



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 U.S.A.

April 9, 2012

Mr. President,

I have the honor of writing on behalf of the Inter-American Commission on Human Rights in relation to the Report of the *Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American System for the Protection of Human Rights*. During its 144 period of sessions the Commission carefully considered this Report and prepared a document, which I enclose with this letter. Allow me, Mr. President, to convey some principal messages contained therein.

In what concerns the recommendations addressed to the Commission, the IACHR attaches fundamental importance to open dialogue with Member States and, in general, with all actors in the Inter-American System. The IACHR wishes to reiterate its willingness and openness to continue the reflection started by the General Assembly of the Organization, which aims at strengthening the System. In this context, the Commission underlines that processes of reflection have historically been followed by important reforms in the work of the Commission: these precedents are described in detail in the Commission's document.

The Commission wishes to emphasize that in order to fully discharge the mandates derived from the Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the other human rights treaties adopted and in force in the region, it is constantly improving the processes and mechanisms available to face important challenges that persist in the Americas. The Commission deploys its best efforts to comply with its fundamental task despite significant limitations resulting from a meagre budget and limited resources at its disposal.

His Excellency
Leonidas Rosa Bautista, Ambassador
Chair of the Permanent Council
Permanent Representative of Honduras to the
Organization of American States
Washington, D.C.

In this context, the Commission has implemented in the last decade a series of measures aimed at strengthening its work. Some of these coincide with recommendations included in the Report of the Special Working Group, and have been already implemented or are underway; some examples of these are shown in the enclosed document. The Commission agrees that efforts must be continued and enhanced in relation to these matters as well as recommendations of the Working Group that strengthen the System and that could modify current practices of the Commission.


The Commission acknowledges the importance of recommendations addressed by the Special Working Group to Member States and the General Secretary of the Organization. In this regard, the Commission highlights that during the last decade the Commission itself has identified four challenges in the system: universality, resources, compliance and effective access of victims. The Commission appreciates that these challenges have been included in the Report and in several General Assembly Resolutions, and hopes that measures conducive to addressing them will be implemented swiftly.

Mr. President, the Commission is thankful for the contributions of Member States and regards the reflection process as important in the further development of its work. During its 144th Ordinary Session, the IACHR decided to follow a process of its own deep and diligent reflection on its procedures and mechanisms, through a detailed consultation with all participants of the Inter-American System; some aspects of this process are presented in the document that the Commission has prepared, and that is enclosed with the instant letter. To that effect and as a first step, the Commission has considered the issuance of a questionnaire that could be distributed soon, in addition to carrying out consultation meetings with all participants in the System (some of these consultations will have regional scope) intended to the study and reflection of the recommendations received by the Commission.

Further, the Commission expects to revise its Strategic Plan during the upcoming 145th Regular Session, and at that moment will decide on policies, programs and priorities, given the inextricable relation that exists between the Strategic Plan (i.e. budgeting priorities) and the implementation of some of the States' recommendations.

Finally, the Commission requests that the Permanent Council and the Commission jointly prepare an agenda to further and strengthen the dialogue with the Member States.

Allow me to reiterate, Mr. President, the assurances of my highest and most distinguished consideration.



José de Jesús Orozco Henríquez
President

c.c: Ambassador María Isabel Salvador, President of the CAJP
Illustrious Member States Organization of American States
Mr. José Miguel Insulza, General Secretary of the Organization of American States



Organization of
American States

Inter-American
Commission on
Human Rights

IACHR

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.

Doc. 68

8 April 2012

Original: English/Spanish

POSITION DOCUMENT ON THE PROCESS OF STRENGTHENING OF THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

Approved by the Commission on April 8, 2012

POSITION DOCUMENT ON THE PROCESS OF STRENGTHENING OF THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

I. EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights, a principal organ of the Organization of American States (OAS), derives its mandate from the OAS Charter, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and the other human rights treaties ratified and enforced in the region. Independence and autonomy are the cornerstones of the Commission's effective and efficient execution of its fundamental mandate.

2. Its many achievements notwithstanding, the System continues to wrestle with enormous challenges that need to be resolved in the near term: universal adherence to all instruments in the System, access of victims, compliance with the Commission's recommendations, and resources available to the Commission. Using these goals as reference points, the work of the Commission can be optimized through detailed, well-informed and balanced scrutiny of its practices, methods and Rules. The Commission wishes to underline that, in order to fully discharge the mandate derived from the Charter, the American Declaration and the American Convention, it is constantly improving the processes and mechanisms available for the promotion and protection of human rights. The Commission commits its best efforts to comply with its delicate task despite significant limitations inherent to a meager budget and limited resources.

3. The Member States have issued a series of recommendations to the Commission as the result of the activities of the *Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American System for the Protection of Human Rights*. The Inter-American civil society has also made the Commission aware of its views to this respect; academic institutions have also issued opinions, as have other organs of the Organization.

4. The instant position paper is issued in the context of the Commission's constant process of institutional growth, and with particular reference to the recommendations included in the Report of the Special Working Group. The IACHR attaches fundamental importance to open dialogue with Member States and, in general, with all actors in the Inter-American System. The IACHR wishes to reiterate its willingness and openness to continue the reflection started by the General Assembly of the Organization, which aims at strengthening the System. In this connection, it is important to underline that processes of reflection have historically been followed by important reforms in the work of the Commission: these precedents are described in detail in the document.

5. The Commission acknowledges the importance of recommendations addressed by the Special Working Group to Member States and the General Secretary of the Organization. In this regard, the Commission highlights that the four great challenges were included in these, and hopes that they will be implemented swiftly.

II. BACKGROUND

6. A principal body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. This mandate is to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission operates the individual petition system, through which it considers petitions and cases

concerning human rights violations and protection measures; tends to more than 15 thematic areas, and monitors the human rights situation in 35 OAS Member States.

7. In conducting these activities, the Commission takes action on both individual situations involving human rights violations as well as structural problems affecting millions of persons. Through this work the Commission has triggered the nullification of the effects of laws that provided amnesty in relation to grave violations of human rights committed by dictatorships and authoritarian governments; the establishment of standards for participation of indigenous peoples in the determination of their rights; the documentation of the full scope of the violence and impunity against persons, communities, peoples and populations historically subjected to discrimination; and the recognition of crimes against humanity stemming from patterns of forced disappearances, torture and sexual violence.

8. Through its recommendations that address structural problems that prevent millions of persons from fully enjoying and exercising their human rights, during its 50-year history in monitoring authoritarian governments, supporting transitions to democratic government and helping to consolidate it, the Commission has dutifully complied with its mandate to promote and protect human rights throughout the hemisphere.

9. In the work of promotion and protection of human rights, the evolution of the tools and mechanisms available to the Commission is a historical constant. In this work of continued evaluation and change, the Commission wants to highlight the importance of the process of dialogue with all actors in the System. Since its creation and in particular since the year 2000 the work, practices and methods of the Commission have been under constant review with all actors interested, and subject to change through independent consideration, discussion and decision by the Commission.

10. In the year 2000, for instance, the General Assembly adopted Resolution AG/RES. 1701 (XXX-O/00), in which it decided “[t]o continue to improve and strengthen the Inter-American System, through systematic and ongoing dialogue among the states, the organs of the System, and other parties involved [...] with a view to guaranteeing the effective exercise and protection of human rights in the Hemisphere”. That Resolution also identified seven areas of procedural recommendations to the Commission (definition of criteria for the opening of cases, precautionary measures, and remittance of cases to the Court; issuance a separate report on admissibility; prompt processing of cases; promotion of friendly settlements; and establishment of Rapporteurships). These recommendations, considered independently by the Commission, resulted in several changes in its work, most importantly, the separation of the procedure in the phases of admissibility and merits, the inclusion in the Rules for criteria for granting precautionary measures, and the definition of criteria for remission of cases to the Inter-American Court.

11. On December 2004, the Committee on Juridical and Political Affairs (“CAJP”) decided to initiate a process of reflection on the Inter-American System pursuant to the mandate contained in operative paragraph 5 of resolution AG/RES. 2030 (XXXIV-O/04), “Strengthening of Human Rights Systems pursuant to the Plan of Action of the Third Summit of the Americas”. The Commission considered the results of that process in its Ordinary Sessions of 2005 and 2006, and they led to a number of changes in its work. Most importantly, these recommendations led to the adoption by the Commission of the Program for the Elimination of Procedural Delay, through which it has achieved substantial progress in the prompt processing of petitions.

12. In 2008-2009, the CAJP carried out a new exercise of reflection on the Inter-American System, pursuant to resolutions AG/RES. 2407 (XXXVIII-O/08), “Strengthening of Human Rights Systems pursuant to the Mandates Arising from the Summits of the Americas”; AG/RES. 2408 (XXXVIII-O/08),

“Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”; and AG/RES. 2409 (XXXVIII-O/08), “Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights”; and other mandates. The process consisted of ten meetings to review topics identified by the Member States, and one meeting with the participation of civil society.

13. The result of the 2008-2009 reflection process was a series of recommendations issued by some, or all, Member States to the Commission. These recommendations included:

- that the IACHR present in a realistic fashion a short, medium and long term plan, accompanied by the respective financial needs; a request that the Commission fulfilled by means of a document on a joint CAJP-CAPP meeting of February 5, 2009 (ref. CP/CAJP-2694/09); and the subsequent issuance of its Strategic Plan;
- a request for the definition of criteria for the granting of precautionary measures;
- the establishment of timeframes for the merits phase;
- the inclusion of criteria for the extension of the timeframe established in Article 50 of the American Convention on Human Rights; and
- the adoption of principles of parity in the participation in thematic hearings.

14. On December 9, 2009, the IACHR published its new Rules of Procedure, based on reforms approved during the 137th Period of Sessions that took place in October and November 2009. The new Rules of Procedure entered into force on January 1, 2010. This amendment to the Rules was the result of independent considerations by the Commission, which were informed by the recommendations made by Member States, as well as many opinions and elements of information provided by Civil Society Organizations and other actors in the System.

15. The central objective of the reform of the Rules in 2009 was to further strengthen the Inter-American System through the enhancement of the participation by victims, guarantees to harmonize procedural participation of the parties and enhance the publicity and transparency of the System, as well as the adoption of other necessary adjustments after the 2001 reform. These modifications involved four essential components of the System for the protection of human rights: the mechanism of precautionary measures, the processing of petitions and cases, the referral of cases to the jurisdiction of the Inter-American Court, and the holding of hearings on the situation of human rights in the Member States.

16. The first critical component of the reform involved the codification of the principles and practices related to the precautionary measures mechanism, which was first introduced in the Rules adopted in 1980. For almost three decades, this mechanism has contributed to the protection of thousands of persons at risk in all of the Member States of the OAS. The amendment sought to reflect the elements taken into account by the IACHR when considering requests for precautionary measures as well as the principles that guide the proceedings for granting, following up and lifting of such measures.

17. The second significant component of the reform related to the processing of petitions and cases on alleged violations of the American Declaration, the American Convention or other applicable instruments. Among the more prominent amendments in this area is the new practice

permitting the production of testimony before one or more members of the Commission during *in loco* observations; the extension of time limits to file allegations on the merits; and the introduction of a provision establishing parameters for the archiving of petitions and cases.

18. The third important area of the reform addressed the review of proceedings and the applicable parameters and procedures after the adoption of reports on the merits in cases involving the alleged responsibility of States who are party to the American Convention and have accepted the contentious jurisdiction of the Inter-American Court of Human Rights (“the Inter-American Court”). The main aspects of the reform are the introduction of a provision that codifies in detail the practice governing the suspension of the time limit provided for in the American Convention to refer cases to the jurisdiction of the Inter-American Court in the event of a request by the State concerned, and changes to the provision governing the referral of cases to that jurisdiction once proceedings before the Commission have been exhausted. This last amendment, which is the outcome of a dialogue held with the Inter-American Court, allows for the referral of the report issued pursuant to Article 50 of the American Convention accompanied by a referral note and other elements relating to the processing of the case before the Commission. This provision also establishes that, once a case has been referred to the jurisdiction of the Inter-American Court, the Commission shall make its merits report public.

19. The fourth significant area of the reform was the introduction of guidelines on participation in public hearings on the situation of human rights in the Member States of the OAS.

20. The amended text was the result of the debate and decision of the IACHR members during three periods of sessions and an open and transparent process. All aspects of the reform relating to the processing of petitions and cases that may eventually reach the jurisdiction of the Inter-American Court of Human Rights were the subject of dialogue. During its debates, the IACHR considered extensively the comments made by an important number of OAS Member States, civil society organizations, academics and citizens of the region, in response to the open consultations on the preliminary draft of the amendments, which took place between May and August 2009 (*cf. Dialogue between the IACHR, the Member States and the Inter-American Court, held by the CAJP on May 14, 2010, CP/CAJP-2904/10*).

21. The Commission is thankful for the resources and efforts that Member States, organizations of civil society, individual users, and academics commit to the constant consideration of the effectiveness and efficiency of the Inter-American System for the protection of human rights; all institutions in the System are the results of the dynamics between these contributions, and the independent management by the Commission of own mandate.

The new cycle of reflection and the Commission’s Strategic Plan

22. As from January 2010, when its new Rules of Proceedings came into force, the Commission has kept its proceedings, efficiency and effectiveness under close and careful review.

23. Simultaneously, the Member States have continued to stress the importance of the Inter-American System for the protection of human Rights. In Resolution AG/RES. 2521 (XXXIX-O/09), “Strengthening of Human Rights Systems pursuant to the Mandates Arising from the Summits of the Americas,” operative paragraph 3 called

for continuing the process of reflection on the Inter-American System for the promotion and protection of human rights, begun in the framework of the Committee on Juridical and Political Affairs[;] the examination of ways to bring about an adequate and effective

increase in the economic resources assigned to the organs of the inter-American human rights System in the program-budget of the Organization[;] the consideration of 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[;] and analysis of the priorities for improvement of the Inter-American 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.

24. In its Strategic Plan, as in all of its Policy considerations, the Commission has carried out a detailed, well informed and balanced diagnostic which it has discussed with other actors in the System, namely the Member States, the Inter-American Court and the organizations of civil society. Its achievements notwithstanding, the System continues to wrestle with challenges that need to be resolved in the near term. The challenges are immediate and serious, but the results achieved in recent years demonstrate that the region has the vision, the capacity and the strength to tackle them.

Universal adherence to all instruments in the System

25. The first challenge is universal adherence to all instruments in the System. The basic treaties of the IAHRs are not yet universally ratified. In order to achieve full observance of human rights in the Americas, all Member States must ratify all the inter-American instruments. What the region now has is a System with three levels of acceptance: one level, of universal acceptance and the minimum for all the Member States ensures that people enjoy the protection of the rights recognized in the American Declaration and the OAS Charter, under the Inter-American Commission's supervision; a second level is for Member States that have ratified the American Convention, but have not accepted the jurisdiction of the Inter-American Court; the third level is for those Member States that have ratified the Convention and have accepted the Inter-American Court's jurisdiction. This arrangement leaves millions of people at a disadvantage in terms of the degree of international protection of their rights.

Victims' access

26. *De jure* and *de facto* access to judicial guarantees and protections is a condition sine qua non for reducing human rights violations. The work of the Commission reveals that the peoples of the hemisphere, particularly the members of sectors that have historically been the targets of discrimination,¹ frequently do not have access to proper and effective judicial remedies to denounce violations of their human rights. This is particularly true in the case of women, who represent half the population of the hemisphere. Given the circumstances, the Inter-American System must be a complementary source of redress and protection for victims. The cases before the regional system point up the considerable challenges and inadequacies at the national level and make their solution a priority. Because of the existing limitations, the victims' access to an effective recourse before the Commission is not what it should be. The IAHRs must be strengthened so that all victims of human rights violations who cannot find justice in the domestic system are able to turn to the Commission as a subsidiary resource to have their rights properly redressed.

¹ See, in general, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

The System's efficacy

27. A third challenge concerns the efficacy of the System as a supranational mechanism for the protection of human rights. A condition *sine qua non* for such a system is that the Member States of the OAS fully and effectively abide by the decisions of the Inter-American Court and the Commission. To enable this process, Member States must act as true guarantors of the System and adopt the legislative measures necessary to establish a juridical mechanism that ensures enforcement at the domestic level of the decisions of the Inter-American Court and the Commission. While important progress has been made with implementation of the Commission's recommendations and compliance with the Inter-American Court's judgments, the level of compliance needed to ensure the effectiveness of the System's decisions has not yet been achieved.

The System's efficiency: available resources

28. For two decades now, the Commission has been laboring under the growing demands made upon it, which are the result of a combination of factors and which the Commission has had to address with its meager available resources. In effect, the number of complaints filed with the Commission increases by the day; civil society and the States are asking for more hearings and visits; the work of the thematic Rapporteurs is expanding, and the General Assembly continues to assign the Commission new mandates.

29. In 2011, the Commission received over 1600 new petitions, held three periods of sessions, managed over 8.500 pending matters and, in connection to these, issued 67 Reports on Admissibility, 11 on Inadmissibility, eight Reports on Friendly Settlement, 54 Reports on Archiving, 25 Reports on the Merits. The Commission further published five Reports on the Merits and presented 23 cases to the consideration of the Inter-American Court, took cognizance of over 400 urgent requests for precautionary measures, held 91 hearings and 54 Working Meetings, carried out over 30 Working Visits led by its Members as Country or Thematic Rapporteurs; its issued 138 Press Releases and conducted 5 Seminars and Training Sessions. To the activities involved in processing individual cases and urgent measures of protection must be added the mandates entrusted by the General Assembly in specific resolutions. In 2011 alone, the General Assembly called upon the Commission to devote special attention to migrant workers and their families,² human rights defenders,³ persons deprived of liberty,⁴ the elderly⁵ and the issues of human rights, sexual orientation and gender identity.⁶ It has also been charged with matters of particular concern, such as racism, discrimination and intolerance,⁷ freedom of expression and access to information,⁸ and protection of human rights in the fight against terrorism.⁹ The Assembly also instructed the Commission to prepare special reports and studies on these and other new issues, such as the development of the right to know the truth about past violations in the

² See Resolution AG/RES. 2669 (XLI-O/11).

³ See Resolution AG/RES. 2658 (XLI-O/11).

⁴ See Resolution AG/RES. 2668 (XLI-O/11).

⁵ See Resolution AG/RES. 2654 (XLI-O/11).

⁶ See Resolution AG/RES. 2653 (XLI-O/11).

⁷ See Resolution AG/RES. 2677 (XLI-O/11).

⁸ See Resolutions AG/RES. 2679 (XLI-O/11) and AG/RES. 2523 (XLI-O/11).

⁹ See Resolution AG/RES. 2676 (XLI-O/11).

hemisphere¹⁰ and the enforcement of the Protocol of San Salvador on economic, social and cultural rights, where it has asked the Commission to propose indicators.¹¹

30. These efforts are occurring against the backdrop of political and juridical situations that, by their nature, call for an immediate and priority response on the Commission's part. In 2009, for example, the Commission invested a considerable percentage of its resources and personnel to follow closely the situation in Honduras in the wake of the coup d'état; a detailed description of these activities and the respective process, which reveals how important these activities are, is available in the reports the Commission issued on this situation. The General Assembly has also asked the Commission to assist in the process of drafting declarations and conventions, as in the case of the American Declaration on the Rights of Indigenous Peoples¹² and the Inter-American Convention against Racism and all Forms of Discrimination and Intolerance¹³; that it play an active role in programs and projects to eliminate obstacles impairing effective participation in democratic processes; and that it assist in the programs for demobilizing illegal armed groups.

31. In the 1990s the challenges posed by the Inter-American Commission's increased workload were matched, at least in part, by an increase in its budget. In 1990 the Commission's budget was US \$1,305,500, a figure that by the year 2000 had risen to US\$ 2,987,500. While the increases in the first half of the 1990s were small,¹⁴ there was an appreciable increase in 1996¹⁵ that more than doubled the 1990 budgetary appropriation. With this significant increase in its budget, the Commission was able to respond to some of the challenges that the 1990s brought. Since 1996, however, the increases to the Commission's budget have on the whole been modest; in some years its budget has even been cut.

32. From 2000, the Commission's budget received small gradual increases up to 2004. In 2005, its budget was cut by 11% in relation to the previous year.¹⁶ Thereafter, in 2007 and 2010 there were some increases to the Commission's budget, with no significant impact in terms of the resources available for operations.

33. Given these developments, in recent years the Commission has repeatedly made the case that the funds earmarked in the budget of the OAS' Regular Fund for the Commission's operation are insufficient for it to adequately discharge its mandate. The shortfall affects not just its capacity to manage its own logistics, but also seriously affects its ability to perform its functions under inter-American conventions and the mandates entrusted to it by the OAS General Assembly. The Commission's lack of resources, a problem dating back 20 years, has become even more serious given the increasing demands placed on the Commission..

¹⁰ See Resolution AG/RES. 2662 (XLI-O/11).

¹¹ See Resolution AG/RES. 2666 (XLI-O/11).

¹² See Resolution AG/RES. 2674 (XLI-O/11).

¹³ See Resolution AG/RES. 2677 (XLI-O/11).

¹⁴ The budget approved for 1992 was US\$1,487,600; in 1993 it was US\$1,617,100; in 1994, US\$1,734,100; and in 1995, US\$1,734,800.

¹⁵ In 1996 the General Assembly approved a budgetary appropriation of US\$2,830,600, which was an increase of 63.17% over the previous year.

¹⁶ The budget approved for 2005 was US\$ 3,077,500.

34. As a consequence of the fact that the budget will in all likelihood not change appreciably in either the short or medium term, the Commission needs funds urgently in order to carry out its mandates conferred upon it by the regional instruments and in resolutions of the General Assembly. Consequently, the IACHR is relying more heavily on a strategy that combines a search for external funding, which has been underway since 2001, with a gradual, long-term increase in the resources that the Organization earmarks to enable the Commission to function.

35. The goal of this strategy is to strengthen the Commission as an institution and enable those interested in the Inter-American System to partner with the Commission's efforts, and to provide as much transparency as possible to the allocation of resources and priorities.

36. The Strategic Plan of the Commission has been presented to Member States and organizations of civil society in various instances. After one such instance, the Permanent Council of the Organization decided to "reaffirm the[ir] commitment [...] to continue strengthening and improving the Inter-American System for the promotion and protection of human rights" and declared that "in order to accord adequate attention to activities and responsibilities in promotion of observance and protection of human rights pursuant to the American Convention on Human Rights, the Charter of the Organization of American States (OAS), and other inter-American instruments, it is essential to continue increasing the funds allocated in the program-budget of the Organization and to continue promoting voluntary contributions" (Permanent Council Resolution CP/RES. 981 (1791/11)).

III. THE SPECIAL WORKING GROUP TO REFLECT ON THE WORKINGS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH A VIEW TO STRENGTHENING THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

37. At its regular meeting of June 29, 2011, the Permanent Council of the Organization decided to create a working group based on a "Statement made by Hugo Martínez, Minister of Foreign Affairs of El Salvador and President of the forty-first regular session of the General Assembly". The working group was named *Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American System for the Protection of Human Rights*. Hereinafter the Commission will refer to it as "the Special Working Group".

38. The Special Working Group held 23 meetings, including one with the presence of the Commission and some with the presence of its President. The meetings were also attended by representatives of the Commission's Executive Secretariat, who provided information when that was appropriate. In one meeting, a series of civil society organizations were given 3 minutes each to make a statement concerning each of the themes identified by the Special Working Group.

39. The Special Working Group adopted its Report on December 13, 2011 (GT/SIDH-13/11 rev. 2), issuing 53 recommendations to the Commission, 14 to Member States and one to the General Secretariat of the Organization. On January 25, 2012 the Permanent Council approved the Report and on January 27, 2012, its President forwarded it to the Commission. On February 14, 2012, the President of the Commission informed the Permanent Council of the following:

My colleagues and I were present during the meeting of January 25; we were particularly pleased to hear Member States underline that the independence and autonomy of the Commission are cornerstones of the Inter-American System, and that each and all recommendations issued by the Special Working Group must be read in a manner consistent with that independence and autonomy and the Commission's role as a principal organ of the OAS established by Article 106 of the Charter.

In this light, I inform you that I have delivered the Report to my colleagues at the Commission, along with a number of observations submitted by civil society organizations. The Commission will consider these documents during its 144th Regular Session, which will be held from March 19 to 30, 2012, and will make the Permanent Council aware of its conclusions.

IV. CIVIL SOCIETY AND OTHER ACTORS

40. Hundreds of organizations of civil society and individuals constantly communicate to the Commission their views as to the measures necessary to strengthen the System. The Commission holds dozens of consultations, hearings and visits every year; each offers a possibility to exchange as to measures that could further enhance the protection and promotion activities undertaken by the Commission.

41. In particular relation to the Report of the Special Working Group, the Commission held a hearing at its headquarters on March 27, 2012, at the request of the International Coalition of Human Rights Organizations in the Americas. The Commission takes note of the following statement issued in connection to the hearing, signed by 188 organizations of the civil society and 49 individuals:

Throughout their history, the bodies of the IAHR and other actors interested in guaranteeing the regional protection of fundamental rights have responded to a number of challenges raised by States in the region under governments of various political persuasions that have, at different times, questioned their effectiveness, their independence, their autonomy, their criteria for action, and the binding nature of their decisions, among other aspects.

Account must be taken of this historical context in addressing this process of reflection started by the Working Group. It is impossible to ignore the fact that the Group's creation comes at a time during which various democratic governments have questioned the effectiveness of the IAHR and the role of the IACHR after it has issued decisions or taken measures affecting them. These recent reactions were mirrored even within the political bodies of the Organization of American States, and were the driving force behind the current reflection debate.

Similarly, we civil society organizations are aware that the process of reflection on the workings of the IACHR began just two years after the adoption by the IAHR bodies of the amendments to their Rules of Procedure. The positions held by some States then with respect to the IACHR's Rules of Procedure were not always geared toward its strengthening; rather, at many times they sought to diminish the scope of protection offered by the IACHR, as we have discussed in other documents. A number of the proposals made by the States then—which were considered extensively by the bodies of the IAHR at that time—have again been included as recommendations in the Report of the Working Group.

Therefore, although the undersigned civil society organizations support any initiative to reform the workings of the IACHR in the interest of strengthening it, the political situation in which the process has arisen could result in measures that, contrary to the Working Group's formal mission, intend to limit the scope of protection offered by the IACHR.

42. The Commission takes note of documents presented by Member States and organizations of the civil society within the process conducted by the Special Working Group. The Commission further takes note of documents presented directly to the IACHR with the views of civil society organizations and on March 28, 2012, the Commission held a public hearing at the request of the International Coalition of Human Rights Organizations in the Americas.

43. The Commission acknowledges that the Member States, civil society and Observer States, and will continue to invest, enormous energy and resources on the issue of its strengthening and wishes to emphasize its appreciation. As principal organ of the OAS in relation to human rights, the Commission will carefully consider this input in its constant process of institutional growth.

44. In resolution AG/RES. 2675 (XLI-O/11) the Inter-American Juridical Committee (“IJC”) was mandated to issue a study “on ways to strengthen the Inter-American Human Rights System”. The IJC published the respective document on March 27, 2012. In it, the IJC stated that its purpose “is to strengthen the [Commission] 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”. Without consulting the IACHR on the issue of its Rules of Procedure and Practices, the IJC issued in its document 32 recommendations and observations aimed primarily at the Commission and the totality of which, the Commission observes, wholly coincide with the recommendations issued by the Special Working Group.

V. THE COMMISSION’S OPINION AND CONCLUSIONS

45. The Commission will consider all input provided in the process in due application of its independence. This is the most fundamental of all principles guiding the work of the Commission, and is indispensable to enable the Commission to deliberate and take decisions without political interference from States, other organs of the OAS, or any other quarter: at adoption of the American Convention, States were single minded in their determination to ensure that the IACHR was protected from any type of political interference, even from the very organs of the Organization. As a delegate observed during the Conference,

[It is] absolutely essential that the Commission’s complete impartiality be guaranteed [...] because the Commission must be above any consideration of a political nature, it must be surrounded with all the necessary guarantees.¹⁷

The Inter-American Court, for its part, has underscored how essential it is that the Commission’s decision-making process be an independent one and has written that the process “must be the result of a collective and autonomous exercise carried out by the Commission as the oversight body of the American Convention.”¹⁸ Further, the Commission highly values the acknowledgement by Member States of the fact that the autonomy and independence of the Commission are essential traits to maintain its credibility, legitimacy and proper functioning (*cfr. Report at VIII.i.3*)

¹⁷ *Travaux préparatoires, supra*, p 343.

¹⁸ I/A Court H.R., *Case of the 19 Tradesmen. Preliminary Objection*. Judgment of June 12, 2002. Series C No. 93, paragraphs 31 to 33.

46. Throughout its history, the Commission has scrupulously observed these provisions, taking care to monitor and protect its own independence in fact and in appearance and has established this opinion having carefully considered all positions and documents described, and aware of the fact that the Inter-American System is in constant evolution.

The recommendations directed toward Member States by the Special Working Group

47. The Commission observes at the outset that five of the 14 recommendations directed at Member States by the Special Working Group surround the issue of the increase of resources that should be made available to the IACHR (*cf. Report, at VII.7.A*). The Commission welcomes this development and urges its immediate implementation: similar statements have been included in General Assembly Resolutions by Member States for at least seven consecutive years without generating a meaningful increase in the resources available from the OAS Regular Budget.

48. Second, the Commission welcomes that two additional recommendations have as their aim achieving universal adherence to all instruments in the System (*cf. Report, at VII.1.B*). The Commission has identified partial adherence as one of the main challenges of the System of Protection, and therefore is pleased to hear the States' will to promote full adherence. This intention notwithstanding, until such time as all States have ratified all instruments in the System, the Commission will exercise its jurisdiction over the 35 Member States of the Organization on the basis of Charter of the Organization and the American Declaration on the Rights and Duties of Man, to which are added, in the case of each Member State, the protections stemming from the treaties ratified by it.

49. Third, the Commission notes that five additional recommendations to Member States (*cf. Report, at VII.6.B; VII.1.B; VII.2.B*) refer to the exchange of best practices and successful experiences in the realms of cases and precautionary measures. The Commission welcomes such initiatives and remains available to Member States in this connection.

Recommendations directed toward the General Secretariat of the OAS by the Special Working Group

50. The Commission notes with interest that one recommendation (*cf. Report, at VII.7.c, item a*) mandates the Secretary General to prepare a proposal to effectively increase the resources available to the Commission. This is in line with Resolution CP/RES. 981 (1791/11) of the Permanent Council of February 18, 2011, and with General Assembly Resolution AG/RES. 2672 (XLI-O/11) which mandated the Secretary-General to continue his efforts and to present additional proposals aimed at achieving adequate financing for the IACHR in the Organization's program-budget, and (with identical content) General Assembly Resolutions AG/RES. 2601 (XL-O/10), AG/RES. 2522 (XXXIX-O/09), AG/RES. 2409 (XXXVIII-O/08), AG/RES. 2290 (XXXVII-O/07), AG/RES. 2227 (XXXVI-O/06), and AG/RES. 2128 (XXXV-O/05).

51. However, the Commission regrets that despite the inclusion of this mandate in seven consecutive resolutions since the year 2005, no significant results have been produced to this date.

Recommendations directed toward the Commission by the Special Working Group

52. The Commission wishes to express that a number of changes that coincide with recommendations of the Special Working Group have either already been implemented or are underway, as they are recurrent issues of universal concern. The Commission has already made progress, for example, in relation to activities that coincide with the following recommendations:

- **In relation to the goal of reaching ideal timeframes in case management** (*cf. Report at VII.3.*), the Commission has over the last five years implemented changes in relation to case management, and will continue to adopt all measures within its reach to ensure maximum efficiency. For instance, in what concerns the duration of the process, in 2007 the average timeframe of the process of initial study of a petition was 50.2 months, in 2008 it was 45.2, in 2009 39.7, and in 2010 36.2 months. Today, the Commission has reached an average of 27 months in the initial study of petitions. The Commission has set the vision to achieve optimum performance standards by 2016: three months in the average length, one year in admissibility and one year in merits. The Commission will not, however, sacrifice the quality of its decision or deliberation process and has carried out a detailed process of estimation of the resources necessary to carry out prompt and diligent case management. These have been described in great detail in the Commission's Strategic Plan. The Commission expects that, in congruence with the recommendations that they have formulated, the Member States will procure immediately the resources required to reach the established goals.
- **In what relates to friendly settlements** (*cf. Report at VII.4.*), the Strategic Plan of the Commission includes a specific plan of action, pursuant to which, among other actions, the Friendly Settlement Group has been created within the Executive Secretariat, the Commissioners and staff are currently participating in capacity-building activities, and manuals and best practices are being created.
- **In relation to mechanisms of consultation** (*cf. Report at VII.1.A.*), hundreds of organizations of civil society and individuals constantly communicate to the Commission their views as to the measures necessary to strengthen the System. The Commission further holds dozens of consultations with political organs of the OAS and, bilaterally, with Member States. A good example of a consultation process managed by the Commission is the last process of revision of the Rules of the Commission, which entered into force on January 1, 2010. The amended text was the result of the debate and decision of the IACHR members during three periods of sessions and a process described by Member States as thorough, open and transparent (*vide, supra* paragraphs 14 to 20).
- **In relation to tools, protocols and mechanisms for information, reporting and accountability** (*cf. Report at VII.1.A; VII.3.A; VII.6.A; VII.7.B.*). In its Strategic Plan, the Commission has included a battery of 182 indicators through which it follows up and informs on performance and results-based management; these indicators are the primary tools for these management activities. Further, in last few years the Commission has constantly renovated and updated its Internet portal to inform, among other matters, precautionary measures, reports approved and budget. In collaboration with the Department of Information and Technology Services, the Commission has also developed a sophisticated digital management system that has received several international awards. During this year the IACHR plans to publish the latest module of

this system, through which the States and the petitioners will be able to consult digital files that are under study before it.

- **In what concerns the criteria for the adoption of precautionary measures** (*cf. Report at VII.2.A*), the Commission reflected most of its current practices and criteria through the 2009 reform of its Rules. In its thematic reports, the Commission has very recently described that criteria in further detail (*vide, inter alia*, Second Report on the Situation of Human Rights Defenders in the Americas, 31.dec.11; paragraphs 417 and following).
- **In what concerns the methodology for the inclusion of States in Chapter IV of the Commission's Annual Report** (*cf. Report at VII.5.A*), the Commission has carried out a detailed process of reflection to refine the methodology for the preparation of that chapter. That process, enriched by the observations and suggestions of Member States and organizations of civil society, continues under the consideration of the IACHR. Among other elements, the Commission may deepen its analysis of civil and political rights and the furtherance of economic, social and cultural rights; the situation of persons, groups, peoples or populations historically discriminated or in situation of particular vulnerability; the status of ratification of inter-American instruments; and best practices adopted by the respective State for the protection of persons at risk.

53. The Commission agrees that efforts must be continued and enhanced in relation to the issues described above, as well as other recommendations of the Special Working Group that strengthen the System and that could modify current practices of the Commission.

54. The implementation of these recommendations requires the continuation of dialogue with the Member States as part as the constant work of strengthening the System, as well as a significant increase in the resources allocated to the Commission. The IACHR wishes to express that the recommendations will be subjected to a detailed and rigorous analysis, bearing in mind particularly their possible effect on the work of the Commission and the effective protection of human rights. The exhaustive consideration of those recommendations is beyond the scope of this document, and will be the object of dialogue and technical analysis by all users of the System.

55. Some recommendations relate to the preparation of reports, manuals or reference documents (*cf. Report at VII.1.a, items a, b, d and h*). At the outset, the Commission considers the development of training and methodological materials as a positive measure, and it will take these requests into account in its annual planning and bearing in mind all priorities that it has set for its work. The Commission will provide more follow-up information in relation to these requests as it progresses in its implementation.

56. Finally, the Commission wishes to underline that many recommendations, accepted by all as constructive, would require a substantial budgetary increase to be implemented, as Member States themselves have observed. That is the case, in particular, of the goal of reaching ideal timeframes in case management (*cf. Report at VII.3*). As stated above, the Commission considers that it has reached very high level of efficiency in its processes and, while it will continue to adopt all measures in its reach, it is acutely aware that successful and prompt case processing will require full coverage of Program 2 of the Strategic Plan.

VI. WAY FORWARD

57. During its 144 Session it decided to trigger a process of deep and diligent reflection on its procedures and mechanisms through a detailed consultation with all sectors of the Inter-American System. To that effect and as a first step, the Commission is currently considering the issuance of a questionnaire that could be distributed soon, as well as holding several hearings, some of them with regional scope. To these elements will be added all contributions presented to it so far by Member States, organizations and individuals of civil society, and any other actors in the System.

58. Further, the Commission expects to revise its Strategic Plan during its 145 Regular Session, and at that moment will decide on policies, programs and priorities, given the inextricable relation that exists between the Strategic Plan (i.e. budgeting priorities) and the recommendation of States.

59. Finally, the Commission requests that the Permanent Council and the Commission jointly prepare an agenda to further and strengthen the dialogue with the Member States.

Washington DC
April 2012