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CJI/RES. 192 (LXXX-O/12)  
9 March, 2012  
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**CJI/RES. 192 (LXXX-O/12)**

**STRENGTHENING THE INTER-AMERICAN SYSTEM FOR THE  
PROTECTION AND PROMOTION OF HUMAN RIGHTS**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that resolution AG/RES. 2675 (XLI-O/11) requested the Inter-American Juridical Committee “to give priority to the preparation of a study on ways to strengthen the inter-American human rights system”;

HAVING IN MIND the study of the rapporteurs, Drs. Fabián Novak Talavera and João Clemente Baena Soares, on “Strengthening the Inter-American System of Protection and Promotion of Human Rights” (CJI/doc.400/12 rev.1),

RESOLVES:

1. To thank rapporteurs Drs. Fabián Novak Talavera and João Clemente Baena Soares for their report.
2. To approve the “Report of the Inter-American Juridical Committee: Strengthening the Inter-American System of Protection and Promotion of Human Rights” (CJI/doc.400/12 rev.3), attached to this resolution.
3. To transmit this resolution to the OAS Permanent Council for its due consideration and to send it to the General Assembly.

This resolution was adopted unanimously at the regular session held at 9 March 2012, by the following members: Drs. Carlos Alberto Mata Prates, David P. Stewart, Fernando Gómez Mont Urueta, Jean-Paul Hubert, Miguel Aníbal Pichardo Olivier, Freddy Castillo Castellanos, Fabián Novak Talavera, José Luis Moreno Guerra and Ana Elizabeth Villalta Vizcarra.

**REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE**  
**STRENGTHENING THE INTER-AMERICAN SYSTEM OF PROTECTION**  
**AND PROMOTION OF HUMAN RIGHTS**

**1. Delimiting the Mandate granted to the Rapporteurs**

The Organization of American States has long been concerned with enhancing and strengthening the inter-American human rights protection system. Thus, since the First Summit of the Americas and at successive General Assembly sessions since 1996, the Heads of State and Government of the OAS member countries have been underscoring the need to reflect on and improve the current system of human rights promotion and protection in the region.<sup>1/</sup>

Accordingly, and in order to fulfill the objectives articulated at the aforementioned Summits of the Americas and OAS General Assembly sessions, the last General Assembly of the OAS, in its fourth plenary session held on 7 June 2011, adopted resolution AG/RES. 2675 (XLI-O/11), whereby it acknowledged that there were gaps and areas that could be improved, and the need to consolidate progress in enhancing this system to protect human beings. It thus decided to take concrete action, including the creation of a Special Working Group within the framework of the Permanent Council for consideration of this issue.

Another action taken by the General Assembly was to request the Inter-American Juridical Committee to “prepare a priority study on ways of strengthening the Inter-American system of human rights” (article 3, letter d) of the resolution).

Thus, in strict fulfillment of the mandate received from the General Assembly, the Inter-American Juridical Committee, at its 79<sup>th</sup> regular session held in Río de Janeiro, Brazil, decided to appoint as rapporteurs for this theme Dr. Fabián Novak and Ambassador João Clemente Baena Soares.

At this session, the scope of this mandate was also broadly discussed, and it was agreed that the report to be prepared by the rapporteurs should have the following features:

- a. The report should be expanded to include the necessary reforms to strengthen the work of the Committee and the Inter-American Court of Human Rights. In this sense the report should address not only substantive but also procedural and even budgetary aspects;
- b. The report should be presented by the rapporteurs to the other members of the Committee in early 2012 to allow for an adequate exchange of opinions in order to approve a definitive version at the session scheduled for March of that year. This was in response to the mandate of the General Assembly’s asking the Committee to prepare a report on the theme “on a priority basis”;

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1. OAS DEPARTMENT OF INTERNATIONAL LAW. *Diálogos sobre el fortalecimiento del Sistema Interamericano de Protección y Promoción de los Derechos Humanos*. July 18, 2011. See also, *inter alia*, Resolutions 1828 (XXXI-0/01), 1890 (XXXII-0/02), 1925 (XXXIII-0/03), 2030 (XXXIV-0/04), 2075 (XXXV-0/05), 2220 (XXXVI-0/06), 2291 (XXXVII-0/07), 2407 (XXXVIII-0/08), 2521 (XXXIX-0/09), 2605 (XL-0/10), and 2675 (XLI-0/11).

- c. To draft the report, the rapporteurs should be able to count on the support of the Secretariat of the Juridical Committee in obtaining all the necessary documentation, including the contributions of the Working Group to Reflect on Strengthening the Inter-American System of Human Rights created within the Permanent Council of the OAS.<sup>2/</sup> Accordingly, the rapporteurs should analyze and take into account the contributions made by the States in this regard, the agencies of the system itself, and the various civil society organizations.<sup>3/</sup>

This report also aims to emphasize the competences and duties of each OAS organ including the General Assembly itself, with all due respect to its autonomy, in order to achieve the strengthen Inter-American System of the Human Rights.

## 2. Opening Comments

Before presenting and analyzing the proposals presented before the Inter-American Juridical Committee, we feel that it is important to make some initial remarks of a general nature.

First, we must repeat that the purpose of this report is to strengthen the Committee and the Inter-American Court of Human Rights as well as the whole normative and structural set that makes up the inter-American system of human rights. This strengthening entails working on several fronts: from strengthening the organizations in the system to the efforts of the States themselves to consolidate their internal systems of protection for human beings. It also involves the commitment of the organizations in the system to provide a due process with full guarantees to the parties concerned, transparency, predictability and actions adjusted to the limitations imposed by the American Convention on Human Rights and its Statute and Regulations, as well as compliance by the American States with the obligations imposed by these same instruments and the binding decisions reached by these organs.

A second, especially relevant, aspect is the need to make the system universal. If we review the present situation of ratifications of the Inter-American multilateral treaties on human rights, we see that some of them regrettably show a very low level of ratifications and that basic, very old instruments of the system have not yet been ratified by all the American countries, as can be seen below:<sup>4/</sup>

- a. The American Convention on Human Rights (the Pact of San José) of 1969: The following are not party to the Convention: Antigua and Barbuda, Bahamas, Belize, Canada, Guyana, Saint Kitts and Nevis, Santa Lucia, Saint Vincent and the Grenadines, United States of America. Trinidad and Tobago denounced it: 10 States.
- b. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) of 1988. The following are not party: Bahamas, Barbados, Belize, Canada, Chile (signed but did not ratify), Jamaica, Saint Kitts and Nevis, Santa Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, United States of America, Venezuela (signed but did not ratify): 12 States.
- c. Protocol to the American Convention on Human Rights to abolish the death penalty of 1990. The following are not party: Antigua and Barbuda, Bahamas, Barbados, Belize,

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2. This report took into account, among others, the document: PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de Trabajo Especial de Reflexión sobre el funcionamiento de la Comisión Interamericana de Derechos Humanos para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 13 December 2011.

3. This report took into account, among others, the document: CENTER OF STUDIES OF LAW, JUSTICE AND SOCIETY. *Organizaciones de sociedad civil de las Américas presentan su posición sobre el informe final elaborado por el Grupo de Trabajo Especial de Reflexión sobre el funcionamiento de la Comisión Interamericana de Derechos Humanos para el fortalecimiento del Sistema Interamericano de Derechos Humanos*. December 2011.

4. Information provided by the Department of International Law of the OAS on 7 December 2011.

Bolivia, Canada, Colombia, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Peru, Saint Kitts and Nevis, Suriname, Trinidad and Tobago, United States of America: 19 States.

- d. Inter-American Convention to Prevent and Punish Torture of 1985. The following are not party: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Haiti, Honduras, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, United States of America: 16 States.
- e. Inter-American Convention on Enforced Disappearance of Persons of 1994. The following are not party: Antigua and Barbuda, Bahamas, Barbados, Belize, Brazil, Canada, Dominica, the Dominican Republic, El Salvador, Grenada, Guyana, Haiti, Jamaica, Nicaragua (signed but did not ratify), Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America: 20 States.
- f. Inter-American Convention to Prevent, Sanction, and Eradicate Violence against Women (Convention of Belém do Pará) of 1994. The following are not party: Canada and the United States of America: 2 States.
- g. Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities of 1999. The following are not party: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica (signed but did not ratify), Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America: 15 States.

We must recognize that several States which are neither part of the conventions nor part of the litigious competence of the Court, remain a full commitment with human rights in the region. Furthermore, these States are parties to the OAS Charter and the American Declaration of the Rights and Duties of Man, are also part of the Inter-American system of protection of human rights. However in order to achieve the strengthen of the system, this Committee considers a main issue the broadest implementation and knowledgment of it, through a proactive participation of the States in the abovementioned Inter-American protection instruments and the recognition of the contentious jurisdiction of the Inter-American Court of Human Rights to all OAS member States. To that end, the Inter-American Juridical Committee calls for a joint effort of member States to increase the number of ratifications of the instruments named above .

### **3. Proposals**

After reviewing all the pertinent information (doctrinal and documental), the rapporteurs now submit to the consideration of the other members of the Committee approval of a set of proposals, all of which are meant to strengthen protection of individuals and their rights in the region and provide fuller and better guarantees of due process.

While most of these proposals relate to the Inter-American Commission on Human Rights, there are also important proposals relating to the Court and to the system's member states themselves. The first set is not only in response to the fact that debate within the Organization, and in the working group set up to that end, has been much more concerned with the procedure followed with respect to this regional body to protect human beings, but is also in response to increased opportunities for improvement and enhancement found by the rapporteurs, in the case of the IACHR.

In each case the same structure and methodology will be followed to present the proposals, that is to say, the provisions or norms that regulate the institutions or aspects to be modified will be established, and their main characteristics will then be pointed out, together with any problems presented as well as the proposed changes (should that be the case).

An important bit of detail that the Inter-American Juridical Committee wishes to offer is that proposed amendments to the Statute or to the Rules of Procedure of the IACHR or the Court, as presented in this document, should be understood strictly as such, and as arising from the mandate given to this advisory body by the OAS General Assembly. It will therefore fall to the states (in the case of the Statutes) or to the IACHR or the Court (in the case of the Rules of Procedure) to see to it that these proposals are accepted and possibly implemented.

In this sense, we have:

## **Inter-American Committee on Human Rights**

### **3.1. Friendly solution<sup>5/</sup>**

The institution of the “friendly solution”, designed so that the denounced State and the victim or denouncers can reach an adequate, prompt and fair solution to the case before it becomes known to the Court, is regulated in article 48, letter f of the American Convention on Human Rights, as well as in article 40, item 1 of the Regulations of the Inter-American Committee on Human Rights (IACHR), which state the following:

(The Committee) will be at the disposal of the interested parties in order to reach a friendly solution to the matter based on respect for human rights as acknowledged in this Convention. (Our parenthesis).

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5. See PERMANENT COUNCIL OF THE OAS. Special Working Group to Reflect on the Functioning of the IACHR to Strengthen the Inter-American Human Rights System. *Presentación de la Delegación del Uruguay sobre el tema Soluciones Amistosas*. 27 September 2011. Also, DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Opinión sobre la aplicación de los diversos instrumentos jurídicos del sistema interamericano en materia de derechos humanos con relación a ciertos temas específicos*. 18 July 2011; PERMANENT MISSION OF MEXICO. *Intervención en el Grupo de Trabajo del Consejo Permanente sobre los desafíos y objetivos de mediano y largo plazo del sistema interamericano de derechos humanos*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Brasil sobre los temas desafíos y objetivos de mediano y largo plazo de la CIDH y medidas cautelares*. 12 September 2011; DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Resumen de los temas y recomendaciones tratados durante los diálogos sobre el fortalecimiento y el perfeccionamiento del Sistema Interamericano de Derechos Humanos 2001-2011*. 27 June 2011; PERMANENT COUNCIL OF THE OAS. *Presentation on the PERMANENT COUNCIL OF THE OAS Federación Interamericana de Abogados (FIA) en la reunión del grupo de trabajo con la Sociedad Civil*; 28 October 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Uruguay sobre los temas Financiamiento, Medidas Cautelares, Asuntos de Procedimiento en las tramitaciones de los casos y peticiones individuales, Soluciones Amistosas y Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 4 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Chile sobre los temas funciones de promoción, medidas cautelares, soluciones amistosas, asuntos de procedimiento en la tramitación de los casos y peticiones individuales y financiamiento*. 11 November 2011; PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Perú sobre los temas de financiamiento, soluciones amistosas y promoción de los Derechos Humanos: Fortalecimiento de los sistemas jurisdiccionales nacionales*. 5 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de México*. 7 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Paraguay*; 6 December 2011. Of particular importance for this and the other themes analyzed in this report are the Strategic Plan of the IACHR 2011-2015 and the Guidelines of the International Court of Human Rights 2011-2015.

The Committee will be at the disposal of the parties at any stage of the examination of a petition or case, by its own initiative or at the request of any of the parties in order to reach a friendly solution based on respect for human rights as established in the Inter-American Convention on Human Rights, the American Declaration and other applicable instruments.

In turn, article 23 of the Statute of the IACHR establishes that should a friendly solution fail to be reached, the report referred to in article 50 of the Convention shall be rewritten within 180 days.

We learn from reading these articles that the institution of “friendly solution” enshrined in the above-mentioned Inter-American instruments bear the following characteristics:

- a. The friendly-solution initiative can come from the IACHR, any of the parties or from both together, at any stage of the petition or case;
- b. The solution is based on consensus of the parties (the petitioner, the denounced State and the IACHR);
- c. The solution reached must necessarily respect human rights;
- d. Once the report of the IACHR that contains the solution has been published, it shall be binding for the parties;
- e. The IACHR fulfils a *facilitating* role in seeking this consensus (the conciliatory nature of the friendly solution), since not only can it bring the parties together but also suggest bases for an understanding. It also fulfils an *inspecting* role, in that it should ensure that the agreed solution respects human rights, has the agreement of the victims or their assignees and also makes sure that the agreement is complied with (articles 40, item 5 and 48 of the Regulations of the IACHR).

The States in the region have been advocating a more active role of the IACHR in this matter. In the last 10 years, only 79 friendly-solution agreements have been reached under the auspices of the IACHR. In this sense, the following measures could be adopted for the purpose of enhancing the results and lending impetus to this mechanism of conciliation:

- a. Strengthen the specialization of the IACHR on this theme through the Friendly Solutions Unit, similar to the groups that exist since 2008 at each stage of the process of registration, administration of cases and litigation before the Court. In this way, greater power will be given to the theme.
- b. Train the members and assistants of this Friendly Solutions Unit in techniques of negotiation and conciliation.
- c. Reduce the time period that the IACHR uses in practice to evaluate and approve the friendly-solution agreements reached by the parties. This approval period should not exceed six months; this should be included in the regulations of the IACHR.
- d. Establish in the Statute and regulations the possibility of IACHR holding follow-up on compliance with friendly-solution agreements, similar to what exists on the level of the Inter-American Court. This would allow for greater control and transparency as regards observing and implementing these agreements, as well as guaranteeing greater efficacy.
- e. The IACHR could prepare a good-practices guide for friendly solutions to be distributed among the States and the victims to facilitate their conciliatory efforts.

### 3.2. Precautionary measures<sup>6/</sup>

The precautionary measures encharged to the IACHR are not contemplated in the American Convention on Human Rights or in the IACHR Statute, but they are in article 25 of its Regulations.<sup>7/</sup> This differs from what happens with the provisional measures of the Inter-American Court of Human Rights provided for in the American Convention.

Reading this article, we learn that the cautionary measures that can be dictated by the IACHR present the following characteristics:

- a. The measures can only be decreed within the framework of grave and urgent situations. In this sense the IACHR must take into account — besides the elements already pointed out — the context, the imminence of the hazard, if the authority have been notified of the risk situation, individual identification of the potential beneficiaries of the measure and the express conformity of these individuals when the request is made to the IACHR by a third party;
- b. The measures can be adopted on the initiative of IACHR itself or at the request of a party;
- c. The IACHR is obliged to ask the State for relevant information before dictating the measure, except when the urgency of the matter justifies dispensing with this step;
- d. The purpose of these measures is to prevent irreparable damage to the persons or object of the process in connection with a petition or pending case, to prevent damage to persons under the jurisdiction of the State regardless of any request, or due to their being related to an organization or community of determined or determinable persons;
- e. The IACHR must periodically evaluate the pertinence of maintaining the measures adopted in effect.

In this respect, we should stress at the start that although — as has been said — this function of the IACHR is not contemplated in the Convention or in the Statute, but rather in the Regulations and in their practice, the States do substantially and expressly recognize this competence and ensure its remaining in effect within the system.

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6. See DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Opinión sobre la aplicación de los diversos instrumentos jurídicos del sistema interamericano en materia de derechos humanos con relación a ciertos temas específicos*. 18 July 2011. Also, PERMANENT MISSION OF MEXICO. *Intervención en el Grupo de Trabajo del Consejo Permanente sobre los desafíos y objetivos de mediano y largo plazo del sistema interamericano de derechos humanos*; 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Brasil sobre los temas desafíos y objetivos de mediano y largo plazo de la CIDH y medidas cautelares*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Argentina sobre los temas de procedimiento en la tramitación de los casos y peticiones individuales ante la CIDH y medidas cautelares*. 20 September 2011; DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Resumen de los temas y recomendaciones tratados durante los diálogos sobre el fortalecimiento y el perfeccionamiento del Sistema Interamericano de Derechos Humanos 2001-2011*. 27 June 2011; CENTER OF STUDIES OF LAW, JUSTICE AND SOCIETY, AND OTHERS. *Aportes para una agenda integral para el fortalecimiento del Sistema Interamericano de Derechos Humanos*. 31 October 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Uruguay sobre los temas Financiamiento, Medidas Cautelares, Asuntos de Procedimiento en las tramitaciones de los casos y peticiones individuales, Soluciones Amistosas y Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 4 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de México*. 7 December 2011.
  7. There is also a reference to them in article XIII of the Inter-American Convention on Enforced Disappearance of Persons; PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Secretaría Ejecutiva de la CIDH sobre el tema de medidas cautelares*. 2 December 2011.

In addition, we consider it important to recognize and emphasize that the IACHR has made efforts in its recent reports to determine the precise criteria for applying this measure in order to ensure greater transparency, predictability and juridical security in its application. Accordingly, in 2006 it determined the criteria for gravity and urgency, as well as the context and fundamental elements for application of these measures, in each case pointing out the following:

With regard to the concept of gravity, the following aspect must be taken into account: (a) the tone of the threats received (oral, written, symbolic and other messages) and their materialization against one or more members of a group of persons; (b) the antecedents of acts of aggression against persons in similar situations; (c) any acts of direct aggression perpetrated against the possible beneficiary; (d) any increase in threats that shows the need to take preventive action; and (e) elements such as apology and incitation to violence against a person or group of persons.<sup>8/</sup>

The concept of urgency entails the following: (a) the existence of cycles of threats and acts of aggression that reveal the need to act immediately; (b) the continuity and temporal proximity of the threats; (c) the existence of a credible “ultimatum” through which, for example, the possible beneficiary is shown that he should abandon the region he lives in or else he will be the victim of violations.<sup>9/</sup>

Finally, as regards context, this establishes the following: i) the existence of armed conflict, ii) the reality of a state of emergency, iii) the degree of efficiency and impunity in the functioning of the judicial system, iv) the indices of discrimination against vulnerable groups, and v) the controls exercised by the Executive Power over the other powers of the State.<sup>10/</sup>

Likewise, we must stress that this is an exceptional mechanism that can only be applied in situations of gravity and urgency. The data show that between 2005 and 2009 the IACHR used the measures in 10% of cases, whereas of the 375 requests for cautionary measures received in 2010, 68 were attended, that is, 18% of cases.<sup>11/</sup>

This, however, does not preclude making certain observations concerning regulating cautionary measures. In this sense:

- a. The contents of each of the criteria that lead to adopting cautionary measures should be included in the Regulations of the IACHR, bearing in mind the development made by the organization in their above-mentioned reports. The purpose here is to assert principles such as transparency, predictability and juridical security to guide the adopting of such measures.
- b. Although article 25, item 8 of the IACHR Regulations determines a criterion to take into account to suspend the effect of adopting this measure (besides other items that can lead to other criteria), it is recommended to mention expressly in the IACHR Regulations all the situations that normally entail adopting cautionary measures, so as to avoid situations that can result in the unjustified suspension or maintenance of such measures. Here the criteria already pointed out by the IACHR, namely those that could expressly be included in its Regulations, should be kept in mind.
- c. Also, when the cautionary measure is adopted without having previously requested information from the State, because of the existence of an emergency situation, we propose that in such cases the decision be approved by absolute or special majority of the

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8. IACHR. *Informe sobre la Situación de las Defensoras y Defensores de Derechos Humanos en las Américas*. OAS/Ser.L/V/II.124, Doc. 5 rev. 1, 7 March 2006, paragraph 244.

9. *Ídem*.

10. *Íbid*, paragraph 245.

11. GONZÁLEZ, Felipe. “Las medidas urgentes en el Sistema Interamericano de Derechos Humanos”. In: *Revista Sur*, volume 7, number 13, 2010, p.67.

members of the Committee (articles 18 and 45 of the IACHR Regulations), in order to strengthen this vital mechanism to protect victims in situations of urgency.

- d. Recommend to the General Assembly the elaboration by the competent organs of a good practice guide on this subject to explain in detail the criteria followed by this organization to determine the measures, as well as the successful experiences in implementing them.
- e. Likewise, the States are recommended to exchange information on successful experiences in undertaking and implementing such measures.
- f. Finally, it is important to set up a mechanism for periodical follow-up on the cautionary measures in effect, with the participation of the beneficiary, the requester and the State, to collaborate in carrying them out and determining the need to maintain or eventually suspend them.

### 3.3. Promoting Human Rights<sup>12/</sup>

Article 106 of the Charter of the OAS and article 41 of the American Convention on Human Rights establish as the main function of the IACHR “to promote the observance and defense of Human Rights”. In the same sense, article 1 of the Statute and the Regulations of the IACHR add the function “to serve as the consultative branch of the Organization on this matter”.

On the other hand, the content and scope of this function are detailed in particular article 41 of the American Convention and articles 18, 19 and 20 of the IACHR Statute. These provisions describe the general functions that the IACHR can perform in fulfilling its role as promoter of human rights, as well as in relation to the members States of the OAS and the States that are party to the American Convention. These functions include stimulating awareness of human rights among the various American peoples, preparing studies and reports, presenting draft additional protocols or amendments to the American Convention on Human Rights, formulate recommendations for the States to adopt legislative or constitutional measures on behalf of human rights, attend to State consultations and lend them the advisory assistance requested on this and many other matters.

The first comment we should make refers to the need to understand that the activities meant to promote human rights and those meant to protect and defend them are not in contradiction with, but rather complement one another. Furthermore, we can assert that when the IACHR works on behalf of protecting

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12. See DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Opinión sobre la aplicación de los diversos instrumentos jurídicos del sistema interamericano en materia de derechos humanos con relación a ciertos temas específicos*. 18 July 2011. Also, PERMANENT MISSION OF MEXICO. *Intervención en el Grupo de Trabajo del Consejo Permanente sobre los desafíos y objetivos de mediano y largo plazo del sistema interamericano de derechos humanos*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Brasil sobre los temas desafíos y objetivos de mediano y largo plazo de la CIDH y medidas cautelares*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Delegación de República Dominicana sobre el tema Promoción de los Derechos Humanos*. 5 October 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Delegación de Colombia sobre el tema Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 5 October 2011; DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Resumen de los temas y recomendaciones tratados durante los diálogos sobre el fortalecimiento y el perfeccionamiento del Sistema Interamericano de Derechos Humanos 2001-2011*. 27 June 2011; CENTER OF STUDIES OF LAW, JUSTICE AND SOCIETY, AND OTHERS. *Aportes para una agenda integral para el fortalecimiento del Sistema Interamericano de Derechos Humanos*. 31 October 2011. PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Perú sobre los temas de financiamiento, soluciones amistosas y promoción de los Derechos Humanos: Fortalecimiento de los sistemas jurisdiccionales nacionales*. 5 December 2011.

and defending human rights, this is also in keeping with our criterion, promoting compliance with such rights through awareness of their content and scope.

In the same vein, it must be acknowledged that the IACHR, within its limited resources,<sup>13/</sup> has been engaged in the important task of promoting and diffusing these rights. Proof of this is its annual report for 2010, where we can read of the various activities undertaken, such as lectures, seminars, skill-building actions, meetings with universities, inaugurations, commemorations, among others.

Nevertheless, in order to stimulate even further IACHR's work of promoting human rights, it is proposed:

- a. To install a Working Group within the IACHR charged with designing, elaborating, funding and carrying out projects meant to cooperate with and strengthen human rights in member countries. These projects should be focused on providing skill-building for employees, members of the armed forces, police and magistrates; offering answers to consultations; etc.
- b. To set up a dialogue mechanism among the member States (for example, periodic meetings with the permanent missions accredited with the OAS) for the purpose of preventing future violations, diffusing good practices, training, assisting and advising state employees on critical issues, and so on.
- c. To prepare IACHR guides for the States on the best practices that could be adopted for proper implementation of the international obligations that exist on the Inter-American level as regards human rights, with a view to enhancing compliance and putting their recommendations into effect.

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13. For the 2010-2011 period, the OAS allocated only US\$10,863 to the programmatic area of the IACHR and the Court.

### 3.4. Financing<sup>14/</sup>

In accordance with article 72 of the American Convention on Human Rights, the expenses and fees involved in the functioning of the IACHR and the Inter-American Court of Human Rights are covered by the budget of the Organization, which is financed thanks to the contributions of the member countries. In addition, voluntary contributions have been made by member and extra-continental countries, which has enabled these protection-focused organizations to cover their other needs.

Nonetheless, the amount allocated to these two organizations of the system proves clearly insufficient, and precludes an adequate program of protection for human rights in the region. The financing problem is not only evidenced when the budget of the Inter-American system is compared with other protection schemes, such as the European, but also when we see failures in the system caused in large measure by the volume of the earmarked budget. Thus, while in the last few years the denunciations presented before to the IACHR have increased (between 2000 and 2010, 13,381 denunciations were registered), which is mirrored on the level of the Inter-American Court (between 1997 and 2010, those organization received 128 demands), between 2008 and 2010 the budget allocated to both organizations represented only 5% of the total budget of the Organization.

Raising the budget should, for example, allow a progressive increase in the number of regular sessions, permanence of the Chairman and therefore of all the commissioned members and judges in the main office (Washington and Costa Rica, respectively), thereby enhancing the capacity of the IACHR and the Court to fulfill the functions for which they were created. A larger budget would also enable increasing the number of lawyers appointed to the Executive Secretariat of the Committee and the Court. All this should result in bigger and better coverage and protection of individual rights in our region.

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14. PERMANENT MISSION OF MEXICO. *Intervención en el Grupo de Trabajo del Consejo Permanente sobre los desafíos y objetivos de mediano y largo plazo del sistema interamericano de derechos humanos*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Brasil sobre los temas desafíos y objetivos de mediano y largo plazo de la CIDH y medidas cautelares*. 12 September 2011; PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Argentina sobre los temas de procedimiento en la tramitación de los casos y peticiones individuales ante la CIDH y medidas cautelares*. 20 September 2011; SPECIAL WORKING GROUP TO REFLECT ON THE FUNCTIONING OF THE IACHR TO STRENGTHEN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM. *Fortalecimiento financiero del sistema interamericano de derechos humanos*. 13 October 2011; DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Resumen de los temas y recomendaciones tratados durante los diálogos sobre el fortalecimiento y el perfeccionamiento del Sistema Interamericano de Derechos Humanos 2001-2011*. 27 June 2011; PERMANENT COUNCIL OF THE OAS. *Aspectos señalados por la Delegación del Ecuador en las reuniones del Grupo de Trabajo*. 2 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Uruguay sobre los temas Financiamiento, Medidas Cautelares, Asuntos de Procedimiento en las tramitaciones de los casos y peticiones individuales, Soluciones Amistosas y Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 4 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuesta de la Delegación de Canadá sobre el tema fortalecimiento financiero del Sistema Interamericano de Derechos Humanos*. 16 November 2011; PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Perú sobre los temas de financiamiento, soluciones amistosas y promoción de los Derechos Humanos: Fortalecimiento de los sistemas jurisdiccionales nacionales*. 5 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de México*. 7 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Ecuador*. 5 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Paraguay*. 6 December 2011.

In this sense, and pursuant to the technical meetings held on this issue in Ottawa and San Salvador, it is necessary:

- a. To establish in the short term a pluri-annual international fund of voluntary contributions from donors to attend to the more urgent needs in the next five years, in compliance with the programs and strategic plans of each organ of the system. This fund should be designed not to address specific themes that represent legitimate interests of the donors, but rather be aimed at strengthening the IACHR and the Inter-American Court of Human Rights as institutions.
- b. To establish in the medium and long run a program to raise the annual contributions of the member States of the OAS for the specific effects of strengthening the system of promoting and protecting human rights, making it permanent and guaranteeing its sustainability, which should enable the objectives mentioned in the third paragraph of this section to be achieved.

In our mind, this is a realistic proposal in that it is based on the present difficulty for the States to reach a consensus on increasing their annual contributions immediately, bearing in mind the strained international economic and financial context. This proposal is also based on the unfeasibility of re-ordering the present budget, as this would imply cutting back in other areas or spheres that are equally priority questions for the Organization.

### **3.5. Chapter IV of the Final Report of the IACHR<sup>15/</sup>**

As regards the practice of the IACHR to include in its annual report to the General Assembly of the OAS a chapter IV on the human-rights situation in some countries in the Inter-American system, some States have registered some criticism, fundamentally questioning the methodology, criteria and objectivity of the Committee's inclusion of the countries in this chapter and pointing out that in essence these problems are common in the region.

Although this practice generally started in the annual report of 1970, the 1975 report is when the IACHR decided to include a whole chapter dedicated to certain countries because of the particularly vulnerable situation of human rights that existed there. So the practice is a very old one which was meant to definitively call the attention of the States so that they could make extra efforts to correct the vulnerable situations that they presented.<sup>16/</sup>

In 1980 the IACHR included this practice in article 59, letter h) of its Regulations, the same one that was changed in 2000 but remained basically with the same wording until the current Regulations of

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15. CENTER OF STUDIES OF LAW, JUSTICE AND SOCIETY, AND OTHERS. *Aportes para una agenda integral para el fortalecimiento del Sistema Interamericano de Derechos Humanos*. 31 October 2011; PERMANENT COUNCIL OF THE OAS. *Aspectos señalados por la Delegación del Ecuador en las reuniones del Grupo de Trabajo*. 2 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Uruguay sobre los temas Financiamiento, Medidas Cautelares, Asuntos de Procedimiento en las tramitaciones de los casos y peticiones individuales, Soluciones Amistosas y Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 4 November 2011; PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Secretaría Ejecutiva de la CIDH sobre el tema Capítulo IV del Informe anual de la CIDH*. 2 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de la República Bolivariana de Venezuela sobre la construcción del Capítulo IV del informe anual de la CIDH*. 5 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Ecuador*. 5 December 2011.

16. RODRÍGUEZ-PINZÓN, Diego. "La Comisión Interamericana de Derechos Humanos". In: *Derecho Internacional de los Derechos Humanos*. Universidad Iberoamericana, Academia de Derechos Humanos y Derecho Internacional Humanitario, 2006, pp.177-178.

2009. Also, between 1996 and 1997, some States requested the IACHR to establish a set of objective criteria to decide on the inclusion of certain countries in this chapter IV.<sup>17/</sup> This not only gave this practice a legal (regulamentary) basis but also provided it with objective and transparent criteria concerning its application. Moreover, the State to be included in the chapter is given prior notice of this decision so that it can present any observations that it deems pertinent and can be taken into consideration by the IACHR when it comes time to publish its conclusions in the final, public report; it is customary for the organization to include the information provided by the State as an attachment to its final report.

Despite the advances that have been made on this question, we consider that the following changes could be implemented in order to strengthen this measure:

- a. Include in the IACHR Regulations the five criteria that it has prepared and have already been mentioned herein (see footnote 16), for a State to be included in chapter IV, which is designed to provide the States not only with more juridical security but also better levels of transparency and predictability.
- b. Broaden the contents of chapter IV in such a way that it is based on an analysis of the general situation of human rights (civil, political, economic, social and cultural) in the region, without this affecting the report focusing on critical cases, in compliance with the five criteria determined by the IACHR, as well as articles 41 of the American Convention and 18 of the IACHR Statute.

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17. See the annual reports of the Inter-American Committee on Human Rights for 1996 (14 March 1997) and 1997 (14 February 1998): The first criterion refers to those States ruled by governments that have come to power via popular elections, by secret, genuine, periodical and free vote in accordance with internationally accepted rules. The Committee has repeatedly emphasized how essential representative democracy and democratically constituted systems are to ensure the rule of law and respect for human rights. With regard to States which do not observe the political rights enshrined in the American Declaration and the American Convention, the Committee has the duty to inform the other member States of the OAS of the situation of political and civil liberties of the inhabitants.

The second criterion involves States where the free exercise of the rights enshrined in the American Convention or the American Declaration has in effect been completely or partially suspended due to the imposition of exceptional measures such as the state of emergency, state of siege, emergency security measures and so on.

The third criterion to justify a State being included in this chapter applies when reliable proof exists that it commits substantial, grave violations of the human rights guaranteed in the American Convention, the American Declaration and other applicable human-rights instruments. In this case, special concern is warranted for violating rights that cannot be suspended, such as extrajudicial executions, torture and enforced disappearance. Accordingly, when the Committee receives trustworthy communication denouncing such violations committed by a particular State, violations that are testified or corroborated by reports or conclusions of other inter-governmental agencies and/or reputable national and international human-rights organizations, it considers that it has the moral and legal duty to inform the Organization and member States of these situations.

The fourth criterion refers to States that find themselves in the process of transition from any of the three situations mentioned above.

The fifth criterion has to do with conjunctural or structural situations presented in a State that for different reasons face circumstances that substantially and gravely affect the practice and privilege of the fundamental rights enshrined in the American Convention or American Declaration. This criterion includes, for instance: grave situations of violence that disturb the proper functioning of the rule of law; serious institutional crises; processes of institutional reform with grave negative effects on human rights; and serious omissions in adopting necessary provisions to make fundamental rights effective.

- c. Expand the current deadline for answering the preliminary reports of the IACHR,<sup>18</sup> since the States usually require a complex and delicate level of internal consultations. An initial calendar could be set at six months, renewable for another six.

### 3.6. Questions of Procedure<sup>19/</sup>

As far as procedure is concerned, several improvements could be made:

- a. *Setting a brief timeframe for initial review of petitions:* At present, initial evaluation of denunciations on the part of the IACHR does not have a pre-established time period and in practice lasts too long (three years on average). There are cases that even go beyond seven years, counting from the time the petition is formalized in the Executive Secretariat till it is transferred to the State. This not only goes against the right of the victims whose appeal is frustrated, but it also contradicts the time period stipulated in article 46, item 1, letter b of the American Convention, which requires the petitioner to present his appeal within 6 months. Also, this can make the State's answer ineffective, or the friendly-resolution mechanism useless, since the case can come to the notice of the State when the facts are irreversible. In this sense we hold that the IACHR Regulations should provide a deadline and that this should be short; in concrete terms, from reception of the petition to the decision on its eventual processing, the timeframe should not exceed 3 months.
- b. *Broadening the timeframe for contesting the petitions:* The practice shows that the time period currently in place for the State to contest the petitions (2 months, according to article 30, item 3 of the IACHR Regulations) is extremely short, which means that the States constantly request extensions, thereby eventually making the procedure even longer. For this reason it is suggested that, depending on the nature and complexity of the case, the IACHR should have the power to grant a longer initial period for contesting (4 months), without this affecting any deadline extensions that might be considered.

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18. See article 47 of the Regulations of the IACHR.

19. See PERMANENT COUNCIL OF THE OAS. *Exposición de la Delegación de Argentina sobre los temas de procedimiento en la tramitación de los casos y peticiones individuales ante la CIDH y medidas cautelares*. 20 September 2011; SPECIAL WORKING GROUP TO REFLECT ON THE FUNCTIONING OF THE IACHR TO STRENGTHEN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM. *Documento Resumen de las posiciones de los Países Miembros*. 20 September 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Delegación de Colombia sobre el tema asuntos de procedimiento en la tramitación de los casos y peticiones individuales ante la CIDH*. 7 October 2011; DEPARTMENT OF INTERNATIONAL LAW OF THE OAS. *Resumen de los temas y recomendaciones tratados durante los diálogos sobre el fortalecimiento y el perfeccionamiento del Sistema Interamericano de Derechos Humanos 2001-2011*. 27 June 2011; PERMANENT COUNCIL OF THE OAS. *Presentación de la Federación Interamericana de Abogados (FIA) en la reunión del grupo de trabajo con la Sociedad Civil*. 28 October 2011; CENTER OF STUDIES OF LAW, JUSTICE AND SOCIETY, AND OTHERS. *Aportes para una agenda integral para el fortalecimiento del Sistema Interamericano de Derechos Humanos*. 31 October 2011; PERMANENT COUNCIL OF THE OAS. *Aspectos señalados por la Delegación del Ecuador en las reuniones del Grupo de Trabajo*. 2 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación del Uruguay sobre los temas Financiamiento, Medidas Cautelares, Asuntos de Procedimiento en las tramitaciones de los casos y peticiones individuales, Soluciones Amistosas y Criterios para la construcción del capítulo IV del informe anual de la CIDH*. 4 November 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Colombia*. 11 November 2011; PERMANENT COUNCIL OF THE OAS. *Informe del Grupo de trabajo especial sobre el funcionamiento de la CIDH para el fortalecimiento del Sistema Interamericano de Derechos Humanos para la consideración del Consejo Permanente*. 6 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de México*. 7 December 2011; PERMANENT COUNCIL OF THE OAS. *Propuestas de la Delegación de Paraguay*. 6 December 2011.

- c. *Regulating the exceptionality of accumulating admissibility and merits:* With regard to the possibility of accumulating the stage of admissibility and the merits of the matter, it must be stated that this should be a measure to be adopted in exceptional circumstances, otherwise due process is adulterated. It should not be forgotten that this stage of the process defines the presumed facts, the presumed violated rights and the presumed victims: in other words, the general characterization of the case. In this sense, it is appropriate to set forth in the Regulations the specific criteria that can qualify the IACHR to proceed with such a measure in order to invest this procedure with more juridical security, transparency and predictability. Also, the accumulation must be based on and supported by the resolution of the IACHR.
- d. *The need to consider other hypotheses for filing the petition:* Other important elements should be added to the two suppositions for filing the petition pointed out in item 1 of article 42 of the IACHR Regulations, such as when the petitioner has not complied with the obligation of exhausting the internal resources, if the petitioner does not continue with the cause for a prolonged time, or if the case has lost juridical relevance, all this without jeopardizing the petitioner's being able to restart the procedure. This will enable the IACHR to order the flow of its pending business and dedicate its time and limited resources to cases that are really pressing. Should the IACHR consider in some cases that the petition should not be filed but rather kept on hold until the requisites are satisfied, we propose that the IACHR should report annually on such cases that are not granted procedural status; this will allow everyone, and in particular the States, to have a clear and sure notion of the causes or petitions that are really pending.
- e. *Priority processing serious and urgent cases:* In line with the proposal on the issue of the precautionary measures, it is suggested to establish a priority handling of those petitions that due to their severity and urgency justify the adoption of this measure, so that the IACHR apply the applicable provisions of its regulations such as article 30 subsection 4, or article 37 subsection 3. In case precautionary measures are lifted it will cease the preferential treatment of the case in question.
- f. *Flexibility in certain deadlines:* It is necessary that in certain cases the schedule given to the State to follow up on the recommendations of the IACHR be made more flexible, as occurs for example when the recommendation entails the Congress of the Republic derogating or passing a law, judicial processing of those responsible for the Judicial Power, or for coordinating different regional or federal entities with total or some degree of autonomy. In these cases, it is particularly important that the IACHR analyze the conduct of the State, how it heeds the principle of good-faith, and how it acts accordingly.

### **Inter-American Court of Human Rights**

Besides the recommendations already pointed out in this report, the following is proposed with regard to the Court:

- 3.7 *Mechanisms to make the follow-up and compliance with the resolutions effective:* On this issue we consider mainly important the need of OAS General Assembly to achieve an effective use of its competence to control the resolutions fulfillment issued by the Inter-American Court of the Human Rights and, when the Court's annual reports point to failure situations, the General Assembly shall entrust to the Permanent Council of the Organization to make a detail investigation of such cases, and shall inform to the Assembly, in its next session, the achieved goals on the execution of such resolutions. However, if the non-fulfillment is confirmed, we recommend that the Assembly shall

take appropriate measures, accordingly to the OAS Charter, aimed to assure the fulfillment of the resolutions and verdicts of this court.

This reform should be complemented with actions to be carried out within the member countries, such as setting up a Sectorial Committee to see to international decisions (as already exists in several countries in the region) and entrusted with coordinating with the competent sectors of the State to ensure that such decisions are properly obeyed.

Another internal measure could be to provide in the State's annual budget a fund meant for payment of indemnization agreed by international jurisdictional bodies.

These international and domestic reform measures could contribute effectively to facilitate observance of the measures decreed by the Court, and consequently help to strengthen the system and make it more effective.

- 3.8 *Full-time functioning of the Court and the IACHR:* Finally, as in the abovementioned section 3.4 of this report, the Inter-American Juridical Committee considers as an essential, necessary and unavoidable step to gradually ensure the full-time functioning of the Court as well as the Inter-American Commission of the Human Rights, in order to achieve the consolidation of the Inter-American System for the Promotion and Protection of Human Rights. We strongly believe that this measure will allow a better and more effective protection of human rights in the region as well as some other positive results, such as: a greater dedication of the member of these organs, faster procedures for the benefit of the alleged victims, effectiveness in the redress of the claimed damage, among others. This would place our system of promotion and protection of human rights in terms similar to other systems. However, this important measure should not be taken alone, but must be accompanied by all the recommendations presented in this report.