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Working Group to Prepare
a Draft Inter-American Convention against
Racism and All Forms of Discrimination and Intolerance

SPECIAL MEETING OF THE WORKING GROUP TO PREPARE A DRAFT INTER-
AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS
OF DISCRIMINATION AND INTOLERANCE

OAS headquarters – Washington, D.C.
November 20, 2008

PRESENTATIONS BY PANELISTS

REMARKS BY THE CENTER FOR JUSTICE AND INTERNATIONAL LAW (CEJIL)
(Michael Camilleri)

Thank you Madame Chair.

On behalf of the Center for Justice and International Law (CEJIL), I would like to thank you for this opportunity to address the Working Group to Prepare a Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. CEJIL's executive director, Viviana Krsticevic, had hoped to be present for this important discussion, but she is currently attending a conference at the invitation of the Brazilian government.

Let me begin by reiterating CEJIL's support for the efforts of this Working Group to draft a new Inter-American Convention that furthers the fight against discrimination, racism and the systematic exclusion of vulnerable populations in our hemisphere. Structural inequality—so pronounced in such vast swaths of the Americas—denies millions of individuals their fundamental rights while eroding the legitimacy of our democracies. As such, the international recognition that vast sectors of the hemisphere's population have been denied the enjoyment of their basic rights—and the accompanying recognition that these historical injustices demand adequate legal, institutional and social responses—is an important step forward in the struggle for a more just and equitable continent.

As the members of the Working Group will recall, CEJIL presented written observations regarding the Draft Convention in January of this year. We would like to recognize the progress that has been made since then, including the incorporation of some of the modifications suggested by CEJIL, such as the addition of a preamble and the inclusion of discriminatory impact.

Notwithstanding these important developments, CEJIL's comments today will again focus on one of the problematic aspects of the Draft Convention that we identified in our January submission: the protective mechanisms contemplated in the Draft Convention. The Draft Convention remains substantially unmodified on the issue of supervisory mechanisms, so I would invite the members of the Working Group to refer to our January submission for a detailed analysis of this issue, notwithstanding the points I will raise here in summarized form.

The shortcomings of the supervision mechanism established by the Draft Convention fall into two broad categories. First, the Draft Convention establishes a new protection mechanism of questionable independence and dubious value. Second, the Draft Convention appears to illicitly curtail the functions of the supervisory mechanisms that already exist, namely the Inter-American Commission and the Inter-American Court of Human Rights.

I will first address the creation of the Inter-American Committee for the Prevention, Elimination and Punishment of Racism and All Forms of Discrimination and Intolerance. Several characteristics of this Committee are of concern to CEJIL, though I will mention just two here. First, the Draft Convention fails to establish the basis on which the members of this Committee will be chosen. There is no mention, for example, of the moral authority, subject matter expertise, or gender or racial diversity that potential members should bring to the Committee. Second, the Draft Convention is unclear and even contradictory with regard to the independence of the Committee's members. Though the Convention affirms that the experts will be independent, they will be drawn exclusively from the national institutions responsible for monitoring compliance with the Convention. Under these conditions, the Inter-American Committee for the Prevention, Elimination and Punishment of Racism and All Forms of Discrimination and Intolerance is apt to be a body composed entirely of government representatives. A Committee of this nature would likely lack the independence, autonomy, transparency, and openness to robust civil society participation that would make its creation worthwhile.

CEJIL's critique of the Committee is not meant to minimize the potential usefulness of a forum in which government representatives responsible for implementing anti-discrimination policies can meet to discuss challenges and share best practices. Indeed, similar meetings regularly bring together the region's Ministers of Justice, penitentiary authorities, national ombudsmen, and so on. Nonetheless, we strongly question the decision to dedicate scarce resources to the creation of a new protection mechanism of questionable effectiveness, when the existing protection mechanisms of the Inter-American system are chronically under-financed.

The Inter-American Commission and Court have proven themselves effective guardians of equality in the hemisphere. The Commission, in particular, has established special rapporteurships to monitor the human rights of women, indigenous peoples, afro-descendants, and migrant workers, among others. Meanwhile, the OAS' experience with parallel human rights protection mechanisms—such as the Mechanism to Follow Up on the Implementation of the Convention of Belém do Pará (MISECVI)—has been unimpressive. As such, CEJIL supports the proposal of the Government of Canada to eliminate the Inter-American Committee for the Prevention, Elimination and Punishment of Racism and All Forms of Discrimination and Intolerance by removing subsections (iv) and (v) of Article 16 of the Draft Convention, and proposes that the additional resources that would have been assigned to this Committee be used instead to strengthen the anti-discrimination work of the Inter-American Commission and Court of Human Rights.

This brings me to my final point, which concerns the Draft Convention's implicit curtailment of some of the faculties of the Inter-American Commission and Court of Human Rights. The American Convention on Human Rights grants the Commission broad authority to issue recommendations, prepare reports and conduct a range of other activities to promote and protect human rights—including the right to equality—in the member states of the OAS. The Draft Convention would appear to condition some of these supervisory activities on an invitation from the State in question. If so, it would constitute an inadmissible attempt to restrict the faculties granted to the Commission by the American Convention.

With regard to the Inter-American Court, we would simply observe that the Draft Convention departs from established OAS practice by requiring that States take an extra step in order to recognize the Inter-American Court's jurisdiction to apply and interpret the Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. This contrasts sharply with the practice established in treaties such as the Convention of Belén do Pará, and the Inter-American Convention on Forced Disappearance of Persons. In CEJIL's view, this is an unwelcome development and one that would contribute to the further fragmentation of the Inter-American human rights system.

It is CEJIL's firm belief that the drafting of an Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance presents a golden opportunity to strengthen the capacity of the Inter-American Commission and Court to respond to situations of discrimination in the hemisphere, rather than an opportunity to dilute their functions or divert scarce resources to parallel mechanisms. To take just a few examples of how such strengthening might be accomplished, the Draft Convention could include a commitment to promote the candidacies of commissioners and judges from historically under-represented backgrounds. Likewise, it could include a commitment to strengthen the aforementioned special rapporteurships of the Inter-American Commission. Finally, the Draft Convention could authorize the Commission to conduct on site visits to supervise states parties' compliance with the Convention, without the need for a specific invitation.

Many other worthy proposals for strengthening the anti-discrimination work of the Inter-American Commission and Court are certainly possible. The bottom line, however, is that this Working Group should refocus its efforts and concentrate on strengthening the existing, proven supervisory mechanisms of the Inter-American human rights system.

On that point I will conclude my remarks. On behalf of CEJIL, I want to again commend the Working Group's efforts to draft this potentially crucial new Convention, and reiterate my gratitude for the opportunity to participate in this important discussion. CEJIL will continue to monitor and support your efforts with great interest.

Thank you.