capacity to accommodate them in its facilities. Information from 2008 indicates that as the National Penitentiary in Port-au-Prince has reached capacity, authorities have begun to transfer detainees to prisons in other provinces. It is important to note that none of the prison facilities have undergone significant reconstruction or repair in several years and many were not constructed for the purposes for which they are being used. During the IACHR Executive Secretariat's visit to Haiti in May 2008, the delegation was able to observe a serious humanitarian situation in the prison of Gonaïves, which had been adapted to accommodate the government's need for a detention facility. The original prison of Gonaïves was destroyed in 2004 and a new facility has not been constructed. In May, the delegation observed detainees held in approximately five small unventilated, dark rooms containing roughly 20-25 people each. The rooms did not have natural lighting, electricity, running water, beds or any other amenities for the detainees. Authorities confirmed the dire situation of the facility. Due to the lack of security of the facility, detainees were confined to these cells all day without any possibility for recreation. In the absence of sanitation facilities, the detainees were forced to relieve themselves in the cells. Further, authorities confirmed that there was no official budget to run



themselves in the cells. Further, authorities confirmed that there was no official budget to run the facility, as it was intended as a temporary solution in 2004.

290. As to conditions in the police holding cells, these are small and have no windows, no natural or artificial lighting, and no space for beds. The police stations have no budget to maintain detainees over a long period of time, or to provide them with potable water, food, access to bathing and sanitation. Police authorities indicate that the police stations lack adequate security measures to hold detainees for long periods of time; therefore, individuals are typically contained in the cells with no time for exercise. Most police stations have no more than two holding cells per station, at times used to separate adult men from adult women, or to separate adult men from children. It is understood that detainees are frequently held in police holding cells while criminal investigations are conducted by judicial authorities. Yet while the criminal procedural code provides for investigations that take place over two months, this period can be extended, and investigations can last well beyond it.

291. All of these conditions fall far below international minimum standard rules for the detention of individuals, and they constitute serious threats to the physical integrity of those detained. This situation must be addressed immediately by appropriate authorities so that the pertinent rights protected by the American Convention are duly respected, including the rights to judicial guarantees, due process, and to be free from cruel and unusual punishment or treatment.

### **C. Impunity**

292. Of utmost concern to the Commission is the persistent problem of impunity for past human rights abuses and crimes. Throughout the period in which the Commission has monitored the human rights situation in Haiti, it has found that impunity for human rights abuses and criminal acts is systematic and widespread. The Commission considers it important to emphasize the State's responsibility to investigate and prosecute human rights abuses in accordance with international standards. While the courts have demonstrated initial efforts to address this issue by holding criminal trials and successfully prosecuting certain criminals, these measures need to be redoubled, and the judicial process continues to be fraught with irregularities and delays that often result in impunity. At the same time, the Commission congratulates the Government of Haiti for the recent adoption of the Act to Establish the Superior Judicial Council. The Council, expected to be launched in October, is charged with oversight of the judiciary and incorporates mechanisms to establish its independence.[\[373\]](#) Finally, the Commission urges Haiti to allocate adequate resources both to the establishment of the Council and to the judiciary as a whole in order to ensure that the Haitian court system functions properly and efficiently.

293. With respect to certain human rights cases, the Commission recognizes the 2007 establishment of a special commission to support the investigation of assassinated journalists. Among the cases in which the special commission will assist Haitian authorities are those of Jean Dominique and Brignol Lindor. The Commission has not received updated information in 2008 with respect to the outcome of these investigations. On this point, the IACHR wishes to emphasize the duty of the State to effectively investigate, prosecute and punish crimes committed within its territory. For this reason, it is especially important to adopt corresponding measures to reinforce the principal state institutions charged with the administration of justice in Haiti, especially the judiciary, in order for it to function effectively and to deliver justice promptly.

294. On the other hand, the Commission continued to receive information regarding human rights abuses which have not received adequate attention or follow-up by judicial authorities. For example, the Haitian judiciary has not yet resolved cases of abduction and rape in which members of the HNP are suspected to be involved. The Commission expresses its concern over the continuing impunity of the perpetrators of these acts. As the Commission previously suggested,[\[374\]](#) addressing the numerous unresolved human rights cases may require innovative approaches aimed not only at providing accountability and reparations, but also at preventing the recurrence of such acts.

295. With respect to these matters, the Commission reiterates its concerns regarding the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind. In light of the task ahead, the Commission emphasizes the important role of the international community in supporting the reinforcement of the judicial system in Haiti, and hopes that it will donate financial resources and equipment to support the reconstruction of court houses, training and technical assistance for judges, and the implementation of reforms to transform an archaic judicial system into one that reflects the current standards of justice.

#### **D. Situation of Particular Persons and Groups**

296. The Commission's concerns during 2008 have also included circumstances relating to groups of particular focus in the Commission's work, including women, children, human rights defenders, and journalists.

297. During 2008, women in Haiti continued to face discrimination and gender-based violence. The Commission is especially concerned with the State's response to the prevalence of discrimination and violence against Haitian women and young girls. Additionally, the failures of the health, education and justice sectors in Haiti particularly affect women and young girls. While the acts of kidnappings, rape, murder and intimidation in recent years have affected the majority of the Haitian population in Port-au-Prince, State and non-State sources confirmed that women and girls are particularly vulnerable to acts of violence due to deep-seated sociocultural norms, patterns and practices that are based on the concept that women are inferior.<sup>[375]</sup> The adoption by the Haitian state of international instruments such as the Convention of Belém do Pará and the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW") reflect an acknowledgement of the discriminatory treatment and violence that women have traditionally suffered in this society and the commitment of the State to act with due diligence to prevent, investigate, sanction and redress these acts.

298. The information received by the Commission indicates that the incidence of rape of women and children remains high in 2008,<sup>[376]</sup> and social workers and human rights observers confirm that impunity for acts of violence against women perpetuates the problem. On this point, a handful of cases have been successfully prosecuted since the 2005 decree modifying the criminal sentence for rape. Nevertheless, the Commission notes the large gap between recorded cases and those which have reached the stage of prosecution and punishment. With respect to these problems, the Commission has reiterated the need for the State to take concrete steps to promote and protect the rights of women, which include the effective investigation and prosecution of complaints of sexual violence perpetrated against women and girls, as mandated by the Inter-American Convention on the Protection, Punishment, and Eradication of Violence Against Women, adopted by Haiti on June 2, 1997. In this sense, the Commission encourages the State's legislative initiatives in this area. The Commission specifically recommends that further steps be taken to introduce a specialized law on the protection of women from violence and discrimination.

299. On the other hand, the Commission is encouraged by initiatives taken by the Ministry of Women to adopt a policy and plan to eradicate violence against women and to secure adequate services for victims of sexual violence. Further, the Commission recognizes and values the Ministry's efforts towards the elimination of stereotypes that are discriminatory against women, in particular the legislative efforts made by the Ministry in these areas, notably the Ministry's intent to prepare a draft bill on violence against women and girls.

300. Information received in 2008<sup>[377]</sup> on the situation of children builds upon the findings made in 2005 by the Rapporteur on Children.<sup>31</sup> Information received indicates that children continued to be subjected to child labor, organized trafficking, kidnapping, abuse, and arbitrary arrest and detention by police forces. In 2008, gang related violence against children

was reported to have remained prevalent in urban centers,<sup>[378]</sup> especially the kidnapping of children and related sexual violence against the victims.

301. Child trafficking has also been noted as a worrisome trend and threat to the protection of children, especially girls. Child rights advocates further indicate that, in some cases, orphanages are being used for illicit purposes, trafficking of children, prostitution and other forms of sexual exploitation of children. In this regard, Haitian authorities together with the International Organization of Migration and human rights organizations are working on domestic legislation to regulate the trafficking of persons. The Commission hopes that the process of evaluation and adoption of the text by parliament, as with the Children's Code awaiting parliament's review, will be swift and will contribute to greater protections for children.

302. The Commission wishes to express its concern with the situation of children in conflict with the law. On this point, during the Secretariat's fact-finding visit in May 2008, the Commission's delegation was able to observe the problem of children being detained together with adults in the prison in Gonaïves. At the time, 8 children were being held together with the Gonaïves adult prison population. Also, the detention of children in a prison facility rather than in the legally mandated rehabilitation facility continues to be a central concern of the Commission. Haiti's legal framework with respect to the protection of children in conflict with the law is largely limited to the 1961 law on delinquent youth and children in conflict with the law, which adopts a rehabilitative approach to delinquent youths and calls for special protection of children in conflict with the law. In particular, the law provides that children under sixteen years of age are not criminally responsible and are expected to serve a term in a rehabilitation center rather than in a detention facility. In meetings with government authorities, members of the judiciary and civil society, an overwhelming concern was expressed over the detention of children in conflict with the law and the lack of an adequate and legally-sanctioned rehabilitation center for this group as well as the lack of shelters for abandoned and abused children.

303. These shortcomings contravene provisions of the American Convention on Human Rights and international standards of protection for children in detention contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, according to which the detention of children awaiting trial is a means of last resort. These provisions require that children held in detention shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

304. Additionally, during the fact-finding visit in May 2008, the delegation visited one of the only State-run shelters for abandoned children and children in conflict with the law in Carrefour, Port-au-Prince. The Director indicated that there are three sites managed by a religious Congregation (the Sisters and Brothers of Incarnation)<sup>[379]</sup> by agreement with the Ministry of Social Affairs, two for boys in Port-au-Prince and one for girls in Hinche. The center in Carrefour is the largest and held 110 children on the date of the visit. Sixty-four children were being held in the Petit-Place Cazeau center in Port-au-Prince, which offers professional training for children. In Hinche there are 134 children (all girls). Nevertheless, the day of the visit the delegation found several girls who were being housed at the same site as the boys. During the visit to the center in Carrefour, the delegation was able to observe that a number of girls and boys were being held in the same facility, while representatives of the center had indicated that girls were to be held separately from boys. Another issue of concern is that abandoned/street children were being held together with children in conflict with the law.

305. A central issue of concern is the fact that the facility is designed for children at risk (homeless, street children, runaways) and children in conflict with the law without any differentiation in the treatment of these children. For example, due to the fact that there are some children in the facility who are in conflict with the law, the facility's policy is not to allow any of the children the possibility of leaving the premises. The Director also indicated that the entrance is guarded at all times to prevent children from escaping.

entrance is guarded at all times to prevent children from escaping.

306. As to conditions, the facilities required repairs and maintenance, while there appeared to be a severe lack of resources to provide adequate materials, supplies and equipment for the adequate operation of the facility. The classrooms were empty of any materials or supplies, except for several chairs (many half-broken) and blackboards that were propped up against the wall because their stands were too weak. At the same time, the Director showed the delegation new construction of latrines and a more spacious kitchen and dining hall.

307. One of the main challenges raised by the Director and his staff is the lack of sufficient resources allocated by the Ministry of Social Affairs to run the center, for example, the Ministry allocates 250 gourdes/per day/per child,[\[380\]](#) which the Director indicated was insufficient to cover the actual costs of providing meals and basic amenities for the children. The center's staff also informed the delegation that they had not been paid their monthly salary for the past 5 months.[\[381\]](#)

308. As the Commission has noted on previous occasions, children are among the most vulnerable members of our societies and are entitled to special protection from the State in order to effectively safeguard their rights. The Commission reiterates its concern for the precarious situation of children in Haiti and notes the near absolute lack of protection afforded to children. On this matter, the Commission urges the State to take all of the protective measures that are required by their condition as children so as to give full effect to the rights protected by Article 19 of the American Convention, as well as the rights and freedoms provided for in the Convention on the Rights of the Child, which Haiti ratified on July 8, 1995.

309. The social, economic, and political problems faced by Haiti in 2008 did not impact the exercise of the right to freedom of expression as much as they did in previous years, as there has been clear evidence of efforts to tackle some of the country's main challenges in this area.

310. In this connection, the Commission applauds the progress made in combating impunity in cases related to the murder of journalists. On January 23, 2008, the Petit-Goave criminal court convicted *in absentia* seven individuals charged in connection with the December 2001 murder of Brignol Lindor, of *Radio Echo 2000*. The suspects were identified as members of an armed militia known as *Dòm nan Bwa*, said to be supporters of former Haitian President Jean-Bertrand Aristide. Two persons were sentenced to life imprisonment in December 2007 for the murder.[\[382\]](#) And, in May 2008, the parents of Ricardo Ortega, the Spanish journalist killed in Haiti in 2004, disclosed the decision by the Haitian courts that, according to evidence gathered, the journalist may have been killed by bullets fired by foreign soldiers. When he was killed, at the time Aristide left power, Ortega was covering pro- and anti-Aristide demonstrations. Initially, the investigations focused on supporters of the former Haitian president as possible suspects in the journalist's murder, but the courts noted that there was not enough evidence to charge the nine Haitians held as suspects. In July, the Spanish authorities announced the re-opening of the investigation.[\[383\]](#)

311. Moreover, the Commission has received reports that show that journalists had been assaulted in 2008 while performing their duties. On April 8, 2008, *Le Matin* newspaper photographer Jean-Jacques Agustin and Channel 11 cameraman Leblanc Macaenzy were wounded after being shot with rubber bullets as they covered clashes between protesters and official Haitian and United Nations security forces in Port-au-Prince, according to reports. *Haiti Progrès* news photographer Yves Joseph was injured by pellets fired by demonstrators. These acts of aggression took place against the backdrop of series of violent protests against the René Préalval government, denouncing food price hikes.[\[384\]](#)

312. Other assaults on journalists were reported to the Commission. Pedro Edouard, a cameraman for the government-owned TV station TNH, was wounded when a police officer pushed a gun into his mouth, even though the weapon did not go off when the trigger was pulled. Photographer Evens Saint-Felix was accosted by foreign soldiers as he photographed

press photographers from being harassed by foreign soldiers as the photographers them harassing Haitian plain-clothes policemen. [\[385\]](#)

313. The IACHR reiterates the importance of Principle 9 of the Declaration of Principles on Freedom of Expression, which states that:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

314. In comparison to previous years, the Commission received fewer complaints relating to violence and threats made in retaliation against human rights defenders for exercising their profession. In these areas, defenders are one of the only sources of information about human rights abuses being perpetrated in the country. The Commission has placed value on the important work of the defenders who, under difficult circumstances continue to promote and protect the rights of Haitians. In this sense, the Commission reminds the State of its duty to ensure the necessary conditions to facilitate the work of defenders. In 2007, the Commission learned of two cases of threatened human rights defenders, with respect to one of whom the Commission issued a request for information to the State. In this regard, the Commission expresses its preoccupation for the failure to respond to the request for information or to apply the request for precautionary measures in favor of defenders in Haiti since 2005. To date, the Commission has not received information from the State indicating the measures taken to protect the life and integrity of the petitioners in the cases with precautionary measures, noting specifically that information regarding the investigation into these matters has yet to be communicated to the Commission. Accordingly, the Commission emphasizes the extreme risks posed to petitioners who continue to exercise their profession without security measures adopted by the State to ensure their right to life and physical integrity.

## **V. CONCLUSION**

315. Based on its observation of the human rights situation in Haiti during the past several years, the Commission found that the situation in Haiti during 2008 was once again characterized by significant challenges which compromised the State's capacity to ensure the full respect of the Haitian people's human rights. These included the food crisis and ensuing riots, the removal of former Prime Minister Alexis and its consequences on the political stability of the country, and the ensuing natural disasters which led the State to declare a State of Emergency. The combination of all these events significantly affected the State's capacity to guarantee the social and economic rights of Haitians in 2008. The Commission observes that the effects of these events have been devastating to the daily livelihood and survival of Haitians.

316. At the same time, the Commission recognizes the valuable support provided by the international community to the Haitian Government during this time of political transition and disaster recovery. However, the situation of peace and stability remains fragile, and the task of reinforcing Haiti's institutions and developing measures to address longstanding deficiencies is a process that will require time, adequate financial and human resources and a long-term commitment by the government and the international community. Accordingly, the Commission continues to emphasize the importance of the role of the State in pursuing the reinforcement of the rule of law and the administration of justice, efforts to strengthen and reform the public security force, and comprehensive measures to achieve progressive social and economic development, as well as ensuring Haitians' enjoyment of social and economic rights including access to employment opportunities. The Commission remains deeply concerned by the degree of widespread impunity for human rights abuses and crimes, the lack of effective protections for victims of human rights abuses, and extreme deficiencies in social and economic conditions severely depriving the majority of the Haitian population of access to basic social services, including adequate shelter and potable water, health care, education and employment.

317. The Commission emphasizes the importance of developing a long term strategy and policy of reform to address structural and legislative weaknesses in these areas. In this connection, the Commission reiterates the importance of the international community's role in providing critical financial and technical assistance to Haiti's mission to address longstanding issues and to achieve long-term change and stability, and in particular the need to develop programs in collaboration and coordination with the Haitian government and other key stakeholders. In light of its conclusions, the Commission recommends that the Republic of Haiti take the following measures:

1. With respect to public security, elaborate a comprehensive security plan for the country, including strategies to prevent the growth of organized crime and illicit trafficking, and specifically, adopt long-term and sustained measures to ensure adequate prevention and punishment of violent criminal acts, and reinforce accountability mechanisms in order to effectively hold perpetrators accountable for their crimes. Equally, maintain financial and technical assistance for the professional development of the Haitian National Police, and take measures to enhance the police academy training curriculum, while also implementing effective supervision and control of the conduct of officers and adopting appropriate disciplinary action where appropriate and with the necessary due process guarantees.
2. With respect to the court system, adopt immediate and long-term measures to address the deficiencies identified in the Commission's reporting on the administration of justice in Haiti, and specifically to ensure that adequate financial and human resources are allocated for the proper and efficient functioning of the courts. Take necessary measures to ensure the swift implementation of the recently adopted laws on the independence of the judiciary, and adopt the measures necessary to ensure that the courts are capable of fulfilling their role, especially the duty to investigate, prosecute and punish persons responsible for human rights violations.
3. With respect to the prison system and persons deprived of liberty, take urgent measures to improve the living and security conditions in Haiti's prison facilities and detention centers in order to ensure that facilities meet minimum international human rights standards, and in addition to the creation of the special detention commission, adopt best practices and preventive measures including necessary institutional reforms, to reduce the duration of pretrial detention. To this end, improve the mechanism of coordination between international donors and agencies implementing humanitarian and social assistance programs in Haiti's prison system.
4. Swiftly adopt legislation that adequately protects women and girls from acts of discrimination and different forms of violence – physical, sexual and psychological – in the private and public spheres. In this connection, provide female victims with accessible and effective legal services free of charge to pursue a claim before the courts and to create specialized centers to provide multidisciplinary services to victims of violence, including necessary legal, medical and psychological support.

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# Inter-American Commission on Human Rights

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## IACHR ANNUAL REPORT 2008

### CHAPTER IV - HUMAN RIGHTS DEVELOPMENTS IN THE REGION

#### VENEZUELA

##### I. INTRODUCTION

318. The Commission prepared this section of Chapter IV of its Annual Report pursuant to Article 57(1)(h) of its Rules of Procedure.[\[386\]](#) The analysis contained here is based on the information reported during the Commission's hearings and in other public sources. In keeping with that article of its Rules of Procedure, on January 6, 2008 the IACHR provided the State with a copy of the preliminary draft of this section of its 2008 Annual Report and asked that it submit its views within one month. On February 6, 2009, the Commission received the State's observations and comments, which, as pertinent, have been included in this report.

319. In its 1997 Annual Report, the Commission spelled out the five criteria that it used to identify the member states of the OAS whose practices in the field of human rights merited special attention, and hence, inclusion in chapter V of that report. In 2008, the Commission assessed the Venezuelan situation and found an environment hostile to political dissent. That hostility took the form of intimidating acts during the November 2008 election campaign, combined with accusations and harassments targeted at nongovernmental organizations and human rights defenders due to the critical work they perform in monitoring the running of government. It also found that reported murders and extrajudicial executions went unsolved and unpunished. All these combined to create a situation inimical to the full exercise and enjoyment of rights protected under the American Convention to which Venezuela has been party since 1977. The Commission therefore considers that the situation of Venezuela fits criterion five of the Commission's criteria, which is as follows:

Structural or temporary situations that may appear in member states confronted, for various reasons, with situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. This criterion includes, for example: grave situations of violence that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences on human rights; or grave omissions in the adoption of the necessary measures which would provide for the effective exercise of fundamental rights.

320. In this chapter, the Commission will pay particular attention to the situations mentioned in paragraph 2 and also address issues related to the administration of justice, freedom of expression, and the situation of persons deprived of liberty.

321. On the other hand, during its 133<sup>rd</sup> regular session, held in October 2008, the Commission decided to prepare a Report on the Situation of Human Rights in Venezuela. The Commission's view was that a systematic evaluation of the situation in Venezuela was called for. Accordingly, it will hold hearings on specific topics related to the human rights situation in that country.

322. Also, in its reply, the Venezuelan State questioned the Commission's impartiality in dealing with the various topics highlighted in this chapter and reaffirmed that it would not allow the IACHR to visit Venezuela "until it has rectified its biased position [...]".[\[387\]](#)

## II. PRELIMINARY MATTER

323. The Commission expresses its concern over decision 1939 of the Constitutional Chamber of the Supreme Tribunal of Justice,[\[388\]](#) issued on December 18, 2008, which declares unenforceable the judgment of the Inter-American Court of Human Rights in the case of *Apitz Barbera et al.* ("First Court of Administrative Disputes") v. Venezuela[\[389\]](#) and, "in accordance with the provisions of Article 78 of the American Convention on Human Rights, requests the National Executive to denounce this treaty or convention, since in this judgment the Inter-American Court of Human Rights clearly has overstepped its authority." In its judgment, the Constitutional Chamber states:

The Chamber finds, in this case, that the execution of the August 5, 2008, judgment of the Inter-American Court of Human Rights would be prejudicial to essential constitutional principles and values of the Bolivarian Republic of Venezuela and could lead to institutional chaos within the justice system, in that it would modify the autonomy of the constitutionally established Judiciary and the legislatively instituted disciplinary system, and in that it aims to reinstate the former judges of the First Court of Administrative Disputes on the grounds of bias on the part of the Commission for Operating and Restructuring the Judicial System, when the latter has acted for many years, in thousands of cases, seeking to purge the Judiciary within the realm of disciplinary activities of judges. Additionally, the ruling of the Inter-American Court of Human Rights also disregards the finality of the decisions to remove the former judges of the First Court of Administrative Disputes, stemming from a lack of exercise of administrative or judicial remedies, or from the finding of inadmissibility of the remedies brought by the competent administrative and judicial authorities.

324. The Commission finds that this jurisprudence disregards the international obligations undertaken by Venezuela as a State Party to the American Convention.

325. The Inter-American Court has maintained that "the Court, as every international organ with jurisdictional functions, has the inherent authority to determine the scope of its resolutions, decision and their compliance cannot be subordinated to the mere decision of the parties because it would render inoperative the Court's jurisdictional role, and consequently, the human rights protection system established in the Convention.[\[390\]](#) The Inter-American Court also has stated that "The States Parties to the Convention must guarantee compliance with its provisions[\[391\]](#) and its effects (*effet utile*) within their own domestic laws."[\[392\]](#)

326. In addition, Article 27 of the Vienna Convention on the Law of Treaties (1969)[\[393\]](#), the principles of which are reflected in the American Convention, codifies a basic principle of international customary law.[\[394\]](#) The Honorable Court has stated on numerous occasions that:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [...] since every treaty in force is binding upon the parties to it and must be performed by them in good faith (*pacta sunt servanda*).[\[395\]](#)

327. The OAS General Assembly has stated that "the denouncement of inter-

American legal instruments on human rights and withdrawal of recognition of the Court's obligatory jurisdiction affects the regional system as a whole" and resolved, *inter alia*, "to reiterate that the judgments of the Court are final and may not be appealed and that the states parties to the Convention undertake to comply with the rulings of the Court in all cases to which they are party".[\[396\]](#)

328. On the basis of the foregoing considerations, the Commission appeals to the Venezuelan State to abide by the international obligations it assumed upon ratifying the American Convention.

329. The Commission will now discuss the topics that warranted Venezuela's inclusion in this chapter. It will also present information received in 2008 regarding economic, social and cultural rights and the right to freedom of conscience and religion.

### **III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

330. In 2008, the Commission received information from the State concerning social programs aimed at eliminating the structural problems of inequity and discrimination in Venezuela. At public hearings held at the IACHR in 2008, the State pointed to the work accomplished through a number of missions in the areas of education, health, food and social services.[\[397\]](#)

331. According to the information supplied by the State, the goal of economic policy has been social inclusiveness, respect for human dignity and equality among the various sectors of society. Working with that as its goal, the Venezuelan State said that it had succeeded in reducing poverty and extreme poverty. To represent the progress, the State supplied figures comparing 1998 and 2007. It noted that while in 1998 54% of the Venezuelan population was living in poverty, at the present time (2007-2008) that figure has declined to 33.07%. It also asserted that the figures for extreme poverty had also dropped, from 20.3% in 1998 to 9.4% in 2007. The State pointed out that the rate of unemployment had dropped by 62.4%, from 16.5% in 1998 to 6.3% in 2007. It observed that in order to give Venezuelans a more decent standard of living, the Venezuelan State had increased social investment by over 66% by 2007, thereby increasing the numbers of Venezuelans with elementary, secondary, diversified and higher educations.

332. The State reported that under the Robinson Mission [*Misión Robinson*] 1,282,543 Venezuelans were taught to read and write, which will help Venezuela win UNESCO certification as an illiteracy-free territory.[\[398\]](#) The State also reported on the beneficiaries of the school food program. According to figures supplied by the State, in 1999 252,284 students were beneficiaries of the school food program, whereas in 2006 the program was serving 1,815,977 school-age children and adolescents.

333. According to the State, its social policy has also focused on the health sector. The State reported that whereas in 1989 social investment in health was 1.36%, by 2007 that figure had increased to 2.25%. It pointed out that the system's governing principles were free, universal, comprehensive, equal health care, social integration and solidarity. It maintained that in 2007, 11,373 primary care units were operating, which it said was clear evidence of the development in health care services; in 1998 only 4,804 primary care units were in operation. The *Barrio Adentro Misión* [Inside the Neighborhood Mission] was developed to provide free and permanent medical care to the most vulnerable sectors. According to the figures supplied by the State, in 1998 free medical coverage was 21% and there were 20 physicians for every 100,000 inhabitants; by 2007, free medical coverage had risen to 95%, and there were 59.3 physicians for every 100,000 inhabitants. According to the State, the *Barrio Adentro Misión*, the *Misión Habitad* (which builds housing), and MERCAL (providing foodstuffs at reasonable prices) together form a comprehensive plan to address the most pressing needs of the poor. The State reported that the "Misiones" were being financed by the State's own industry, the PDVSA.[\[399\]](#)

334. Doubtless, the social and economic programs instituted by the Venezuelan Government warrant more in-depth study from the human rights perspective. The Commission recognizes the importance of this subject and hopes to have the opportunity to compile empirical data in order to be able to eventually address it. Therefore, the Commission reiterates its interest in conducting a visit to Venezuela<sup>[400]</sup> which would allow the gathering of information with regard to the social, cultural and economic programs developed by the State. Finally, the Commission notes that although Venezuela signed the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights on January 27, 1989, it has not yet ratified that instrument. The Commission urges the Venezuelan State to complete ratification of all regional human rights treaties.

#### **IV. PARTICIPATION IN DEMOCRATIC LIFE: POLITICAL RIGHTS**

335. One of the main challenges in building democracies is to allow the various political factions within a State to have their voice, thereby ensuring tolerant, active, participatory and peaceful dialogue among all social and political sectors.

336. Political rights, defined as those that recognize and protect the right and duty of every citizen to participate in his country's political life, are by nature the rights that serve to strengthen democracy and political pluralism. Political rights are important basic human rights within the inter-American system and are closely linked to a set of other rights that make participatory democracy possible.<sup>[401]</sup> The OAS member states recognized the relationship between democracy, political rights and human rights when they approved the Inter-American Democratic Charter, Article 3 of which states that:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.<sup>[402]</sup>

337. The Commission has written that *representative democracy*--one of whose key elements is the popular election of those who hold political power--is the form of organization of the state explicitly adopted by the member states of the Organization of American States.<sup>[403]</sup>

338. The Commission has also stressed the direct relationship between the exercise of political rights and the concept of democracy as a form of organization of the State, which in turn presupposes effective observance of other fundamental human rights. The concept of representative democracy is based on the principle that political sovereignty rests with the people, who elect their representatives to exercise political power. These representatives, moreover, are elected by the citizens to apply certain political measures, which in turn implies that the nature of the policies to be adopted have been widely debated (freedom of expression) among organized political groups (freedom of association) that have had the opportunity to express themselves and meet publicly (right of assembly).<sup>[404]</sup>

339. In a recent case, the Inter-American Court held that:

[...] The right to vote is one of the essentials for the existence of democracy and one of the ways in which citizens freely express their will and exercise their right to political participation. This right implies that citizens are able to decide for themselves and elect freely and as equals those who will represent them in taking decisions on public affairs... [It also wrote that] Political participation through exercise of the right to be elected presupposes that citizens can place their names in nomination as candidates, as equals, and can hold elective public office if they win the number of votes needed to do so.<sup>[405]</sup>

340. The jurisprudence of the Court makes clear that the American Convention recognizes and protects political participation through the right of active suffrage (the right to vote), through the right to be a candidate for elective office, and through adequate election rules that provide for the political process and the conditions under which that process unfolds, to ensure effective exercise of that right without arbitrary and discriminatory exclusions. In this connection the State, in its reply, said that "in the interest of political tolerance the legitimate President, Hugo Chávez Frías, in December 2007, issued a decree pardoning all persons on trial for the coup-related events. Over the past 10 years, international organizations have supervised 12 electoral events and found them to have met all international standards".[\[406\]](#)

341. That notwithstanding, in 2008, the Commission received worrisome information about acts of intimidation against sectors of society that are openly critical of or express their disagreement with the policies of the government. According to the reports received, this situation was particularly in evidence in the November 23, 2008 election. In its reply to this section, the Venezuelan State indicated that the elections of November 23, 2008, were conducted in a transparent fashion and monitored by various observers. It said in this connection that "nearly 17 million Venezuelans were empowered to elect [...] 22 governors, 328 mayors, and 233 local legislators in 22 of the country's 23 states, as well as in the Federal District of Caracas. A total of 134 foreign observers, from 52 countries, monitored the transparency of the polling in 10 states and in the Federal District. The CNE distributed 11,500 voting centers and 35,000 tables in Venezuelan territory for the elections.

342. During the 2008 hearings the IACHR was informed about the debate taken place in the Venezuelan society and in the international sphere with regard to the declarations of disqualification for the exercise of the public office of people who post their candidacy for the elections of November 23. In accordance with information of public knowledge, in February, 2008 the General Comptroller of the Republic sent to the National Electoral Advice a list of persons that were disqualified for achieving post in popular election. Various actors of the political life of Venezuela adduced that a large percentage of those preceded from post of public election were candidates of the opposition. At present, there are current before the Commission several cases related to the compatibility of the norm by means of which the General Comptroller of the Republic disqualified applicants to be postulated to charges of popular election with the American Convention[\[407\]](#). The CIDH reserves any pronouncement related to the compatibility of this norm and its application with the American Convention.

343. In the said context, the Commission received information about public statements made from the highest levels of government which might have had an effect of producing an atmosphere of intimidation and threat of voters and candidates for election or re-election to public office.

344. The Commission learned that during the November 2008 election, the President of the Republic had allegedly made statements that did nothing to contribute to democratic dialogue and that could have instigated the use of violence. Among those statements were the following: "If you let the oligarchy (...) return to power, I may have to call up the armored tanks to defend the revolutionary government and the people of Carabobo"[\[408\]](#); "On Tuesday, the Venezuelan president reminded the opposition parties with candidates running in the regional elections slated for next November 23 that his "is an armed revolution" and that "the people are ready to defend the revolutionary process"[\[409\]](#); "Ramón Martínez is not just going to lose the governor's office; he's going to end up in jail; he'll see, we're going to sweep you out of office, you dirty traitor; on November 23 the people of Sucre will throw you out of office"[\[410\]](#).

345. The Commission considers that the said expressions favors an environment of intimidation which has an adverse effect on the free and full exercise of freedom of expression and ultimately undermine the rule of law. Given the above considerations, the Commission is urging the Venezuelan State to ensure that its electoral procedures and elections foster an atmosphere of respect for a plurality of ideas and opinions and thus guarantee the participation

of Venezuela's various political parties and movements.

## **V. SITUATION OF HUMAN RIGHTS DEFENDERS**

346. The IACHR reiterates its concern over the situation of human rights defenders in Venezuela, especially given the statements made by various authorities to discredit and disparage their work and the reports received alleging the use of lawsuits against them. As pointed out in its report on human rights defenders, the IACHR has observed that these actions taken by the State have created adverse conditions and have had a chilling effect on the work of human rights defenders, often silencing public opinion critical of government policy for fear of reprisals<sup>[411]</sup>.

347. In 2008, the Inter-American Commission continued to receive troubling information about the situation of human rights defenders in Venezuela. In this section, the Commission will discuss situations that warrant special attention, in the following order: a) life and physical well-being; b) public statements that discredit the work of human rights defenders; c) the institution of legal action, and d) administrative and financial controls.

### **A. Life and personal integrity**

348. The Commission has learned that a number of threats and attempts have been made against the lives and physical well-being of human defenders in Venezuela.

349. The Commission also received information about the situation of Mr. José Luis Urbano, President of the *Asociación Civil Pro-Defensa del Derecho a la Educación* [Civil Association for the Right to Education]. In defending and promoting the right to education, Mr. Urbano filed a number of complaints in May 2008 to protest the unlawful fees being required of children attending public schools in the state of Anzoátegui. His complaints allegedly elicited death threats and threats to his physical well-being<sup>[412]</sup> purportedly made by state officials. Mr. Urbano was also allegedly followed and kept under surveillance by unknown persons, presumably because of his work of defending and promoting human rights.<sup>[413]</sup>

350. The IACHR also learned that no progress has been made in the investigations instituted into the acts of harassment committed against human rights defenders. Specifically, it was informed that the criminal inquiries instituted to investigate the telephone and e-mail threats against the Committee of Relatives of Victims of Events between February 27 and early March 1989 (COFAVIC) was closed after multiple summonses were issued to the victims<sup>[414]</sup> in September 2008.

351. The IACHR must remind the Venezuelan State that the best way to prevent attacks and threats against human rights defenders is to conduct investigations, judicial proceedings and punish those responsible. Additionally, the investigation process ought not to become a procedural burden for those who have been threatened or attacked because of their work to defend and promote human rights.

352. The Commission has previously expressed concern stating that "the attacks on the lives and personal safety of human rights defenders is intended to 'make an 'example' of the victims, bring a halt to reporting of violations, getting the human rights organizations to leave certain areas, and/or bringing about a drop in the number of complaints presented."<sup>[415]</sup>

### **A. Statements discrediting the work of human rights defenders**

353. In 2008, the IACHR received information alleging that high-ranking Venezuelan government officials continue to make disparaging statements about the work of those dedicated to defending and promoting human rights in Venezuela. The Commission observes that, in keeping with the pattern of recent years,<sup>[416]</sup> State officials continue to publicly belittle human rights defenders in order to discredit the complaints that the defenders lodge

alleging human rights violations. In some cases, public officials accuse human rights defenders of being part of a plan to destabilize the government and to defy "the revolution" because they were receiving funding from organizations and countries abroad.

354. Specifically, the IACHR received information about the situation of Mr. Humberto Prado, a member of the Observatorio Venezolano de Prisiones [Venezuelan Prisons Observatory] (OVP), an organization dedicated to protecting persons deprived of liberty in Venezuela. According to the information received, Mr. Prado was the target of a number of verbal attacks allegedly coming from government officials. Specifically the Minister of the People's Power for Interior Affairs and Justice, Ramón Rodríguez Chacín, was alleged to have referred to the OVP as "suspected human rights defenders in Venezuela, [who] have taken it upon themselves to decide whether or not human rights are being observed in Venezuela; we know these people are of doubtful moral fiber and are making a living off of the problems in prisons."[\[417\]](#) Similarly, the Vice Chairwoman of the Congressional Interior Policy Committee, Iris Varela, stated that Mr. Prado "is a profiteer of the prison situation."[\[418\]](#) As for the situation of Mr. Humberto Prado, in May 2007 the Commission petitioned the Inter-American Court to order provisional measures so that the State would take the necessary measures to guarantee the life and physical well-being of Mr. Prado and enable him, as director of the Venezuelan Prisons Observatory, to continue his work of promoting and defending human rights in Venezuela. In response to Mr. Prado's situation, the State indicated that "the fact that a criminal investigation has been instituted by the government does not constitute an act of intimidation."

355. The Commission also expresses concern over the accusations that state officials made against Mr. Carlos Ayala Corao[\[419\]](#) during an international proceeding with the inter-American system where Mr. Ayala Corao was serving as the victims' representative in the case *Gabriela Perozo et al. v. Venezuela*. The Commission recalls the Venezuelan Government that under Article 61 of the IACHR's Rules of Procedure the "State may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission".

356. The Commission also condemned Venezuela's expulsion of José Miguel Vivanco and Daniel Wilkinson, Executive Director and Deputy Director of the Americas Division of Human Rights Watch, a nongovernmental international organization dedicated to the protection of human rights. The government ordered the two men's expulsion the night of September 18, 2008, after Human Rights Watch released a report on the situation of human rights in Venezuela. The Commission observed that this measure "affects the right to freedom of expression of the representatives of that organization and constitutes an act of intolerance of criticism which is an essential component of democracy."[\[420\]](#)

357. The Commission is calling upon the Venezuelan State to create an environment in which criticism is protected within its territory, not just for those who, as members of international human rights organizations, express their concern over the observance of and respect for human rights, but also for those who are within Venezuelan territory. The Commission believes that the measures taken by state authorities to discredit human rights defenders help to cultivate conditions inimical to the protection and promotion of human rights and are profoundly harmful to the democracies of the Hemisphere."[\[421\]](#)

### **C. Initiation of legal actions**

358. In 2008, the Commission learned that human rights defender Humberto Prado, like other members of the OVP, were allegedly being investigated by the Ministry of Interior Affairs and Justice for treason and sedition, presumably because of the various protests that inmates staged inside Venezuelan prisons.[\[422\]](#)

359. The Commission has previously observed that "States sometimes use criminal laws that restrict or limit the means used by human rights defenders to carry out their

activities. [...] In other cases criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment. [...] These proceedings generally involve charges of rebellion, attacks on public order or state security, and the formation of illegal groups.<sup>[423]</sup> It also noted that "A person whose liberty is unlawfully restricted or who lives in fear of being subject to imprisonment or held against his will imprisoned because of his actions to defend the rights of other persons is directly limited in his ability to do his work."<sup>[424]</sup>

360. The Commission has also learned that on November 30, 2007, three United Nations Special Rapporteurs<sup>[425]</sup> expressed concern over constitutional reform in Venezuela, especially the reform that would prohibit associations with a political aim from receiving funding from foreign sources. Their concern was that the definition might be selectively applied to human rights organizations to prevent them from accessing international funding.

361. In conclusion, the Commission is of the view that the above-described situations constitute obstacles for the work of defending and promoting human rights in Venezuelan territory.

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<sup>[386]</sup> Article 57 of the Commission's Rules of Procedure reads as follows: "1. The Annual Report presented by the Commission to the General Assembly of the OAS shall include the following: ...h. any general or special report the Commission considers necessary with regard to the situation of human rights in the Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; ... 2. For the preparation and adoption of the reports provided for in paragraph 1.h of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the respective State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission." *Rules of Procedure of the Inter-American Commission on Human Rights* (Approved by the Commission at its 109<sup>th</sup> special session, held December 4 through 8, 2000, amended at its 116<sup>th</sup> regular session, held October 7 to 25, 2002, and at its 118<sup>th</sup> regular session, held October 6 to 24, 2003).

<sup>[387]</sup> Reply of the Venezuelan State, received by the IACHR on February 6, 2009.

<sup>[388]</sup> Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, Chamber for Constitutional Matters. Judgment of December 18, 2008, file No. 08-1572, declaring unenforceable the judgment of the Inter-American Court of Human Rights of August 5, 2008. Available at <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html>

<sup>[389]</sup> I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes"). Judgment of August 5, 2008, Series C, No. 182.

<sup>[390]</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No 94, para. 19; I/A Court H.R., *Hilaire Case*. Preliminary Exceptions. Judgment of September 1, 2001. Series C No 80, paras. 82 and 84; I/A Court H.R., *Case of Benjamin et al., Preliminary Exceptions*. Judgment of September 1 2001. Series C No 81, paras. 73 and 75; I/A Court H.R., *Case of Constantine et al. Preliminary Exceptions*. Judgment of September 1, 2001. Series C No 82, paras. 73 and 75; I/A Court H.R., *Case of the Constitutional Court. Competence*. Judgment of September 24, 1999. Series C No 55, para. 35; I/A Court H.R., *Ivcher Bronstein Case. Competence*. Judgment of September 24, 1999. Series C No 54, para. 36. I/A Court H.R., Decision. Provisional Measures, Luis Uzcategui with respect to Venezuela, February 20, 2003.

<sup>[391]</sup> Article 62 of the American Convention provides that:

1.A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention. 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court. 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special



declaration pursuant to the preceding paragraphs, or by a special agreement.

[392] I/A Court H.R., *Ivcher-Bronstein Case*. Judgment of September 24, 1999. Series C Nº 54, para. 37, and I/A Court H.R., *Constitutional Court Case. Competence*. Judgment of September 24, 1999. Series C Nº 55, para. 36.

[393] Vienna Convention on the Law of Treaties. U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, entered into force January 27, 1980. Vienna, May 23, 1969. Articles 26 and 27 provide:

26. "Pacta sunt servanda". Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

27. Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

[394] I/A Court H.R., *Provisional Measures, Case of Luis Uzcatogui v. Venezuela*. Decision, February 20, 2003, para. 14.

[395] Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, entered into force January 27, 1980. Vienna, May 23, 1969.

[396] OAS. General Assembly, resolution 1716: Observations and Recommendations of the Member States on the Annual Report of the Inter-American Court of Human Rights, (adopted at the first plenary session, held on June 5, 2000). OEA/Ser.P AG/RES. 1716 (XXX-O/00) 5 June 2000.

[397] See the Web page of the Government of the Bolivarian Republic of Venezuela, available at <http://www.gobiernoenlinea.ve/miscelaneas/misiones.html>

[398] Information supplied by the State during the 131<sup>st</sup> and 133<sup>rd</sup> sessions of the IACHR, Situation of Human Rights in Venezuela, March 7, 2008, and Citizen security and violence in Venezuela, October 28, 2008, respectively.

[399] Information supplied by the State during the 131<sup>st</sup> and 133<sup>rd</sup> sessions of the IACHR, Situation of Human Rights in Venezuela, March 7, 2008, and Citizen security and violence in Venezuela, October 28, 2008, respectively.

[400] See IACHR, Press Release Nº13/07 - The Inter-American Commission on Human Rights Appeals to be Allowed to visit Venezuela. Washington, D.C., March, 9, 2007.

[401] I/A Court H.R. *Case of Castañeda Gutman. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184.

[402] Inter-American Democratic Charter, approved at the first plenary session, held September 11, 2001.

[403] IACHR, Report No. 137/99, Case 11.863 (Andrés Aylwin Azócar *et al.*), December 27, 1999, para. 31, which cites a former member of the Commission, Professor Michael Reisman, who wrote that:

Popular government is an internationally prescribed human right. Article 21(3) of the Universal Declaration on Human Rights provides: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." [Therefore, when the right to democratic government is violated], all the other human rights that depend on the lawful institutions of government become matters for the discretion of the dictators.... Violations of the right to popular government are not secondary or less important. They are very, very serious human rights violations. ... (W. Michael Reisman. *Humanitarian Intervention and Fledgling Democracies*. 18 *J. Fordham Int. L.J.* 794, 795, 1995).

[404] IACHR, Report No. 137/99, Case 11.863 (Andrés Aylwin Azócar *et al.*), December 27, 1999, para. 38, which references resolutions 510 (X-0/80); 543 (XI-0/81); 618 (XII-0/82); 666 (XIII-0/83); and 742 (XIV-0/84).

[405] I/A Court H.R., *Case of Castañeda Gutman. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 148.

[406] Reply of the Venezuelan State, received by the IACHR on February 6, 2009.

[407] See IACHR, Report Nº 67/08, Petition 275-08, ADMISSIBILITY (Leopoldo López Mendoza) Venezuela, July 25, 2008.

[408] See [http://archivo.derf.com.ar/despachos.asp?cod\\_des=232184&ID\\_Seccion=22](http://archivo.derf.com.ar/despachos.asp?cod_des=232184&ID_Seccion=22): *Venezuela: Hugo Chávez amenaza con sacar tanques a la calle 9/11/08* [Venezuela: Hugo Chávez threatens to take his tanks to the streets, 9/11/08]; <http://www.elnuevoherald.com/157/story/318800.html>: *Antiguo mentor acusa a Chávez de enturbiar el panorama electoral* [Former mentor accuses Chávez of roiling the election waters],

November 10, 2008, where Luis Miquelena said that "The President wants to disrupt the municipal and regional elections slated for November 23, and to that end is threatening to deny 'bread and water' to those who vote for opposition candidates."

[409] See, *Chávez dice que acatará decisiones del soberano* [Chávez says he will abide by the people's decisions], available at <http://www.diariolavoz.net/seccion.asp?pid=18&sid=424&notid=277799> and *La amenaza como estrategia electoral* [Threat as an election strategy], available at [http://www.elpais.com/psp/index.php?module=elp\\_pdapsp&page=elp\\_pda\\_noticia&idNoticia=20081113](http://www.elpais.com/psp/index.php?module=elp_pdapsp&page=elp_pda_noticia&idNoticia=20081113) [http://www.elpais.com/psp/index.php?module=elp\\_pdapsp&page=elp\\_pda\\_noticia&idNoticia=20081113](http://www.elpais.com/psp/index.php?module=elp_pdapsp&page=elp_pda_noticia&idNoticia=20081113) [elpepuint 3.Tes&seccion=int.](http://www.elpais.com/psp/index.php?module=elp_pdapsp&page=elp_pda_noticia&idNoticia=20081113)

[410] *Idem*. See also *Chávez califica a gobernador de Sucre como asqueroso traidor* [Chávez brands Sucre governor a dirty traitor], available at: <http://www.cadenaglobal.com/noticias/default.asp?Not=196522&Sec=5>, and *"Te vamos a barrer, asqueroso traidor"* [We're going to sweep you out, you dirty traitor] at [http://www.rfi.fr/actues/articles/107/article\\_9734.asp](http://www.rfi.fr/actues/articles/107/article_9734.asp).

[411] IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006.

[412] Amnesty International. Urgent Action Venezuela, José Urbano, human rights defender, AMR53/004/2008 of July 29, 2008

[413] See <http://www.amnesty.org/en/library/asset/AMR53/004/2008/en/51ea0269-5ecd-11dd-a592-c739f9b70de8/amr530042008spa.html>

[414] The Commission is referring to the case of COFAVIC, an organization that since 2005 has received around four summonses from the Public Prosecutor's Office and seven from the courts, to prosecute the criminal case being conducted into the anonymous phone calls, newspaper articles and statements made to threaten its members.

[415] IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc-5 rev. 1, March 7, 2006, para. 152.

[416] IACHR. Annual Report of the Inter-American Commission on Human Rights 2007. Chapter IV Venezuela. OEA/Ser.L/GV/II.130.Doc.22 rev.1, December 29, 2007, para. 242.

[417] The *Observatorio para la Protección de los Defensores de Derechos Humanos* [Observatory for the Protection of Human Rights]. Urgent appeal, dated May 15, 2008. See [http://www.fidh.org/article.php3?id\\_article=5559](http://www.fidh.org/article.php3?id_article=5559).

[418] See [http://www.asambleanacional.gov.ve/index.php?option=com\\_content&task=view&id=19193&Itemid=131](http://www.asambleanacional.gov.ve/index.php?option=com_content&task=view&id=19193&Itemid=131).

[419] During a public hearing that the Inter-American Court held on May 8, 2008, in the case of Gabriela Perozo *et al.* v. Venezuela, Mr. Ayala Corao appeared as representative of the victims. That same day, the television channel *Venezolana de Televisión* aired a program on which statements were made to discredit him, accusing him of having had a hand in the *coup d'état* attempt in Venezuela in April 2002. See [www.vtv.gov.ve](http://www.vtv.gov.ve).

[420] See Press Release issued by the IACHR on September 22, 2008. Available at: <http://www.cidh.oas.org/Comunicados/English/2008/42.08eng.htm>. SIP. September 19, 2008. *La SIP repudia expulsión de Human Rights Watch de Venezuela* [The SIP condemns the expulsion of Human Rights Watch from Venezuela]. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4032&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4032&idioma=sp).

[421] IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc-5 rev. 1, March 7, 2006 para. 177.

[422] See *"Garantizan fin de crisis carcelaria"* [An end to the prison crisis promised], *El Tiempo* March 13, 2008. [http://www.eltiempo.com.ve/noticias/default.asp\\_id=143236](http://www.eltiempo.com.ve/noticias/default.asp_id=143236). See also Human Rights Watch. A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela. September de 2008, p. 240.

[423] IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc-5 rev. 1, March 7, 2006, paragraphs 178-179.

[424] IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc-5 rev. 1, March 7, 2006, para. 48.

[425] Press Release United Nations Independent Experts Concerned About Constitutional Reform in Venezuela, 30 November 2007. Ambeyi Ligabo, Special Rapporteur on the right of freedom of opinion and expression; Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders; Leandro Despouy, Special Rapporteur on the independence of judges and lawyers. See <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/3A9D80608052F4FCC12573A30073E377?opendocument>.

	AMERICAN CONVENTION ON HUMAN RIGHTS "Pact of San José" Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica held from November 8-22 1969 ENTRY INTO FORCE: July 18, 1978	ACCEPTANCE OF THE JURISDICTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS	ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR" (Adopted at San Salvador, El Salvador on November 17, 1988) ENTRY INTO FORCE: November 16, 1999	PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY (Adopted at Asunción, Paraguay, on June 8, 1990) ENTRY INTO FORCE: August 28, 1991	INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE (Adopted at Cartagena de Indias, Colombia, on December 9, 1985) ENTRY INTO FORCE: February 28, 1987	INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS (Adopted at Belém do Pará, on June 9, 1994) ENTRY INTO FORCE: March 28, 1996	INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT, AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELÉM DO PARÁ" (Adopted at Belém do Pará, Brazil, on June 9, 1994) ENTRY INTO FORCE: March 5, 1995	INTER-AMERICAN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (Adopted at Guatemala City, Guatemala on June 7, 1999) ENTRY INTO FORCE: September 14, 2001
Antigua and Barbuda	-	-	-	-	-	-	AD 11.19.98	-
Argentina <sup>1</sup>	R 09.05.84	A 09.05.84	R 10.23.03	S 09.05.08	R 03.31.89	R 02.28.96	R 07.05.96	R 01.10.01
Bahamas <sup>2</sup>	-	-	-	-	-	-	AD 05.16.95	-
Barbados <sup>3</sup>	R 11.27.82	A 06.04.00	-	-	-	-	R 05.16.95	-
Belize	-	-	-	-	-	-	AD 11.25.96	-
Bolivia <sup>4</sup>	AD 07.19.79	A 07.27.93	R 10.05.06	-	R 11.21.06	R 05.05.99	R 12.05.94	R 05.30.03
Brazil <sup>5</sup>	AD 09.25.92	A 12.10.98	AD 08.21.96	R 08.13.96	R 07.20.89	S 06.10.94	R 11.27.95	R 08.15.01
Canada	-	-	-	-	-	-	-	-
Chile <sup>6</sup>	R 08.21.90	A 08.21.90	S 06.05.01	R 19.16.08	R 09.30.88	S 06.10.94	R 11.15.96	R 02.26.02
Colombia <sup>7</sup>	R 07.31.73	A 06.21.85	AD 12.23.97	-	R 01.19.99	R 04.12.05	AD 11.15.96	R 02.11.04
Costa Rica <sup>8</sup>	R 04.08.70	A 07.02.80	R 11.16.99	R 05.26.98	R 02.08.00	R 06.02.96	R 07.12.95	R 02.08.00
Cuba	-	-	-	-	-	-	-	-
Dominica <sup>9</sup>	R 06.11.93	-	-	-	-	-	R 06.06.95	S 06.08.99
Dominican Republic <sup>10</sup>	R 04.19.78	A 03.25.99	S 11.17.88	-	R 01.29.87	-	R 03.07.96	R 02.05.07
Ecuador <sup>11</sup>	R 12.28.77	A 07.24.84	R 03.25.93	R 04.15.98	R 11.09.99	R 07.27.06	R 09.15.95	R 03.18.04
El Salvador <sup>12</sup>	R 06.23.78	A 06.06.95	R 06.06.95	-	R 12.05.94	-	R 01.26.96	R 03.08.02
Grenada <sup>13</sup>	R 07.18.78	-	-	-	-	-	R 02.15.01	-
Guatemala <sup>14</sup>	R 05.25.78	A 03.09.87	R 10.05.00	-	R 01.29.87	R 02.25.00	R 04.04.95	R 01.28.03
Guyana	-	-	-	-	-	-	R 02.28.96	-
Haiti <sup>15</sup>	AD 09.27.77	A 03.20.98	S 11.17.88	-	S 06.13.86	-	AD 06.02.97	S 06.08.99
Honduras <sup>16</sup>	R 09.08.77	A 09.09.81	-	-	S 03.11.86	R 07.11.05	R 07.12.95	-
Jamaica <sup>17</sup>	R 08.07.78	-	-	-	-	-	R 12.14.05	S 06.08.99
Mexico <sup>18</sup>	AD 03.24.81	A 12.16.98	R 04.16.96	R 06.28.07	R 06.22.87	R 04.09.02	R 11.12.98	R 01.25.01
Nicaragua <sup>19</sup>	R 09.25.79	A 02.12.91	S 11.17.88	R 11.09.99	S 09.29.87	S 06.10.94	R 12.12.95	R 11.25.02
Panama <sup>20</sup>	R 06.22.78	A 05.09.90	R 02.18.93	R 08.28.91	R 08.28.91	R 02.28.96	R 07.12.95	R 02.16.01
Paraguay <sup>21</sup>	R 08.24.89	A 03.11.93	R 06.03.97	R 12.07.00	R 03.09.90	R 11.26.96	R 10.18.95	R 10.22.02
Peru <sup>22</sup>	R 07.28.78	A 01.21.81	R 06.04.95	-	R 03.28.91	R 02.13.02	R 06.04.96	R 08.30.01
Saint Kitts and Nevis	-	-	-	-	-	-	R 06.12.95	-
Saint Vincent and the Grenadines	-	-	-	-	-	-	R 05.31.96	-
Santa Lucia	-	-	-	-	-	-	R 04.04.95	-
Suriname <sup>23</sup>	AD 11.12.87	A 11.12.87	AD 07.10.90	-	R 11.12.87	-	R 03.08.02	-
Trinidad and Tobago <sup>24</sup>	D 05.26.99	D 05.26.99	-	-	-	-	R 05.08.96	-
United States	F	-	-	-	-	-	-	-
Uruguay <sup>25</sup>	R 04.19.85	A 04.19.85	R 04.02.96	R 04.04.94	R 11.10.92	R 04.02.96	R 04.02.96	R 07.20.01
Venezuela <sup>26</sup>	R 08.09.77	A 06.24.81	S 01.27.89	R 10.06.93	R 08.26.91	01.19.99	R 02.03.95	R 09.28.06

- R Ratification  
A Acceptance of the Jurisdiction of the Inter-American Court of Human Rights  
S Signature not followed by ratification  
D Date of denunciation of the American Convention on Human Rights  
AD Accesion

**1. Argentina:**

(Reservation and interpretative declarations made at the time of ratification)

The instrument of ratification was received at the General Secretariat of the OAS on September 5, 1984, with a reservation and interpretative declarations. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on May 23, 1969.

The texts of the above-mentioned reservation and of the interpretative declarations are the following:

I. Reservation:

Article 21 is subject to the following reservation: "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."

II. Interpretative Declarations:

Article 5, paragraph 3, shall be interpreted to mean that a punishment shall not be applied to any person other than the criminal, that is, that there shall be no vicarious criminal punishment.

Article 7, paragraph 7, shall be interpreted to mean that the prohibition against "detention for debt" does not involve prohibiting the state from basing punishment on default of certain debts, when the punishment is not imposed for default itself but rather for a prior independent, illegal, punishable act.

Article 10 shall be interpreted to mean that the "miscarriage of justice" has been established by a national court.

Recognition of Competence

In the instrument of ratification dated August 14, 1984, and deposited with the General Secretariat of the OAS on September 5, 1984, the Government of Argentina recognizes the competence of the Inter-American Commission on Human Rights and on the jurisdiction of the Inter-American Court of Human Rights. This recognition is for an indeterminate period and on condition of reciprocity on all cases related to the interpretation or application of the Convention cited, with the partial reservation and bearing in mind the interpretative statements contained in the instrument of ratification.

The instrument of ratification further notes that the obligations undertaken by virtue of the Convention shall only be effective as regards acts that have occurred after the ratification of the above-mentioned instrument.

**2. Bahamas:**

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women "Convention Of Belém Do Pará"

(Declaration made at the time of signature)

Article 7(g) of the Convention imports no obligation upon the Government of the Commonwealth of The Bahamas to provide any form of compensation from public funds to any woman who has been subjected to violence in circumstances in which liability would not normally have been incurred under existing Bahamian law.

**3. Barbados:**

(Reservations made at the time of ratification)

The instrument of ratification was received at the General Secretariat of the OAS on November 5, 1981, with reservations. Notification of the reservations submitted was given in conformity with the Vienna Convention on the Law of Treaties, signed on May 23, 1969. The twelve-month period from the notification of said reservations expired on November 26, 1982, without any objection being raised to the reservations.

The text of the reservations with respect to Articles 4(4), 4(5) and 8(2) (e), is the following:

In respect of 4(4) the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4)

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape.

#### **4. Bolivia:**

##### Recognition of competence:

On July 27, 1993 the instrument of recognition of the competence of the Inter-American Court of Human Rights was deposited with the OAS General Secretariat, in accordance with Article 62 of the American Convention on Human Rights, with the following declaration:

I. The Constitutional Government of the Republic, under Article 59, paragraph 12, of the State Constitutional, by Law 1430 of February 11, approved and ratified the American Convention on Human Rights "Pact of San Jose", signed at San Jose, Costa Rica, on November 22, 1969, and recognized the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, under Articles 45 and 62 of the Convention.

II. By virtue of the power vested in me under Article 96, paragraph 2, Constitution of the State, I issue this instrument ratifying the American Convention on Human Rights "Pact of San Jose", recognizing the competence of the Inter-American Commission on Human Rights, and recognizing as binding, *ipso facto*, unconditionally and indefinitely the jurisdiction of the Inter-American Court of Human Rights, under Article 62 of the Convention.

The Government of Bolivia in letter OAS/262/93, of July 22, 1993, made an interpretative declaration at the time of deposit of the instrument of recognition of the competence of the Inter-American Court of Human Rights. The text of the declaration is as follows:

"The Government of Bolivia declares that the norms of unconditionally and indeterminacy shall apply with strict observance to the Constitution of Bolivia, especially with respect to the principles of reciprocity, non retroactivity and judicial autonomy."

#### **5. Brazil:**

(Interpretative declaration made at the time of adhesion)

The Government of Brazil understands that Articles 43 and 48, (D) do not include the automatic right of on site visits and inspections by the Inter-American Commission of Human Rights, which will depend on the express consent of the State.

##### Recognition of competence:

The Government of the Federative Republic of Brazil declares its recognition as binding, for an indefinite period of time, *ipso jure*, of the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights, according to Article 62 of that Convention, on the condition of reciprocity, and for matters arising after the time of this declaration.

(Date: December 10, 1998)

##### Protocol to the American Convention on Human Rights to Abolish the Death Penalty

In ratifying the Protocol to Abolish the Death Penalty, adopted in Asunción on June 8, 1990, make hereby, in compliance with constitutional requirements, a reservation under the terms of Article 2 of the said Protocol, which guarantees states parties the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.

#### **6. Chile:**

(Declaration made at the time of signature)

The Delegation of Chile signs this Convention, subject to its subsequent parliamentary approval and ratification, in accordance with the constitutional rules in force. Such parliamentary approval was later granted and the instrument of ratification was deposited with the General Secretariat of the OAS.

(Reservations made at the time of ratification)

a) The Government of Chile declares that it recognizes, for an indefinite period of time and on the condition of reciprocity, the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of the human rights established in the American Convention on Human Rights, as provided for in Article 45 of the Convention.

b) The Government of Chile declares that it recognizes as binding, *ipso facto*, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention in accordance with its Article 62.

In making these declarations, the Government of Chile places on record that this recognition of the competence and jurisdiction of the Commission applies to events subsequent to the date of deposit of this instrument of ratification or, in any case, to events which began subsequent to March 11, 1990. Moreover, in acknowledging the competence and jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Government of Chile declares that, when these bodies apply the provisions of Article 21.2 of the Convention, they may not make statements concerning the reasons of public utility or social interest taken into account in depriving a person of his property.

#### **Inter-American Convention to Prevent and Punish Torture**

(Reservations made at the time of ratification)

a) To Article 4, to the effect that, inasmuch as it alters the principle of "automatic obedience" established in Chile's domestic law, the Government of Chile will enforce the provisions of that international rule in respect of subordinate personnel subject to the jurisdiction of the Code of Military Justice, provided that execution of an order whose obvious intent is the perpetration of the acts stipulated in Article 2, is not demanded by the superior over the subordinate's representation.

b) With regard to the final paragraph of Article 13, because of the discretionary and subjective way in which the rule is drafted.

c) The Government of Chile states that in its relations with the countries of the Americas that are Parties to the present Convention, it will apply this Convention in those cases where there is incompatibility between its provisions and those of the Convention against torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the United Nations in 1984.

d) With regard to the third paragraph of Article 8, since a case may only be submitted to the international fora whose competence has been recognized by the State of Chile.

#### Withdrawal of Reservations:

On August 21, 1990 deposited an instrument dated May 18, 1990, withdrawing the reservations formulated by the Government of Chile to Article 4 and to the final paragraph of Article 13 of the Convention.

### **7. Colombia**

#### Recognition of Competence:

On 21 June 1985 presented an instrument of acceptance by which recognizes the competence of the Inter-American Commission on Human Rights for an indefinite time, on the condition of strict reciprocity and nonretroactivity, for cases involving the interpretation or application of the Convention, and reserves the right to withdraw its recognition of competence should it deem this advisable. The same instrument recognizes the jurisdiction of the Inter-American Court of Human Rights, for an indefinite time, on the condition of reciprocity and nonretroactivity, for cases involving the interpretation or application of the Convention, and reserves the right to withdraw its recognition of competence should it deem this advisable.

### **8. Costa Rica**

#### Recognition of Competence:

Deposited on 2 July 1980 at the General Secretariat of the OAS an instrument recognizing the competence of the Inter-American Commission on Human Rights and the jurisdiction of the Inter-American Court of Human Rights, in accordance with Articles 45 and 62 of the Convention.

(Declaration and reservations made at the time of ratification)

1) That Costa Rica declares that it recognizes, without conditions and while the American Convention on Human Rights remains in effect, the competence of the Inter-American Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of human rights established by the cited Convention.

2) That Costa Rica declares that it recognizes, without conditions and while the American Convention on Human Rights remains in effect, the mandatory jurisdiction of the Court, as a matter of law and without a specific convention on the Inter-American Court on Human Rights, on all cases relating to the interpretation or application of such multilateral treaty.

**9. Dominica:**

(Reservation made at the time of ratification)

On June 3, 1993, the Commonwealth of Dominica ratified the American Convention on Human Rights, with the following reservations:

1) Article 5. This should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act.

2) Article 4.4. Reservation is made in respect of the words "or related common crimes".

3) Article 8.2.(e). This Article shall not apply in respect of Dominica.

4) Article 21.2. This must be interpreted in the light of the provisions of the Constitution of Dominica and is not to be deemed to extend or limit the rights declared in the Constitution.

5) Article 27.1. This must also be read in the light of our Constitution and is not to be deemed to extend or limit the rights declared by the Constitution.

6) Article 62. The Commonwealth of Dominica does not recognize the jurisdiction of the Court.

**10. Dominican Republic:**

(Declaration made at the time of signature)

The Dominican Republic, upon signing the American Convention on Human Rights, aspires that the principle pertaining to the abolition of the death penalty shall become purely and simply that, with general application throughout the states of the American region, and likewise maintains the observations and comments made on the aforementioned Draft Convention which it distributed to the delegations to the Council of the Organization of American States on 20 June 1969.

Recognition of jurisdiction

The Government of the Dominican Republic, by way of this instrument, declares that it recognizes as binding, as a matter of law, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights, of November 22, 1969.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

On February 5, 2007, the Dominican Republic deposited its instrument of ratification of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. The Convention had been ratified by the Dominican Republic on December 28, 2006.

**11. Ecuador:**

(Declaration made at the time of signature)

The Delegation of Ecuador has the honor of signing the American Convention on Human Rights. It does not believe that it is necessary to make any specific reservation at this time, without prejudice to the general power set forth in the Convention itself that leaves the governments free to ratify it or not.

Recognition of Competence:

On July 24, 1984 recognized the applicability of Articles 45 and 62 of the American Convention on Human Rights, by Decree No. 2768 of July 24, 1984, published in the Registro Oficial No. 795 on July 27 of said month and year.

In addition, the Minister of Foreign Affairs of Ecuador made the following declaration on July 30, 1984, in conformity with Articles 45(4) and 62(2) of the above-mentioned Convention:

In keeping with the provisions of Article 45, paragraph 1, of the American Convention on Human Rights--Pact of San José, Costa Rica-- (ratified by Ecuador on October 21, 1977, and in force since October 27, 1977), the Government of Ecuador recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of the human rights set forth in the Convention, under the terms provided for in paragraph 2 of that Article.

This recognition of competence is to be valid for an indefinite time and on condition of reciprocity.

As provided in Article 62, paragraph 1, of the Convention in reference, the Government of Ecuador declares that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention.

This recognition of jurisdiction is for an indeterminate period and on condition of reciprocity. The Ecuadorian State reserves the right to withdraw its recognition of this competence and this jurisdiction whenever it may deem it advisable to do so.

## **12. El Salvador:**

(Declaration and reservations made at the time of ratification)

The present Convention is ratified, its provisions being interpreted to mean that the Inter-American Court of Human Rights shall have jurisdiction to hear any case that can be submitted to it, either by the Inter-American Commission on Human Rights or by any state party, provided that the State of El Salvador, as a party to the case, recognizes or has recognized such jurisdiction, by any of the means and under the arrangements indicated in the Convention.

The American Convention on Human Rights, known as the "Pact of San José, Costa Rica", signed at San José, Costa Rica, on 22 November 1969, composed of a preamble and eighty-two articles, approved by the Executive Branch in the Field of Foreign Affairs by Agreement 405, dated June 14 of the current year, is hereby ratified, with the reservation that such ratification is understood without prejudice to those provisions of the Convention that might be in conflict with express precepts of the Political Constitution of the Republic.

The instrument of ratification was received at the General Secretariat of the OAS on 23 June 1978 with a reservation and a declaration. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

### Recognition of Competence deposited on June 6, 1995:

I. The Government of El Salvador recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the American Convention on Human Rights, "Pact of San José."

II. The Government of El Salvador, in recognizing that competence, expressed that its recognition is for an indefinite period and on condition of reciprocity, and that it retains the right to include exclusively subsequent deeds or juridical acts or deeds or juridical acts began subsequent to the date of deposit of this declaration of acceptance, by reserving the right to withdraw its recognition of competence whenever it may deem it advisable to do so.

III. The Government of El Salvador recognizes the competence of the Court, insofar as this recognition is compatible with the provisions in the constitution of the Republic of El Salvador.

## **13. Grenada:**

By way of an instrument dated July 14, 1978, the Prime Minister and the Minister of Foreign Affairs of this state ratified the American Convention on Human Rights on its behalf.

## **14. Guatemala:**

(Reservation made at the time of ratification)

The Government of the Republic of Guatemala ratifies the American Convention on Human Rights, signed at San José, Costa Rica, on 22 November 1969, with a reservation as to Article 4, paragraph 4 thereof, since the Constitution of the Republic of Guatemala, in its Article 54, only excludes the application of the death penalty to political crimes, but not to common crimes related to political crimes.



The instrument of ratification was received at the General Secretariat of the OAS on 25 May 1978 with a reservation. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

Withdrawal of Guatemala's reservation:

The Government of Guatemala, by Government Agreement N° 281-86, dated 20 May 1986, has withdrawn the above-mentioned reservation, which was included in its instrument of ratification dated 27 April 1978, considering that it is no longer supported by the Constitution in the light of the new legal system in force. The withdrawal of the reservation will become effective as of 12 August 1986, in conformity with Article 22 of the Vienna Convention on the Law of Treaties of 1969, in application of Article 75 of the American Convention on Human Rights.

Recognition of Competence:

On 9 March 1987, presented at the General Secretariat of the OAS, the Government Agreement N° 123-87, dated 20 February 1987, of the Republic of Guatemala, by which it recognizes the jurisdiction of the Inter-American Court of Human Rights, in the following terms:

"(Article 1) To declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights."

"(Article 2) To accept the competence of the Inter-American Court of Human Rights for an indefinite period of time, such competence being general in nature, under terms of reciprocity and with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States."

**Inter-American Convention on Forced Disappearance of Persons**

Pursuant to Article XIX of the Convention, the Republic of Guatemala, upon ratifying the Convention, formulates a reservation regarding the application of Article V thereof, since Article 27 of its Political Constitution establishes that "extradition proceedings, for political crimes shall not be instituted against Guatemalans, who shall in no case be handed over to a foreign government, except as provided in treaties and conventions concerning crimes against humanity or against international law," and that for the time being, there is no domestic Guatemalan legislation governing the matter of extradition.

Withdrawal of the reservation regarding the application of article V made at the time of the reservation (September 7, 2001).

**Inter-American Convention To Prevent And Punish Torture**

(Reservation made at the time of signature)

The Republic of Guatemala does not accept the application nor shall it apply the third paragraph of Article 8, because in conformance with its domestic legal procedures, when the appeals have been exhausted, the decision acquitting a defendant charged with the crime of torture becomes final and may not be submitted to any international fora.

Withdrawal of Reservations: On October 1, 1990, deposited at the General Secretariat, an instrument dated August 6, 1990, withdrawing the reservation made by the Government of Guatemala at the time of signing the Convention and reiterated at the time of ratifying it on December 10, 1986.

**15. Haiti:**

By way of an instrument dated September 14, 1977, the President of this state, in accordance with Article 93 of its national constitution, ratified the American Convention on Human Rights, promising that it would be strictly observed.

Recognition of Competence:

Having seen the Constitution of the Republic of 1987; and

Having seen the law dated August 18, 1979, whereby the Republic of Haiti ratified the American Convention on Human Rights.

Hereby declare that we recognize as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This declaration has been issued for presentation to the General Secretariat of the Organization of American States, which shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court, pursuant to Article 62 of the Convention.

Attached to the present declaration is the law of August 18, 1979, whereby the Republic of Haiti ratified the American Convention on Human Rights, which was promulgated in the Official Journal of the Republic.

Done in the National Palace, in Port-au-Prince, on March 3, 1998, the 195th year of independence.

**16. Honduras:**

Recognition of Competence:

On 9 September 1981, presented at the General Secretariat of the OAS, an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights in accordance with Article 62 of the Convention.

**17. Jamaica:**

Recognition of Competence:

The instrument of ratification, dated July 19, 1978, states, in conformity with Article 45, paragraph 1 of the Convention, that the Government of Jamaica recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

**18. Mexico:**

(Declarations and reservation made at the time of ratification)

The instrument of accession was received at the General Secretariat of the OAS on 24 March 1981, with two interpretative declarations and one reservation. Notification of the reservation submitted was given in conformity with the provisions of the Vienna Convention on the Law of Treaties, signed on 23 May 1969. The twelve-month period from the notification of said reservation expired on 2 April 1982, without any objection being raised to the reservation.

The texts of the interpretative declarations and the reservation are the following:

Interpretive Declarations:

With respect to Article 4, paragraph 1, the Government of Mexico considers that the expression "in general" does not constitute an obligation to adopt, or keep in force, legislation to protect life "from the moment of conception," since this matter falls within the domain reserved to the States.

Furthermore, the Government of Mexico believes that the limitation established by the Mexican Constitution to the effect that all public acts of religious worship must be performed inside places of public worship, conforms to the limitations set forth in Article 12, paragraph 3. This interpretive declaration was withdrawn on April 9, 2002.

Reservation:

The Government of Mexico makes express reservation to Article 23, paragraph 2, since the Mexican Constitution provides, in Article 130, that ministers of denominations shall not have an active or passive vote, nor the right to associate for political purposes.

Declaration for Recognition of the Jurisdiction of the Inter-American Court of Human Rights

1. The United States of Mexico recognizes as binding *ipso facto* the adjudicatory jurisdiction of the Inter-American Court of Human Rights on matters relating to the interpretation or application of the American Convention on Human Rights, in accordance with article 62.1 of the same, with the exception of cases derived from application of article 33 of the Political Constitution of the United States of Mexico

2. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights shall only be applicable to facts or juridical acts subsequent to the date of deposit of this declaration, and shall not therefore apply retroactively.

3. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights is of a general nature and shall continue in force for one year after the date of which the United States of Mexico gives notice it has denounced it.

## **Inter-American Convention on Forced Disappearance of Persons**

Reservation made when depositing the instrument of ratification (April 9, 2002)

"The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact."

Interpretative declaration made when depositing the instrument of ratification (April 9, 2002)

"Based on Article 14 of the Political Constitution of the United Mexican States, the Government of Mexico declares, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994, that it shall be understood that the provisions of said Convention shall apply to acts constituting the forced disappearance of persons ordered, executed, or committed after the entry into force of this Convention."

Protocol to the American Convention on Human Rights to Abolish the Death Penalty

On June 28, 2007, Mexico ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; Mexico deposited its instrument of ratification on August 20, 2007.

### **19. Nicaragua:**

#### Recognition of Competence:

On February 12, 1991, presented at the General Secretariat of the OAS, an instrument dated January 15, 1991, by which the Government of Nicaragua declares:

I. The Government of Nicaragua recognizes as binding as of right with no special convention the competence of the Inter-American Court of Human Rights in all cases involving interpretation and application of the Inter-American Convention on Human Rights, "Pact of San Jose, Costa Rica," by virtue of Article 62(1) thereof.

II. The foregoing notwithstanding, the Government of Nicaragua states for the record that its acceptance of the competence of the Inter-American Court of Human Rights is given for an indefinite period, is general in character and grounded in reciprocity, and is subject to the reservation that this recognition of competence applies only to cases arising solely out of events subsequent to, and out of acts which began to be committed after, the date of deposit of this declaration with the Secretary General of the Organization of American States.

On February 6, 2006, Nicaragua delivered a note to the General Secretariat in which it reported that the Government of the Republic of Nicaragua had added a third paragraph to the Declaration No. 49 of January 15, 1991 regarding the American Convention on Human Rights, in which it declares that it recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in the Convention, as provided in Article 45 thereof.

### **20. Panama:**

#### Recognition of Competence:

On May 9, 1990, presented at the General Secretariat of the OAS, an instrument, dated February 20, 1990, by which it declares that the Government of the Republic of Panama recognizes as binding, *ipso facto*, the jurisdiction of the Court on all matters relating to the interpretation or application of the American Convention on Human Rights.

### **21. Paraguay:**

#### Recognition of Competence:

On March 11, 1993, Paraguay presented to the General Secretariat of the OAS an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights, "for an indefinite period of time and which should be interpreted in accordance with the principles of International Law in the sense that this recognition refers expressly to acts that occurred after the deposit of this instrument and only for cases in which there exists reciprocity."

**22. Peru:**

Recognition of Competence and Jurisdiction

On January 21, 1981, an instrument issued by the Ministry of Foreign Affairs of the Republic of Peru, dated October 20, 1980, was presented to the OAS General Secretariat. The instrument states: "...As stipulated in paragraph 1 of Article 45 of the American Convention on Human Rights, or Pact of San José, Costa Rica (ratified by Peru on September 9, 1980), the Government of Peru recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a state party alleges that another state party has committed a violation of a human right set forth in that Convention, as provided in paragraph 2 of that article. This recognition of competence is valid for an indefinite time and under the condition of reciprocity. As stipulated in paragraph 1 of Article 62 of the aforementioned Convention, the Government of Peru declares that its recognizes as binding, as a matter of law, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This recognition of jurisdiction is valid for an indefinite time and under the condition of reciprocity ...."

Withdrawal of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights

The Government of Peru, on July 8, 1999, declares:

In accordance with the American Convention on Human Rights, the Republic of Peru withdraws the declaration of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights previously issued by the Peruvian Government under the optional clause pertaining to such recognition.

This withdrawal of recognition of the contentious jurisdiction of the Inter-American Court takes effect immediately and applies to all cases in which Peru has not replied to a complaint lodged with the Court.

Withdrawal of recognition of the contentious jurisdiction of the Court

The Government of Peru, on January 29, 2001, declares:

The recognition of the contentious jurisdiction of the Inter-American Court of Human Rights issued by Peru on October 20, 1980, is in full effect and is binding in all legal respects on the Peruvian state. Such effect should be understood as having been uninterrupted since the deposit of the declaration with the General Secretariat of the Organization of American States on January 21, 1981.

The Government of the Republic of Peru withdraws the declaration deposited on July 9, 1999, the intent of which was to withdraw the declaration of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights under the optional clause pertaining to such recognition.

**23. Suriname:**

Accession.

Recognition of Competence:

On 12 November 1987, presented at the General Secretariat of the OAS, an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights in accordance with Article 62 of the Convention.

**24. Trinidad and Tobago:**

(Reservations made at the time of accession)

1. As regards Article 4(5) of the Convention the Government of The Republic of Trinidad and Tobago makes reservation in that under the laws of Trinidad and Tobago there is no prohibition against the carrying out a sentence of death on a person over seventy (70) years of age.

2. As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.

On May 26, 1998, the Republic of Trinidad and Tobago notified the Secretary General of the OAS of its denunciation of the American Convention. In accordance with Article 78(1) of the American Convention, the denunciation came into effect one year from the date of notification.

**25. Uruguay:**

(Reservation made at the time of signature)

Article 80.2 of the Constitution of Uruguay provides that a person's citizenship is suspended if the person is "under indictment on a criminal charge which may result in a penitentiary sentence." Such a restriction on the exercise of the rights recognized in Article 23 of the Convention is not envisaged among the circumstances provided for in Article 23, paragraph 2, for which reason the Delegation of Uruguay expresses a reservation on this matter.

(Reservation made at the time of ratification)

With the reservation made at the time of signature. Notification of this reservation was given in conformity with the Vienna Convention on the Law of Treaties, signed on May 23, 1969.

Recognition of Competence:

In the instrument of ratification dated March 26, 1985 and deposited with the General Secretariat of the OAS on April 19, 1985, the Government of the Oriental Republic of Uruguay declares that it recognizes the competence of the Inter-American Commission on Human Rights for an indefinite period and of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of this Convention, on the condition of reciprocity, in accordance with Articles 45.3 and 62.2 of the Convention.

**26. Venezuela:**

(Reservation and declaration made at the time of ratification)

Article 60, paragraph 5 of the Constitution of the Republic of Venezuela establishes that: No one may be convicted in a criminal trial without first having been personally notified of the charges and heard in the manner prescribed by law. Persons accused of an offense against the *res publica* may be tried *in absentia*, with the guarantees and in the manner prescribed by law. Such a possibility is not provided for in Article 8, paragraph 1 of the Convention, and for this reason Venezuela formulates the corresponding reservations, and,

DECLARES: That, in accordance with the provisions of Article 45, paragraph 1 of the Convention, the Government of the Republic of Venezuela recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed violations of human rights set forth in that Convention, in the terms stipulated in paragraph 2 of that article. This recognition of competence is made for an indefinite period of time.

The instrument of ratification was received at the General Secretariat of the OAS on 9 August 1977 with a reservation and a declaration. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

Recognition of Competence:

On 9 August 1977 recognized the competence of the Inter-American Commission on Human Rights and on 24 June 1981 recognized the jurisdiction of the Inter-American Court of Human Rights, in accordance with Articles 45 and 62 of the Convention, respectively.



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## **ADDRESS BY THE CHAIRMAN OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS PAOLO CAROZZA**

### **PRESENTATION OF THE 2007 ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES**

Washington, D.C.  
April 3, 2008

Mr. Chairman of the Committee on Juridical and Political Affairs,

Distinguished representatives of member states and observers to the Organization,

Ladies and gentlemen,

As Chairman of the Inter-American Commission on Human Rights, I am pleased to present the Commission's Annual Report for the year 2007 to the Committee on Juridical and Political Affairs of the Permanent Council. Joining me today are our Executive Secretary and Secretariat staff.

The report I present to you today was approved by the Inter-American Commission, having been prepared in accordance with the guidelines established by the General Assembly and pursuant to Article 57 of the Commission's Rules of Procedure. The report reflects the general activities of the IACHR primarily under the presidency of Commissioner Florentín Meléndez.

#### **Structure and Summary of the Annual report for 2007**

The Report is divided into three volumes: the first two refer to the work of the Inter-American Commission on Human Rights and the third contains the report from the Commission's Special Rapporteur for Freedom of Expression.

#### **The Role of the Commission and the Vitality of the System**

While **Chapter I** of our report has been dedicated in recent years to a brief assessment of the human rights situation in the Hemisphere, this year's introduction departs from that practice in order to reflect on the role of the Commission within the inter-American human

rights system. The inter-American human rights system represents a vital mechanism to further the establishment of justice and the rule of law in the countries of this Hemisphere. The system supports Member States in making crucial advances in law, policy and practice at the national level. We see more and more frequently, in fact, that national institutions employ international human rights standards and the jurisprudence of the regional system in their decision-making, using those norms as a baseline against which to assess and revise their own practice at the domestic level.

That domestic effectiveness reflects the high credibility of the system's organs. As the legitimacy of the system continues to increase, it faces demands which grow in both number and complexity. Individuals present an ever-increasing number of petitions before the Commission; civil society and states request more hearings covering more diverse issues; the Commission carries out expanded thematic initiatives; and it receives additional mandates from the General Assembly.

Although these expanded expectations and responsibilities constitute a strong sign of the indispensable role that the Commission plays in protecting and promoting human rights in the Hemisphere, they also create an enormous challenge for the entire system, because the activities and mandates of the Commission cannot be carried out without adequate financial and human resources. Those resources have not increased in proportion to the Commission's growing importance and role in the region; indeed, the regular budget allocated to the Commission by the Member States has remained constant or even decreased in real terms since at least 1999. As a result, there is now a very large and expanding gap between the resources necessary to maintain a healthy human rights system and the reality of the Commission's activities. This has forced the Commission to spread its resources thinly, and creates a situation of internal competition for resources among the various activities of the Commission – for example, this situation pits the Commission's expeditious resolution of contentious cases in tension with our visiting, monitoring and reporting on general conditions in Member States or on thematic issues throughout the region, as both parts of the Commission's work vie for the same limited pool of funds.

One additional consequence of this situation is that the Commission has had to seek and rely upon special, ad hoc contributions to its budget from generous states and private organizations. In 2007 more than half of its operating budget came from such donations. Although the Commission is of course very grateful for that support, we also are acutely aware that it places the Commission's work in a very precarious and uncertain state, because there is no stability or long-term assurance of the availability of those funds. In 2007, the regular funds of the Commission were only sufficient to fully cover one out of our four periods of sessions. Moreover, the continued reliance on special contributions could in the long run raise concerns about the complete independence and autonomy of the Commission in establishing its own priorities and activities in defense of human rights.

In short, the regional human rights system cannot continue to respond to the growing demands placed upon it without decisive action by the Member States to address the critical shortage of resources.

## **Activities of the Inter-American Commission during 2007**

**Chapter II** of the Annual Report provides a brief introduction to the origins and legal bases of the Commission and describes the primary activities carried out during 2007. This review of activities – which include four periods of sessions, the approval of 74 reports on individual cases, 94 hearings and 80 working meetings, a series of working and thematic visits, and hearings before the Inter-American Court – reflects the breadth and diversity of demands placed upon the Commission, and the multi-faceted manner in which it contributes to the promotion and protection of human rights in the region.

In addition to the three periods of sessions the Commission held at its headquarters, the Commission held a special session in Asuncion, Paraguay, from September 5 – 7, 2007, at the

invitation of the Government of Paraguay. The delegation held four public hearings, carried out promotional activities, visited the Center for Documentation and Archives for the Defense of Human Rights, also known as the "Terror Files," from the era of the dictatorship. On behalf of the Commission, I wish to reiterate our gratitude to the Government of Paraguay for its openness and support, including the financial support that made the extraordinary period of sessions possible, as well as to civil society for the warm welcome and collaboration we received.

The Commission attributes great importance to the work of other agencies and entities working to promote regional and international human rights. During various sessions, the Commission had the opportunity to strengthen relations with delegations from the African Commission on Human Rights, the Central American Council of Human Rights, a number of rapporteurs from the United Nations system and the legal secretariat that serves the UN rapporteurs and treaty bodies, among others.

During its last session of the year, in October of 2007, the Commission signed an agreement with the University of Quebec in Montreal, Canada, to establish the Brian Tittmore Scholarship, enabling a graduate of that university to learn about the regional system through a working fellowship at Commission headquarters. The scholarship was established in commemoration of Brian Tittmore, an outstanding Canadian attorney who worked in our Secretariat until his death in December of 2006.

In terms of thematic and working visits, the Commission carried out a number of visits to Colombia during 2007. In January, a delegation visited Bogotá and Medellín in connection with monitoring the demobilization of illegal armed groups. Another delegation was present in April, and the Rapporteur for Afrodescendants visited Colombia in May of 2007. Also during 2007, in the framework of the advisory services that the Commission provides to the Support Mission to the Peace Process and follow-up on the demobilization process in Colombia, a delegation of the Executive Secretariat visited 8 different departments of the country. The Commission has also closely monitored the peace and justice process through the observance of hearings and other activities.

The Rapporteur for Haiti carried out a visit to that country in April of 2007, focusing on the administration of justice and the rights of women. The Rapporteur for persons Deprived of Liberty carried out a visit to Haiti in June of 2007 in order to assess conditions in a number of detention facilities.

The Commission's Rapporteur for Mexico, visited that country in April of 2007 to meet with authorities and address the general human rights situation, and returned in August of 2007 in order to assess the situation of human rights in Oaxaca.

The Rapporteur for the Rights of Children organized two working meetings in Sao Paulo, Brazil in August of 2007, as part of the preparation of a report on juvenile justice in the Americas.

In September, in conjunction with the Commission's special period of sessions in Paraguay, the Rapporteur for Paraguay and for the Rights of Indigenous Peoples carried out a series of meetings with government officials, civil society organizations and indigenous communities, and held working meetings on pending petitions and cases.

The Rapporteur on Women's Rights carried out a visit to Chile in September of 2007 for the purpose of gathering information on discrimination in the family sphere, the workplace and in political life, in preparation for an upcoming report.

Many other states of the region also extended invitations to the Commission to visit in 2007, which we were unable to accept. The Commission wishes to express its appreciation to all the Member States that invited the Commission to visit, since such visits can play an



important role in enabling the Commission to monitor human rights in the Hemisphere. Such freedom of the Commission to visit and observe human rights conditions has historically been one of the most critical tools for ensuring the effectiveness of the Inter-American human rights norms, even in the Hemisphere's darkest periods of repression.

In this regard, the Commission remains very concerned about the difficulties it has encountered in seeking to carry out a visit to the Bolivarian Republic of Venezuela, which has over a period of years repeatedly failed to accept any date for such a visit. The inability to visit a Member State due to the absence of government consent constitutes a serious obstacle to the implementation of the Commission's mandate. Accordingly, in its 2007 Annual Report, the Commission reiterates its interest in conducting an on-site visit to the country in the near future in order to participate in the development and strengthening of human rights in Venezuela, as it does regularly with other Member States.

The Commission also sought permission during 2007 to carry out an on-site visit to Guantanamo Bay, Cuba, to monitor conditions of detention there for the hundreds of nationals of various countries who have been held there for extended periods. While representatives of the US Government did indicate that the Commission could visit the base at Guantanamo, they informed the Commission that it would not be permitted to freely interview detainees. The Commission declined to conduct a visit under such limitations. At the invitation of the US Government, the Commission has been negotiating the details of a visit to several migrant detention facilities.

During 2007, the various IACHR Rapporteurships continued their activities in support of a range of thematic initiatives and the system of individual cases.

The Rapporteurship for the Rights of Indigenous Peoples continued to advise the Chairman of the working group charged with preparing the Draft American Declaration on the Rights of Indigenous Peoples. The Commission wishes to emphasize the importance of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly on September 13, 2007. The Commission encourages the OAS member states to maximize their efforts to adopt a regional declaration, and to consider the UN Declaration as an important reference point for moving forward with their discussions.

In March 2007, the Commission issued a report prepared by the Rapporteurship on the Rights of Women, entitled *Access to Justice for Women Victims of Violence in the Americas*. The report analyzes the main obstacles women face when trying to gain access to legal resources, guarantees and protection against acts of violence, and offers a series of recommendations to assist states in implementing timely and effective legal measures to combat such violence. In April 2007, in Bogotá, Colombia, the Rapporteurship presented its report on *Violence and Discrimination against Women in the Armed Conflict in Colombia*. The Rapporteurship has conducted follow-up activities on both reports to promote the implementation of their recommendations.

The Rapporteurship on the Rights of Children continued to give priority attention in 2007 to juvenile justice, to the situation of children in conflict with the law, as well as to the specific issue of juvenile participation in gangs.

In November 2007, the Rapporteurship on Persons deprived of Liberty, working with the Argentine Ministry of Justice and the Argentine Office of the Public Defender, organized the Latin American Seminar on Best Prison Practices. The seminar was held in Buenos Aires, and attended by government and prison officials, as well as experts and representatives of governmental and nongovernmental organizations.

As part of its work, the Special Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination continued to provide technical support to the working group of the Committee on Juridical and Political Affairs of the Permanent Council of the OAS that is

preparing a Draft American Convention against Racism and All Forms of Discrimination.

Among its functions, the Rapporteurship on Migrant Workers has provided support in the process of establishing the Special Committee on Migratory Affairs created by the Permanent Council of the OAS.

The Special Rapporteur for Freedom of Expression prepared his 2007 report on the subject, and it forms part of this Annual Report. As mandated by the Commission, the report covers the subjects and activities that were given priority by the Rapporteurship during the year, including the evaluation of the status of freedom of expression in the Hemisphere.

During 2007, the Commission continued to benefit from the support of its Unit for Human Rights Defenders. The Commission moved forward with other studies and activities, including its *Initiative on Public Safety and Human Rights in the Americas*, designed to assist states in meeting the challenge of maintaining citizen security with due respect for individual rights and freedoms.

In December, the Commission published the report entitled *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*. The Commission understands that access to justice is an essential component to realize economic, social and cultural rights. Accordingly, the report explains the obligations of the States with respect to four core issues: 1) the obligation to remove economic obstacles to ensure access to the courts; 2) the components of due process of law in administrative proceedings concerning social rights; 3) the components of due process of law in judicial proceedings concerning social rights; and 4) the components of effective judicial protection of individual and collective social rights. The report also provides a conceptual framework for the preparation of progress indicators on this issue.

### **Decisions of the Inter-American Commission with Respect to Petitions, Cases, and Precautionary Measures**

**Chapter III** contains the Commission's decisions on complaints of human rights violations in the member states of the Organization. This Chapter also includes pertinent statistics concerning the Commission's work, summaries of precautionary measures adopted or extended by the Commission during 2007, and an overview of follow-up on the Commission's recommendations in decisions published since 2000.

During 2007, the Commission approved 51 reports on admissibility, 14 reports on inadmissibility, 5 reports on friendly settlement, and 13 preliminary reports on the merits. During this year, the Commission published 4 final reports on the merits, and submitted a total of 14 cases to the Inter-American Court of Human Rights. Over this period, the Commission issued a total of 40 requests that Member States take urgent precautionary measures to prevent irreparable harm to persons.

The statistics concerning the case system demonstrate that more and more individuals are coming to the Commission seeking an efficient and effective response. The number of petitions received by the Commission has increased in every year since 1999, and during 2007, the Commission received a record number of complaints, totaling 1,456. The Commission accepted 126 petitions as satisfying the minimum requirements for opening a case, raising the total number of individual petitions and cases currently being processed to 1,251.

In responding to the challenge of its large and increasing backlog of cases, the Commission, with the support of external funding, is currently implementing the first stage of a comprehensive process designed to bring the processing of individual petitions up to date. I'm pleased to report that this first stage, which focuses on the initial evaluation of older petitions, is meeting the benchmarks established at the outset of the project. The Commission is now implementing changes to bring the subsequent stages of the petition system to a more timely

resolution as well.

The effectiveness of the Commission's contribution to the promotion and protection of human rights in the region through its system of contentious cases depends, of course, on cooperation from the Member States in implementing the Commission's recommendations. This Annual Report indicates that some states have done so to an important degree, but that the level of compliance overall remains unacceptably low. There are many cases in which the states concerned have yet to fully implement the recommendations issued, and the Commission will continue to follow-up and report on those cases.

### **Development of Human Rights in the Region: The Situation in Colombia, Cuba, Haiti and Venezuela**

**Chapter IV** of the 2007 Annual Report contains the Commission's synthesis of the human rights situation in those OAS Member States where the Commission has concluded that human rights conditions call for special attention. Accordingly, this Chapter reports on the human rights situation in Colombia, Cuba, Haiti and Venezuela.

In its report on the situation in Colombia, the Commission highlights that the achievement of a lasting peace requires that measures be put in place to guarantee the non-repetition of human rights violations and gross violations of international humanitarian law. To that end, past violations must be investigated and reparations made for the consequences of the violence, using mechanisms that establish the truth about what happened, administer justice and compensate the victims of the conflict. The particular challenge in 2007 has been to achieve concrete results through the dismantling the armed paramilitary structures and to implement the framework of laws to prosecute the crimes committed by the AUC. The IACHR continues to be concerned by the fact that some groups are taking up arms again and new groups are forming. The Commission urges the Colombian Government to implement effective mechanisms to ensure that the structures of the AUC are dismantled and criminal gangs broken up.

In its report, the Commission manifests its concern for the toll the violence takes on the civilian population in Colombia, particularly the most vulnerable sectors such as indigenous peoples, the Afro-Colombian communities, and the displaced. It draws the State's attention to the increasing number of complaints alleging the involvement of police or military in violations of human rights. The Commission also remains concerned about the precarious situation of human rights defenders and social leaders who often face reprisals in connection with their work.

With respect to Cuba, the Commission continued to receive information regarding the human rights situation from international agencies, civil society, and the Cuban Government through the official web page of the Ministry of Foreign Affairs of Cuba. During the period of this report, the Commission held hearings in which it received information about the conditions facing prison inmates, on the situation of imprisoned union members, and on compliance with the recommendations issued in merits report in the case of Oscar Elías Biscet and others (Case 12.476).

The Commission's assessment highlights concerns with respect to due process and the independence of the judiciary; the detention conditions in which political dissidents are held and the harassment of dissidents; restrictions on freedom of expression and harassment targeting independent journalists; and the situation faced by human rights defenders and trade union leaders. Although the economic and commercial sanctions imposed on the Government of Cuba do not constitute any justification for the Government of Cuba's restrictions on these human rights, the Commission does believe that the sanctions are obstacles to the effective realization of economic, social, and cultural rights by the Cuban people, and should be lifted.

In reporting on Haiti, the Commission observed a notable improvement in comparison with previous years, specifically with regard to the reduction in deadly violence and kidnappings

of civilians. The Commission's report recognizes a series of initiatives by the State to address key challenges to achieving sustainable peace and security. In particular, the Commission notes a concerted effort by the State, with support of the international community, to strengthen institutions in the administration of justice, including the introduction of a specialized response to the problem of prolonged pretrial detention, legislative measures in the area of judicial independence and the reinforcement of the national police force.

The Commission emphasizes, however, that the situation in Haiti remains precarious. State institutions remain weak, deficient and in need of structural reforms and assistance. Further, Haiti's social and economic situation remains extremely fragile. The Commission remains very concerned about deficiencies in the administration of justice and citizen security, and the State's capacity to guarantee access to basic social services for the population. Given the essential role of the justice system in ensuring respect for fundamental rights as well as the full realization of democracy and the rule of law, the Commission emphasizes the need for the State to further develop its capacity to administer justice effectively and promptly with due judicial guarantees in order to ensure respect for human rights in Haiti.

Finally, with regard to the situation in Venezuela, the principal concerns that the Commission identified as affecting the full enjoyment of human rights during 2007 include the transparency and independence of the administration of justice; the existence of direct and indirect limitations on freedom of expression, including the criminalization of social protest; the systematic discrediting of nongovernmental organizations critical of the government and of human rights defenders; growing problems with citizen security; and inhuman conditions for persons deprived of liberty, as well as the failure to investigate and resolve the deaths of inmates due to violence in Venezuelan prisons.

### **Ratification Status of the Human Rights Treaties of the Inter-American System**

Lastly, the annexes to the Annual Report contain information concerning the current state of the human rights conventions and protocols on human rights adopted within the inter-American system, as well as copies of press releases issued by the Commission during 2007, and speeches delivered on behalf of the Commission.

The Commission has continued to emphasize how important it is for the system to progress towards universal acceptance and application of its norms through ratification of the various regional human rights instruments, especially the American Convention on Human Rights. The Commission therefore notes with satisfaction that in 2007 Mexico ratified the Protocol to the American Convention to Abolish the Death Penalty, and the Dominican Republic deposited its instrument of ratification of the Inter-American Convention on the Elimination of All Forms of Discrimination against persons with Disabilities.

The Commission also recognizes in particular the seven states that have already ratified all of the regional human rights treaties: Costa Rica, Ecuador, Mexico, Paraguay, Peru, Panama and Venezuela. We invite and encourage other member states to join them.

### **Conclusion**

Mr. President, Representatives, Observers, Esteemed Colleagues, Ladies and Gentlemen,

On behalf of the Commission, I want to thank the Member States for all the support they have given the Commission in its continuing efforts to fulfill faithfully its mandate.

In a special way, the Commission thanks the governments of the following OAS member countries for their financial contributions to the Commission in 2007: Chile, Colombia, Mexico, Paraguay, and the United States. I would also like to thank those observer countries that have supported the Commission's activities: Denmark, Finland, France, Ireland, Italy, Korea, Spain, and Sweden. The Commission welcomes and appreciates the contributions received from the

Inter-American Development Bank, the European Commission, the University of Notre Dame, and the Save the Children Sweden foundation. These donations contribute in a very concrete way to the strengthening of the inter-American human rights system.

I would like to express appreciation for the sense of professionalism and dedication of our Executive Secretary and the professional and administrative Secretariat staff for their tireless work in support of human rights. The Commissioners are proud of the professional work done by the Executive Secretariat, under the leadership of Dr. Canton, in very demanding circumstances, and give it our wholehearted support.

The Commission has always placed a high priority on maintaining an open and sincere dialogue with the Member States and with civil society regarding the best ways to strengthen the protection and promotion of human rights in the Hemisphere. We look forward to continuing that discussion now and in the future, in furtherance of our common duty to defend the human dignity of every person in our Hemisphere.



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## **ADDRESS BY THE CHAIRMAN OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, PAOLO G. CAROZZA, AT THE PRESENTATION OF THE 2007 ANNUAL REPORT OF THE IACHR TO THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES**

**Medellin, June 3, 2008**

Mr. Chairman of the General Assembly, Your Excellencies, ladies and gentlemen:

As Chairman of the Inter-American Commission on Human Rights, I am pleased to present to you the Commission's Annual Report for the year 2007.

Chapter I of our report reflects on the vital role of the Commission and the inter-American human rights system generally in furthering of justice and the rule of law in the countries of our hemisphere. The system supports Member States in making crucial advances in law, policy and practice at the national level.

Chapter II of the Annual Report describes the primary activities carried out during 2007. These activities together reflect the breadth and diversity of demands placed upon the Commission, and the multi-faceted manner in which it contributes to the promotion and protection of human rights in the region. The Commission held four periods of sessions last year, including a special session in Asuncion, Paraguay, for which we are grateful to Government of Paraguay for its invitation and support. In 2007 the Commission also approved 74 reports on individual cases, held 94 hearings and 80 working meetings, and participated in hearings before the Inter-American Court. Its thematic Rapporteurships issued three reports, conducted seminars, and provided support in the drafting of new regional human rights instruments. The annual report of the Special Rapporteur for Freedom of Expression forms part of this Annual Report of the Commission.

In the course of 2007, the Commission also conducted a series of working and thematic visits to various countries of the region, including Brazil, Chile, Colombia, Haiti, Mexico, and Paraguay. Many other states of the region also extended invitations to the Commission to visit in 2007, and a significant number have confirmed in writing their permanent, open invitations for the Commission to visit. The Commission wishes to express its appreciation to all the Member States that have manifested this openness, since such visits play an indispensable role in enabling the Commission to fulfill its mandate to protect and promote human rights throughout the hemisphere. We urge all of the Member States to provide the Commission with open access to their territories.

Chapter III of the Annual Report contains the Commission's decisions on complaints of human rights violations in the member states of the Organization, and on precautionary

measures requested in 2007. The statistics concerning the case system demonstrate that more and more individuals are coming to the Commission seeking an efficient and effective response. During 2007, the Commission received a record number of complaints, totaling 1,456. The Commission accepted 126 petitions as satisfying the minimum requirements for opening a case, raising the total number of individual petitions and cases being processed to 1,251 as of the end of 2007.

Chapter IV of the 2007 Annual Report contains the Commission's synthesis of the human rights situation in those OAS Member States where the Commission has concluded that human rights conditions call for special attention. Accordingly, this Chapter reports on the human rights situation in Colombia, Cuba, Haiti, and Venezuela.

In its report on the situation in Colombia, the Commission highlights that the achievement of a lasting peace requires that measures be put in place to guarantee the non-repetition of human rights violations. It draws the State's attention to the increasing number of complaints alleging the involvement of police or military in violations of human rights, and to the precarious situation of human rights defenders and social leaders who often face reprisals in connection with their work.

With respect to Cuba, the Commission's assessment highlights concerns with respect to due process and the independence of the judiciary; the detention conditions in which political dissidents are held and the harassment of dissidents; restrictions on freedom of expression and harassment targeting independent journalists; and the situation faced by human rights defenders and trade union leaders.

In reporting on Haiti, the Commission observed certain notable improvements in the human rights situation in comparison with previous years. The Commission emphasizes, however, that the situation in Haiti remains precarious. The Commission remains very concerned about deficiencies in the administration of justice and citizen security, and the State's capacity to guarantee access to basic social services for the population.

Finally, with regard to the situation in Venezuela, the principal factors that the Commission identified as affecting the full enjoyment of human rights during 2007 include the lack of transparency and independence of the administration of justice; the existence of direct and indirect limitations on freedom of expression; the systematic discrediting of human rights defenders and of nongovernmental organizations critical of the government; growing problems with citizen security; and inhuman conditions for persons deprived of liberty.

As the annual report demonstrates, the credibility and effectiveness of the Inter-American human rights system generates demands on the Commission, which grow in both number and complexity. Individuals present an ever-increasing number of petitions before the Commission; civil society and states request more hearings covering more diverse issues; the Commission carries out expanded thematic initiatives; and each year it receives additional mandates from the General Assembly.

Although these expanded expectations and responsibilities constitute a strong sign of the indispensable role that the Commission plays in protecting and promoting human rights in the Hemisphere, they also create an enormous challenge, because the activities and mandates of the Commission cannot be carried out without adequate financial and human resources. Those resources have not increased in proportion to the Commission's growing importance and role in the region, and the budgetary allocations of the OAS do not accurately reflect the Member States' stated commitment to human rights as one of the central aims of the Organization. As a result, there is now a very large and expanding gap between the resources necessary to maintain a healthy human rights system and the reality of the Commission's activities. This has forced the Commission to spread its resources thinly, and creates a situation of internal competition for resources among the various activities of the Commission, as different aspects of the Commission's work vie for the same limited pool of funds.

One additional consequence of this situation is that the Commission has had to seek and rely upon special, ad hoc contributions to its budget from generous states and private organizations. In 2007 more than half of its operating budget came from such donations, and the regular funds of the Commission were only sufficient to fully cover one out of our four periods of sessions. This places the Commission's work in a precarious and uncertain state, because there is no stability or long-term assurance of the availability of those funds.

In short, it cannot be stated too strongly that the long-term health and sustainability of the regional human rights system is at stake. The Commission simply cannot continue to respond to the growing demands placed upon it without decisive action by the Member States to address the critical shortage of resources.

Of course, the Commission always bears its own share of the responsibility to act decisively to ensure the continued strength and credibility of the system. Thus, in responding to the challenge of its large and increasing backlog of cases, the Commission, with the support of external funding, is currently implementing a comprehensive strategy designed to make the processing of individual petitions more efficient. The first stage, aimed at bringing the initial evaluation of older petitions up to date, is almost complete. Currently, the Commission's Executive Secretariat is undergoing a comprehensive restructuring of its internal organization and working methods, in order to maximize the efficiency of its handling of cases. In addition, with technical and financial assistance from the Secretary General's office, the Commission is in the process of digitalizing all of its records and documents, which will also contribute significantly to the Secretariat's ability to process cases more quickly. Finally, the Commission is currently seeking funding for an ambitious proposal to create a special unit designed to promote greater friendly settlement of contentious cases between petitioners and the Member States.

The need of the Inter-American human rights system as a whole to respond to the shifting challenges before it have also led the Commission, in conjunction with the Inter-American Court of Human Rights, to undertake a critical reevaluation of the interrelationship of our two organs in the litigation of contentious cases. Responding to the evolution of the case system, especially since 2001, and to the need for greater unity and efficiency in the processing of cases, members of the Commission and Court have engaged in a series of discussions that have led to a broad agreement on the basic principles that should animate a reform of our respective rules of procedure. We have agreed upon a concrete timetable for the elaboration of the details of such reforms, that includes ample opportunity for a full and transparent consultation with the Member States as well as civil society. It is our hope and expectation that the Commission and Court together can bring this process of procedural reform to a successful conclusion before the end of this calendar year.

In conclusion, on behalf of the Commission, I would like to thank the Member States for all the support, both political and material, they have given the Commission in its continuing efforts to fulfill faithfully its mandate. In a special way, the Commission thanks the governments of Chile, Colombia, Mexico, Paraguay, and the United States for their special financial contributions to the Commission in 2007, as well as those observer countries that have supported the Commission's activities: Denmark, Finland, France, Ireland, Italy, Korea, Spain, and Sweden. These donations contribute in a very concrete way to the strengthening of the inter-American human rights system.

We are grateful also to Secretary General Insulza for his active support of the Commission and its central role as one of the constitutive organs of the OAS. In collaboration with the community of nations, the other organs of the OAS, and civil society, the Commission will continue to work tirelessly to protect and promote human rights in our Hemisphere in 2008 and beyond.





# Inter-American Commission on Human Rights

Organization of American States

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**REMARKS BY PAOLO CAROZZA  
PRESIDENT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
AT THE INAUGURAL SESSION OF THE 133<sup>rd</sup>  
REGULAR PERIOD OF SESSIONS OF THE IACHR**

October 20, 2008

Mr. Chairman of the Permanent Council, Mr. Secretary General, Mr. Assistant Secretary General, Honorable Permanent Representatives and Observers, ladies and gentlemen, dear colleagues of the Inter-American Commission on Human Rights and its Secretariat:

It is an honor to address you in this inaugural ceremony to open our 133<sup>rd</sup> period of sessions. Here with me today are Luz Patricia Mejía, First Vice-President of the Commission; Felipe Gonzalez, Second Vice-President; and Commissioners Víctor Abramovich, Florentín Meléndez, Paulo Sérgio Pinheiro, and Clare Roberts. We are also accompanied by Santiago Canton, Executive Secretary, Elizabeth Abi-Mershed, Assistant Executive Secretary, and professional staff from the Executive Secretariat.

The period of sessions that we have begun has an intense program of activities. As usual, much of our work will be devoted to studying and considering individual cases from various countries of the hemisphere, as well as reports and documents of a more general nature addressing situations of human rights throughout the region. Starting this Wednesday, the Commission will hold 57 hearings on cases and petitions, and on various pressing human rights situations, and will preside over a total of 57 working meetings intended primarily to facilitate friendly settlements between the Member States and petitioners or to advance in the implementation of the Commission's recommendations to Member States in specific cases. In addition, we will be considering over 50 draft reports on individual cases during these sessions.

Geographically, our work in these sessions relates to virtually every country in the hemisphere, reminding us that no nation can take for granted the full guarantee of the human rights of its people, and we must remain vigilant always against the risk of violations of those rights. Human rights can be, and at times undeniably are, violated even in places where democracy and the rule of law are generally strong and even where the worst abuses of past criminal regimes are, thankfully, things of the past. The Inter-American human rights system is in this sense an active partner of governments in the effective protection and guarantee of human rights in all of the Member States, not simply a passive observer of democratic rule.

In substance, the range of the human rights issues that the Commission will take up in these hearings, cases, and reports will encompass a remarkable variety of concerns. Many of them are specific to the unique circumstances and conditions of individual countries of the region. There are, however, certain themes that emerge as common threads uniting many parts of the hemisphere. For example, overcoming impunity and providing redress for past violations of human rights, especially systematic violations of the rights to life and physical integrity, is still a major challenge for many of our countries. In addition, citizen security today is precarious throughout much of the region, threatened by both the forces of the state and by non-state groups. It is especially troubling that in the face of widespread patterns of violence certain sectors within society are very often excluded from the effective protection of the rule of law: women, children, migrants, and minority groups, for example. Third, the lack of due process, the institutional incapacities of judicial systems, and threats to the independence of judges and other actors in the administration of justice all contribute to making the access to effective judicial guarantees of human rights among the most pervasive and persistent problems in the Americas. Finally, the challenge of strengthening representative democracy, which has always one of the pillars of the Inter-American system, generates many critical problems of freedom of expression and association, of the right to political participation, and makes evident the need to confront the fact that large sectors of the populations of the region remain systematically excluded from full participation in the material and social life of their countries.

In facing these matters, the role of human rights defenders is indispensable, and it is therefore important to highlight that many of the Commission's current cases, hearings, reports, and requests for precautionary measures, arise out of the harassment and intimidation of human rights defenders, or out of unreasonable legal restrictions on their organization and activity. Such situations pose serious dangers not only to the individuals and organizations directly affected but also to the promotion and protection of human rights for the societies as a whole in which they operate.

It will be apparent to all observers of the human rights situation in the hemisphere and of the Inter-American institutions that the depth and breadth of these challenges makes the task of the Commission an enormous one, requiring massive time, energy and resources. Indeed, the demands have increased in important part because of the historic successes that we have achieved up until now in constructing and consolidating a credible, regional human rights system. The dynamic and evolving realities of the region and of the human rights system itself also require adaptation and flexibility in the tools, structures and processes that the Commission uses in meeting its mandate. The Commission must therefore ensure constantly that it functions with as much efficiency as possible and with a willingness to change. We continue, therefore, to engage in an ongoing process of reexamining our rules, methods, and practices, with a consistent openness to receiving and acting upon the relevant concerns of all the stakeholders in the Inter-American human rights system. In particular, the Commission recognizes that the huge backlog of pending cases is a real and urgent problem that must be resolved for the Commission to continue its work with credibility and effectiveness. That accumulation of cases generates problems of equity, as parties wait unreasonable periods of time for the resolution of complaints, and it risks diverting the overall work of the Commission away from adequate attention to the most current human rights issues before us. A recent reorganization of the work of the Secretariat, and other reforms designed to maximize our efficiency in the handling of cases, is helping to mitigate this problem, and the Commission will continue to seek further ways to address it in cautious fashion and with full and open consultation. Among the reforms that are in the process of being developed, as you know, are those which relate to the interrelationship between the Commission and Court. Discussions with the Court and within the Commission have been progressing in this area, and we continue to hope and expect that proposed rules reforms can be presented for public consultation very soon. Finally, we are aware that different Member States have of their own initiative promoted various processes to identify and discuss potential reforms of the system; we welcome all such efforts as are genuinely oriented toward a strengthening of the level of human rights protections in the hemisphere.

While reforms of our rules and practices are important, however, we must be very clear that the institutional health of the Inter-American human rights system will not be maintained by focusing only on limited procedural and formal problems or increases in marginal efficiencies. It is, fundamentally, a matter of political commitment by the Member States who created the system and who have agreed to make human rights one of the pillars of regional cooperation in the Americas. No rules fixes by the Commission will be able to replace the need for the governments of the region to give effective implementation to the norms of the Inter-American system and to the recommendations and decisions of its constitutive organs. The basic treaties of the system have not yet been universally accepted, and this must be a high priority. Even where they are accepted, noncompliance is a pervasive fact that must be acknowledged openly and decisively. Some Member States refuse to allow the Commission or its Rapporteurs free and unconditional access to their territories. More generally, the lack of a political mechanism of supervision – such as that which exists in the European region, for example – is a critical structural flaw in our system. The minimal engagement of the Permanent Council with the question of implementation and compliance is a serious weakness. The four minutes of General Assembly time that are dedicated to a presentation of the Commission's annual report, at the last moment and without the least discussion, should be regarded, frankly, as a political charade.

Most immediately, the lack of adequate political commitment to the effectiveness of human rights in the hemisphere is reflected in the persistently insufficient financial support of the system. The Commission's allocation from the general funds of the OAS constitutes a mere 4% of the overall budget of the Organization. More tellingly, that amount is not enough to cover even 50% of the current activity of the Commission. Without the support and commitment of those States, in our region and beyond it, who have helped finance the Commission's work through generous special contributions, our work would be immediately reduced by half. This is true at a time when it is increasingly apparent that even the most minimal fulfillment of the Commission's mandates, such as simply processing its current petitions and cases or holding its six weeks of regular sessions per year, cannot be accomplished without very substantial growth in the Commission's human and financial resources – including the amount of time that the Commission is able to spend in session. There has been much discussion of the importance of the autonomy of the Commission in recent years, and we are grateful for the strong endorsement that many States, and the Secretary General, have given to that principle. But the autonomy of the Commission must be affirmed beyond words. There is no autonomy for the Commission in the long run unless its financial autonomy is guaranteed as well.

Distinguished authorities, dear colleagues and friends:

It is in the vital interest of all of us – Member States, regional institutions, civil society, and all the people of our hemisphere – to construct and maintain a strong and healthy system for the protection and promotion of the observance of human rights. The acknowledgement of the dignity of the human person that opens the American Declaration, and that has been developed and deepened in the American Convention and other regional human rights instruments, is the foundation for “democratic institutions, a system of personal liberty and social justice” in all our hemisphere. The Commission pledges to continue to work in these sessions toward that ideal, and we count on the support and collaboration of all of you now and in the future in realizing it more and more fully.

Thank you very much.

AG/RES. 2361 (XXXVIII-O/08)

60<sup>TH</sup> ANNIVERSARY OF THE AMERICAN DECLARATION  
OF THE RIGHTS AND DUTIES OF MAN

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

CONSIDERING that the Charter of the Organization of American States proclaims fundamental human rights as one of the principles of the Organization;

RECALLING that the American Declaration of the Rights and Duties of Man was adopted at the Ninth International Conference of American States (Bogotá, 1948);

UNDERSCORING that the 60<sup>th</sup> anniversary of said Declaration falls in 2008;

BEARING IN MIND that the American Declaration was the first international instrument to enumerate basic human rights and recognized that the international protection of those rights should be the principal guide of an evolving American law; and

AWARE that both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have recognized that the American Declaration is a source of international obligations for the OAS member states,

RESOLVES:

1. To reaffirm the importance of the American Declaration of the Rights and Duties of Man as one of the fundamental instruments of the inter-American human rights system.
2. To urge all member states to continue to ensure its effective implementation and to step up activities geared toward its promotion.
3. To invite governments, the General Secretariat, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Institute of Human Rights, and the other pertinent organs, agencies, and entities of the Organization of American States, in accordance with their respective mandates, as well as civil society organizations to disseminate the Declaration widely, along with other inter-American and international human rights instruments.
4. To hold a special meeting of the Permanent Council to commemorate the 60<sup>th</sup> anniversary of the Declaration of the Rights and Duties of Man.
5. To encourage states and civil society organizations to organize national and regional activities in commemoration of the 60<sup>th</sup> anniversary of the Declaration of the Rights and Duties of Man and to report thereon to the OAS General Secretariat.
6. To invite the OAS General Secretariat to report to the General Assembly at its thirty-ninth regular session on the programs and activities carried out to commemorate the 60<sup>th</sup> anniversary of the American Declaration of the Rights and Duties of Man.

AG/RES. 2362 (XXXVIII-O/08)

INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRY  
AND THE "RIGHT TO IDENTITY"

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

TAKING INTO ACCOUNT resolution AG/RES. 2286 (XXXVII-O/07), "Inter-American Program for a Universal Civil Registry and 'the Right to Identity'";

RECOGNIZING the obligations of the States Parties to the Convention on the Rights of the Child to undertake to respect the right of the child to preserve his or her identity ("right to identity");

TAKING INTO ACCOUNT the Memorandum of Understanding between the United Nations Children's Fund, the General Secretariat of the Organization of American States, and the Inter-American Development Bank for Cooperation in the Area of Citizen Registration, signed on August 8, 2006, which notes, *inter alia*, that the General Secretariat is committed to "strengthening governance through the modernization of the state and to the recognition and strengthening of the right to identity through programs and projects to increase access to citizen registration and to build capacity of institutions responsible for registration in Latin America and the Caribbean as the cornerstone of its development activities";

TAKING NOTE of the document prepared by the Executive Secretariat for Integral Development (CP/CAJP-2482/07), of April 16, 2007, entitled "Preliminary Thoughts on Universal Civil Registry and the Right of Identity";

RECALLING the Advisory Opinion of the Inter-American Juridical Committee (CJI) on the scope of the right to identity (CJI/doc.276/07 rev. 1);

BEARING IN MIND the Strategic Plan for Partnership for Development 2006-2009, which calls for "[promoting] policy dialogue to share information and best practices among Member states to assist in developing effective and efficient government policies" and "[enhancing] individual and institutional capacities in the member states to design and implement cooperation programs, projects, and activities and strengthen the capacity of individuals to contribute to the social and economic development of their countries" [AG/RES. 2201 (XXXVI-O/06)];

CONSIDERING that recognition of the identity of persons is one of the means through which observance of the rights to legal personhood, a name, a nationality, civil registration, and family relationships is facilitated, among other rights recognized in international instruments, such as the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. The exercise of these rights is essential for participation in a democratic society;

RECOGNIZING the work of the Inter-American Institute of Human Rights (IHR) of promotion and dissemination in the processes of strengthening citizen participation and consolidating democracy in the region, and the contributions it has also made to states and the General Secretariat through its technical advice and assistance;

CONSIDERING that non-recognition of identity can mean that a person has no legal proof of his or her existence, which makes it difficult to exercise fully his or her civil, political, economic, social, and cultural rights;

EMPHASIZING the importance of civil registries as state institutions that can guarantee recognition of the identity of persons and, therefore, the advisability of strengthening them to ensure that their scope is universal, taking into account the rich and varied diversity of cultures;

RECALLING that the Inter-American Democratic Charter establishes that it is the right and responsibility of all citizens to participate in decisions relating to their own development;

COMMITTED to building just, equitable societies based on the principles of social justice and social inclusion;

TAKING NOTE of the First Latin American Regional Conference on Birth Registration and the Right to Identity, held in Asunción, Paraguay, from August 28 to 30, 2007, with indigenous leaders and leaders of African descent participating prominently;

TAKING NOTE ALSO of the Meeting to Receive Inputs on the Draft Inter-American Program for Universal Civil Registry and the "Right to Identity," held at OAS headquarters on December 5, 2007, in which there was broad participation by member states, governmental experts and by representatives of competent organs, agencies, and entities of the inter-American system, multilateral and intergovernmental organizations, and civil society organizations;

TAKING INTO ACCOUNT the Progress Report on the Application of the Memorandum of Understanding among the United Nations Children's Fund and the General Secretariat of the Organization of American States and the Inter-American Development Bank for Cooperation in the Area of Citizen Registration, presented by the General Secretariat at the meeting of the Working Group to Prepare an Inter-American Program for Universal Civil Registry and the "Right to Identity" held on April 11, 2008 (CAJP/GT/DI-29/08);

VALUING the contributions received from member states, specialized organs and agencies and competent entities of the inter-American system and civil society organizations to the efforts of the Working Group to Prepare an Inter-American Program for Universal Civil Registry and the "Right to Identity"; and

EXPRESSING ITS SATISFACTION with the report of the Working Group to Prepare an Inter-American Program for Universal Civil Registry and the "Right to Identity" (CAJP/GT/DI-33/08), in which, in compliance with its mandate set forth in resolution AG/RES. 2286 (XXXVII-O/07), it presents a Draft Inter-American Program for Universal Civil Registry and the "Right to Identity,"

RESOLVES:

1. To adopt the Inter-American Program for Universal Civil Registry and the "Right to Identity," which forms part of this resolution.
2. To instruct the General Secretariat, through the Executive Secretariat for Integral Development, to provide to member states that so request necessary assistance in implementing the Inter-American Program for Universal Civil Registry and the "Right to Identity," promoting the improvement and enhancement of their civil registry systems and the adoption of universal civil registration.
3. To urge the member states to continue adopting measures to ensure full recognition of the right to identity, emphasizing that non-recognition of identity can mean that a person has no legal proof of his or her existence, which makes it difficult to exercise fully his or her civil, political, economic, social, and cultural rights.

4. To request the Permanent Council to continue supporting efforts under the Memorandum of Understanding between the United Nations Children's Fund (UNICEF), the General Secretariat of the Organization of American States (GS/OAS), and the Inter-American Development Bank (IDB) for Cooperation in the Area of Citizen Registration.

5. To request the General Secretariat to continue increasing its cooperation with other specialized organizations and agencies of the inter-American system and international organizations on matters of citizen registration.

6. To urge the states that participated in the First Latin American Regional Conference on Birth Registration and the Right to Identity to implement the recommendations that emerged from it that seek to develop and strengthen the capacity of the registered institutions.

7. To instruct the Permanent Council to hold, in the first half of 2010, a special meeting of the Committee on Juridical and Political Affairs to review the status of implementation of the aforementioned Inter-American Program on the basis of information provided by the states and of a progress report prepared by the General Secretariat, with a view to making such changes in the Program as are deemed appropriate, in order to achieve universal civil registration by 2015. That meeting may include contributions from experts in the field, civil society organizations, and organs, agencies, and entities of the inter-American system and international organizations.

8. To instruct the General Secretariat to support the maintenance of the Inter-American Virtual Forum for Universal Civil Registry and the Right to Identity, which is intended to promote discussion, exchange, and promotion of experiences, lessons learned, and dissemination of knowledge on matters of identity and civil registry in the region.

9. To request the Inter-American Children's Institute (IIN) to continue working on the topic "[t]o ensure children's right to identity and citizenship," as set out in its Strategic Plan 2005-2008, as well as on universal birth registration, in accordance with its Action Plan 2007-2011. Likewise, to instruct the IIN to join forces with the General Secretariat to achieve the objectives of the Inter-American Program for Universal Civil Registry and the "Right to Identity," and to keep the Permanent Council informed of progress and obstacles in the region.

10. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.

DRAFT INTER-AMERICAN PROGRAM FOR  
UNIVERSAL CIVIL REGISTRY AND THE "RIGHT TO IDENTITY"

The Inter-American Program for Universal Civil Registry and the Right to Identity is a consolidated effort by the OAS and its member states, in consultation with international organizations and civil society, to promote and achieve in a progressive manner and in accordance with international law, applicable international human rights law, and domestic law, the purposes, objectives, and specific measures set forth below:

PURPOSE

- Ensure that by 2015 birth registration, which is used to ensure the right to identity, with emphasis on persons in poverty and at risk, is universal, accessible, and, if possible, cost-free.
- Identify and promote best practices, criteria, and standards for civil registry systems and their universalization, in order to address the problems and overcome the obstacles that arise in this area, taking the gender perspective into account, as well as to raise awareness of the need effectively to establish the identity of millions of persons, taking into account vulnerable groups and the rich diversity of cultures in the Americas.
- Promote and protect the rights to identity; juridical personality; a name; a nationality; inscription in the civil registry; family relations; and citizen participation as an essential element of decision-making.
- Contribute to building just and equitable societies based on the principles of social justice and social inclusion.

OBJECTIVES

In accordance with the guidelines contained in operative paragraph 4 of resolution AG/RES. 2286 (XXXVII-O/07), "Inter-American Program for Universal Civil Registry and the "Right to Identity", the Program pursues the following objectives:

1. Universalization and accessibility of civil registry and the right to identity
  - a. The member states will strengthen and/or, where applicable, develop national institutions responsible for conducting universal civil registration.
  - b. The member states, with the support of the General Secretariat when such support is requested, will work to ensure that the birth registry, which is used to ensure the right to identity, with emphasis on persons in poverty and at risk, is universal, accessible, and, if possible, cost-free.
  - c. They will also promote a multidimensional approach to this topic, considering its relationship with enjoyment of rights and freedoms, with the modernization and transparency of state institutions, and with citizen participation<sup>1/</sup> in the democratic societies of the Hemisphere. Moreover, this approach should take into account the rich and varied cultures in the Americas.

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<sup>1/</sup> For the purposes of this Program, citizen participation shall include all social sectors.



2. Strengthening of policies, public institutions, and legislation

- a. The states will develop public and institutional policies and adopt legislative measures to improve civil registry systems, taking into account the contributions of specialized bodies and international organizations.
- b. The states will guarantee the administrative and procedural autonomy of civil registries in order to safeguard their independence.
- c. Through appropriate legislation, the states will guarantee the confidentiality of the personal information gathered by the civil registry systems, applying the principles of personal data protection and the conditions needed to ensure its physical and legal security and to protect against forgery and adulteration.
- d. In accordance with their domestic laws, the states will promote the cost-free use of administrative procedures in connection with registration processes in order to simplify and decentralize them, while leaving recourse to the judicial system as a last resort.
- e. The states will secure an adequate endowment of human and economic resources for their civil registries to enable them to be effective in promoting the accessibility and universality of civil registry and protecting the right to identity of all persons.
- f. The states will ensure that people may consult the information about themselves that the states possess. The state will promote to that end, in an expeditious and simple manner, the use of information and telecommunication technologies.

3. Citizen participation and awareness

- a. The member states, with the support of the General Secretariat when such support is requested, will promote citizen participation and awareness through the universalization of civil registry to protect and demand the effective exercise of and respect for the right to identity, especially with regard to the formulation of public policies and legislative proposals conducive to those ends.

4. Identification of best practices

- a. The General Secretariat, with the support of the member states, will identify the best practices employed to guarantee—with a gender perspective—the different elements that make up the right to identity, paying particular heed to the challenges posed by poverty, social exclusion, multicultural, multilingual, and multiethnic contexts, and, especially, vulnerable groups.

5. International and regional cooperation

- a. The states will foster international and regional cooperation as an effective tool in support of the efforts of member states, trying to ensure that it leads to partnerships among the different players at the national, regional, and international level, with an emphasis on the sharing of and benefiting from successful experiences, including those where social programs have been implemented to guarantee the right to identity, by issuing the corresponding public identity documents.

- b. The states will, to the extent possible, consider factors aimed at harmonizing laws in force in the various member states in the area of the identity of persons.
- c. The states will foster uniformity in registry systems, so as to obtain instruments that will enable their use in the various member states.

6. Follow-up on implementation of the Program

- a. The Permanent Council, with the technical support of the General Secretariat, will follow-up on the commitments and implementation of this Program.

SPECIFIC MEASURES

1. Universalization and accessibility of civil registry and the right to identity

- a. The states will guarantee access, without discrimination, by all persons to registries.
- b. The states, with the support of the General Secretariat when such support is requested, will secure the implementation of modern mechanisms for facilitating access to civil registry. To that end, they will promote, *inter alia*, the establishment of mobile offices, the use of technology, the coverage of civil registry offices within their territory and their on-line connectivity, the issuance of registry certificates through teller machines, joint field trips, and auxiliary registrars.
- c. The states will ensure registration of the births of all those born in their territory, regardless of the migration status of the child's parents, in accordance with their domestic law.

2. Strengthening of policies, public institutions, and legislation

- a. The states will establish and carry out policies, rules and other measures aimed at eliminating practices of racism, discrimination, and intolerance in their civil registry systems.
- b. The General Secretariat will provide technical assistance to governments that so request in the modernization of their identity registries; in national plans to restore identity, and in the updating of vital statistics.
- c. The states will, where applicable, pay special attention to zones affected by conflicts and/or natural disasters, in which civil registries have been destroyed, implementing special procedures for the recovery of the information.
- d. The states will promote the enforcement throughout their territory of applicable legal instruments related to civil registry, including, as appropriate, those at the national level, and international conventions, agreements, and treaties on the subject.
- e. The states will strive to include in their regulatory systems, where applicable, a cost-free service for correcting mistakes in registry certificates that affect the identity of persons.
- f. The General Secretariat will prepare draft model legislation covering the technical, administrative, financial, and logistical aspects needed to ensure implementation of the Program, taking into account the diversity of cultures, languages, ethnic groups,

and legal systems in the region and ensuring full respect of the confidentiality and the authenticity of personal information. Member states will evaluate, as the case may be, the possibility of adopting such draft model legislation.

- g. The states may request the cooperation of the General Secretariat in support of their efforts to identify, systematize, and standardize the basic criteria and standards needed to ensure that national civil registry systems can function properly and guarantee universal coverage.
- h. The states will protect the information in their civil registries by using highly reliable electronic security systems.
- i. The states will promote the simplification of civil registry administrative processes and their standardization at the national level.
- j. The states will strive to adopt all measures aimed at consolidating respect for the linguistic diversity of the region and indigenous names.
- k. The states will register all girls and boys immediately after birth and will promote late registration of adults in accordance with their domestic legislation and any obligations they have incurred by virtue of pertinent international instruments. To that end, with the support of the General Secretariat and specialized agencies of the inter-American system when such support is requested, the states will strive to acquire the required technological equipment and software.
- l. The states, with the support of the General Secretariat when such support is requested, will promote the design and execution of massive civil registry campaigns that include all relevant measures to guarantee access to registration and the actual registration of boys and girls, adolescents, and adults.
- m. Likewise, the states will promote late registration of those adults who have not been registered, thereby attempting to ensure that registration of the parents helps to ensure effective registration of their children.
- n. The states will foster the establishment of administrative procedures for processes involving the correction of certificates and late registry, and others, with a view to ensuring the accessibility and universality of civil registry.
- o. The states will strengthen their consulates to facilitate the issuance of registry certificates and identity documents for their nationals living abroad.
- p. The states will promote the universalization of birth registration as a means of preventing and combating statelessness and, where applicable, they will promote the reforms needed in accordance with the respective provisions of international law.

### 3. Citizen participation and awareness

- a. The states will promote the development of ongoing sensitization and awareness-raising plans targeting officials and civil servants in all branches of the state, and all sectors of society, emphasizing promotion and protection of the rights to legal personhood, a name, a nationality, and civil registration, and promote the elimination of stereotypes and discrimination.

- b. The states will foster and support the implementation of awareness programs and/or campaigns for the population directed especially at the segments of the population living in poverty, indigenous peoples, and other vulnerable groups, on the importance and necessity of properly registering the newly born, and the population in general, and on the repercussions of improper registration for the enjoyment of other rights. Those campaigns will be directed with particular emphasis on mothers, fathers, guardians, or legal representatives.
  - c. The states will encourage cooperation among the authorities of States and civil society organizations, as appropriate and in accordance with domestic laws, in order to foster the co-responsibility of both citizens and States for solving the problem of underregistration in the establishment of stable and effective networks.
  - d. The General Secretariat, together with the states, will promote the participation of civil society organizations in the execution of the Program, in accordance with the Guidelines for Civil Society Participation in OAS Activities.
  - e. The states will promote civil society participation in execution of the Program.
  - f. The states will foster and develop instructional campaigns to make parents and guardians aware of and sensitive to the importance of civil registry of minors with issuance of the corresponding public identity document.
  - g. The states will promote periodic training sessions for school teachers aimed at fostering a culture conducive to the protection and effective exercise of the right to identity among students and parents.
  - h. The states will take advantage of services and programs provided by the State to verify that all children accessing them have their civil registry IDs. If they do not, parents and guardians should be helped with the process of applying or and obtaining them.
  - i. The states will work with indigenous communities and any other under-registered ethnic group, to raise awareness on and sensitivity to the importance of the need to register their members and obtain the corresponding public identity document, while fully respecting their forms of organization and their authorities
4. Identification of best practices
- a. The General Secretariat will draw up a catalogue of best practices, criteria, and standards with respect to civil registry, taking into account the specific needs of the member states, in order to identify technical and practical factors – such as use of technology, customer service quality, performance indicators, information management, and national civil registry plans, to name but a few – that might be used by the countries in the region to ensure universalization of civil registry, bearing in mind each country’s cultural, linguistic, and ethnic diversity and the region’s already existing legal systems.
5. International and regional cooperation
- a. The states will foster international and regional cooperation and the sharing of experiences, information, and human resources with a view to drawing upon the successful experiences of countries that have implemented social programs to

guarantee the right to identity of their population by issuing the appropriate government identification documents.

- b. The General Secretariat will promote and support the exchange of experiences and the integration of common fields, which will make it possible, when the states so agree, to share information among the parties and to draw up programs and projects for strengthening the institutions in charge.
- c. The states, with the support of the General Secretariat and the specialized agencies of the inter-American system when such support is requested may, in implementing the Program, take into account the national plans drawn up at the First Latin American Regional Conference on Birth Registration and the Right to Identity (Paraguay, August 28-30, 2007).
- d. The General Secretariat will continue working in coordination with the Inter-American Development Bank (IDB) and the United Nations Children's Fund (UNICEF) so that they can report on the problems of underregistration and promotion of the right to identity in the region and on the impact that the Inter-American Program for Universal Civil Registry and the Right to Identity might have on the improvement of registry systems.
- e. The General Secretariat will work in coordination with the Inter-American Children's Institute (IIN) and will support its work on universal birth registration and the right to identity.
- f. The General Secretariat will strengthen ties and foster partnership for development and coordination activities with other regional and international bodies and civil society organizations working in the Americas, with a view to ensuring effective policy and optimal management of resources for proper implementation of the Program.

#### 6. Follow-up on implementation of the Program

- a. The General Secretariat will provide the assistance required by member states that request it in order to improve and develop their civil registry systems and to achieve implementation of the Program.
- b. Hold a special meeting in the CAJP framework in 2010 to assess progress with implementation of the Program, based on the information provided by the states and a progress report by the General Secretariat, with a view to making any changes to the Program that are deemed appropriate in order to reach the goal of achieving universal civil registry by 2015. That meeting may benefit from the contributions of experts in this field, civil society organizations, and the organs, agencies, and entities of the inter-American and global systems.
- c. Strengthen the General Secretariat by endowing it appropriately with the human and financial resources needed to execute the Program in accordance with the availability of said resources and the Organization's internal rules and procedures.

## STRATEGIES

1. The states will promote implementation of the Inter-American Program through their policies and, if considered necessary, in their legislation, and by furnishing the resources needed to execute and monitor it.
2. The states will promote the evaluation and, where applicable, updating and improvement of their legal systems and institutional and organizational structures, in accordance with international human rights instruments and taking into account the best practices, technical tools, and experiences of other member states.
3. The states will further promote the establishment of effective international and intergovernmental cooperation mechanisms, in order to improve their laws and policies, including—to the extent possible—their harmonization, and to share information regarding the Program's objectives.
4. The states will promote citizen participation and that of social organizations in the process of preparing and implementing public policies for combating underregistration and protecting universal access to civil registry and the right to identity.
5. The states, taking into account the existence of particularly vulnerable segments of the population who are adversely affected by underregistration and the lack of identity documents, will promote the design and implementation of policies aimed at overcoming this situation, and will foster social and institutional awareness campaigns and initiatives to address this issue, in addition to building these goals into all public policies on health, education, culture, and so on.

AG/RES. 2364 (XXXVIII-O/08)

PROMOTION OF THE INTERNATIONAL CRIMINAL COURT<sup>2/</sup>

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1619 (XXIX-O/99), AG/RES. 1706 (XXX-O/00), AG/RES. 1709 (XXX-O/00), AG/RES. 1770 (XXXI-O/01), AG/RES. 1771 (XXXI-O/01), AG/RES. 1900 (XXXII-O/02), AG/RES. 1929 (XXXIII-O/03), AG/RES. 2039 (XXXIV-O/04), AG/RES. 2072 (XXXV-O/05), and AG/RES. 2176 (XXXVI-O/06), and AG/RES. 2279 (XXXVII-O/07);

RECALLING ALSO the recommendation of the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, Chapter VII, 21.3.B), as well as its resolution No. 1/03, on the prosecution of international crimes, and the document "Framework for OAS Action on the International Criminal Court" (AG/INF.248/00);

RECOGNIZING that the adoption of the Rome Statute of the International Criminal Court was a milestone in efforts to combat impunity, and that it and the Court are fundamental components of the international criminal justice system and that they constitute effective instruments for consolidating international criminal law and international justice and peace;

NOTING WITH CONCERN the continuation in some parts of the world of persistent violations of international humanitarian law and of international human rights law; and reaffirming that all states have the primary duty to investigate, prosecute, and punish those violations so as to prevent their recurrence and avoid the impunity of the perpetrators of those crimes, by taking measures whether at the national or the international level, including, as appropriate, referral to the International Criminal Court;

CONVINCED of the importance of preserving the effectiveness and legal integrity of the Rome Statute, including the jurisdiction of the International Criminal Court; and recognizing the essential role of the Vienna Convention on the Law of Treaties and the firm resolve of the states parties to preserve them;

WELCOMING the 10<sup>th</sup> anniversary of the adoption of the Rome Statute of the International Criminal Court on July 17, 1998, and its entry into force on July 1, 2002, the date on which the Court became the international judicial body complementing the efforts of national jurisdictions to prosecute the perpetrators of the most serious international crimes, such as genocide, crimes against humanity, and war crimes;

MINDFUL of the importance of effective cooperation from the states, the United Nations, including the Security Council, and from other international and regional organizations, and of support from civil society, to the effective functioning of the International Criminal Court;

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<sup>2.</sup> Reservation by the United States: The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide, and crimes against humanity, but cannot support the flawed International Criminal Court (ICC). Thus, the United States has not ratified the Rome Statute and has no intention of doing so. In light of this position, the United States cannot join in the consensus on an OAS resolution that promotes the Court, nor support the use of the OAS regular budget to fund cooperation and any other support rendered to the ICC, including under any OAS-ICC cooperation agreement. The United States understands that any such support will result only from specific fund contributions.

NOTING in this respect that Article 87.6 of the Rome Statute recognizes the role intergovernmental organizations can play in providing cooperation to the Court and that, in its resolution ICC-ASP/6/Res. 2, contained in ICC publication ICC-ASP/6/20, the Assembly of States Parties, at its sixth session, renewed its invitation to other relevant organizations to consider concluding such agreements with the Court;

WELCOMING that 106 states have now ratified or acceded to the Rome Statute, among them 23 members of the Organization of American States;

NOTING WITH GRATIFICATION:

The work done by Costa Rica as President of the Assembly of States Parties to the Rome Statute of the International Criminal Court and the participation by Belize, Bolivia, and Peru as members of the Bureau of said Assembly of States Parties in the 2005-2008 term; and

That 12 member states of the Organization have ratified or acceded to the Agreement on Privileges and Immunities of the International Criminal Court, the most recent among them being Mexico in 2007 and Honduras in 2008; and that others are in the process of doing so;

NOTING the outcome of the sixth session of the Assembly of States Parties to the Rome Statute, held from November 30 to December 14, 2007, especially resolution ICC-ASP/6/Res. 2, "Strengthening the International Criminal Court and the Assembly of States Parties";

NOTING ALSO the results of the Hemispheric Seminar "Toward the First Review Conference of the Rome Statute of the International Criminal Court," held in Mexico City in August 2007, and of the meeting of legislators of the Central American region, Dominican Republic, Mexico, and Panama on incorporation of war crimes in international criminal law, held in San José, Costa Rica, on June 7 and 8, 2007;

RECOGNIZING the important work of the Coalition for the International Criminal Court with member states in promoting and defending the Rome Statute;

EXPRESSING ITS SATISFACTION with the progress made by the International Criminal Court in developing into a fully operational judicial body, and with the forthcoming beginning of its first trial and with the detention and surrender of the alleged perpetrators of crimes under its jurisdiction, which mark the beginning of a new phase for the Court;

CONVINCED of the importance of continuing to address problems identified in implementing fully United Nations Security Council resolution S/RES/1593, of March 31, 2005, and the need to step up, to that end, international assistance and cooperation with the International Criminal Court and the Office of the Prosecutor in efforts to combat impunity;

EXPRESSING ITS SATISFACTION with the holding, at the Organization's headquarters, on January 28, 2008, of the Working Meeting on the International Criminal Court, within the framework of the Committee on Juridical and Political Affairs and with support from the Office of International Law, in which representatives of the International Criminal Court, international organizations, and civil society organizations participated; and taking note of the results of that meeting, contained in the Rapporteur's report (CP/CAJP-2569/08);

RECOGNIZING the results of the informal meeting to address the mandate of the Inter-American Juridical Committee to prepare a model law on cooperation between states and the International Criminal Court, held at OAS headquarters on January 28, 2008;



TAKING INTO ACCOUNT the report of the Inter-American Juridical Committee presented pursuant to resolution AG/RES. 2279 (XXXVII-O/07), contained in document CP/doc.4260/08, as well as resolution CJI/RES. 140 (LXXII-O/08), "Promotion of the International Criminal Court"; and

TAKING NOTE of the Annual Report of the Permanent Council to the General Assembly (AG/doc....),

RESOLVES:

1. To renew its appeal to those member states of the Organization that have not already done so to consider ratifying or acceding to, as the case may be, the 1998 Rome Statute of the International Criminal Court and to cooperate in promoting universal accession thereto.

2. To urge member states of the Organization that are parties or signatories to the Rome Statute to promote and respect its intent and its purpose, in order to preserve its effectiveness and integrity and bring about its universal adoption.

3. To remind the member states of the Organization that are parties to the Rome Statute that it is important to continue to take measures with a view to its full and effective implementation, including those necessary to adapt or amend their domestic law, as necessary, and the adjustments necessary to define war crimes in accordance with definitions contained in applicable instruments of international humanitarian law, especially the Additional Protocol to the Geneva Conventions (Protocol 1), or of international human rights law.

4. To urge the member states of the Organization to cooperate to the greatest extent possible among themselves and, as appropriate, with the International Criminal Court, so as to avoid the impunity of the perpetrators of the most serious international crimes, such as war crimes, crimes against humanity, and genocide, ensuring that their national legislation facilitates said cooperation, and applies to crimes within the jurisdiction of the International Criminal Court and establishes their imprescriptibility.

5. To urge the member states of the Organization to consider ratifying or acceding to, as the case may be, the Agreement on Privileges and Immunities of the International Criminal Court and, in the case of those states that are already party to that Agreement, to take the necessary measures for its full and effective implementation at the national level.

6. To encourage states to contribute to the trust fund established by the Assembly of States Parties to the Rome Statute for the benefit of victims of crimes within the jurisdiction of the International Criminal Court, and of the families of such victims, as well as to the fund for the participation of least developed countries.

7. To invite member states to participate actively in the work of the Assembly of States Parties, as states parties or observers, where appropriate, with the purpose, among others, of stepping up discussions on the review conference planned for 2010 and ensuring the integrity of the Rome Statute.

8. To request the Inter-American Juridical Committee, on the basis of its proposal to prepare a model law on cooperation between states and the International Criminal Court, to promote, insofar as it is able and with support from civil society, the adoption of said law in states that do not yet have a law in the area, and, with collaboration from the General Secretariat and the Secretariat for Legal Affairs, to provide support for and promote in member states the training of

administrative and judicial officials and academics for that purpose, and to report on progress thereon to the General Assembly at its fortieth regular session.

9. To request the General Secretariat to continue its efforts toward the conclusion of a cooperation agreement with the International Criminal Court and to keep the member states informed of progress in negotiations with the International Criminal Court or any of its organs in that regard.

10. To request the Permanent Council to hold a working meeting, with support from the Department of International Law, on appropriate measures that states should take to cooperate with the International Criminal Court, which should include a high-level dialogue among member states. The International Criminal Court, international organizations, and nongovernmental organizations will be invited to cooperate and participate in this working meeting.

11. To request the Permanent Council to include the topic of the implementation of the Rome Statute and of the Agreement on Privileges and Immunities on the agenda of the Committee on Juridical and Political Affairs.

12. To request the Secretary General, to promote, at the headquarters of the Organization of American States and with the sponsorship of interested member states and other interested entities or organizations, activities to commemorate the 10th anniversary of the adoption of the Rome Statute of the International Criminal Court.

13. To request the Secretary General to report to the General Assembly at its thirty-ninth regular session on the implementation of the mandates contained in this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2365 (XXXVIII-O/08)

PROGRAM OF ACTION FOR THE DECADE OF THE AMERICAS FOR  
THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES (2006-2016)  
AND SUPPORT FOR ITS TECHNICAL SECRETARIAT (SEDISCAP)

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

TAKING INTO ACCOUNT that, in the Plan of Action of the Fourth Summit of the Americas (Mar del Plata, Argentina, 2005), the Heads of State and Government instructed the Organization of American States (OAS) to “consider at the next OAS period of regular sessions of the General Assembly to be held in the Dominican Republic, a Declaration on the Decade of the Americas for Persons with Disabilities (2006–2016), together with a program of action”;

RECALLING its resolutions AG/RES. 1249 (XXIII-O/93) and AG/RES. 1356 (XXV-O/95), “Situation of Persons with Disabilities in the American Hemisphere”; AG/RES. 1369 (XXVI-O/96), “Panama Commitment to Persons with Disabilities in the American Hemisphere”; AG/RES. 2230 (XXXVI-O/06), and AG/RES. 2339 (XXXVII-O/07), which adopted the “Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006–2016)”;

BEARING IN MIND:

The Declaration on the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016), adopted in Santo Domingo, Dominican Republic, with the theme “Equality, Dignity, and Participation” [AG/DEC. 50 (XXXVI-O/06)], the objectives of which are the recognition and full exercise of the rights and dignity of persons with disabilities and their right to participate fully in economic, social, cultural, and political life and in the development of their societies, without discrimination and on an equal basis with others; and

The need, during the aforementioned Decade, to undertake programs, plans, and measures to bring about the inclusion of and full participation by persons with disabilities in all aspects of society; to carry out social, political, economic, cultural, and development programs that afford such persons opportunities; to promote effective measures to prevent new disabilities; and to provide persons with disabilities with access to rehabilitation services and programs, on an equal basis with others;

CONSIDERING:

That the Program of Action assigns the coordination of its execution to a technical secretariat, hereinafter referred to as SEDISCAP, the purpose of which will be to provide support to member states, persons with disabilities and their organizations, and OAS bodies, to follow up on the commitments set forth therein and the planning of activities in pursuit of its specific aims and measures; and

Resolution CP/RES. 926 (1625/08), “Installation in Panama of the Technical Secretariat for the Implementation of the Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016)”;

CONVINCED that successful enactment and implementation of the Program of Action for the Decade depends on member states’ honoring their commitments and on support from multilateral

cooperation agencies, civil society organizations, especially those specialized in this area, and the private sector,

RESOLVES:

1. To thank the Government of the Republic of Panama for its steadfast and effective support for the Program of Action and for the installation in Panama City, Republic of Panama, of the Technical Secretariat for the Implementation of the Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016) and for the adoption by the Permanent Council of document CP/CAJP-2538/07 rev. 3, which defines the structure, legal status, and funding of the Technical Secretariat.

2. To declare the importance of contributing to the Specific Voluntary Contributions Fund established by the Permanent Council, the purpose of which is to support SEDISCAP operations.

3. To thank the General Secretariat for its support to enable said Technical Secretariat to start operating.

4. To request the Secretary General, taking account of the legal and financial status of the SEDISCAP, to provide the Permanent Council, at the end of SEDISCAP's first year of effective operation, with a report on its operations, budget outturn, adjusted budgets and budget projections, and on firm funding commitments for subsequent years.

5. To instruct the Permanent Council to follow up on this resolution, which will be implemented, where it pertains to SEDISCAP, with resources of the Specific Voluntary Contributions Fund established for that purpose and, where it pertains to the responsibilities assigned in this area to the Secretariat for Legal Affairs, within the resources allocated in the program-budget of the Organization and other resources. In addition, to present a report on its implementation to the General Assembly at its thirty-ninth regular session.

AG/RES. 2366 (XXXVIII-O/08)

SUPPORT FOR THE COMMITTEE FOR THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

BEARING IN MIND:

The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, adopted in Guatemala on June 7, 1999, which entered into force on September 14, 2001, and has been ratified by 17 member states; and

Resolution AG/RES. 2263 (XXXVII-O/07), on "Support for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities";

HAVING SEEN the report on the first meeting of the Committee, held on February 28 and March 1, 2007, in Panama City, Republic of Panama (CEDDIS/doc.28/07 corr. 1); and

CONSIDERING that the states parties to the Convention have submitted their comments on the national reports, which would make it possible to hold the second meeting of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities in the second half of 2008,

RESOLVES:

1. To express its satisfaction with the progress made in the work of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities; and to encourage it to convene its second meeting during the second half of 2008 to facilitate preparation of the report on the progressive implementation of the Convention, especially Article VI thereof and Article 20 of the Committee's Rules of Procedure, which, in turn, would make it possible to remit that report to the General Assembly for its information at its next regular session.

2. To reiterate the importance of contributing to the specific fund of voluntary contributions, entitled "Specific Fund for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities," in order to supplement financing for the activities of the Committee and its Technical Secretariat and to allow for the participation of representatives appointed by those states parties that, owing to special circumstances, cannot finance such participation.

3. To request the Secretary General to continue, through the Department of International Law, which is the Technical Secretariat of the Committee, supporting the tasks assigned to the Committee.

4. To instruct the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2367 (XXXVIII-O/08)

DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM  
AND ALL FORMS OF DISCRIMINATION AND INTOLERANCE

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly;

REAFFIRMING the content of its resolution AG/RES. 2276 (XXXVII-O/07), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," and all prior resolutions on the subject: AG/RES. 1712 (XXX-O/00) and AG/RES. 1774 (XXXI-O/01), both entitled "Preparation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance"; AG/RES. 1905 (XXXII-O/02), "Prevention of Racism and All Forms of Discrimination and Intolerance and Consideration of the preparation of an Inter-American Draft Convention"; AG/RES. 1930 (XXXIII-O/03), AG/RES. 2038 (XXXIV-O/04), and AG/RES. 2126 (XXXV-O/05); and

HAVING SEEN document CAJP/GT/RDI-57/07 rev. 7 corr. 1, "Consolidated Document: [Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance],"

RESOLVES:

1. To take note of the progress achieved by the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

2. To instruct the Working Group to continue negotiations on that draft Convention, taking into account the progress set forth in document CAJP/GT/RDI-57/07 rev. 7 corr. 1, "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," and in keeping with the work plan and working procedure to be adopted by the Group as it begins its activities.

3. To request that the Working Group continue promoting contributions from member states; organs, agencies, and entities of the Organization of American States; the United Nations; and regional organizations; and to urge those bodies to continue sending their written contributions to the Working Group for consideration; and, bearing in mind the Guidelines for Participation by Civil Society Organizations in OAS Activities, contained in Permanent Council resolution CP/RES. 759 (1217/99), dated December 15, 1999, that it also continue to receive contributions from vulnerable groups and from interested civil society organizations.

4. To request the Working Group to hold a one-day meeting at OAS headquarters, prior to the close of 2008, to receive contributions and inputs on the negotiation process of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, for the purpose of furthering and strengthening the negotiation process of the draft Convention and facilitating the participation of government experts. The purpose of that meeting is to ensure that the contributions of the participants and experts guide and feed the negotiation process through technical analysis of specific points previously identified in the Working Group.

5. To renew the mandates to the Justice Studies Center of the Americas (JSCA) and the Inter-American Commission on Human Rights (IACHR), as set forth in paragraphs 5, 7, and 8 of its resolution AG/RES. 2168 (XXXVI-O/06).

6. To request the General Secretariat to continue to provide support, through the Executive Secretariat of the IACHR and the Department of International Law of the Secretariat for Legal Affairs, to the Working Group's activities.

7. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.

AG/RES. 2368 (XXXVIII-O/08)

DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1022 (XIX-O/89), AG/RES. 1479 (XXVII-O/97), AG/RES. 1549 (XXVIII-O/98), AG/RES. 1610 (XXIX-O/99), AG/RES. 1708 (XXX-O/00); AG/RES. 1780 (XXXI-O/01), AG/RES. 1851 (XXXII-O/02), AG/RES. 1919 (XXXIII-O/03); AG/RES. 2029 (XXXIV-O/04), AG/RES. 2073 (XXXV-O/05), AG/RES. 2234 (XXXVI-O/06), and AG/RES. 2294 (XXXVII-O/07); and

HAVING SEEN the report of the Chair of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples on the activities carried out in 2007 and 2008 (GT/DADIN/doc.xx/08), as well as document GT/DADIN/doc.324/08 rev. 1 of the Meeting of Reflection, held from November 26 to 28, 2007, on the Meetings of Negotiations in the Quest for Points of Consensus, and the report of the Eleventh Meeting of Negotiations in the Quest for Points of Consensus (GT/DADIN/doc.xx/08), held from April 14 to 18, 2008,

RESOLVES:

1. To reaffirm that the adoption of the American Declaration on the Rights of Indigenous Peoples remains a priority for the Organization of American States (OAS), emphasizing the importance of full and effective participation by the indigenous peoples in preparing the draft Declaration.

2. To renew the mandate of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples to continue holding its meetings of negotiations in the quest for points of consensus, so as to complete the drafting of the Declaration, on the basis of the "Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples" (GT/DADIN/doc.334/08) and taking into consideration the "Compendium of Proposals of Negotiations in the Quest for Points of Consensus Held by the Working Group" (GT/DADIN/doc.255/06 add. 2 rev. 2), as well as the report on the Meeting of Reflection (GT/DADIN/doc.324/08 rev. 1), and other pertinent documents of the Working Group.

3. To request the Permanent Council to instruct the Working Group to:

- a. Hold, between September 2008 and March 2009, up to three meetings, each of up to five days, one of them a special meeting for evaluation and strengthening of the negotiation process and to propose specific actions for addressing the issues, and the two others Meetings of Negotiations in the Quest for Points of Consensus for negotiation of the document "Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples." At least one of the three meetings is to be held at the headquarters of the Organization;
- b. Ensure that the Chair of the Working Group engages in informal consultations with those involved in the process and presents the conclusions thereof in a document for the special meeting for presentation to the Working Group for its consideration;



- c. Take the appropriate measures to ensure effective participation by representatives of indigenous peoples; and
- d. Seek consensual solutions that address the needs of the indigenous peoples and the specific characteristics of the region.

4. To request the Selection Board of the Specific Fund to continue to work according to the principle of transparency established in resolution CP/RES. 873 (1459/04), "Amendments to the Specific Fund to Support the Preparation of the American Declaration on the Rights of Indigenous Peoples."

5. To request the General Secretariat and the organs, agencies, and entities of the Organization to lend their valuable support to the process of drafting the American Declaration on the Rights of Indigenous Peoples; and to thank them for their ongoing contribution to that process.

To request the Permanent Council to report to General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2369 (XXXVIII-O/08)

MEETING OF MINISTERS OF JUSTICE OR OTHER MINISTERS,  
ATTORNEYS OR PROSECUTORS GENERAL OF THE AMERICAS (REMJA)

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (\_\_\_\_\_), in particular as it pertains to the implementation of resolution AG/RES. 2266 (XXXVII-O/07), "Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas";

RECALLING that, in the Summits of the Americas, the Heads of State and Government have supported the work done in the context of the (REMJAs) and the implementation of their conclusions and recommendations;

BEARING IN MIND that in the Declaration on Security in the Americas the states of the Hemisphere reaffirmed "that the Meetings of Ministers of Justice or Ministers or Attorneys General of the Americas (REMJA) and other meetings of criminal justice authorities are important and effective fora for promoting and strengthening mutual understanding, confidence, dialogue, and cooperation in developing criminal justice policies and responses to address new threats to security";

TAKING INTO ACCOUNT that, in resolution AG/RES. 2266 (XXXVII-O/07), the General Assembly decided to convene REMJA-VII, which was held in the United States of America from April 28 to 30, 2008; and

TAKING INTO ACCOUNT ALSO the contributions made at the Third Meeting of Central Authorities and Other Experts on Mutual Assistance in Criminal Matters and Extradition, held in Bogotá, Colombia, in September 2007; the Fifth Meeting of the Group of Governmental Experts on Cyber-crime, held in Washington, D.C., United States, in November 2007; and the Technical Meeting to prepare a comprehensive draft document on the REMJA process, held in Washington, D.C., United States, in March 2008,

RESOLVES:

1. To express its satisfaction with the results of the Seventh Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-VII), held in Washington, D.C., United States, from April 28 to 30, 2008, and of the technical meetings that preceded it, in the framework of the REMJA process, and to emphasize the adoption at said meeting of the Document of Washington, which institutionalizes said process, formally establishing the organization and operation of the REMJA.

2. To thank the Government of the United States for its successful organization of the aforementioned ministerial meeting.

3. To endorse the "Conclusions and Recommendations of the Seventh Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas," which are appended to this resolution and form an integral part thereof.

4. To express appreciation for and accept the offer of Brazil to host REMJA-VIII, which is to be held in 2010.

5. To express appreciation for and accept the offer of Chile to host the Second Meeting of Officials Responsible for the Penitentiary and Prison Policies of the OAS Member States, which is to be held from August 27 to 29, 2008, in Valdivia.

6. To instruct the Permanent Council to duly follow up on the conclusions and recommendations of REMJA-VII and, pursuant thereto, to convene the following meetings, which will be carried out within the resources allocated in the program-budget of the Organization and other resources, taking into account progress already made with the preparations therefor:

- a. Meeting of Specialists in Forensic Investigation;
- b. Sixth Meeting of the Group of Governmental Experts on Cyber-crime;
- c. Second Meeting of National Authorities on Trafficking in Persons;
- d. Fourth Meeting of Central Authorities and Other Experts on Mutual Assistance in Criminal Matters and Extradition, to be held in El Salvador, in 2009.

7. To instruct the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2370 (XXXVIII-O/08)

FUTURE OF THE INTER-AMERICAN INDIAN INSTITUTE

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1718 (XXX-O/00) "Reform of the Inter-American Indian Institute", AG/RES. 1933 (XXXIII-O/03), AG/RES. 2046 (XXXIV-O/04) "Support for the Restructuring of the Inter-American Indian Institute" and AG/RES. 2131 (XXXV-O/05) "Situation of the Inter-American Indian Institute" and AG/RES. 2284 (XXXVII-O/07) "Situation of the Inter-American Indian Institute";

RECOGNIZING that the Inter-American Indian Institute (III) was established in 1940, with the signing of the First International Convention of Pátzcuaro, for the main purpose of fostering collaboration in the coordination of indigenous policies of the member states; of requesting, compiling, organizing, and distributing scientific research, legislation, historical archives and other documents related to the indigenous peoples of the Americas; and of carrying out publication and dissemination activities to bring about an increased awareness of indigenous peoples;

RECOGNIZING ALSO that in 1953, the Institute became an inter-American specialized organization of the OAS, whose status was the subject of the Agreement between the Organization and the Institute dated October 28, 1985;

RECOGNIZING the important historical contribution of the Inter-American Indian Institute as an institution that promotes indigenous policies in member states and fosters research projects and training programs for individuals dedicated to the development of indigenous communities, and that it contributed to the development of national authorities tasked with addressing the needs of indigenous peoples in the member states;

CONFIRMING the valuable bibliographic, historical, newspaper and visual archives of the III and the essential need to salvage them and give them wider dissemination;

CONCERNED over the difficult financial situation that the III has endured for a considerable period of time, which significantly hampers its capacity to carry out the plans and achieve the objectives that led to its establishment;

RECOGNIZING that the member states have determined that the analysis of the future of the Institute cannot be postponed; and

BEARING IN MIND the need to continue reaffirming and broadening the commitment of states to promote the integral development of indigenous peoples,

RESOLVES:

1. To recognize the important historical contribution made by the Inter-American Indian Institute (III) as a promoter in the formulation of national and international policies to recognize, renew appreciation for, and give consideration to the indigenous peoples in the Americas, as well as the value of its historical and documentary heritage.

2. To acknowledge that the Inter-American Indian Institute, at the time, in encouraging a closer relationship of state agencies and academia with the cultural, economic, and social reality

of indigenous peoples, helped motivate the direct participation of those peoples in the formulation, implementation, and evaluation of the policies directed towards their full development.

3. To make the following recommendations on the future of the Inter-American Indian Institute:

- a. Acknowledging the financial difficulties faced by the Inter-American Indian Institute, it is recommended that the Executive Committee of the Inter-American Indian Institute evaluate whether it is appropriate to close the institute taking into consideration the following:
  - (i) Denunciation of the Pátzcuaro Convention by all states still party to that international instrument, or
  - (ii) Decision of the Executive Committee of the III with regard to deciding the closing of the III.
- b. That, in the event that a decision is made to close the III, the costs thereof will have to be addressed.
- c. That the necessary measures be taken to salvage, maintain, and disseminate the historical, bibliographical, newspaper and visual archives of the III in order to achieve their widest access so that they may contribute input to research projects related to indigenous peoples.
- d. That the proposal of the National Autonomous University of Mexico be accepted, considering that it would make it possible to fulfill the objectives recommended in the preceding paragraph.
- e. That any initiatives respect the multinational nature of the patrimony of the III.
- f. That loaning the archives be considered as a possibility or that their donation be considered if acceptable to all states.
- g. That in the event that the responsible institution decides to no longer maintain the collections, that any future determination be made collectively by the states party to the Pátzcuaro Convention (in the event that it is still in force) or by the OAS General Assembly.
- h. That measures be taken to make possible the dissemination of the archives to all the countries in the region, and to that end, it is recommended to consider entering into agreements with other libraries to allow access to the digital archives, specially, an agreement with the OAS Columbus Library.

4. To request the Permanent Council to report to the Inter-American Indian Institute on the recommendations made by the Informal Working Group.

AG/RES. 2371 (XXXVIII-O/08)

MECHANISM TO FOLLOW UP ON IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION ON THE PREVENTION, PUNISHMENT, AND ERADICATION  
OF VIOLENCE AGAINST WOMEN, "CONVENTION OF BELÉM DO PARÁ"

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN resolutions AG/RES. 2162 (XXXVI-O/06) and AG/RES. 2330 (XXXVII-O/07), "Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 'Convention of Belém do Pará'" (MESECVI), in which the General Assembly took note of the report of the Permanent Council on implementation of the follow-up mechanism; and

CONSIDERING:

That the Convention of Belém do Pará is the only specific, binding international legal instrument on gender-based violence and has become an important framework in which the states parties thereto undertake to implement policies, laws, and national and regional action programs to eradicate violence against women;

That the Statute of the Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará" (MESECVI) has been in effect since 2004, as a means of assessing progress and trends in the fulfillment of the objectives of the Convention and facilitating cooperation among the states parties and with the member states of the Organization of American States (OAS);

That to date 32 member states have ratified the Convention of Belém do Pará;

That, despite the efforts made by the countries of the region, violence against women continues to be an area of special concern;

That the first multilateral evaluation round of the MESECVI has arrived at its final phase, which demonstrates the interest and support of the states parties in building a genuine instrument for progress in punishing and eradicating gender-based violence in the Hemisphere;

That the OAS General Secretariat, through the Permanent Secretariat of the Inter-American Commission of Women (CIM), serves as the secretariat to the organs of the MESECVI, with advice, where appropriate, from the Inter-American Commission on Human Rights (IACHR), as well as from other areas of the General Secretariat; and

That the human and financial resources available to the technical secretariat of the MESECVI are not sufficient to ensure the Mechanism's full and effective functioning; and the valuable financial and human resources provided by the Government of Mexico to the MESECVI over the past year,

RESOLVES:

1. To take note of the report of the Permanent Council on the activities of the Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention,

Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará" (MESECVI).

2. To welcome the progress of the first multilateral evaluation round of the MESECVI; and to express its conviction that this exercise will contribute significantly to achievement of the objectives set forth in the Convention.

3. To congratulate the states parties on their efforts to meet the objectives of the Convention; and once again to urge those states that have not yet done so to designate their experts and competent national authorities, so as to ensure the full implementation and success of the Mechanism.

4. To thank the Government of Mexico for its continuing contribution to the Mechanism; and to invite all states parties and states not party to the Convention, permanent observers, international financial institutions, and civil society organizations to contribute to the Specific Fund established in the OAS to finance MESECVI's operations.

5. To reiterate its gratitude to the Permanent Secretariat of the Inter-American Commission of Women (CIM) for its support of the states parties in the process of implementation of the MESECVI; and to thank it for its important role, as technical secretariat of the Mechanism, in the fulfillment of the objectives of the Convention of Belém do Pará.

6. To urge the states parties to the Convention and all OAS member states to strengthen the MESECVI and hemispheric cooperation in combating violence against women, including the participation of experts in meetings of the Committee of Experts (CEVI).

7. To encourage the states parties to the Convention to provide economic support or human resources to the MESECVI to enable it to comply with its work calendar and to ensure the its optimal functioning.

8. To request the Secretary General, in accordance with available financial resources, and with the agreement of the Committee on Administrative and Budgetary Affairs (CAAP), to allocate the human, technical, and financial resources needed to enable the CIM to continue supporting the implementation of the MESECVI.

9. To request the Secretary General to analyze the possibility of holding a donors' meeting to make it possible to obtain the resources needed for the MESECVI to function.

10. To thank the Government of the Argentine Republic for having hosted the Third Meeting of the Committee of Experts (CEVI) of the MESECVI in Buenos Aires, Argentina, from July 18 to 20, 2007; and to urge member states to lend their support to enable the meetings of the CEVI to be held in the states parties to the Convention, as far as possible on a rotating basis.

11. To thank the Government of the Bolivarian Republic of Venezuela for its commitment to hosting the Second Conference of States Parties to the Convention of Belém do Pará in July 2008, which will consider and adopt the Hemispheric Report on the first multilateral evaluation round of MESECVI.

12. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of resources in the program-budget of the Organization and other resources.

AG/RES. 2402 (XXXVIII-O/08)

PROTECTION OF ASYLUM-SEEKERS AND REFUGEES  
IN THE AMERICAS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING its resolution AG/RES. 2232 (XXXVI-O/06), "Protection of Asylum-seekers, Refugees, and Returnees in the Americas," and its resolutions AG/RES. 1762 (XXX-O/00), AG/RES. 1832 (XXXI-O/01), AG/RES. 1892 (XXXII-O/02), AG/RES. 1971 (XXXIII-O/03), AG/RES. 2047 (XXXIV-O/04), and AG/RES. 2296 (XXXVII-O/07);

WELCOMING the fact that 28 member states of the Organization of American States (OAS) have acceded to the 1951 Convention Relating to the Status of Refugees and 30 to its 1967 Protocol; that most of those countries have incorporated their provisions in their domestic laws and regulations; and that Chile, Mexico, and Nicaragua are in the process of adopting new domestic legislation on refugees;

UNDERSCORING the importance of the Cooperation Agreement signed on November 12, 2007, by the OAS General Secretariat and the Office of the United Nations High Commissioner for Refugees (UNHCR) to promote international refugee law in the Hemisphere;

RECOGNIZING the commitment assumed by OAS member states to continue extending protection to asylum-seekers and refugees on the basis of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and to seek lasting solutions to their situation;

RECOGNIZING ALSO the efforts that countries of origin are making, with support from the international community, to deal with the circumstances that generate flows of asylum-seekers and the importance of persisting in those efforts;

EMPHASIZING the efforts made by some receiving countries of the region, faithful to their generous tradition of asylum even under difficult socioeconomic conditions, to continue extending protection to asylum-seekers and refugees;

UNDERSCORING the importance of implementation of the Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America, adopted by 20 Latin American states on November 16, 2004, in Mexico City, in the context of the commemoration of the 20<sup>th</sup> anniversary of the 1984 Cartagena Declaration on Refugees, in order to attend to the needs for protection and to make progress in the quest for durable solutions for refugees in the region, and the report evaluating its implementation presented by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva, Switzerland, in September 2007;

WELCOMING the initiatives taken in accordance with that Plan of Action by Argentina, Brazil, and Chile to establish and implement the Regional Solidarity Resettlement Program, and the recent incorporation of Uruguay and Paraguay into said program;

UNDERSCORING the importance of international technical and financial cooperation to adequately address, and to find or, as appropriate, support durable solutions to, the situation of refugees and asylum-seekers; and noting with satisfaction, in this context, the signing of agreements between the UNHCR and various countries of the region aimed at improving national protective mechanisms;



RECOGNIZING the responsibility of states to provide international protection to refugees on the basis of the principles of international solidarity and responsibility-sharing; and

HIGHLIGHTING the importance of the special meeting of January 29, 2008 on current issues in international refugee law organized by the OAS Committee on Juridical and Political Affairs with the support of the Department of International Law of the General Secretariat and that of the UNHCR,

RESOLVES:

1. To reaffirm its support for, and emphasize the relevance and fundamental importance of, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as the principal universal instruments for the protection of refugees; and to urge the member states that are parties thereto to continue to implement fully and effectively all of their obligations in that regard.

2. To urge those states parties that have not yet done so to consider, as the case may be, signing, ratifying, or acceding to the international instruments in the area of refugees, and to promote the adoption of procedures and institutional mechanisms for their effective application, in accordance with those instruments.

3. To support the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America; and to continue implementing it fully and effectively, with support from the international community and from the Office of the United Nations High Commissioner for Refugees (UNHCR).

4. To urge member states and the international community to collaborate in and support the strengthening and consolidation of the "Borders of Solidarity," "Cities of Solidarity," and "Resettlement in Solidarity" programs proposed in the Mexico Plan of Action.

5. To reaffirm the importance and the vital role of international cooperation in the search for, and strengthening of, durable solutions to address the situation of refugees and asylum-seekers; and to urge member states and the international community to increase technical and economic cooperation to the countries of the Hemisphere that receive refugees and that so require, and to work in cooperation with the UNHCR to provide effective protection to asylum-seekers and refugees in the region.

6. To recognize the efforts and the progress that the countries of origin have been making; and to encourage them, to the extent of their ability and with support from the UNHCR and the international community, to continue making efforts to deal with the circumstances that generate flows of asylum-seekers.

7. To recognize the efforts and progress that countries of the Hemisphere that receive refugees have made in implementing protective mechanisms, in accordance with international refugee law and the international principles of refugee protection established therein.

8. To instruct the Permanent Council to organize, through the Committee on Juridical and Political Affairs and with support from the Department of International Law of the General Secretariat and the collaboration of the UNHCR, a course on international refugee law for staff of the permanent missions of member states to the OAS, General Secretariat personnel, and other interested persons during the second half of 2008.

9. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the outcome of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2403 (XXXVIII-O/08)

STUDY OF THE RIGHTS AND THE CARE OF PERSONS  
UNDER ANY FORM OF DETENTION OR IMPRISONMENT

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1816 (XXXI-O/01), AG/RES. 1897 (XXXII-O/02), AG/RES. 1927 (XXXIII-O/03), AG/RES. 2037 (XXXIV-O/04), AG/RES. 2125 (XXXV-O/05), AG/RES. 2233 (XXXVI-O/06), and AG/RES. 2283 (XXXVII-O/07);

TAKING INTO ACCOUNT:

That in the inter-American system the OAS member states undertake to respect and protect the human rights of persons who have been deprived of freedom, including all applicable rights established in the American Declaration of the Rights and Duties of Man and those established in all other human rights instruments to which they are party;

That consultations with the member states on this subject have continued within the Committee on Juridical and Political Affairs (CAJP) and that a number of them have replied to the questionnaire prepared for that purpose (CP/CAJP-1853/01 rev. 1);

The conclusions and recommendations of the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V), contained in its Final Report (REMJA-V/doc.9/04), and, in particular, the recommendation that the states promote "modernization of prison infrastructure and extend the functions of rehabilitation and social integration of the individual, by improving conditions of detention and studying new penitentiary standards";

The conclusions and recommendations of the Sixth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-VI), including those on a possible inter-American declaration on the rights, duties, and care of persons under any form of detention or imprisonment and those on the feasibility of preparing a hemispheric manual on penitentiary rights, taking as a basis the United Nations Standard Minimum Rules for the Treatment of Prisoners (REMJA-VI/doc.21/06 rev. 1, paragraphs 4.d and b); and

The Recommendations of the First Meeting of Officials Responsible for the Penitentiary and Prison Policies of the OAS Member States (GAPECA/doc.04/03), held in Washington, D.C., on October 16 and 17, 2003;

TAKING NOTE of the "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas," approved by the Inter-American Commission on Human Rights through resolution 01/08, adopted at the Commission's 131<sup>st</sup> regular session; and

OBSERVING WITH CONCERN the critical situation of violence and overcrowding in places of deprivation of freedom in the Americas, and stressing the need to take concrete measures to prevent this situation and to ensure the exercise of the human rights of persons deprived of freedom,

RESOLVES:

1. To urge member states to comply, under all circumstances, with all applicable international obligations to respect the human rights of persons under any form of detention or imprisonment, including the rights established in the American Declaration of the Rights and Duties of Man and those established in all other human rights instruments to which they are party.

2. To instruct the Permanent Council to continue studying the question of the rights and the care of persons under any form of detention or imprisonment, in cooperation with the competent organs and entities of the inter-American system and taking into account the Conclusions and Recommendations of the Seventh Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas, contained in the Final Report of that meeting (REMJA-VII/doc.7/08 rev. 1), including the reports of the meetings of officials responsible for penitentiary and prison policies.

3. To request the Inter-American Commission on Human Rights (IACHR), at the request of the Rapporteurship on the Rights of Persons Deprived of Freedom to continue reporting on the situation of persons under any form of detention or imprisonment in the Hemisphere and, using as a basis its work on the subject, to continue making reference to the problems and best practices it observes.

4. To congratulate and acknowledge those member states that have invited the Special Rapporteur on the Rights of Persons Deprived of Freedom in the Americas of the Inter-American Commission on Human Rights to visit their countries, including their detention centers; and to encourage all member states to facilitate such visits.

5. Also to recognize the important work of the International Committee of the Red Cross, within its sphere of competence, to help persons deprived of liberty in detention centers and prisons to receive humane treatment.

6. To call upon member states to consider allocating more funds to the IACHR to enable it to support the effective fulfillment of the mandate assigned to its Special Rapporteurship on the Rights of Persons Deprived of Freedom in the Americas.

7. To reiterate to the Permanent Council that, on the basis of the results of the discussions and studies conducted, including the inputs of the IACHR, such as the document entitled "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas" and the work of the Special Rapporteur of the IACHR on the Rights of Persons Deprived of Freedom in the Americas, and the results of the Second Meeting of Officials Responsible for Penitentiary and Prison Policies, to be held pursuant to the REMJA-VII decision, it consider the possibility of drafting an inter-American declaration on the rights, duties, and care of persons under any form of detention or imprisonment, with a view to strengthening existing international standards on these topics, and the feasibility of preparing a hemispheric manual on penitentiary rights, taking as a basis the United Nations Standard Minimum Rules for the Treatment of Prisoners, and that it keep the membership abreast of developments.

8. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2404 (XXXVIII-O/08)

EDUCATION ON HUMAN RIGHTS IN FORMAL EDUCATION IN THE AMERICAS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING its resolution AG/RES. 2066 (XXXV-O/05), in which the General Assembly of the Organization of American States (OAS) suggested including human rights content and basic activities in the academic curricula of educational institutions, and its resolution AG/RES. 2321 (XXXVII-O/07);

CONSIDERING that in the Plan of Action of the First Summit of the Americas, held in Miami in 1994, the Heads of State and Government established that governments should “[d]evelop programs for the promotion and observance of human rights, including educational programs to inform people of their legal rights and their responsibility to respect the rights of others”;

CONSIDERING ALSO that Article 13 of the Inter-American Democratic Charter establishes that “[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere”;

BEARING IN MIND that Article 13.2 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador,” refers to essential factors to which education in each of the states parties should be directed, one of them being respect for human rights;

APPRECIATING the efforts of the Inter-American Institute of Human Rights (IHR) in producing, uninterruptedly since 2002, five Inter-American Reports on Human Rights Education, which record progress made by the states parties to the Protocol of San Salvador with respect to human rights education;

RECALLING that Article 49 of the OAS Charter provides that “[t]he Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education,” taking into account, *inter alia*, that “[e]lementary education, compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge”;

CONSIDERING that the right to human rights education from the very first years at school helps strengthen the democratic system, development, security, and progress of the free societies of the Americas;

REAFFIRMING that the Inter-American Democratic Charter regards the promotion and protection of human rights as a prerequisite for the existence of a democratic society;

APPRECIATING the efforts of the Conference of Ministers of Education on Human Rights Education, convened by the Minister of Education of Panama and the IHR and held in May and June 2007, to strengthen the human rights material incorporated into the member states’ formal educational systems;

RECOGNIZING that effectively incorporating human rights education into the formal educational system, to which measure all the member states are committed, is an aspect of medium- and long-term efforts and, therefore, requires financial sustainability;

RECOGNIZING ALSO that the Inter-American Institute of Human Rights has, in compliance with its mandates, been playing a fundamental role in supporting the inter-American system for the effective incorporation of education on human rights into formal educational systems and in other areas in the countries of the Americas; and

NOTING WITH SATISFACTION the progress made in the implementation of the Inter-American Program on Education in Democratic Values and Practices since its launch in August 2005, and the important role played by the Inter-American Institute of Human Rights on the Advisory Board for the Program,

RESOLVES:

1. To acknowledge the progress, actions, and policies gradually being implemented by member states with respect to human rights education for children and young people in academic institutions, as documented by the Inter-American Reports on Human Rights Education.

2. To suggest that member states implement, if, and to the extent that, they have not yet done so, the recommendations contained in the Inter-American Reports on Human Rights Education at different levels in their formal education systems.

3. To suggest to member states that they analyze the contributions of the Curricular and Methodological Proposal of the Inter-American Institute of Human Rights (IIHR) to incorporate human rights education into the official curriculum for children aged 10 to 14, with a view to their adopting it and in accordance with Article 13.2 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Accordingly, to recommend to member states that have not already done so that they adopt, sign, and ratify this instrument.

4. To underscore the work and achievements of the Inter-American Meeting of Ministers of Education on Human Rights Education in the states parties to the Protocol of San Salvador, in which participants shared their experience and discussed the curricular and methodological developments needed to introduce or strengthen human rights education in each state party's educational system.

5. To encourage member states to continue supporting the Inter-American Institute of Human Rights in educational activities and projects conducted at the national and regional levels under this mandate.

AG/RES.2406 (XXXVIII-O/08)

RIGHT TO THE TRUTH

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN its resolutions AG/RES. 2175 (XXXVI-O/06) and AG/RES. 2267 (XXXVII-O/07), "Right to the Truth";

CONSIDERING the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, or "Pact of San José, Costa Rica," the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance of Persons;

CONSIDERING IN PARTICULAR Articles 25, 8, 13, and 1.1 of the American Convention on Human Rights, related, respectively, to the right to judicial protection, the right to due process and judicial guarantees, the right to freedom of expression, and the duty of states to respect and guarantee human rights;

CONSIDERING ALSO the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Geneva Conventions of 1949 and the 1977 Additional Protocols thereto, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, and other relevant instruments of international human rights law and international humanitarian law, as well as the Vienna Declaration and Programme of Action;

NOTING the universality, interdependence, indivisibility, and interrelatedness of civil, political, economic, social, and cultural rights;

TAKING NOTE of Articles 32 and 33 of Additional Protocol I, adopted on June 8, 1977, to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, which recognize the right of families, as soon as circumstances permit, to know the fate of persons who have disappeared in armed conflicts;

STRESSING that adequate steps to identify victims should also be taken in situations not amounting to armed conflict, especially in cases of severe or systematic violations of human rights;

RECALLING resolution 2005/66 of the United Nations Commission on Human Rights, on the right to the truth, and decision 2/105 of the United Nations Human Rights Council;

RECALLING ALSO its resolution AG/RES. 445 (IX-O/79), on the promotion of human rights, and its resolutions AG/RES. 510 (X-O/80), AG/RES. 618 (XII-O/82), AG/RES. 666 (XIII-O/83), and AG/RES. 742 (XIV-O/84), on forced disappearance;

TAKING INTO ACCOUNT its resolution AG/RES. 2134 (XXXV-O/05), on persons who have disappeared, and its resolutions AG/RES. 2231 (XXXVI-O/06) and AG/RES. 2295 (XXXVII-O/07), on persons who have disappeared and assistance to members of their families;

NOTING that the General Assembly has received reports from the Inter-American Commission on Human Rights on the human rights situation in certain countries of the region, which refer to the right to the truth and recognize that the disappearance of persons causes suffering and

hardship, especially to relatives and any other person having a legitimate interest, who are uncertain about their fate and unable to provide them with legal, moral, and material assistance;

NOTING ALSO that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have recognized the right to the truth in their respective recommendations and judgments in various individual cases of human rights violations;

TAKING NOTE of the oral progress report presented by the IACHR in April 2008 on the preparation of the report requested in resolution AG/RES. 2267 (XXXVII-O/07);

ACKNOWLEDGING that the right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information;

ACKNOWLEDGING ALSO the study on the right to the truth prepared by the Office of the United Nations High Commissioner for Human Rights (E7CN.4/2006/91) in fulfillment of Human Rights Commission resolution 2005/66;

RECALLING the conclusions of the regional seminar "Memory, Truth, and Justice: Our Recent Past," held in the context of the Meeting of Competent High Authorities on Human Rights and Foreign Ministries of MERCOSUR and Associated States, in November 2005, which recognize the collective dimension of the right to the truth;

STRESSING that the regional community should make a commitment to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations to the fullest extent practicable, in particular the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred;

STRESSING ALSO that it is important for states to provide effective mechanisms for society as a whole and, in particular, for relatives of the victims, to learn the truth regarding gross violations of human rights and serious violations of international humanitarian law; and

CONVINCED that states, within the framework of their own internal legal systems, should preserve records and other evidence concerning gross violations of human rights and serious violations of international humanitarian law, in order to facilitate knowledge of such violations, investigate allegations, and provide victims with access to an effective remedy in accordance with international law, in order to prevent these violations from occurring again in the future, among other reasons,



RESOLVES:

1. To recognize the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promoting and protecting human rights.
2. To welcome the establishment in several states of specific judicial mechanisms, as well as other non-judicial or ad hoc mechanisms, such as truth and reconciliation commissions, that complement the justice system, to contribute to the investigation of violations of human rights and of international humanitarian law; and to express appreciation for the preparation and publication of the reports and decisions of these bodies.
3. To encourage the states concerned to disseminate and implement the recommendations of national non-judicial or ad hoc mechanisms, such as truth and reconciliation commissions, to monitor the implementation of said recommendations at the domestic level, and to report on compliance with the decisions of judicial mechanisms.
4. To encourage other states to consider the possibility of establishing specific judicial mechanisms and, where appropriate, truth commissions or other similar bodies to complement the justice system, to contribute to the investigation and punishment of gross violations of human rights and serious violations of international humanitarian law.
5. To encourage states and the Inter-American Commission on Human Rights (IACHR), within its sphere of competence, to provide the states that so request with necessary and appropriate assistance concerning the right to the truth, through, *inter alia*, technical cooperation and information exchange on national administrative, legislative, and judicial measures applied, as well as experiences and best practices geared toward the protection, promotion, and implementation of this right.
6. Once again to request the IACHR to continue working on the preparation of a report, for presentation to the Permanent Council in the second half of 2008, on the evolution of the right to the truth in the Hemisphere, which report shall include national mechanisms and experiences in this regard. This with a view to the Permanent Council's holding, in the first half of 2009, a special meeting on the right to the truth to discuss the IACHR report and exchange national experiences.
7. To encourage all states to take appropriate measures to establish mechanisms or institutions for disclosing information on human rights violations, and to ensure that citizens have appropriate access to said information, in order to further the exercise of the right to the truth, prevent future human rights violations, and establish accountability in this area.
8. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2407 (XXXVIII-O/08)

STRENGTHENING OF HUMAN RIGHTS SYSTEMS PURSUANT TO THE MANDATES  
ARISING FROM THE SUMMITS OF THE AMERICAS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4698/07 corr. 1) as it pertains to this topic, as well as resolutions AG/RES. 1828 (XXXI-O/01), AG/RES. 1890 (XXXII-O/02), AG/RES. 1925 (XXXIII-O/03), AG/RES. 2030 (XXXIV-O/04), AG/RES. 2075 (XXXV-O/05), AG/RES. 2220 (XXXVI-O/06), and AG/RES. 2291 (XXXVII-O/07);

REAFFIRMING that universal promotion and protection of human rights, including civil, political, economic, social, and cultural rights, based on the principles of universality, indivisibility, and interdependence, as well as respect for international law, including international humanitarian law, international human rights law, and international refugee law, are essential to the functioning of democratic societies; and stressing the importance of respect for the rule of law, effective and equal access to justice, and participation by all elements of society in public decision-making processes;

REAFFIRMING ALSO the importance of the inter-American human rights system, whose organs have competence to promote the observance of human rights in all member states of the Organization, in accordance with the commitments undertaken by each state, and which operate in a manner subsidiary to national jurisdictional systems;

EXPRESSING that strengthening the autonomy of the Inter-American Commission on Human Rights (IACHR) in the context of the Charter of the Organization of American States, the American Convention on Human Rights, and the Statute and Rules of Procedure of said Commission, will lead to improvements in the inter-American human rights system;

CONSIDERING that the Organization can serve as a forum for contributing to the efforts of member states to develop and strengthen national systems for the promotion and protection of human rights; and

BEARING IN MIND the Declaration and Plan of Action of the Third Summit of the Americas (Quebec City, 2001) and of the Fourth Summit of the Americas (Mar del Plata, Argentina, 2005), in particular, paragraphs 45 and 62 of the Plan of Action of the Fourth Summit, on the development of comprehensive economic and social policies, and on strengthening of the inter-American human rights system, respectively,

RESOLVES:

1. To reaffirm the commitment of member states to continue strengthening and improving the inter-American system for the promotion and protection of human rights and, in that connection, to continue to take the following concrete measures aimed at implementing the respective mandates of the Heads of State and Government arising from the Summits of the Americas, in particular, the Third Summit (Quebec City, 2001) and the Fourth Summit (Mar del Plata, Argentina, 2005):

- a. Universalization of the inter-American human rights system by considering the signature and ratification or ratification of, or accession to, as soon as possible and as the case may be, all universal and inter-American human rights instruments;
- b. Compliance with the judgments of the Inter-American Court of Human Rights and follow-up of the recommendations of the Inter-American Commission on Human Rights;
- c. Improvement of access by victims to the mechanisms of the inter-American human rights system;
- d. Adequate financing of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, including the fostering of voluntary contributions, so that they may continue to address their activities and responsibilities; and
- e. Examination of the possibility that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights may come to operate on a permanent basis, taking into account, among other things, the views of those organs.

2. To recognize the following progress made in the specific areas of the inter-American human rights system, namely:

- a. The broad process of reflection on the inter-American system for the promotion and protection of human rights, within the Committee on Juridical and Political Affairs (CAJP) of the Permanent Council and the importance of the informal meetings held in the framework of the CAJP and of the exchange of proposals and comments between the member states and the organs of the inter-American human rights system, regarding ways to strengthen and improve it;
- b. Also, that those meetings contributed to the “dialogue on the workings of the inter-American human rights system between member states and the members of the Inter-American Commission on Human Rights and the judges of the Inter-American Court of Human Rights,” on April 4, 2007, at which were received, as well, contributions from civil society organizations in accordance with the guidelines for civil society participation in OAS activities, as recorded in the report of the meeting (CP/CAJP-.../08);
- c. The deposit by Mexico, on August 20, 2007, of its instrument of accession to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty;
- d. The voluntary contributions to facilitate the work of the organs of the inter-American human rights system, made by Canada, Chile, Colombia, Costa Rica, Mexico, and the United States; by Denmark, Finland, France, Ireland, Italy, Norway, the Republic of Korea, Spain, and Sweden; and also by the European Union, the Inter-American Development Bank, the Office of the United Nations High Commissioner for Refugees, the Save the Children Foundation, and the University of Notre Dame; and

- e. To recognize the effort made by the IACHR in beginning the process of consultation on the proposed amendments to its Rules of Procedure in 2007, and to receive the contributions of member states and of civil society, all of which redounds in improved performance and protection of the inter-American human rights system.

3. To instruct the Permanent Council to meet the objectives mentioned in operative paragraph 1 and to complement and consolidate the progress referred to in operative paragraph 2, by:

- a. Continuing the broad process of reflection on the inter-American system for the promotion and protection of human rights, as a matter of special importance in the work program of the CAJP adopted each year, and that, to that end, meetings are scheduled taking account of the proposals put forward in the discussions that took place in said Committee. Said process of reflection will continue in consultation with the member states, specialized agencies of the inter-American human rights system, nongovernmental organizations, national human rights institutes, academic institutions, and experts in the field, regarding:
  - i. The major challenges facing the inter-American system for the promotion and protection of human rights in the Hemisphere;
  - ii. Possible actions to strengthen and improve the system; and
  - iii. The advisability of convening an inter-American human rights conference;
- b. Continuing to examine, principally through the Committee on Administrative and Budgetary Affairs (CAAP) of the Permanent Council, ways to bring about adequate financing of the organs of the inter-American human rights system in the program-budget of the Organization;
- c. Supporting any initiatives taken by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to request funding from international and regional agencies to further the activities of the organs of the inter-American system for the promotion and protection of human rights;
- d. Encouraging, in addition, member states to contribute to the Specific Fund for Strengthening the Inter-American System for the Protection and Promotion of Human Rights, as well as to the Oliver Jackman Fund established by resolution AG/RES. 2329 (XXXVII-O/07);
- e. Continuing to consider ways to promote compliance with the judgments of the Inter-American Court of Human Rights and follow-up of the recommendations of the Inter-American Commission on Human Rights by member states;
- f. Continuing to analyze the priorities for improvement of the inter-American human rights system, including consideration of the possibility that the Inter-American Court of Human Rights and the Inter-American Commission on

Human Rights may come to operate on a permanent basis, taking into account related information provided by the presidents of both organs;

- g. Holding each year, within the CAJP, the dialogue between the member states and the members of the Inter-American Commission on Human Rights and judges on the Inter-American Court of Human Rights on how the inter-American human rights system operates. The CAJP will establish the agenda for said meeting at least two months in advance; and
- h. Requesting the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to continue to report on the impact and the meaning in practice of these regulatory reforms for the work of both organs and for the strengthening of the system.

4. To continue to promote the strengthening of national systems for the promotion and protection of human rights in member states; and, to that end, to urge the pertinent organs, agencies, and entities of the Organization to provide, in accordance with their capabilities and resources, cooperation and technical support to the member states that so request, in order to help enhance compliance with their international human rights obligations, and to develop cooperative relations and information exchange with, *inter alia*, the Ibero-American Federation of Ombudsmen, the Caribbean Ombudsmen's Association, the Network of National Human Rights Institutions of the Americas, the Andean Council of Ombudsmen, and the Central American Ombudsman Council.

5. To urge member states to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador."

6. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which will be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2408 (XXXVIII-O/08)

OBSERVATIONS AND RECOMMENDATIONS ON THE ANNUAL REPORT  
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the observations and recommendations of the Permanent Council on the Annual Report of the Inter-American Court of Human Rights (AG/doc....);

UNDERSCORING that 2009 marks the 40<sup>th</sup> anniversary of the adoption of the American Convention on Human Rights and the 30<sup>th</sup> anniversary of the establishment of the Inter-American Court of Human Rights;

CONSIDERING:

That in the Declaration of the Third Summit of the Americas (Quebec City, 2001) the Heads of State and Government stated that their “commitment to full respect for human rights and fundamental freedoms is based on shared principles and convictions” and that they supported “strengthening and enhancing the effectiveness of the inter American human rights system, which includes . . . the Inter-American Court of Human Rights”;

That in the Declaration and the Plan of Action of the Fourth Summit of the Americas (Mar del Plata, Argentina, 2005) the Heads of State and Government recognized that the promotion and protection of human rights, on the basis of the principles of universality, indivisibility, and interdependence, are essential to the functioning of democratic societies. Likewise, they undertook “[t]o continue supporting and strengthening the functioning of the bodies of the Inter-American System of Human Rights, promoting within the political bodies of the OAS, in the framework of the ongoing reflection process, concrete actions to achieve, among other objectives, greater adhesion to the legal instruments, an effective observance of the decisions by the Inter-American Court of Human Rights and due consideration of the recommendations of the Inter-American Commission of Human Rights, and the improvement of access of the victims to the mechanisms of the system, and the adequate financing of the bodies of the System, including the fostering of voluntary contributions”;

That Article 54.f of the Charter of the Organization of American States establishes that it is a function of the General Assembly to consider the observations and recommendations presented by the Permanent Council on the reports of the organs, agencies, and entities of the Organization, in accordance with Article 91.f of the Charter; and

That Article 65 of the American Convention on Human Rights establishes that “to each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly’s consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations”;

UNDERSCORING WITH SATISFACTION the efficient work done by the Inter-American Court of Human Rights in the exercise of its advisory functions; and in particular its substantial output in 2007 with respect to its contentious functions;

EXPRESSING ITS APPRECIATION for the offers of the Governments of Chile, Paraguay, Argentina, Brazil, El Salvador, Guatemala, Colombia, Honduras, Uruguay, Mexico, Ecuador, and the Dominican Republic to host special sessions of the Inter-American Court of Human Rights, as a means of promoting the inter-American human rights system;

NOTING the practice initiated by the Inter-American Court of Human Rights to hold private hearings on the monitoring of compliance with its judgments;

RECOGNIZING the importance of the training activities carried out by the Inter-American Court of Human Rights for judges and others involved in the administration of justice, as a means of bringing about a better understanding of the inter-American human rights system;

EXPRESSING APPRECIATION for the valuable, detailed report "Monetary Reparations and Status of Compliance Therewith," presented to the states by the Inter-American Court of Human Rights, which describes and highlights the Court's work in this area; and

UNDERSCORING the importance of the initiative of the Inter-American Court of Human Rights to hold a seminar in 2009 on progress made in human rights in the region, including participation by civil society, which would also afford an excellent opportunity to share best practices on the subject and to consider the present problems faced by the system and its future challenges,

RESOLVES:

1. To adopt the observations and recommendations of the Permanent Council on the Annual Report of the Inter-American Court of Human Rights and to forward them to that organ.

2. To reaffirm the essential value of the work of the Inter-American Court of Human Rights in enhancing the protection and defense of human rights in the Hemisphere.

3. To reiterate that the judgments of the Inter-American Court of Human Rights are final and may not be appealed, and that the states parties to the American Convention on Human Rights undertake to comply with the decisions of the Court in all cases to which they are party.

4. To reiterate the need for states parties to provide, in a timely fashion, the information requested by the Court in order to enable it to fully meet its obligation to report to the General Assembly on compliance with its judgments.

5. To reaffirm the importance of:

- a. The advisory function of the Inter-American Court of Human Rights for the development of inter-American jurisprudence and international human rights law;
- b. The jurisprudence of the Inter-American Court of Human Rights for the effective exercise of and respect for human rights in the Hemisphere; and consequently the importance of the dissemination of its decisions by the member states, as they deem it appropriate;
- c. The special sessions of the Inter-American Court of Human Rights held away from its headquarters, given their importance in disseminating information on the inter-American human rights system and especially on the work of the Inter-American Court; and

- d. The training activities conducted by the Inter-American Court for judges and others involved in the administration of justice.
6. To instruct the Permanent Council to:
    - a. Continue its consideration of the issue of "Access of victims to the Inter-American Court of Human Rights (*jus standi*) and its application in practice," including its financial and budgetary implications, taking into account the need to maintain procedural equity and to redefine the role of the Commission in proceedings before the Court;
    - b. Continue to consider means of encouraging compliance by member states with the judgments of the Court; and
    - c. Instruct the Permanent Council to continue analyzing ways to achieve an effective increase of the financial resources allocated to the Inter-American Court of Human Rights in the program-budget of the Organization. To that end, thank the Secretary General of the Organization for his work and urge him to continue his efforts and present additional proposals for achieving adequate funding for the Inter-American Court of Human Rights in the program-budget of the Organization.
  7. To thank the member states (Colombia, Costa Rica, and Mexico) and permanent observers (the European Union, Norway, and Spain) and the Office of the United Nations High Commissioner for Refugees (UNHCR), which have made voluntary contributions to the Inter-American Court of Human Rights. In addition, to urge member states to contribute to the Specific Fund for Strengthening the Inter-American System for the Protection and Promotion of Human Rights; and to encourage permanent observers and other donors in accordance with Article 74 of the General Standards to Govern the Operations of the General Secretariat to make voluntary contributions to the Inter-American Court of Human Rights.
  8. To encourage member states to continue to invite the Inter-American Court of Human Rights to hold special sessions away from its headquarters.
  9. To urge the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and the Inter-American Institute of Human Rights to continue to hold specialized seminars on the inter-American system for the promotion and protection of human rights for government officials.
  10. To support the initiative of the Inter-American Court of Human Rights to hold a seminar on the present and future challenges to the inter-American human rights system.
  11. To invite the Inter-American Court of Human Rights to continue to participate, with its judges, in the dialogue with member states in the reflection process on strengthening the inter-American human rights system, within the context of the Committee on Juridical and Political Affairs.
  12. Also to invite the Inter-American Court to bear in mind the proposals and comments issued by the member states in the framework of the dialogue, between the member states and the members of the IACHR and the Court, on the functioning of the inter-American human rights system, on April 4, 2008, as well as the contributions by civil society, as set out in the report of



that meeting (CP/CAJP-\_\_\_\_), and to adopt the measures it deems appropriate in the framework of its autonomy and independence.

13. To thank the Court for its willingness to dialogue with member states as part of the joint reflection process in the event of possible reforms to its Rules of Procedure.

14. To urge member states to consider the signature and ratification of, ratification of, or accession to, as the case may be, the American Convention on Human Rights and other instruments of the system, including acceptance of the binding jurisdiction of the Inter-American Court of Human Rights.

15. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2409 (XXXVIII-O/08)

OBSERVATIONS AND RECOMMENDATIONS ON THE ANNUAL REPORT  
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the observations and recommendations of the Permanent Council on the Annual Report of the Inter-American Commission on Human Rights (CP/doc..../08);

EMPHASIZING that in 2009 the 40<sup>th</sup> anniversary of the adoption of the American Convention on Human Rights and the 30<sup>th</sup> anniversary of the establishment of the Inter-American Court of Human Rights will be celebrated;

CONSIDERING:

That, in the Charter of the Organization of American States (OAS), the member states have proclaimed, as one of their principles, respect for the fundamental rights of the individual without distinction as to race, nationality, creed, or sex;

That, under the OAS Charter and the American Convention on Human Rights, the principal function of the Inter-American Commission on Human Rights (IACHR) is to promote the observance and protection of human rights;

That in the Declaration and Plan of Action of the Fourth Summit of the Americas (Mar del Plata, Argentina, 2005) the Heads of State and Government recognized that the promotion and protection of human rights, on the basis of the principles of universality, indivisibility, and interdependence, are essential to the functioning of democratic societies, as well as the need to continue the process of strengthening and enhancing the effectiveness of the inter-American human rights system to achieve, among other objectives, greater accession to the legal instruments, effective observance of the decisions of the Inter-American Court of Human Rights, and due consideration of the recommendations of the Inter-American Commission of Human Rights;

THANKING the Government of Paraguay for the invitation it extended to the IACHR to hold its 129<sup>th</sup> special session in Asunción, from September 5 to 7, 2007, as a means of promoting the inter-American human rights system;

THANKING ALSO the Governments of Argentina, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay, which have extended open and permanent invitations to the IACHR to visit those countries; and

THANKING AS WELL the Government of Argentina for its invitation to the IACHR to hold a special session in that country in 2009, on the occasion of the 30<sup>th</sup> anniversary of its on-site visit to Argentina, for the 40<sup>th</sup> anniversary of the adoption of the American Convention on Human Rights, and for the 50<sup>th</sup> anniversary of the establishment of the IACHR,

RESOLVES:

1. To adopt the observations and recommendations of the Permanent Council on the Annual Report of the Inter-American Commission on Human Rights (CP/doc..../07) and to forward them to that organ.
2. To reaffirm the essential value of the work carried out by the Inter-American Commission on Human Rights (IACHR) to enhance the protection and promotion of human rights and to reinforce the rule of law in the Hemisphere.
3. To encourage member states to:
  - a. Consider signing and ratifying, ratifying, or acceding to, as the case may be, all legal instruments of the inter-American human rights system;
  - b. Follow up on the recommendations of the IACHR, including, *inter alia*, precautionary measures; and
  - c. Continue to take appropriate action in connection with the annual reports of the IACHR, in the context of the Permanent Council and the General Assembly.
4. To note with satisfaction the decisions taken by governments of member states that have invited the IACHR to visit their respective countries; and to encourage all member states to continue this practice and to consider the requests filed by the IACHR to that end.
5. To encourage member states to continue inviting the IACHR to hold special sessions away from its headquarters.
6. To urge the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the Inter-American Institute of Human Rights to continue to hold specialized seminars from time to time for government officials, on the inter-American system for the promotion and protection of human rights.
7. To reiterate the importance of the application of the friendly settlement mechanism among parties concerned, in accordance with the American Convention on Human Rights and the Statute and Rules of Procedure of the Inter-American Commission on Human Rights.
8. To take the following actions with regard to financing of the IACHR:
  - a. Instruct the Permanent Council to continue analyzing ways to achieve an effective increase in the financial resources allocated to the IACHR in the program-budget of the Organization. To that end, thank the Secretary General for his work and urge him to continue his efforts and to present, prior to the thirty-ninth regular session of the General Assembly, additional proposals aimed at achieving adequate financing for the Commission in said program-budget;
  - b. Thank member states, permanent observers, and institutions that have made voluntary contributions to the IACHR; and
  - c. Suggest to donors that, to the extent possible, part of the voluntary contributions that they make not be earmarked for specific purposes, to give

the Commission flexibility in allocating resources among its various activities and projects.

9. To invite the IACHR to:
  - a. Continue to take into account the observations and recommendations of the member states on its annual report and to adopt such measures as it considers pertinent based on such observations and recommendations;
  - b. Continue to publish on its Internet page, when member states so request, their observations and recommendations on its annual report to the General Assembly;
  - c. Continue to strengthen, pursuant to Article 15 of its Rules of Procedure, existing rapporteurships and operational units, in the most equitable manner possible, within the limits of its available resources, and in accordance with the procedures in effect for designating special rapporteurs; and
  - d. Continue to participate, through the members of the Commission, in the dialogue with member states, in the context of the Committee on Juridical and Political Affairs (CAJP), so as to follow up on the observations and comments of the states set forth in the reports on the meetings held on October 26, 2004 (CP/CAJP/SA.412/04 corr. 1 and CP/CAJP/INF.17/04), on March 9, 2006 (CP/CAJP-2311/05 add. 2 and 2-a), on March 30, 2007 (CP/CAJP-2526/07), and on April 4, 2008 (CP/CAJP-.../08), in particular those on the criteria used when applying its principal mechanisms for the protection of human rights and when applying its Rules of Procedure to the individual case system; and likewise on the role of the IACHR in proceedings before the Inter-American Court of Human Rights.

10. Also to invite the IACHR to bear in mind the proposals and comments issued by the member states in the framework of the dialogue between the member states and the members of the IACHR and the Court, on the functioning of the inter-American human rights system, on April 4, 2008, as well as the contributions by civil society, as set out in the report of that meeting (CP/CAJP-\_\_\_\_), and to adopt the measures it deems appropriate in the framework of its autonomy and independence.

11. To instruct the CAJP, with a view to implementing operative paragraph 9.d, to schedule meetings to continue its dialogue with the members of the IACHR.

12. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2411 (XXXVIII-O/08)

STRENGTHENING OF THE NATIONAL HUMAN RIGHTS SYSTEMS OF THE  
MEMBER STATES AND SUPPORT FOR THE WORK OF DEFENDERS OF  
THE PEOPLE, DEFENDERS OF THE POPULATION, AND HUMAN RIGHTS  
ATTORNEYS OR COMMISSIONERS (OMBUDSMEN)

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

TAKING INTO ACCOUNT resolutions AG/RES. 2345 (XXXVII-O/07), AG/RES. 2221 (XXXVI-O/06), and AG/RES. 2132 (XXXV-O/05), "Strengthening of the National Human Rights Systems of the Member States and Support for the Work of Defenders of the People, Defenders of the Population, and Human Rights Attorneys or Commissioners (Ombudsmen)," whereby it recognized the importance of national systems for the promotion and protection of human rights in safeguarding the rights of the individual;

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4698/07 corr. 2);

TAKING INTO ACCOUNT that in the Charter of the Organization of American States, the American Convention on Human Rights, and the American Declaration of the Rights and Duties of Man, the member states proclaimed the fundamental rights of the individual without distinction as to race, nationality, creed, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition;

REAFFIRMING that the member states recognize that all human rights are universal, indivisible, interdependent, and interrelated, and that all persons should be treated justly and equitably, on an equal footing, bearing in mind the progressive nature of economic, social, and cultural rights;

RECALLING that the World Conference on Human Rights reaffirmed the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. As stated in the Declaration on the Right to Development, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level;

TAKING INTO ACCOUNT that the fundamental objective of national systems for the promotion and protection of human rights is to safeguard the rights of the individual;

BEARING IN MIND the Principles relating to the Status of National Institutions, "Paris Principles," adopted by the United Nations General Assembly in its resolution 48/134, of December 20, 1993;

REAFFIRMING the importance of the inter-American human rights system, whose organs have competence to promote the observance of human rights in all member states of the Organization, in accordance with the commitments undertaken by each state, and which operate in a manner subsidiary to national jurisdictional systems;

TAKING INTO ACCOUNT that all member states have the obligation to promote and protect the human rights and fundamental freedoms, without distinguishing among the specific national and regional characteristics and the different historical, cultural, and religious backgrounds of all states, regardless of their political, economic, and cultural systems; and recognizing that democracy is a universal value and there is no single model of democracy;

AWARE that “[t]he effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States” and that one of the essential purposes of the OAS is “[t]o promote and consolidate representative democracy, with due respect for the principle of nonintervention”;

REAFFIRMING that the participatory nature of democracy in our countries in different aspects of public life contributes to the consolidation of democratic values and to freedom and solidarity in the Hemisphere;

RECALLING resolutions AG/RES. 1505 (XXVII-O/97), AG/RES. 1601 (XXVIII-O/98), and AG/RES. 1670 (XXIX-O/99), in which the General Assembly recognized the work of ombudsmen in the Hemisphere, a concept recognized in the law of member states with names such as defenders of the people, defenders of the population, human rights attorneys, and human rights commissioners;

RECALLING ALSO the message transmitted by the United Nations Commission on Human Rights through resolution 2005/74, “National Institutions for the Promotion and Protection of Human Rights,” which, in paragraph 12, “[w]elcomes the continuation of the practice of national institutions convening regional meetings” and encourages national institutions, in cooperation with the Office of United Nations High Commissioner for Human Rights, “to continue to organize similar events with Governments and non-governmental organizations in their own regions”;

UNDERSCORING the work done by the Caribbean Ombudsmen’s Association, the Network of National Human Rights Institutions of the Americas, the Andean Council of Ombudsmen, the Central American Ombudsman Council, and the Ibero-American Federation of Ombudsmen;

RECALLING the exhortation contained in the aforementioned resolutions that member states of the inter-American system adopt measures to ensure that the defenders of the people, defenders of the population, human rights attorneys, and human rights commissioners enjoy political, administrative, and financial independence; and

TAKING INTO CONSIDERATION the Plan of Action of the Third Summit of the Americas (Quebec City, 2001) as it pertains to strengthening the capacity of national institutions responsible for the promotion and protection of human rights,

RESOLVES:

1. To reaffirm the fundamental importance of national human rights systems for the promotion and protection of human rights in strengthening the rule of law and social justice for the consolidation of democracy.

2. To reiterate its support for the politically, administratively, and financially independent work of the ombudsmen or defenders of the people, defenders of the population, human rights attorneys, and human rights commissioners in the countries of the Hemisphere, in the promotion and protection of human rights.

3. To recommend to member states that do not yet have institutions of the kind to which this resolution refers that they consider the possibility of establishing and operating them within the framework of their legal order.

4. To encourage the governments and organs of the inter-American system to promote the establishment of forums for dialogue between the institutions of the kind to which this resolution refers and the pertinent organs of the inter-American system, in order to strengthen their contribution to the democratic order in the Hemisphere.

5. To reaffirm the support of the Organization of American States for the work of the Caribbean Ombudsmen's Association, the Network of National Human Rights Institutions of the Americas, the Andean Council of Ombudsmen, the Central American Ombudsman Council, and the Ibero-American Federation of Ombudsmen.

6. To reiterate to the Committee on Juridical and Political Affairs of the Permanent Council that it consider inviting the institutions to which this resolution refers to participate in the dialogue to be held among member states on human rights issues, given that their presence is necessary.

7. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2412 (XXXVIII-O/08)

HUMAN RIGHTS DEFENDERS: SUPPORT FOR THE WORK OF INDIVIDUALS, GROUPS, AND ORGANIZATIONS OF CIVIL SOCIETY TO PROMOTE AND PROTECT HUMAN RIGHTS IN THE AMERICAS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc. .../08) as it pertains to this topic, and resolution AG/RES. 2280 (XXXVII-O/07), "Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas";

RECALLING the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

REITERATING that "[e]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means" in accordance with domestic law consistent with the Charter of the United Nations and other international obligations of the state in the field of human rights and fundamental freedoms;

CONCERNED that situations persist in the Americas that directly or indirectly prevent or hamper the work of individuals, groups, or organizations working to protect and promote human rights and fundamental freedoms;

GRAVELY CONCERNED that, in some instances, national security and counterterrorism legislation and other measures have been misused to target human rights defenders or have hindered their work and safety in a manner contrary to international law;

BEARING IN MIND that, in resolution 60/161 of the United Nations General Assembly and resolution 2005/67 of the former Commission on Human Rights of that organization, the member states of the United Nations noted "with deep concern that, in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms are facing threats, harassment and insecurity as a result of those activities";

CONSIDERING that the member states of the Organization of American States have demonstrated their full willingness to support the work carried out by human rights defenders and recognize their valuable contribution to the promotion, observance, and protection of human rights and fundamental freedoms in the Americas, and to the representation and defense of individuals, minorities, and other groups of persons whose rights are threatened or violated;

NOTING that the decisions of the Inter-American Court of Human Rights granting provisional measures, and the "Report on the Situation of Human Rights Defenders in the Americas," prepared by the Inter-American Commission on Human Rights, have highlighted the importance of the work of human rights defenders to the development of democracies in the Americas;



URGING the Unit for Human Rights Defenders of the Inter-American Commission on Human Rights to continue its work;

EMPHASIZING that everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible;

EMPHASIZING FURTHER that the protection and promotion of human rights is legitimate work and that, in the exercise of their duties, human rights defenders contribute decisively to strengthening democratic institutions and improving national human rights systems; and

EMPHASIZING ALSO the importance of the role of human rights defenders in promoting dialogue, openness, participation, and justice to contribute to the prevention of violence and promote sustainable peace and security, and the affirmation that, to be effective, international strategies in this area must pay special attention to protecting human rights defenders,

RESOLVES:

1. To reiterate its support for the work carried out, at both the national and regional levels, by human rights defenders; and to recognize their valuable contribution to the promotion, observance, and protection of human rights and fundamental freedoms in the Hemisphere.

2. To recognize that, in view of their gender-specific role and needs, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities.

3. To condemn actions intended to prevent or hamper, whether directly or indirectly, the work of human rights defenders in the Americas.

4. To encourage human rights defenders to continue their selfless work and their contributions to the enhancement of national human rights systems for the strengthening of democracy, in accordance with the principles contained in the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

5. To encourage member states to continue or begin, as the case may be, activities to educate and disseminate information to government officials, society at large, and the media, both public and private, so as to make them aware of the importance and validity of the work of human rights defenders and their organizations.

6. To urge member states to continue stepping up their efforts to adopt necessary measures to safeguard the lives, freedom, and personal safety of human rights defenders and their relatives, including effective emergency protection measures in the case of imminent threat or danger, and to ensure that thorough and impartial investigations and proceedings are carried out, and appropriate punishments are applied, in all cases of violations against human rights defenders.

7. To request the Inter-American Commission on Human Rights to:

a. Continue to give due consideration to this matter;

b. Continue intensifying its dialogue and cooperation with the United Nations Special Representative of the Secretary-General on Human Rights Defenders; and

- c. Include in its annual report a section on the work of the Unit for Human Rights Defenders of the Inter-American Commission on Human Rights.

8. To encourage member states to ensure applicable national law—including registration where applicable under national law—concerning human rights defenders and their organizations allows their work to be carried out in a free, transparent, and open political environment and in a manner consistent with applicable international human rights and humanitarian law.

9. To invite member states to promote the dissemination and enforcement of the treaty and non-treaty instruments of the inter-American system and the decisions of its bodies on human rights matters, as well as the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

10. To invite member states to consider the preparation and implementation of national plans to apply the principles contained in the United Nations Declaration mentioned in the preceding paragraph, for which purpose they may also request the advisory services of the Inter-American Commission on Human Rights.

11. To invite member states to inform the Inter-American Commission on Human Rights of measures adopted to follow up on the recommendations contained in the “Report on the Situation of Human Rights Defenders in the Americas,” prepared in 2006 by the Unit for Human Rights Defenders of the Inter-American Commission on Human Rights.

12. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2415 (XXXVIII-O/08)

PROTECTING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
WHILE COUNTERING TERRORISM

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1840 (XXXII-O/02), AG/RES. 1906 (XXXII-O/02), AG/RES. 1931 (XXXIII-O/03), AG/RES. 2035 (XXXIV-O/04), AG/RES. 2143 (XXXV-O/05), AG/RES. 2238 (XXXVI-O/06), AG/RES. 2271 (XXXVII-O/07), and the Report on Terrorism and Human Rights, prepared by the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.116 – Doc.5 rev. 1);

REAFFIRMING the principles and purposes of the Charter of the Organization of American States and the Charter of the United Nations;

EMPHASIZING that all persons are born free and are entitled to the human rights and fundamental freedoms recognized in the Universal Declaration of Human Rights, without distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other status, and that this applies in all circumstances, in accordance with international law;

REITERATING that all persons are equal before the law and have the rights and duties established in the American Declaration of the Rights and Duties of Man, without distinction as to race, sex, language, creed, or any other factor;

REAFFIRMING that states are under the obligation to protect all human rights and fundamental freedoms of all persons;

RECOGNIZING that respect for all human rights, respect for democracy, and respect for the rule of law are interrelated and mutually reinforcing;

CONSIDERING that terrorism poses a serious threat to the security, the institutions, and the democratic values of states and to the well-being of our peoples, and that it impairs the full enjoyment and exercise of human rights;

RECOGNIZING that the adoption of measures to ensure respect for human rights for all and the rule of law is one of the pillars of the Plan of Action of the United Nations Global Counter-Terrorism Strategy, adopted by consensus in 2006;

REAFFIRMING that acts, methods, and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms, and democracy, threatening the territorial integrity and security of states and destabilizing legitimately constituted governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism;

REAFFIRMING ALSO its unequivocal condemnation of all acts, methods, and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable; and renewing its commitment to strengthen international cooperation to prevent and combat terrorism;

## TAKING INTO ACCOUNT:

That, in the Declaration of Lima entitled "Reaffirmation of the Hemispheric Commitment to Fighting Terrorism" adopted on March 7, 2008, the member states reaffirmed that terrorism in all its forms and manifestations, whatever its origin or motivation, has no justification whatsoever, affects the full enjoyment and exercise of human rights, and constitutes a grave threat to international peace and security, the institutions and values of democracy, and the stability and prosperity of the countries of the region;

That, in the Declaration on Security in the Americas, the states of the Hemisphere renewed their commitment, reiterated in the Declaration of San Carlos and Declaration of Panama, to fight terrorism and its financing, with full respect for the rule of law and international law, including international humanitarian law, international human rights law, and international refugee law, the Inter-American Convention against Terrorism, and United Nations Security Council resolution 1373 (2001); and

That, in the Declaration of Mar del Plata of the Fourth Summit of the Americas and the Declaration of Nuevo León of the Special Summit of the Americas, the Heads of State and Government agreed to take all necessary steps to prevent and counter terrorism and its financing, in full compliance with their obligations under international law, including international human rights law, international refugee law, and international humanitarian law;

WELCOMING the fact that the Inter-American Convention against Terrorism came into force on July 10, 2003; and that to date 23 countries have ratified it;

CONSIDERING the report of the Meeting of Government Experts to Exchange, from a Human Rights Perspective, Best Practices and National Experiences in Adopting Antiterrorism Measures, held on February 12 and 13, 2004 (CP/CAJP-2140/04);

HAVING RECEIVED the document entitled "Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism" (CP/doc.4117/06), prepared by the Inter-American Commission on Human Rights (IACHR), which supplements the report of the IACHR on Terrorism and Human Rights of October 22, 2002 (OEA.Ser.L/V/II.116, doc. 5 rev. 1);

## REAFFIRMING:

That, in the fight against terrorism, any detained person presumed to be involved in a terrorist act will enjoy the rights and guarantees provided by applicable international law, in particular international human rights law and international humanitarian law;

That the means the state can use to protect its security or that of its citizens in the fight against terrorism should, under all circumstances, be consistent with applicable international law, in particular international human rights law, international humanitarian law, and international refugee law; and

That terrorism cannot and should not be associated with any religion, nationality, civilization, or ethnic group;

RECALLING that, under Article 27 of the American Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights, it is recognized that some rights are non-derogable under any circumstances, and that, with respect to rights that may be subject to derogation, states may take measures derogating from their obligations under these Conventions to the extent and, with respect to the American Convention, for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with the other

rights and obligations prescribed under international law; and emphasizing that, in the inter-American system, the protection of non-derogable rights includes essential judicial guarantees for their protection; and

DEEPLY DEPLORING the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee law and international humanitarian law,

RESOLVES:

1. To reaffirm that the fight against terrorism must be waged with full respect for the law, including compliance with due process and human rights comprised of civil, political, economic, social, and cultural rights, as well as for democratic institutions, so as to preserve the rule of law and democratic freedoms and values in the Hemisphere.

2. To reaffirm that all member states have a duty to ensure that all measures adopted to combat terrorism are in compliance with their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.

3. To urge states, while countering terrorism, to fully comply with their obligations against cruel, inhuman, or degrading treatment or punishment, in particular the absolute prohibition of torture.

4. To call upon states to ensure that their laws criminalizing terrorist conduct and/or activities are accessible, formulated with precision, non-discriminatory, non-retroactive, and in accordance with applicable international law, including human rights law, international humanitarian law, and international refugee law.

5. To urge states to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law.

6. To urge states to comply with safeguards concerning the liberty, security, and dignity of persons and to treat detainees, in all places of detention, in accordance with applicable international law, including human rights law and international humanitarian law.

7. To call upon all member states, with a view to fulfilling the commitments undertaken in this resolution, to consider signing and ratifying, ratifying, or acceding to, as the case may be and as soon as possible, the Inter-American Convention against Terrorism and the American Convention on Human Rights; and to urge the states parties to take appropriate steps to implement the provisions of those treaties.

8. To call upon member states to promote and apply at every level the United Nations Global Counter-Terrorism Strategy and its Plan of Action in order to move toward the common goal of eradicating the scourge of international terrorism, taking into account that one of its mainstays is ensuring respect for human rights while countering terrorism.

9. To request the Inter-American Commission on Human Rights (IACHR) to continue promoting respect for and the defense of human rights and facilitating efforts by member states to comply appropriately with their international human rights commitments when developing and

executing counterterrorist measures, including the rights of persons who might be at a disadvantage, subject to discrimination, or at risk as a result of terrorist violence or counterterrorist initiatives, and to report to the Permanent Council on the advisability of conducting a follow-up study.

10. On the basis of the "Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism," prepared by the IACHR, and the results of consultations with the Inter-American Committee against Terrorism (CICTE) and the member states, the Permanent Council may consider preparing draft common terms of reference for the protection of human rights and fundamental freedoms in the fight against terrorism, which would compile current international standards and be based on applicable international law and on best practices, for consideration by the General Assembly.

11. To reiterate the importance of intensifying dialogue among CICTE, the IACHR, and other pertinent areas of the Organization, with a view to improving and strengthening their ongoing collaboration on the issue of protecting human rights and fundamental freedoms while countering terrorism.

12. To urge member states to respect, in accordance with their obligations, the human rights of all persons deprived of their liberty in high-security detention centers, particularly observance of due process.

13. To reaffirm that it is imperative that all states work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism.

14. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2416 (XXXVIII-O/08)

PERSONS WHO HAVE DISAPPEARED AND ASSISTANCE  
TO MEMBERS OF THEIR FAMILIES

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolution AG/RES. 2295 (XXXVII-O/07) and resolutions on this subject from prior years;

TAKING INTO ACCOUNT that the problem of missing persons and assistance to members of their families is addressed in international humanitarian law and international human rights law within their respective spheres of application, their legal frameworks being distinct;

DEEPLY CONCERNED over the suffering caused both by the disappearance of persons as a result of armed conflict or other situations of armed violence and by forced disappearances;

RECOGNIZING the need to alleviate the anxiety and uncertainty suffered by the relatives of persons who are presumed to have disappeared;

MINDFUL of the need to prevent the disappearance of persons, to ascertain the fate of those who have disappeared, and to respond to the needs of members of their families, both in situations of armed conflict or other situations of armed violence and in cases of forced disappearances;

GUIDED by the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 thereto, the American Declaration of the Rights and Duties of Man of 1948, the American Convention on Human Rights of 1969, the Inter-American Convention on Forced Disappearance of Persons of 1994, the International Convention for the Protection of All Persons from Enforced Disappearance of 2006, and applicable international law;

TAKING INTO ACCOUNT resolution 59/189, "Missing persons," adopted by the United Nations General Assembly on December 20, 2004; resolution 2005/66, "Right to the Truth," adopted by the United Nations Commission on Human Rights on April 20, 2005; resolution 2005/26, "Human Rights and Forensic Science," adopted by the United Nations Commission on Human Rights on April 19, 2005; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly on December 16, 2005; decision 2/105, "Right to the truth," adopted by the United Nations Human Rights Council in November 2006; resolution 61/155, "Missing persons," adopted by the United Nations General Assembly on December 19, 2006, and resolution 7/28, "Missing Persons," of the United Nations Human Rights Council, of March 28, 2008, and

TAKING INTO ACCOUNT resolution 1 of the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from November 26 to 30, 2007, which urged the members of that Conference to continue and intensify their efforts to address the problem of missing persons and their relatives,

RESOLVES:

1. To urge all parties involved in armed conflict and actors in other situations of armed violence to prevent the disappearance of persons, in accordance with applicable international law.
2. To encourage member states to continue moving forward in preventing the forced disappearance of persons by considering, where appropriate, the adoption of laws, regulations, and/or instructions requiring the establishment of official registries in which records will be kept of all detained persons, among other reasons to allow, as appropriate, family members, other interested persons, judicial authorities, and/or bodies that have a recognized mandate to protect detainees to learn, within a short period of time, of any detention that has taken place, all of the foregoing without interfering with appropriate communications between detainees and their families.
3. To urge member states to step up their efforts to shed light on the fate of persons who have disappeared and, to that end, to ensure that authorities and all mechanisms involved coordinate their work, cooperate among themselves, and complement one another's efforts.
4. To urge member states to maintain, in keeping with their legal and administrative organization, complete birth and death records, and also to establish registries to collect and centralize information on persons presumed to have disappeared.
5. To urge member states to ensure that disappearance cases are impartially investigated by the competent authorities, in accordance with their international obligations and domestic legislation, and that the families of persons presumed to have disappeared are systematically involved in the efforts to clarify what has happened to them.
6. To encourage member states to address as fully as possible the psychological, social, legal, and material needs of the families of presumed victims of disappearances through measures including, where appropriate, provision of periodic information to relatives on the efforts to cast light on the fate of the disappeared and on their whereabouts.
7. To encourage member states to consider enacting, as applicable, domestic laws that recognize the situation of the families of disappearance victims, taking into account the specific needs and particular interests of women heads of household and children, including the consequences of disappearances on property management, child custody, parental rights, and marital status, as well as devising adequate compensation programs.
8. To urge member states to ensure that human remains are treated with due respect and in accordance with national and international practices and standards and legal and ethical standards applicable to the collection, exhumation, and management of unidentified remains, in order to assemble all the information needed to identify them and to ascertain the facts that led to that situation.
9. To encourage member states to take appropriate measures to ensure that the collection, exhumation, and management of human remains and other related procedures are carried out by forensic experts, respecting, if applicable, traditional practices.
10. To urge member states to ensure that fully identified human remains are returned to families and that the respective death certificates are issued.
11. To urge member states to punish those found guilty of violating, in armed conflict and other situations of armed violence, provisions of international human rights law and/or international humanitarian law, within their respective spheres of application, which protect persons from disappearances, in particular, forced disappearances.



12. To urge member states to adopt necessary legislative and/or administrative measures to prevent the unlawful deprivation of freedom.

13. To urge member states to adopt necessary legislative and/or administrative measures to prevent the systematic and deliberate denial of information exchange among families; obstacles to the provision of information on disappearance victims, in particular regarding identification processes; the illicit withholding of accessible information on a death or its cause and the reasons for or circumstances of a death; the destruction of evidence likely to clarify the fate of a person presumed to be missing; and the pillaging, desecration, or mutilation of the deceased.

14. To urge member states to ensure adequate protection of the personal data gathered in connection with disappeared persons, in accordance with the law.

15. To urge member states to cooperate among themselves in addressing the various aspects of the problem of the disappearance of persons, including in the area of support for families, the search for missing persons, collection, exhumation, and identification of human remains, and mutual assistance in criminal proceedings.

16. To encourage member states to request support from international and civil society organizations to address the problem of the disappearance of persons.

17. To invite member states to continue their cooperation with the International Committee of the Red Cross, a recognized humanitarian institution, in its various areas of responsibility, and to facilitate its work.

18. To urge those member states that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance.

19. To urge states, as applicable, to endeavor to carry out the mandates set forth in this resolution on an ongoing basis.

20. To instruct the Permanent Council to follow up on this resolution.

AG/RES. 2417 (XXXVIII-O/08)

INTERNALLY DISPLACED PERSONS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1971 (XXXIII-O/03), "The Protection of Refugees, Returnees, and Stateless and Internally Displaced Persons in the Americas," AG/RES. 774 (XV-O/85), AG/RES. 838 (XVI-O/86), AG/RES. 951 (XVIII-O/88), AG/RES. 1021 (XIX-O/89), AG/RES. 1039 (XX-O/90), AG/RES. 1040 (XX-O/90), AG/RES. 1103 (XXI-O/91), AG/RES. 1170 (XXII-O/92), AG/RES. 1214 (XXIII-O/93), AG/RES. 1273 (XXIV-O/94), AG/RES. 1336 (XXV-O/95), AG/RES. 1416 (XXVI-O/96), AG/RES. 1504 (XXVII-O/97), AG/RES. 1602 (XXVIII-O/98), AG/RES. 1892 (XXXII-O/02), AG/RES. 2055 (XXXIV-O/04), AG/RES. 2140 (XXXV-O/05), AG/RES. 2229 (XXXVI-O/06), and, especially, resolution AG/RES. 2277 (XXXVII-O/07), "Internally Displaced Persons";

REITERATING the principles established in the Charter of the Organization of American States (OAS) and in the Inter-American Democratic Charter, especially those referred to in its Chapter III, "Democracy, Integral Development, and Combating Poverty";

RECALLING the pertinent rules of international human rights, humanitarian, and refugee law; and recognizing that the protection of internally displaced persons has been reinforced by the definition and consolidation of specific protection standards, in particular the Guiding Principles on Internal Displacement, prepared by the Special Representative of the United Nations Secretary-General on Internally Displaced Persons;

RECALLING ALSO that, according to those guiding principles, internally displaced persons are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border";

EMPHASIZING that the states have the primary responsibility to provide protection and assistance to internally displaced persons within their jurisdiction, as well as to address, as appropriate, the causes of the internal displacement problem and to do so, when so required, in cooperation with the international community;

NOTING that several countries in the Hemisphere are using the Guiding Principles on Internal Displacement and including them in the development of national policies and strategies;

TAKING INTO ACCOUNT that internal displacement affects a large number of persons, and that the needs of internally displaced persons, particularly with regard to protection and assistance, must be addressed immediately and comprehensively;

EMPHASIZING the importance of implementing effective policies for preventing and averting forced internal displacement and for protecting and assisting displaced persons during displacement and during return or resettlement and reintegration, including through the implementation of applicable international law; and

UNDERSCORING that to promote enhanced protection for internally displaced persons, comprehensive strategies and lasting solutions are needed, which include, among other aspects, a

free and informed decision by internally displaced persons as to whether to return to their place of origin, to integrate locally in the place where they were displaced, or to resettle elsewhere in the country,

RESOLVES:

1. To urge member states to include, as appropriate, in their sectoral plans, policies, and programs, the special needs of internally displaced persons, especially in the preparation of programs to foster development and fight poverty.

2. To urge member states to consider using the Guiding Principles on Internal Displacement, prepared by the Special Representative of the United Nations Secretary-General on Internally Displaced Persons, as a basis for their plans, policies, and programs in support of such persons, and, in accordance with international law, in support of, *inter alia*, indigenous communities and communities of African descent, and the specific needs of children, women, the elderly, and persons with disabilities.

3. To urge member states, to continue considering the implementation in their domestic law or in their policies referring to all stages of displacement the Guiding Principles on Internal Displacement, which reflect certain aspects of international human rights law and international humanitarian law.

4. In order to avert the internal displacement of persons, to encourage member states to address the factors that cause it and to establish preventive policies, such as early warning, bearing in mind that dialogue with all the actors involved is essential to the achievement of lasting solutions.

5. To call upon member states to comply with their obligations under applicable international humanitarian law, international human rights law, and refugee law in dealing with internally displaced people, including in the possible prevention of internal displacement.

6. To urge member states, in keeping with their responsibility to internally displaced persons, based on comprehensive strategies and from a human rights perspective, to commit to providing them with protection and assistance during displacement, through competent national institutions; and to invite member states to commit to seeking lasting solutions, including the safe and voluntary return of internally displaced persons and their resettlement and reintegration, whether in their place of origin or in the receiving community.

7. To call upon states, in the care they provide to internally displaced persons in natural and man-made disasters, to protect their human rights through a comprehensive approach to disaster relief and reconstruction, consistent with international human rights law and domestic law, taking into account the Guiding Principles on Internal Displacement.

8. To urge states to work together by fostering the exchange of good practices for the effective protection of the human rights of internally displaced persons as well as in the development and implementation of public policy to prevent displacement.

9. To encourage member states, in dealing with internally displaced people, to consider the Framework on Lasting Solutions for Internal Displacement and the Operational Guidelines on Human Rights and Natural Disasters prepared by the Special Representative of the United Nations Secretary General on Internal Displacement.

10. To appeal to the appropriate agencies of the United Nations and the inter-American system, and to other humanitarian organizations and the international community, to provide support and/or assistance, as requested by states, in addressing the various factors that cause internal displacement, and in assisting persons affected by internal displacement at all stages, where account should be taken of the Guiding Principles on strengthening of the coordination of humanitarian emergency assistance (United Nations General Assembly resolution 46/182).

11. To instruct the Permanent Council to follow up on this resolution as it sees fit.

ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY<sup>3/</sup>

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (.....) on the status of implementation of resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy";

CONSIDERING that Article 13 of the American Convention on Human Rights provides that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice";

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the right "to seek, receive and impart information and ideas through any media and regardless of frontiers";

RECALLING that the Plan of Action of the Third Summit of the Americas (Quebec City, 2001) indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information by all citizens;

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation

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<sup>3</sup>. The Bolivarian Republic of Venezuela reaffirms the statement made in the footnote to resolution AG/RES. 2288 (XXXVII-O/07) as we consider that access to public information held by the state should be fully consistent with Article 13 of the American Convention on Human Rights, which establishes that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." Venezuela maintains that a democratic system for access to public information should allow all citizens, without exception, to seek, receive, and impart information. A citizen seeking information is consciously and fully exercising the right to access to information, and the state must promote the adoption of legal provisions guaranteeing the exercise thereof. Likewise, on the basis of the principle of equality before the law, the state must guarantee the same right to the poor, the underprivileged, and the socially disadvantaged. Accordingly, it is necessary "[t]o instruct the Inter-American Commission on Human Rights to conduct a study on how the state can guarantee all citizens the right to receive public information, on the basis of the principle of the transparency of information, when it is disseminated through the mass media, in the full exercise of the right to freedom of expression and as an effective means of participation." Along those lines, we underscore the important conclusions and reflections of the special meeting on the right to public information, held on April 28, 2006, within the framework of the OAS, in which it was recognized that the media were responsible for ensuring that citizens receive, without distortions of any type, information provided by the state. Venezuela regrets that a response to the message of the poor has once again been postponed. We share the view of those who claim that refusing to grant the poor and the disadvantaged access to information condemns them to continued social and economic ostracism. Venezuela therefore once again urges the Inter-American Commission on Human Rights to take the initiative and, under the powers granted to it in the Inter-American Convention on Human Rights, to conduct the aforementioned study and report on the results thereof to the General Assembly of the Organization of American States at its next regular session.

and promotes effective respect for human rights, and, in that connection, that they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

CONSIDERING ALSO that the General Secretariat has been providing support to member state governments in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee (CJI) on this issue, in particular resolution CJI/RES. 123 (LXX-O/07), "Right to Information," attached to which is the report titled "Right to Information: Access to and Protection of Information and Personal Data in Electronic Format" (CJI/doc.25/00 rev. 2);

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING ALSO that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR); and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression, adopted in 2006;

TAKING NOTE ALSO of the reports of the IACHR Special Rapporteur on Freedom of Expression on the situation of access to information in the Hemisphere for 2003, 2004, 2005, 2006, and 2007;

TAKING NOTE FURTHER of the report on the special meeting of the Committee on Juridical and Political Affairs to promote, impart, and exchange experiences and knowledge with respect to access to public information and its relationship with citizen participation, which received input from experts from the states and civil society representatives, held at OAS headquarters on April 28, 2006 (CP/CAJP-2320/06 add. 2); and of the report of the Special Meeting on Freedom of Thought and Expression, held on February 28 and 29, 2008, which highlighted recent inter-American jurisprudence on access to public information;

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well as the outcomes of the Regional Forum on Access to Public Information of January 2004; the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information sponsored by the Carter Center, which address ways of promoting the fulfillment and exercise of the right of access to information; and of the International Seminar on Press, Litigation, and the Right to Public Information, held in Lima, Peru on November 28, 2007;

RECALLING ALSO that the media, the private sector, and political parties can likewise play an important role in facilitating access by citizens to information held by the State;

TAKING INTO ACCOUNT the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (document CP/CAJP-2608/08), which is a contribution to the study of best practices as regards access to public information in the Hemisphere; and

WELCOMING WITH INTEREST the Study of Recommendations on Access to Information, submitted to the Committee on Juridical and Political Affairs on April 24, 2008 (document CP/CAJP-2599/08), a study organized by the Department of International Law pursuant to resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

1. To reaffirm that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.

2. To urge member states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.

3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.

4. Also to encourage member states, when preparing and/or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society with the opportunity to participate in that process; and to urge them, when drafting and/or adapting their national legislation, to take into account clear and transparent exception criteria.

5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to make public information available electronically or by any other means that will allow ready access to it.

6. To encourage civil society organizations to make information related to their work available to the public.

7. To encourage states to consider, when they are designing, executing, and evaluating their regulations and policies on access to public information, where applicable, with the support of the appropriate organs, agencies, and entities of the Organization, implementing the recommendations on access to public information contained in the Study organized by the Department of International Law and submitted to the Committee on Juridical and Political Affairs on April 24, 2008.

8. To instruct the Permanent Council, in the framework of the Committee on Juridical and Political Affairs to:

- a. Convene in the second half of 2008 a special meeting with the participation of the member states, the General Secretariat, and representatives of civil society to examine the possibility of preparing an Inter-American Program on

Access to Public Information, bearing in mind the recommendations contained in the aforementioned Study.

- b. Update the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2599/08) requesting to that end contributions by member states, the Special Rapporteurship for Freedom of Expression of the IACHR, the Inter-American Juridical Committee, the Department of International Law, the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, interested entities and organizations and civil society representatives.
- c. To include in the study mentioned in the foregoing subparagraph the right of all citizens to seek, receive, and disseminate public information

9. To instruct the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, and to invite the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), to support the efforts of member states that request such support to design, execute, and evaluate their regulations and policies with respect to access by citizens to public information.

10. To instruct the Department of International Law to prepare a study with recommendations on the protection of personal data, using as a basis the contributions of member states, the organs of the inter-American system and of civil society, and the preparatory work done during the special meeting of the CAJP on that subject.

11. To instruct the Special Rapporteurship Freedom of Expression to continue to include in the Annual Report of the IACHR a report on the situation regarding access to public information in the region.

12. To instruct the Inter-American Agency for Cooperation and Development (IACD) to identify new resources to support member states' efforts to facilitate access to public information.

13. To request the Secretary General to report, through the Permanent Council, to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.



AG/RES. 2419 (XXXVIII-O/08)

SUPPORT FOR ENHANCED INTER-REGIONAL COOPERATION  
WITH THE AFRICAN UNION (AU)

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

AWARE of the historical bonds and shared experiences which tie together the American and African continents, the fundamental contributions of persons of African descent and their communities in the Americas, and the importance of recognizing and preserving that heritage;

COMMITTED, through regional and inter-regional cooperation, to support states in their efforts to strengthen democratic institutions, values, practices, and governance, to fight corruption, to enhance the rule of law, to bring about the full exercise of human rights, and to reduce poverty, hunger, inequity, and social exclusion;

TAKING INTO ACCOUNT the presentations made during the special meeting of the Permanent Council on December 11, 2002, regarding Western Hemisphere-Africa cooperation, resolution 1631 (2005) of the United Nations Security Council, "Cooperation between the United Nations and regional organizations in maintaining international peace and security," AG/RES. 2016 (XXXIV-O/04), and "Cooperation between the Organization of the American States and the United Nations System, the Central Integration System and the General Secretariat of the Caribbean Community (CARICOM)";

BEARING MIND that, in recognition of racial discrimination against persons of African descent in the Americas, the Inter-American Commission on Human Rights (IACHR) established in February 2005 a Special Rapporteurship on the Rights of Persons of African Descent and on Racial Discrimination;

NOTING the progress achieved by the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance;

RECALLING the commitments of the inter-American and African systems to the regional promotion and protection of human rights, as reflected in instruments such as the African Charter on Human and Peoples' Rights, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights;

RECOGNIZING that democracy, transparent, responsible, accountable and participatory governance responsive to the needs and aspirations of the people, and respect for human rights, fundamental freedoms and the rule of law are essential for the effective prevention and elimination of racism, racial discrimination, xenophobia and related intolerance;

CONSIDERING that countries of Africa and the Americas, in the framework of bilateral and multilateral fora, have committed themselves to encourage regional and interregional initiatives to promote democracy, human rights and the rule of law, and to exchange experiences with other regional organizations, including the African Union, in matters of strengthening democracy at regional and interregional levels through the OAS;

AWARE that the 2003 Declaration of Mexico (CIDI/RME/DEC. 4 (III-O/03) adopted by the Ministers of Education of the Hemisphere recognized the importance of raising cultural awareness

and promoting democratic values in present and future generations, especially in education, as a key means for alleviating poverty and fostering greater understanding among peoples; and that the 2008 Declaration of African Union Ministers in Charge of Youth recognized the “role of the African youth in the Diaspora” and the “urgent need to promote African Youth and to enhance youth involvement in the African development agenda”;

RECOGNIZING the value of collaborative sharing of experiences and best practices for the deepening and implementation of the Inter-American Democratic Charter and the African Charter on Democracy, Elections, and Governance (ACDEG), adopted on January 30, 2007;

RECALLING that both the Inter-American Democratic Charter, in Chapter 6, and the African Charter on Democracy, Elections, and Governance, in Chapter 5, affirm the importance of civil society organizations and civic education for the strengthening of democratic culture;

RECALLING ALSO that the Inter-American Democratic Charter, in Chapter III (Democracy, Integral Development, and Combating Poverty), Articles 11 and 12, recognizes that democracy and social and economic development are interdependent, and that “poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy”;

CONSIDERING that in July 2007 the African Union established a diplomatic representational mission in Washington, D.C., and that, beginning in 2002, the African Union collaborated with the Western Hemisphere African Diaspora Network to engage with the Diaspora community and persons of African descent;

TAKING NOTE WITH SATISFACTION of the July 10 to 12, 2007, forum entitled “Democracy Bridge: Multilateral Regional Efforts for the Promotion and Defense of Democracy in Africa and America,” which included the participation of senior officials from the African Union and the OAS;

RECALLING that the World Conference on Human Rights reaffirmed the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. As stated in the Declaration on the Right to Development, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level;

REAFFIRMING that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives and that, while democracies share common features, there is no single model of democracy;

AWARE that “the effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States” and that one of the essential purposes of the OAS is “[t]o promote and consolidate representative democracy, with due respect for the principle of nonintervention”; and

REAFFIRMING that the participatory nature of democracy in our countries in different aspects of public life contributes to the consolidation of democratic values and to freedom and solidarity in the Hemisphere,

RESOLVES:

1. To improve cooperation between the OAS and regional organizations; encourage the adoption, and support the implementation where these exist, of regional democracy charters and cooperative initiatives; and strengthen the capacities of regional organizations through the sharing of best practices, keeping in mind existing bilateral and multilateral cooperation.

2. To express support for deepened cooperation between the African Union and the OAS and, in particular:

a. To express support for the "Declaration of Intent" signed on July 10, 2007 between the General Secretariat of the Organization and the African Union Commission, which calls for future cooperation between the AUC and the General Secretariat of the OAS on areas of common interest to "include *inter alia* democracy promotion", and

b. To urge member states, permanent observers, and other international organizations to strengthen their support for ongoing engagement between the two organizations, such as the sharing of best practices.

3. To request the General Secretariat, in consultation with the African Union Commission, to develop a framework document guiding inter-organizational cooperation in areas of mutual interest, to include *inter alia* democracy promotion, the promotion and protection of human rights, and cooperation for economic and social development, for consideration by the Permanent Council. This framework might include, for example, the exchange of lessons learned and best practices in the area of democracy promotion and human rights, as well as measures to fight hunger and poverty and to promote social inclusion.

4. To encourage the Secretary General to prepare a report for presentation to the Permanent Council noting best practices and challenges for enhanced inter-regional cooperation.

5. To instruct the Permanent Council to convene a second special meeting on cooperation between the Americas and Africa, with the participation of the African diplomatic corps and representatives of the African Union Commission, during the second half of 2008.

6. To request the Permanent Council and the General Secretariat to carry out the activities mentioned in this resolution in accordance with the resources allocated in the program-budget of the Organization and other resources.

7. To request the Permanent Council to present a report on the implementation of this resolution to the General Assembly at its thirty-ninth regular session.

8. To request the Secretary General to forward this resolution to the Chairperson of the African Union Commission, the Secretary General of CARICOM, the Presidency Pro Tempore of MERCOSUR, the Secretary General of the Andean Community of Nations (CAN), and the United Nations Secretary-General. To consider sending it as well to the Chairman of the Community of Democracies Convening Group.

AG/RES. 2420 (XXXVIII-O/08)

VOLUNTARY CONTRIBUTIONS FOR THE  
OPERATIONS OF THE OLIVER JACKMAN FUND  
TO FINANCE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN:

Resolution AG/RES. 2329 (XXXVII-O/07), "Establishment of the Oliver Jackman Voluntary Capital Fund to Finance the Inter-American Human Rights System";

Resolution CP/RES. 924 (1623/07), "Regulations for the Operations of the Oliver Jackman Voluntary Capital Fund to Finance the Inter-American Human Rights System";

Resolutions AG/RES. 2075 (XXXV-O/05) and AG/RES. 2220 (XXXVI-O/06), "Strengthening of Human Rights Systems pursuant to the Mandates Arising from the Fourth Summit of the Americas";

Resolutions AG/RES. 2128 (XXXV-O/05) and AG/RES. 2227 (XXXVI-O/06), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," and AG/RES. 1918 (XXXIII-O/03) and AG/RES. 2223 (XXXVI-O/06), "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights"; and AG/RES. 2292 (XXXVII-O/07), "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights" and AG/RES. 2290 (XXXVII-O/07), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights";

BEARING IN MIND that the Inter-American Democratic Charter states that the member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere;

RECALLING that, at the Third Summit of the Americas (Quebec City, Canada, 2001), the Heads of State and Government of the Hemisphere mandated the General Assembly of the OAS at its thirty-first regular session "to consider an adequate increase in resources for the activities of the Commission and the Court in order to improve human rights mechanisms and to promote the observance of the recommendations of the Commission and compliance with the judgments of the Court"; and pledged to continue promoting concrete measures to strengthen and improve the inter-American human rights system, in particular the functioning of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (IACHR), focusing, *inter alia*, on substantially increasing resources to maintain ongoing operations, including the encouragement of voluntary contributions, examining the possibility that the Court and the IACHR will function permanently;

CONSIDERING:

That the inter-American human rights system has been recognized universally for its work to develop jurisprudence for the protection of human rights, for its efficacy in promoting and protecting human rights in the Hemisphere, and for its contribution to strengthening national human rights systems and the rule of law;

That the system's achievements in the promotion of human rights have prompted a significant increase in users and that, therefore, its ability to respond can be jeopardized if its funding is not adjusted to its needs;

That in the quest for substantive solutions that will ensure the proper functioning and sustainability of the system, the Oliver Jackman voluntary capital specific fund was established for the purpose of financing, with the income produced by capital contributions, the operations of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights; and

That it is necessary to explore alternatives for the Fund's operations, thereby ensuring its viability and effectiveness,

RESOLVES:

1. To recognize the efforts of the Secretary General to raise specific funds to strengthen the human rights system.
2. To urge the member states to make voluntary contributions in order to start operating the "Oliver Jackman Fund," as a sign of their commitment to democracy, development, and human rights in the Hemisphere.
3. To instruct the Secretary General, as part of his efforts to raise external resources, prior to December 2008 and through the Secretariat for External Relations to begin a specific campaign to raise funds to strengthen the "Oliver Jackman Fund."

AG/RES. 2421 (XXXVIII-O/08)

STRENGTHENING THE ROLE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND  
PROTECTION OF HUMAN RIGHTS IN THE ORGANIZATION OF AMERICAN STATES

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING the Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights (A/CONF.157/23), which reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights;

RECALLING resolution 2005/74 of the United Nations Commission on Human Rights "National Institutions for the Promotion and Protection of Human Rights," as well as the Report of the United Nations Organization Secretary-General on national institutions for the promotion and protection of human rights presented to the seventh session of the United Nations Human Rights Council (A/HRC/7/69);

RECALLING resolution AG/RES. 2345 (XXXVII-O/07), in which the General Assembly encouraged "the governments and organs to promote the establishment of forums for dialogue between the institutions of the kind to which this resolution refers and the pertinent organs of the inter-American system, in order to strengthen their contribution to the democratic order in the hemisphere";

WELCOMING the decisions of a growing number of states to establish national institutions for the promotion and protection of human rights in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights "Paris Principles," adopted by the United Nations General Assembly (resolution 48/134);

CONVINCED of the important role of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) in assessing conformity with the Paris Principles;

RECALLING the commitment of member states in the 2001 Quebec City Plan of Action of the Summit of the Americas to strengthen the capacity of national human rights institutions, and to contribute to the successful establishment of the Network of national institutions for the promotion and protection of human rights of the Hemisphere;

RECOGNIZING the important contributions national institutions for the promotion and protection of human rights accredited by the ICC can make to work of the Organization of American States in the promotion of human rights;

RESOLVES:

1. To welcome the efforts of the Network of national institutions for the promotion and protection of human rights of the Americas ("Network of the Americas") to strengthen cooperation among member institutions as well as with the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and other human rights bodies.

2. To facilitate, once the appropriate administrative and procedural requirements are in place, the participation of all national institutions for the promotion and protection of human rights

from member states, including those accredited by the ICC the Network of the Americas, in the human rights activities of the organs, agencies and entities of the Organization of American States, in particular, *inter alia*, by:

- a. Promoting opportunities for national institutions for the promotion and protection of human rights to share experiences, advice, and best practices, and to collaborate with member states, organs, agencies, and entities of the Organization; and
- b. Allowing national institutions for the promotion and protection of human rights, the ICC, and the Network of the Americas to participate, contribute, and to submit information and documentation under human rights related agenda items of the Organization.

3. To request the Permanent Council to prepare a report, for the implementation of this resolution, and, after discussion by the member states, to present it to the General Assembly at its thirty-ninth regular session, including administrative and procedural considerations, the execution of which shall be subject to the availability of financial resources allocated in the program-budget of the Organization and other resources.

AG/RES. 2426 (XXXVIII-O/08)

ESTABLISHMENT OF THE "LEGAL ASSISTANCE FUND OF  
THE INTER-AMERICAN HUMAN RIGHTS SYSTEM"

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN:

Resolutions AG/RES. 2075 (XXXV-O/05), "Strengthening of Human Rights Systems pursuant to the Plan of Action of the Third Summit of the Americas," and AG/RES. 2220 (XXXVI-O/06), "Strengthening of Human Rights Systems pursuant to the Mandates Arising from the Fourth Summit of the Americas"; and

Resolutions AG/RES. 2128 (XXXV-O/05) and AG/RES. 2227 (XXXVI-O/06), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," and AG/RES. 1918 (XXXIII-O/03), and AG/RES. 2223 (XXXVI-O/06), "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights";

BEARING IN MIND:

That the Charter of the Organization of American States (OAS) proclaims as one of the principles of the Organization respect for the fundamental rights of the individual without distinction as to race, nationality, creed, or sex;

That Article 44 of the American Convention on Human Rights establishes that any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a state party;

That since 2001, when amendments were made to the rules of the organs of the inter-American human rights system, Article 23 of the Rules of Procedure of the Inter-American Court of Human Rights has granted *jus standi* to victims in the Court's proceedings;

RECALLING that at the Third Summit of the Americas, held in Quebec, Canada in 2001, the Heads of State and Government of the Americas pointed to the need to continue promoting concrete measures to strengthen and improve the inter-American human rights system, particularly facilitation of the access of persons to this protection mechanism;

CONSIDERING:

That there are a significant number of low-income victims who have no real access to the inter-American human rights system, given the considerable cost involved in litigation in that system;

That the purpose of the inter-American human rights system is to promote and protect the human rights of all the inhabitants of the Hemisphere, without exception; and

That member states should seek to support and strengthen mechanisms for access to the organs of the system by alleged victims and petitioners,



RESOLVES:

1. To request the Secretary General to establish a specific voluntary contributions fund to be called the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM."
2. To agree that:
  - a. The purpose of the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" is to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their case before the system;
  - b. Financial management of the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" shall be entrusted to the General Secretariat of the Organization of American States and its financing and operations shall be governed by Rules of Procedure adopted in the Permanent Council, which shall contain clear accountability procedures;
  - c. Approval of legal assistance shall be decided by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (IACHR), as the case may be, in accordance with regulations that each of these institutions shall issue to that end; and
  - d. The "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" shall have two separate accounts, named (i) Inter-American Court of Human Rights and (ii) Inter-American Commission on Human Rights. Contributions made to each of these two bodies in the system shall be deposited in the appropriate account. Contributions made without specifying which body they are for shall be construed as contributions to be split equally between the two.
3. To invite the member states, permanent observers, and other donors, as defined by Article 74 of the General Standards to Govern the Operations of the General Secretariat and other rules and regulations of the Organization, to contribute to the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM," as an effective manifestation of commitment to the protection of human rights in the Hemisphere.
4. To urge the international financial agencies to contribute to the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" as a demonstration of their commitment to democracy, development, and human rights in the Hemisphere, or to assist efforts to obtain such contributions.
5. To recall that the operation of the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" does not exonerate the OAS from its obligation to guarantee funding of the inter-American human rights system with resources from the Regular Fund.
6. To specify that contributions to the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" shall not preclude other voluntary contributions or the establishment of other specific funds to finance the operations of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights or programs run by those institutions, or the Oliver Jackman Fund.

7. That the "LEGAL ASSISTANCE FUND OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM" shall take effect once the Permanent Council has adopted its Rules of Procedure, after consulting the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, taking into account the observations made by civil society.

8. To request the General Secretariat to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2429 (XXXVIII-O/08)

HUMAN RIGHTS AND CLIMATE CHANGE IN THE AMERICAS

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

CONSIDERING that the international community has recognized the adverse effects of climate change at the international level, principally in the United Nations Framework Convention on Climate Change and the Kyoto Protocol thereto;

RECOGNIZING the autonomy and independence of the process of the United Nations Framework Convention on Climate Change and the Kyoto Protocol thereto, as the principal forum for consideration of the subject of climate change; and reaffirming the principles of the United Nations Framework Convention on Climate Change set forth in its Article 3.

BEARING IN MIND that in the Declaration of Santa Cruz + 10, the Ministers and High Level Authorities responsible for the Sustainable Development of the Americas reiterate "that human beings are at the center of concerns for sustainable development, that they are entitled to a healthy and productive life in harmony with nature, and that poverty alleviation is an integral part of sustainable development.";

TAKING INTO ACCOUNT:

The findings of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) on the adverse effects of climate change, in connection, inter alia, to flooding risks and the dangers of sea level rise;

That the adverse effects of climate change might generate a negative impact on the enjoyment of human rights;

BEARING IN MIND ALSO:

The Declaration of Santa Cruz + 10 of the First Inter-American Meeting of Ministers and High-Level Authorities on Sustainable Development, adopted in Santa Cruz, Bolivia, on December 5, 2006;

The Inter-American Program for Sustainable Development (2006-2009) (PIDS), adopted on the same occasion;

The American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), and other related human rights instruments; and

The Vienna Declaration and Programme of Action of the World Conference on Human Rights;

RECALLING:

That its resolution AG/RES. 1674 (XXIX-O/99), "Climate Change in the Americas," instructed the Inter-American Council for Integral Development (CIDI), through its appropriate subsidiary bodies, to consult with member states on the ways of addressing climate change in the Americas within the OAS;

That in its resolution AG/RES. 1682 (XXIX-O/99), "OAS Natural Disaster Reduction and Response Mechanisms," the member states established the Inter-American Committee for Natural Disaster Reduction (IACNDR) and decided to "promote the exchange of technical and scientific personnel in the area of research into adverse events" that have a harmful socioeconomic and environmental impact on the countries of the Hemisphere;

That its resolution AG/RES. 1736 (XXX-O/00), "The Socioeconomic and Environmental Impacts of Climate Change on the Countries of the Hemisphere," instructed the General Secretariat to seek to mobilize resources to assist member states in their efforts to adapt to climate change; and

That its resolution AG/RES. 1821 (XXXI-O/01), "The Socioeconomic and Environmental Impacts of Climate Change on the Countries of the Hemisphere," renewed its instruction to the Inter-American Council for Integral Development (CIDI) to keep this topic under review and instructed the Inter-American Agency for Cooperation and Development (IACD) to continue working with the General Secretariat to mobilize and obtain resources to assist member states in their efforts to mitigate the impact of climate change;

BEARING IN MIND its resolutions AG/RES. 1819 (XXXI-O/01), "Human Rights and the Environment"; and AG/RES. 1896 (XXXII-O/02) and AG/RES. 1926 (XXXIII-O/03), "Human Rights and the Environment in the Americas";

TAKING INTO ACCOUNT:

That the United Nations Commission on Human Rights adopted resolution 2005/60, "Human rights and the environment as part of sustainable development"; and

That the United Nations Human Rights Council adopted resolution 7/23, "Human rights and climate change";

CONSIDERING:

The importance of the cooperation activities carried out within the OAS to enable the most vulnerable states and populations to become more resilient to climate change, helping states in their efforts to adapt to climate change and provide natural disaster relief;

The commitments made by the Heads of State and Government to sustainable development, climate change, environmental protection, and protection of human rights in the region, as established in the Declarations and Plans of Action of the Summits of the Americas process at its four regular and two specialized summits;

The Declaration of Barbados and the Programme of Action for the Sustainable Development of Small Island Developing States, as well as the five-year review conducted at the United Nations in September 1999; and

The pertinent provisions of the declarations, resolutions, and programs of action adopted by major United Nations conferences, in particular the Rio Declaration on Environment and Development, the program known as Agenda 21, and the Johannesburg Declaration on Sustainable Development and its Plan of Implementation, with special emphasis on the consensus positions reached and the commitments made in the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Buenos Aires Plan of Action and Program of Work on adaptation and response, the Nairobi Work Program on impacts, vulnerability and adaptation to climate change and the Bali Action Plan,

**EMPHASIZING:**

That economic and social development and environmental protection are interdependent pillars of sustainable development and that poverty eradication is a fundamental goal thereof;

That climate change is a shared concern of all humankind, and that its effects have an impact on sustainable development and could have consequences for the full enjoyment of human rights;

MINDFUL of the need for support from within the Organization for the efforts of member states in this area;

**RESOLVES:**

1. To reaffirm the commitment made in the various instruments, resolutions, and declarations on human rights, sustainable development, and climate change in the framework of the Organization of American States.

2. To pursue and step up the efforts being made from within the OAS to counter the adverse effects of climate change, and to build resilience and the capacity to adapt to the phenomenon of climate change among vulnerable states and populations.

3. To express an interest in the progress made in other spheres, in the global efforts to face climate change, with regard to the exploration of possible links between climate change and human rights.

4. To instruct the Inter-American Commission on Human Rights (IACHR), with support from the General Secretariat, through the Executive Secretariat of the IACHR and the Department of Sustainable Development, to contribute, within its capacities, to the efforts to determine the possible existence of a link between adverse effects of climate change and the full enjoyment of human rights, seeking coordination to that end with the United Nations Human Rights Council and the Office of the United Nations High Commissioner for Human Rights, and in consultation with the member states, the Intergovernmental Panel on Climate Change (IPCC), and the OAS Department of Sustainable Development.

5. To invite interested states to contribute to this process.

6. Also to invite civil society organizations to consider the possibility of providing inputs for the purposes envisaged in operative paragraph 2 of this resolution, in accordance with the Guidelines for Participation by Civil Society Organizations in OAS Activities.

7. To request the Permanent Council and the Permanent Executive Committee of the Inter-American Council for Integral Development (CEPCIDI), with support from the General Secretariat and the Executive Secretariat of the IACHR, to report to the General Assembly at its

thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization.

AG/RES. 2430 (XXXVIII-O/08)

PROTOCOL OF SAN SALVADOR:  
COMPOSITION AND FUNCTIONING OF THE WORKING GROUP TO EXAMINE  
THE PERIODIC REPORTS OF THE STATES PARTIES

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4698/07 corr. 2) and resolutions AG/RES. 2074 (XXXV-O/05), AG/RES. 2178 (XXXVI-O/06), and AG/RES. 2262 (XXXVII-O/07);

CONSIDERING the provisions of the American Convention on Human Rights, Chapter III of which refers to economic, social, and cultural rights;

UNDERSCORING the entry into force, in November 1999, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," and its ratification by 14 member states of the Organization of American States (OAS);

RECALLING that both the American Convention and the Protocol of San Salvador recognize that the essential rights of an individual are not derived from one's being a national of a certain state, but are based upon attributes of the human person;

RECALLING ALSO that, in Article 19 of the Protocol of San Salvador, the states parties undertake to submit, pursuant to the provisions of that article and the corresponding rules to be formulated for that purpose by the OAS General Assembly, periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in said Protocol;

TAKING INTO ACCOUNT that resolution AG/RES. 2074 (XXXV-O/05) adopted the "Standards for the Preparation of Periodic Reports pursuant to Article 19 of the Protocol of San Salvador," that resolution AG/RES. 2178 (XXXVI-O/06) instructed the Permanent Council to make proposals as soon as possible, through the Committee on Juridical and Political Affairs, on the composition and functioning of the working group established to examine the national reports in accordance with the Standards, and that resolution AG/RES. 2262 (XXXVII-O/07) approved the composition and functioning of the Working Group to examine the national reports;

TAKING NOTE of the preliminary document entitled "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights" (CP/doc.4250/07), presented to the Permanent Council by the Inter-American Commission on Human Rights (IACHR) in November 2007, in accordance with the mandate issued in resolution AG/RES. 2262 (XXXVII-O/07);

BEARING IN MIND the progress report presented by the IACHR in April 2008 and the Commission's stated intention to adopt a proposal on progress indicators at its regular session in July 2008; and

RECOGNIZING that the Plan of Action of the Fourth Summit of the Americas (Mar del Plata, Argentina, 2005) urged the member states to consider signing and ratifying, or acceding to, as the

case may be, the Protocol of San Salvador, and to collaborate in the development of progress indicators in the area of economic, social, and cultural rights,

RESOLVES:

1. To reiterate the request to the Inter-American Commission on Human Rights to continue its work aimed at proposing to the Permanent Council, no later than August 2008, the progress indicators to be used for each group of protected rights on which information is to be provided, taking into account, *inter alia*, the contributions of the Inter-American Institute of Human Rights and of the member states. The Permanent Council will consider and possibly adopt those progress indicators during the second half of 2008.

2. To reiterate the importance of promptly establishing the Working Group to examine national reports, which is to begin its work with the consideration and adoption of its Rules of Procedure.

3. To delegate to the Permanent Council the choice of the government experts comprising the aforementioned Working Group and to authorize the Secretary General to appoint the independent expert and his or her alternate at the same time.

4. To reiterate that the time periods envisaged in resolution AG/RES. 2074 (XXXV-O/05) for submission of the national progress reports to be presented by the states parties to the Protocol of San Salvador will not begin to run until the progress indicators have been approved.

5. To create a specific fund of voluntary contributions managed by the General Secretariat called the "Specific Fund for the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador" to supplement financing for the activities of the Working Group and its Technical Secretariat and in accordance with Article 74 of the General Standards to Govern the Operations of the General Secretariat of the Organization.

6. To urge member states to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador."

7. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.



AG/RES. 2433 (XXXVIII-O/08)

PROMOTION OF AND RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1270 (XXIV-O/94), AG/RES. 1335 (XXV-O/95), 1408 (XXVI-O/96), AG/RES. 1503 (XXVII-O/97), AG/RES. 1565 (XXVIII-O/98), AG/RES. 1619 (XXIX-O/99), AG/RES. 1706 (XXX-O/00), AG/RES. 1709 (XXX-O/00), AG/RES. 1770 (XXXI-O/01), AG/RES. 1771 (XXXI-O/01), AG/RES. 1904 (XXXII-O/02), AG/RES. 1944 (XXXIII-O/03), AG/RES. 2052 (XXXIV-O/04), AG/RES. 2127 (XXXV-O/05), AG/RES. 2226 (XXXVI-O/06), AG/RES. 2231 (XXXVI-O/06), and AG/RES. 2293 (XXXVII-O/07);

RECALLING ALSO that, under the Charter of the Organization of American States (OAS) and pursuant to all applicable provisions of international humanitarian law and international human rights law within their respective spheres of application, human rights and fundamental freedoms must always be respected, including in situations of armed conflict;

DEEPLY CONCERNED about the persisting violations of international humanitarian law that continue to cause suffering to all victims of armed conflict;

ACKNOWLEDGING the Report of the Secretary-General of the United Nations General Assembly pursuant to the mandate in United Nations General Assembly resolution 61/89 of December 6, 2006, entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms," and the work done by the group of governmental experts, within that framework and pursuant to the mandate of the same resolution, to seek the views of member states on the feasibility, scope, and parameters of a broad, legally binding draft instrument on the trade in conventional weapons;

RECALLING that it is the obligation of all member states, in all circumstances, to respect and ensure respect for the 1949 Geneva Conventions, and that the principles set forth therein are also binding on all parties to an armed conflict;

CONSIDERING that international humanitarian law contains provisions that reflect customary international law which states must observe;

EMPHASIZING that in cases of serious violations of international humanitarian law constituting crimes under international law, states have the duty to investigate, and if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations, and if said person is found guilty, the duty to punish him/her, in order to prevent impunity and future violations;

EMPHASIZING ALSO the obligation of states to take all necessary measures, including, when applicable, penal sanctions, for the suppression of other breaches;

UNDERSCORING the need to strengthen the rules of international humanitarian law by means of their universal acceptance, their broader dissemination, and the adoption of national measures for their application;

NOTING WITH SATISFACTION the universal adoption of the four 1949 Geneva Conventions on the protection of victims of war, to which 194 states are parties to date;

RECALLING that 33 and 32 OAS member states, respectively, are parties to Additional Protocols I and II of 1977, respectively;

URGING member states to become parties to Additional Protocol III to the Geneva Conventions of 1949, which was adopted in 2005 and has been in force since 2007, regarding the adoption of the Red Crystal as an additional distinctive emblem to the Red Cross and Red Crescent, taking into account that several states in the region have already done so;

RECALLING ALSO that 11 member states have issued the declaration envisioned in Article 90 of Additional Protocol I, of 1977, on recognition of the competence of the International Humanitarian Fact-Finding Commission;

AWARE of the Hemisphere's rich cultural heritage, which contains cultural assets recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as world heritage, and which could benefit from the systems for the promotion and protection of international humanitarian law;

RECALLING that the International Convention for the Protection of All Persons from Enforced Disappearance, adopted on December 20, 2006, by the General Assembly of the United Nations, requires 20 ratifications to enter into force;

NOTING all of the international efforts under way to promote international instruments, including the possibility of their being legally binding, on the development, use, production, transfer, and stockpiling of cluster munitions;

RECALLING the 10<sup>th</sup> anniversary of the signing of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, on December 3 and 4, 1997;

RECOGNIZING the important advisory work of the national committees or commissions on international humanitarian law in support of the efforts of states in the area of promotion of and respect for that law through the adoption of national enacting measures, and that 17 member states of the Organization have such organizations;

NOTING the final declaration and the six resolutions adopted by the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, entitled "Together for Humanity," held on November 26 to 30, 2007; and the commitments made by the states of the Americas participating in the Conference;

NOTING ALSO the results achieved at the following meetings in which representatives of member states and OAS officials took part:

- a. The meetings of the Group of Government Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) of 1980, held in Geneva from January 14 to 18, 2008 and April 7 to 11, 2008;
- b. The various conferences on cluster munitions, held in Lima, Peru from May 23 to 25, 2007; in Vienna, Austria from December 5 to 7, 2007; in Wellington, New Zealand,

from February 18 to 22, 2008; and the Diplomatic Conference for the Adoption of a Cluster Munitions Convention, held in Dublin, Ireland, from May 19 to 30, 2008, following up on the process that began with the Oslo (Norway) Conference on Cluster Munitions, on February 22 and 23, 2007;

- c. The Regional Seminar for Latin America and the Caribbean on Ensuring the Universality of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) of 1980, held in Santo Domingo on March 11 and 12, 2008;
- d. The First Latin American Regional Conference on Cluster Munitions, held in San José, Costa Rica, on September 4 and 5, 2007, and the Latin American and Caribbean Regional Conference on Cluster Munitions, held in Mexico, on April 16 and 17, 2008;
- e. The Regional Meeting of Governmental Experts on the Application of International Humanitarian Law in the Americas, held in Mexico City, on August 6 and 7, 2007; and
- f. The Meeting of Legislators of the Central American Region, Mexico, Panama, and the Dominican Republic on the Integration of the War Crimes of International Criminal Law in Commemoration of the XXX Anniversary of the Additional Protocols of 1977 to the Geneva Conventions of 1949, celebrated in San Jose, Costa Rica, on June 7 and 8, 2007;

WELCOMING the regional presentation of the International Committee of the Red Cross Study on Customary International Humanitarian Law, which took place on Bogotá, Colombia, in March 2008; and

EMPHASIZING the special role of the International Committee of the Red Cross (ICRC) as a neutral, impartial, and independent institution working to protect and assist the victims of armed conflicts and other situations of armed violence, as well as to promote respect for international humanitarian law and the principles underlying it,

RESOLVES:

1. To urge member states and the parties engaged in armed conflict to honor their obligations under international humanitarian law, including those pertaining to safeguarding the well-being and dignity of protected persons and property, and the proper treatment of prisoners of war.

2. To urge those member states that have not yet done so to consider becoming parties to the following treaties, among others:

- a. The Convention for the Protection of Cultural Property in Time of Armed Conflict (Hague Convention, 1954), and its 1954 and 1999 Protocols;
- b. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity;
- c. The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention);

- d. The 1977 Protocols I and II Additional to the Geneva Conventions of 1949, as well as the 2005 Protocol Additional III; including the declaration contained in Article 90 of Protocol Additional I;
- e. The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) of 1980, including the amendment to Article 1 thereof adopted in 2001, and the five protocols thereto;
- f. The 1989 Convention on the Rights of the Child and the 2000 Optional Protocol thereto on the involvement of children in armed conflict;
- g. The 1993 Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Chemical Weapons Convention);
- h. The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction;
- i. The 1998 Rome Statute of the International Criminal Court;
- j. The 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA);
- k. The 1999 Inter-American Convention on Transparency in Conventional Weapons Acquisitions; and
- l. The Convention on the Safety of United Nations and Associated Personnel.

3. To invite member states to bring about the widest possible dissemination of the rules of international humanitarian law, in particular by incorporating them into military doctrine and manuals, so that armed forces will have the means and mechanisms necessary for their effective application; and by making use of the pertinent media so that such law may be familiar to the civilian population.

4. To urge member states to adapt their criminal law in order to meet their legal obligations under the 1949 Geneva Conventions and, in the case of the states parties thereto, the 1977 Additional Protocol I thereto with respect to the definition of war crimes, the universal jurisdiction for these grave breaches, and the responsibility of superiors for the acts of their subordinates.

5. Also to urge member states that have not yet done so to adopt, in accordance with their internal law and pursuant to international law, legislative or other measures necessary to establish non-applicability of statutory limitations to the most serious violations of international humanitarian law constituting crimes under international law.

6. To invite member states that are parties to the Rome Statute to cooperate fully with the International Criminal Court and to define under their criminal law the crimes that are within its jurisdiction.

7. To call upon member states to enact laws to regulate the use of and to prevent and, when applicable, punish the misuse of the red cross, red crescent, and, where applicable, red crystal emblems, as well as their denominations, as established in relevant treaties.

8. To urge member states, in keeping with their obligations under international law, to adopt effective measures to prevent the disappearance of persons in cases of armed conflict or other situations of armed violence, to determine the fate of those who have disappeared, and to attend to the needs of their family members.

9. To encourage member states to ensure the adoption of the necessary measures and mechanisms to protect cultural property from the effects of armed conflict, in accordance with their international obligations, and in particular to give consideration to the adoption of preventive measures related to the preparation of inventories, the planning of emergency measures, the appointment of competent authorities, and the enactment of laws to ensure respect for such property.

10. To remind those member states that are parties to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction of their obligation to prevent and suppress any activity prohibited therein when it is carried out by persons or in territory under their jurisdiction or control and of the importance of addressing the needs of victims of antipersonnel mines and, where appropriate, victims of explosive remnants of war, considering, as part of those needs, medical care, rehabilitation, and economic and social reintegration of the victims.

11. To urge member states to adopt legislative and other measures, including criminal legislation, to strengthen national institutions and coordination among national institutions, and regional and subregional cooperation, on implementation of the 1925 Geneva Protocol, 1972 Biological Weapons Convention, and 1993 Chemical Weapons Convention, *inter alia* by adopting or developing codes of conduct and of professional ethics for the scientific and industrial community, with the aim of preventing misuse in the context of advances in bio-science and bio-technology research and considering national, regional, and international measures to improve biosafety and biosecurity, including laboratory safety and security of pathogens and toxins.

12. To call upon member states to adopt all necessary measures to comply with their respective international legal obligations regarding the recruitment and use of children in armed forces or armed groups and to prevent their participation in hostilities, in accordance with recognized standards of international humanitarian law, international human rights law, and international refugee law.

13. To invite member states to step up their efforts to strengthen safeguards for civilians against the use and indiscriminate effects of arms and munitions in general, especially through the enactment of laws aimed at strengthening control over the illicit manufacturing of and trafficking in firearms and other related materials.

14. To invite member states to consider becoming parties to the Convention on Cluster Munitions, adopted at the Dublin Conference on May 28, 2008, which will be open to signature from December of this year in Oslo, and to continue participating in other processes in addressing the development, use, stockpiling, production, and transfer of cluster munitions, and on assistance to victims and the removal of such munitions to lessen their impact on civilian populations.<sup>4</sup>

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<sup>4</sup> Footnote from the Delegation of Brazil: Brazil supports all initiatives aimed at strengthening already existing provisions in international humanitarian law that regulate the use of arms and the distinction between military and civilian

15. To encourage member states to establish procedures for determining, when studying, developing, acquiring, or adopting a new weapon or new means or methods of warfare, whether using, manufacturing, stockpiling, exporting, or transferring them would be contrary to international humanitarian law, and, in that event, to prohibit their use by the armed forces and their manufacture for such purposes. Additionally, in such cases to take into account the international obligations assumed, as indicated in paragraph 11.

16. To encourage interested member states to continue to support the work of the Group of Governmental Experts established by United Nations General Assembly resolution 61/89, of December 6, 2006, so that it may continue to advance the study and negotiation of a broad and binding draft instrument for the establishment of common international norms on the import, export, and transfer of conventional arms, and to gauge the interest of member states in such an instrument.

17. To invite member states to continue to support the work of national committees or commissions responsible for the dissemination and implementation of international humanitarian law; and to urge states where such bodies do not exist to consider establishing them, as a means of strengthening conflict prevention and the role those bodies play in times of peace.

18. To request the Inter-American Juridical Committee (CJI) to continue working on the preparation of model laws to support the efforts made to fulfill obligations under international humanitarian law treaties, on the basis of priority topics determined in consultation with the member states and the International Committee of the Red Cross; to that end, member states are urged to forward to the CJI as soon as possible a list of such priority topics, to enable the Committee to carry out that mandate.

19. To express its satisfaction over the cooperation between the Organization and the International Committee of the Red Cross in promoting respect for international humanitarian law and the principles that govern that law; and to urge the General Secretariat to continue to strengthen such cooperation.

20. To request the General Secretariat to continue organizing, within the framework of the Committee on Juridical and Political Affairs, through the Office of International Law of the Department of International Legal Affairs, and in coordination with the ICRC, courses and seminars for staff of the permanent missions of the member states to the Organization of American States and for General Secretariat staff and the general public, in order to promote knowledge of and respect for international humanitarian law and related inter-American conventions, including measures for their effective implementation.

21. To instruct the Permanent Council to hold a special meeting with a high-level dialogue component, with support from the Office of International Law of the Department of International Legal Affairs, and in cooperation with the ICRC, on topics of current interest in international humanitarian law, prior to the thirty-ninth regular session of the General Assembly.

22. To invite member states to continue, within the high-level dialogue of the special meeting and in pertinent forums, the discussion of topics of interest, such as the humanitarian

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...continuation

targets. As regards cluster munitions, Brazil favors discussion of the topic within the framework of the Convention on Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW).

consequences of cluster munitions, the participation of private sector security firms in armed conflicts, improving the use of national humanitarian law committees, and others.

23. To instruct the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2434 (XXXVIII-O/08)

RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION  
AND THE IMPORTANCE OF THE MEDIA

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.xxxx/08);

TAKING INTO ACCOUNT resolution AG/RES. 2237 (XXXVI-O/06) and AG/RES. 2287 (XXXVII-O/07), "Right to Freedom of Thought and Expression and the Importance of the Media";

UNDERSCORING the Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society [AG/DEC. 46 (XXXVI-O/06)], adopted on June 6, 2006;

RECALLING that the right to freedom of thought and expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, is recognized in Article IV of the American Declaration of the Rights and Duties of Man, Article 13 of the American Convention on Human Rights, the Inter-American Democratic Charter (including Article 4), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments and national constitutions, as well as United Nations General Assembly resolution 59 (I) and resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

RECALLING ALSO that Article IV of the American Declaration of the Rights and Duties of Man states that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever";

RECALLING FURTHER that Article 13 of the American Convention on Human Rights states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice;

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. Respect for the rights or reputations of others; or
- b. The protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or



by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law;

BEARING IN MIND principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), of 2000, which refer to the decriminalization of "*desacato*" (offensive expressions directed at public officials);

RECALLING the relevant volumes of the Annual Reports of the IACHR for 2004, 2005, 2006, and 2007 on freedom of expression, as well as the comments by member states during meetings at which said reports were presented;

TAKING INTO ACCOUNT resolutions 2004/42 and 2005/38, "The Right to Freedom of Opinion and Expression," of the United Nations Commission on Human Rights; and

RECALLING the significance of the studies and contributions approved by UNESCO regarding the contribution of the media to strengthening peace, tolerance, and international understanding, to the promotion of human rights, and to countering racism and incitement to war,

RESOLVES:

1. To reaffirm the right to freedom of expression and to call upon member states to respect and ensure respect for this right, in accordance with the international human rights instruments to which they are party, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights, *inter alia*.

2. To reaffirm that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy.

3. To urge member states to safeguard, within the framework of the international instruments to which they are party, respect for freedom of expression in the media, including radio and television, and, in particular, respect for the editorial independence and freedom of the media.

4. To urge those member states that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the American Convention on Human Rights.

5. To reaffirm that free and independent media are fundamental for democracy and for the promotion of pluralism, tolerance, and freedom of thought and expression; and to facilitate dialogue and debate, free and open to all segments of society, without discrimination of any kind.

6. To urge member states to promote a pluralistic approach to information and multiple points of view by fostering full exercise of freedom of expression and thought, access to media, and diversity in the ownership of media outlets and sources of information, through, *inter alia*,

transparent licensing systems and, as appropriate, effective regulations to prevent the undue concentration of media ownership.

7. To urge member states to consider the importance of including, in their domestic legal systems, rules about the establishment of alternative or community media and safeguards to ensure that they are able to operate independently, so as to broaden the dissemination of information and opinions, thereby strengthening freedom of expression.

8. To call upon member states to adopt all necessary measures to prevent violations of the right to freedom of thought and expression and to create the necessary conditions for that purpose, including ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

9. To urge member states to review their procedures, practices, and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security, public order (*ordre public*), or public health or morals.

10. To recognize the valuable contribution of information and communication technologies, such as the Internet, to the exercise of the right to freedom of expression and to the ability of persons to seek, receive, and impart information, as well the contributions they can make to the fight against racism, racial discrimination, xenophobia, and related and contemporary forms of intolerance, and to the prevention of human rights abuses.

11. To request the Inter-American Commission on Human Rights once again to follow up on and deepen its study of the issues addressed in the relevant volumes of its 2004, 2005, 2006, and 2007 Annual Reports on freedom of expression, on the basis, *inter alia*, of the inputs on the subject that it receives from member states.

12. To invite member states to consider the recommendations concerning defamation made by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and, in this regard, to regulate these conducts exclusively in the area of civil law.

13. To reiterate to the Permanent Council that, through its Committee on Juridical and Political Affairs, it is to hold a special two-day meeting to delve further into the existing international jurisprudence on the subject covered in Article 13 of the American Convention on Human Rights and include the following items on the agenda of that meeting:

- a. Public demonstrations as exercise of the right to freedom of expression; and
- b. The subject of Article 11 of the American Convention on Human Rights.

Invitees to the aforementioned meeting will include members of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, including the Special Rapporteur for Freedom of Expression, and experts from the member states, all for the purpose of sharing their experiences with these issues.

14. To take into consideration the findings of, and views expressed at, the Special Meeting on Freedom of Thought and Expression, held on February 28 and 29, 2008, in the framework of the Committee on Juridical and Political Affairs; and to request the Special Rapporteur of the IACHR to report on the conclusions and recommendations issued by the experts at that special meeting, in order to follow up on the matter.

15. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

AG/RES. 2435 (XXXVIII-O/08)

HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

REAFFIRMING:

That the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in that Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status;

That the American Declaration of the Rights and Duties of Man establishes that every human being has the right to life, liberty, and the security of the person;

CONSIDERING that the OAS Charter proclaims 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;

REAFFIRMING the principles of universality, indivisibility, and interdependence of human rights; and

TAKING NOTE with concern acts of violence and related human rights violations perpetrated against individuals because of their sexual orientation and gender identity,

RESOLVES:

1. To express concern about acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity.
2. To request that the Committee on Juridical and Political Affairs (CAJP) include on its agenda, before the thirty-ninth regular session of the General Assembly, the topic of "Human rights, sexual orientation, and gender identity."
3. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the resources allocated in the program-budget of the Organization and other resources.