

2. Human Rights and Fundamental Freedoms

→ MANDATE

Leaders at the Quebec City Summit recognized that universal protection and promotion of human rights are fundamental to the functioning of democratic societies. The mandates are focused on six main areas: national governments adherence, in both the spirit and the letter of the law, to international human rights obligations and standards; strengthening the inter-American human rights system, including the Inter-American Commission for Human Rights (IACHR); migrant workers and their families; the human rights of women and children; and freedom of expression. Particular attention has been paid to populations that have historically suffered the consequences of discrimination and social exclusion.

The Summit Process has been a dynamic multilateral forum to place key human rights challenges squarely on the regional agenda and establish new mandates for progress. Since the Quebec City Summit, democracy and human rights in the Hemisphere have been challenged on many occasions by economic and political crises, and by a lack of confidence in public institutions and politicians. Impunity and weak systems for the administration of justice remain key pending challenges in countries throughout the region. While there has been increased attention to placing economic, social and cultural rights on the regional agenda, concrete advances remain incomplete and limited. The region continues to suffer the consequences of situations of inequality, discrimination and social exclusion for many populations and social sectors.

IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS AND RESPECT FOR INTERNATIONAL STANDARDS

The implementation of international obligations at the national level is the ultimate objective of the regional human rights system. As set forth in the Quebec City Summit, ratification of the inter-American human rights treaties is a key step in consolidating the efficacy of regional guarantees at the national level. Since that Summit, one country has ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), two have ratified the Inter-American Convention on Forced Disappearance of Persons, one has ratified the Inter-American Convention on the Prevention, Punishment and



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Eradication of Violence Against Women (“Convention of Belém do Pará”), and eight have ratified the Inter-American Convention on the Elimination of All Forms of Discrimination Against persons with Disabilities. (IACHR)

One of the Inter-American Commission for Human Rights’ (IACHR) recent initiatives in the area of implementation of international obligations has been to advise governments on how national anti-terrorism initiatives must be made compatible with the preservation of democratic values and human rights. As governments in the Americas refocused their security efforts to confront the threat of terrorism, the Commission published its comprehensive “Report on Terrorism and Human Rights” in October of 2002. The report provides advice to governments on their international human rights obligations in the struggle against terrorism, and offers specific recommendations on how to implement the rules when developing and applying anti-terrorism initiatives. (IACHR)

More generally, in March of 2003, the IACHR held a “Working Session on the Implementation of International Human Rights Commitments and Standards in the Inter-American System,” with the cooperation of the International Justice Project. Fifteen panelists from both governments and civil society addressed legislative, judicial and intra-governmental mechanisms to implement such commitments and more than 70 representatives of OAS member States participated in the dialogue. (www.oas.org)

In October of 2003, the IACHR issued its Resolution N° 1/03 on International Crime to address the need for further measures to combat impunity for genocide, crimes against humanity and war crimes. The Resolution urges states to adopt the legislative and other means necessary in order for such crimes to be punished. It specifically calls for States to ensure that presumed perpetrators are subjected to jurisdiction at the national level or to extradition where merited.

The treaty establishing the International Criminal Court (ICC) entered into force on July 1, 2002. The ICC was established to prosecute individuals accused of committing genocide, crimes against humanity and war crimes. In the Americas, 19 countries are state parties to the ICC treaty. Several countries have incorporated international obligations and joined the ICC. Brazil, for example, adopted the Rome Statute for the ICC as national law. Argentina and Ecuador made progress with draft implementing legislation, while Peru, Bolivia, and Venezuela were beginning the implementation process. (Human Rights Watch World Report 2003: Americas Overview)

In the area of racism, racial discrimination, xenophobia and related forms of intolerance, the Regional Preparatory Conference in Chile prior to the Quebec Summit, and the World Conference in Durban following the Summit helped mobilize both governments and civil society to renew their approaches to these issues and put them on the regional agenda. The Americas played a leadership role on this topic. The OAS is moving forward in this area through its recent resolution calling for studies by the IACHR on affirmative action and by the Justice Studies Center of the Americas (CEJA) on racial discrimination in the area of administration of justice.

STRENGTHENING HUMAN RIGHTS SYSTEMS

The human rights movement in the Americas has shown impressive grassroots strength. Numerous local and regional civil society organizations have dedicated themselves to the defense of human rights, including concerns such as women’s rights and freedom of expression, often working under threats of intimidation, assault and even death.

In order to address the Quebec City Summit mandate on human rights defenders and their situation in the Hemisphere, as well as the priority assigned to this issue by the OAS General Assembly, the IACHR created the Unit of Human Rights Defend-

ers in late 2001. The Unit coordinates the Executive Secretariat's work with human rights defenders and the problems they face, receives relevant information and maintains contacts with a broad range of actors including the office of the UN Rapporteur on this issue, government sources, and representatives of civil society. It serves as a focal point to ensure urgent attention to situations of imminent risk, as well as to promote strategies of promotion and protection for the role of human rights defenders. The Unit has provided support during on site visits of the Commission, as well as during hearings on particular themes or cases. The Commission is currently preparing a study on the situation of human rights defenders in the region.

Finally, in the area of strengthening the regional human rights system, both the IACHR and the Inter-American Court have implemented revised Rules of Procedure aimed at clarifying and strengthening procedures, particularly with respect to the individual petition system. For example, changes to the Commission's Rules clarify the different stages and consequences of the petition process. In accordance with the Summit mandate to facilitate the access of individuals to the protection mechanisms, another key change is the greater role for victims and petitioners in the sending of individual cases to the Inter-American Court, with the opportunity to present their own arguments and evidence during the proceedings. One result of the new Rules is that the number of contentious cases submitted to the Inter-American Court has substantially increased. In this regard, it must be noted that the positive aspects of these changes also bring additional challenges. The increase in the number of contentious cases before the Inter-American system is stretching its limited resources. For its part, the Commission is consistently called upon to respond to new and amplified mandates, as well as urgent situations, and is receiving an increasing number of individual petitions. However, insufficient funding for the IACHR to meet the increasing demands of



mandates from countries remains a major obstacle. (IACHR)

The inter-American human rights system has made important progress in recent years. The rise of democratic governments in the region has been a basic requirement for achieving advances in respect for the rule of law and human rights. The strengthening of democratic systems has brought with it an increased awareness of the regional human rights system and the protections it offers, and greatly enhanced the potential for the inter-American human rights system to play its role in advancing respect for basic rights and liberties at the national level. This heightened awareness and the existence of more open societies have, for example, resulted in an increase in the number of petitions submitted to the Inter-American Commission on Human Rights in recent years. The Commission's recommendations

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on individual cases have produced changes in national laws, policies and practices, as well as reparation for the victims of violations. Through the friendly settlement process, the Commission has facilitated constructive dialogue between parties aimed at resolving conflicts, and this mechanism has become increasingly fruitful in achieving solutions that benefit petitioners, member states and the system as a whole. The work of the Commission serves to save lives, safeguard fundamental freedoms, restore justice and achieve reparation. Through the case system and the other protection mechanisms, the Commission and Court play an increasingly vital role in the ongoing challenge that remains the priority for the system: achieving the effective implementation of the human rights protections at the national level.

MIGRATION

The IACHR decided to make the situation of migrant workers and their families a priority, considering that they are an especially vulnerable social group, often subjected to abuse and systematic violation of their basic rights. Although created before the Quebec City Summit, the OAS Special Rapporteurship on Migrant Workers and their Families is a vital component in the implementation of leaders' commitments. The role of the Rapporteurship is to raise awareness of the duty of states; to present specific recommendations to encourage states to take progressive measures in favor of migrant workers; to prepare reports and studies; and to act promptly on any petition regarding violation of rights of migrant workers. The Summit leaders decided to request the creation of an inter-American program within the OAS for the promotion and protection of the human rights of migrants. In response to this mandate, the Commission presented its initial recommendations in a report to the Permanent Council. (Rapporteur on Migrant Workers)

The Rapporteurship carried out its first thematic on-site visits in 2002, to Guatemala,

Costa Rica and Mexico, in order to obtain first hand information on the situation of migrant workers in these countries. On-site visits enable the Rapporteurship to carry out its work by establishing important contacts and collecting valuable information on the situations of migrant workers and their families. The Rapporteurship must have an overall view of the issues at play for migrant workers, their status and any developments at the national and regional level. The Rapporteurship achieves this goal through many different mechanisms, and observation and monitoring activities are a crucial means to this end. (Fourth Progress Report of the Special Rapporteurship on Migrant Workers and their Families).

Some of the key issues of concern that the Rapporteur and his team are following closely include due process guarantees available for migrant workers and their families; heightened controls on migration designed to enhance national security and combat terrorism, particularly the implementation of measures that may erode the fundamental rights of migratory workers and their families; the smuggling and trafficking of persons; and the effects of political and economic crises on migration flows in the Americas. Recent economic and political crises in Argentina, Venezuela, and the ongoing conflict in Colombia have had a dramatic effect on migration. The UN Economic Commission for Latin America and the Caribbean (ECLAC) calculates that at least 20 million of the migrants in the world were from Latin America. According to estimates, 70% of these migrants from Latin America and the Caribbean live in the United States. Another critical issue being closely followed by the Rapporteurship is the situation of migrant workers and their labor rights in the Hemisphere. As of June 2003, only seven countries had ratified the UN Convention on the Protection of the Rights of All Migrant Workers and their Families.

Human Rights of Women

→ MANDATE

Created just prior to the First Summit of the Americas in 1994, the OAS Rapporteurship on the Rights of Women has given priority to ensuring women's effective access to justice, particularly those who have been subjected to violence. The twin pillars of equality and nondiscrimination serve as the basis for the Rapporteurship's mandates, given that prompt access to effective judicial protection and guarantees are the first line of defense for the protection of basic rights. The work of the Rapporteurship on the Rights of Women indicates that the experience of women with respect to access to justice and its administration in the Americas has a common denominator: the inability of many victims to obtain prompt access to effective judicial protection and guarantees. Violence against women and impunity remain major obstacles to the realization of women's human rights in the Hemisphere. According to PAHO, 20 to 60 % of women in the Americas have been victims of intra-familial violence. (OAS, 2002 Update on the Work of the Rapporteurship on the Rights of Women).

The Rapporteurship also collaborates in the preparation of reports on specific cases concerning the rights of women, as well as with those concerning specific countries or themes, and assists in coordinating hearings on issues concerning the rights of women before the Commission. Another key component in the work of the Rapporteurship is the dissemination of information as a means of promoting women's access to effective remedies as well as a means to raise awareness within civil society of the regional mechanisms to enhance the protection of rights, including the individual petition system.

In an effort to integrate a gender perspective in the work of the OAS and in accordance with the Inter-American Program on the Promotion of Women's

Human Rights and Gender Equity and Equality, the Inter-American Commission of Women (CIM) has developed two comprehensive plans for the incorporation of a gender perspective in two of the Summit's Ministerial processes: Labor and Justice. These have been incorporated into the work of the Labor and Justice Ministers since 2001, and continue to be expanded. Plans are currently being developed for this program to also be incorporated into the work programs of the Education and Science and Technology Ministers.

ECLAC has developed an elaborate set of indicators for the areas identified in the Regional Programme of Action for the Women in Latin America and the Caribbean 1995-2000 and the Beijing Declaration and its Platform for Action,



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as well as indicators by country and region. These indicators cover many of the issues within the Summit mandates on gender equality, including poverty reduction, infant mortality, primary education, combating HIV/AIDS, maternal health and violence, however the data available predates 2001. (Report of the Joint Summit Working Group)

Initiatives at the local, national and regional levels aimed at confronting human rights violations with gender specific causes and consequences have succeeded in establishing some key minimum standards, particularly with respect to discrimination and violence against women. Within the region, we have seen the adoption of new or improved legislation, programs and policies to combat these problems. The priority challenge that continues to confront us is the gap between these standards and the actual experience of the women of the Americas. (Rapporteur on the Rights of Women).

The ongoing challenge remains funding for these crucial activities. It must be emphasized that the mandate of the

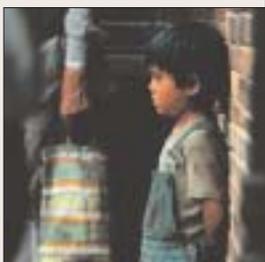
Inter-American Commission on Human Rights is based directly on the OAS Charter, the American Convention, its Statute and the other applicable instruments of the system. These responsibilities must be fulfilled, and require the allocation of the corresponding funds. Furthermore, the Commission is regularly tasked with additional or expanded mandates by the political organs of the OAS. In the context of the budgetary restrictions currently affecting the Organization as a whole, it is important to recognize that the Permanent Council appropriated limited additional funds for both the Inter-American Commission and Court in 2002 and 2003. While both the Quebec City Summit and subsequent OAS General Assemblies have strongly affirmed the need to increase funding for the Inter-American Commission and Court, both remain severely challenged by resource limitations.

Decisive regional action is required to overcome the serious challenges the region faces in advancing the hemispheric agenda of democracy, the rule of law and respect for human rights.

Human Rights of Children and Adolescents

→ MANDATE

There are two specific mandates on the human rights of children and youth in the Quebec City Plan of Action. The first is for countries to consider, sign and ratify, or accede to the two Optional Protocols to the UN Convention on the Rights of the Child as well as integrate fully their obligations pursuant to this Convention into national legislation, policy and practice. The second is that the human rights of children and adolescents are to be integrated into hemispheric institutions such as the Inter-American Court on Human Rights, the IACHR, and the Inter-American Children's Institute (IACI).



The two Optional Protocols, on the Involvement of Children in Armed Conflict, and the Sale of Children, Child Prostitution and Child Pornography, were adopted to strengthen the provisions of the UN Convention on the Rights of the Child in these areas. They entered into force respectively on February 12th and January 18th, 2002, making these Optional Protocols binding instruments for half of the countries in the Hemisphere. According to UNICEF's website, these Governments are:

- *Sale of Children, Child Prostitution and Child Pornography*: Antigua and Barbuda, Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominica, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.
- *The Involvement of Children in Armed Conflicts*: Argentina, Canada, Chile, Costa Rica, Dominica, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

The OAS Special Rapporteur on Children's Rights has organized, in conjunction with OAS Member States and civil society, several workshops and seminars to educate the public about the inter-American human rights system. For example, on June 19, 2002, in Asunción, Paraguay, the Children's Rapporteur held a workshop on the role of the inter-American human rights system in promoting and defending the rights of children and youth. The OAS also has conducted various on-site visits and workshops, with the participation of government officials and children's human rights defenders, in Paraguay, Guatemala, Honduras, Peru, Mexico, Colombia, Uruguay, Jamaica, Brazil and Trinidad and Tobago in order to promote the inter-American system's mechanisms for the protection of children.

Children's rights are gaining prominence and acceptance in the political agen-

PROGRESS

In Colombia's armed conflict more than 11,000 child combatants fight for guerrilla and paramilitary groups. On September 18, 2003 Human Rights Watch announced that the Colombian government took new steps toward ending the use of child combatants. The Colombian government plans to expand its programs to rehabilitate former child combatants and also pay special attention to the demobilization of child combatants in talks with both the guerrillas and the paramilitaries. These are difficult tasks as the armed groups often make some children execute others who try to desert.

da of the Americas. However, progress on children's rights has been uneven. UNICEF outlines some challenges to children's rights, which include: States that are moving towards increasingly punitive systems of juvenile justice, where children are beaten, arbitrarily detained by police and forced to share prisons with adults in inhumane conditions; combating child labor and exploitation; armed conflicts and the recruitment of child combatants. The IACHR states in their Recommendations for Eradicating the Recruitment of Children and Their Participation in Armed Conflicts that most member countries laws establish a minimum age of 18 for conscription but the practice of violating the human rights of children persists by forced "drafting" by state military forces and armed dissident groups that also recruit minors. Often the young recruits are young people from low-income and/or indigenous families, which are disproportionately affected by poverty and lack of access to justice.



Freedom of Expression

→ MANDATE

The Inter-American Commission on Human Rights (IACHR) created the Special Rapporteurship for Freedom of Expression in 1997 in response to a profound concern regarding constant curtailment of freedom of the press and of information in the Hemisphere. At the Second and Third Summits of the Americas the Heads of State and Government reaffirmed the importance of this office for the democratic system in the region.

“The right of freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the Hemisphere.”
(Declaration on Freedom of Expression)

Since he took office, the Special Rapporteur has participated in international fora and carried out activities designed to coordinate efforts with other nongovernmental organizations. Through the ties established with member states and various civil society organizations, this office has helped to bring on stream initiatives aimed at amending the laws restricting the right to freedom of expression as well as promote

new laws broadening the right of citizens to play an active part in the democratic process through access to information.

One of the major contributions of the Office of the Rapporteur was the preparation of a Draft Declaration of Principles on Freedom of Expression, which was adopted by the Inter-American Commission at its 108th regular session in October 2000. This Dec-

laration has become a core document for interpretation of Article 13 of the American Convention on Human Rights (which establishes freedom of expression as a fundamental human right) and a reference tool throughout the Hemisphere with respect to the minimum necessary standards that democratic societies must guarantee for the full exercise of that right.

The Office of the Rapporteur also conducts extensive monitoring of violations and threats to freedom of expression in the Hemisphere. This work is reflected in its annual assessment of the status of freedom of expression in the Americas, as well as in its press releases which are distributed throughout the Hemisphere and beyond it.

The work it performs with respect to individual cases considered within the framework of the organs of the inter-American system has led victims of violations of freedom of expression to regard the system as the final resort for seeing that justice is done. The judgments and reports issued in individual cases in which the Office of the Rapporteur has actively participated have helped improve the situation of human rights in the region by inducing specific changes in the legislation and practices of member states of the OAS. Precautionary and preliminary measures have also had a significant impact on protection of the lives of numerous social communicators and the prevention of possibly irreparable damage to the exercise of freedom of expression.

The Office of the Rapporteur has, in addition, made far-reaching contributions to the doctrine of freedom of expression in the chapters of its annual reports devoted to topics such as legislation; gender and freedom of expression; access to information; ethics in the media; terrorism and freedom of expression; and poverty and freedom of expression.

The Office maintains its commitment to combating the prevalence of certain threats to and violations of freedom of expression

- Freedom of expression is both a personal and a collective right
- Freedom of expression is a cornerstone without which no democratic society can exist. An ill-informed society is not fully free.
- Guaranteeing access to information is a basic instrument for promoting justice and it guarantees the existence of remedies to prevent attacks on human rights.

that it has had to draw attention to repeatedly in its annual reports. Assaulting and murdering journalists, impunity, the dearth of legislation guaranteeing access to information, and the existence of laws prohibiting insults against officials are all still lamentable features of some countries in the region. Further information on the Office of the Rapporteur for Freedom of Expression may be found at the following web site: www.cidh.oas.org/Relatoria

