

AG/RES. 2656 (XLI-O/11)

GUARANTEES FOR ACCESS TO JUSTICE: THE ROLE OF
OFFICIAL PUBLIC DEFENDERS

(Adopted at the fourth plenary session, held on June 7, 2011)

THE GENERAL ASSEMBLY,

RECALLING that, pursuant to the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, and bearing in mind all applicable provisions of international human rights law within their respective spheres of application, human rights and fundamental freedoms must be respected, without distinction of any kind;

RECALLING ALSO that the International Covenant on Civil and Political Rights establishes the obligation of the States Parties to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. Article 14 provides that everyone charged with a criminal offense shall be entitled to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

UNDERSCORING that Article 8.2.e of the American Convention on Human Rights establishes the inalienable right to be assisted by counsel provided by the State, paid or not, as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

AFFIRMING the universal, indivisible, and interdependent nature of human rights;

AFFIRMING ALSO that the member states have the obligation to respect and guarantee the exercise of the rights recognized in the international treaties to which they are party and in their domestic legislation, removing the obstacles that may impair or limit access to a public defender, in such a way as to ensure full and free access to justice;

CONSIDERING that access to justice, as a fundamental right, is also the means of restoring the exercise of rights that have been disregarded or violated and underscores that access to justice is not limited to ensuring admission to a court but applies to the entire process, which must be conducted in conformity with the principles of the rule of law, such as a fair trial, right through to execution of the sentence;

BEARING IN MIND:

United Nations Human Rights Committee General Comment No. 32, para. 9, which states that access to the administration of justice must be effectively guaranteed in all cases; and

The Brasilia Regulations Regarding Access to Justice for Vulnerable People (XIV Ibero-American Judicial Summit, Brasilia, Brazil, 2008), which are designed to guarantee effective access to justice for vulnerable people, without any discrimination, so that said persons can make full use of judicial system services, and which, moreover, promote the implementation of public policies designed to assist people with technical-legal counsel;

UNDERSCORING the work done by official public defenders in a number of countries in the region to defend the fundamental rights of individuals, especially cost-free legal counsel services, which provide simple and timely access to justice for everyone, in particular to people who are especially vulnerable;

TAKING INTO ACCOUNT that it is vital that said services operate independently; and

NOTING WITH IMMENSE SATISFACTION the implementation of the position of “inter-American public defender” and of the Memorandum of Understanding between the Court and the Inter-American Association of Public Defender Offices (AIDEF) for the *motu proprio* appointment of a public defender and ensuring free legal counsel services to alleged victims of human rights violations, as required, in the processing of contentious cases,

RESOLVES:

1. To affirm that access to justice, as a fundamental right, is also the means of restoring the exercise of rights that have been disregarded or violated.
2. To support the work being done by official public defenders in the states of the Hemisphere, as this constitutes a core aspect for strengthening access to justice and to consolidate democracy.
3. To affirm the fundamental importance of cost-free legal counsel services for promoting and protecting the right of access to justice for everyone, particularly those who are especially vulnerable.
4. To recommend to member states that already provide free legal counsel to take steps to ensure that official public defenders operate independently.
5. To encourage member states that do not yet have the institution of free legal counsel to consider the possibility of establishing it within the framework of their legal order.
6. To urge states to foster international cooperation opportunities for sharing experience and best practices in this field.
7. To encourage states and the organs of the inter-American system to promote agreements regarding courses and training for official public defenders.
8. To support the work of the Inter-American Association of Public Defender Offices (AIDEF) in strengthening public defender services in member states.

9. To request the Permanent Council to report to the General Assembly at its forty-second regular session on the implementation of this resolution. Execution of the activities envisaged in this resolution will be subject to the availability of financial resources in the program-budget of the Organization and other resources.