

## **Statement of Reasons to Modify the Rules of Procedure**

Taking into account the importance of the Inter-American System for the promotion and protection of Human Rights (hereinafter, also the "Inter-American system of Human Rights" or "Inter-American system") whose organs have the competence to promote the observance of human rights in all of the Member States of the Organization of American States (hereinafter, "OAS") in accordance with the obligations assumed by each State, and that are subsidiary to domestic legal systems, the Inter-American Court of Human Rights (hereinafter, the "Court" or the "Tribunal") has been involved, in recent years, in the process of amending its rules, the first stage of which has concluded with the modifications mentioned in this document.

In this stage of the reform process and without reservation of those that shall be done afterwards, the Court has showed a constant willingness to dialogue; hence, apart from presenting its own proposals, it has urged other actors to participate in the process of reflection. This willingness to dialogue has been also demonstrated by the participation of the Court's members in several regional and international forums to which they have been convened; by the numerous statements of the different Presidencies about the need for dialogue and by the Court's participation at the instance of the General Assembly of the OAS (hereinafter, the "General Assembly").

In Resolution AG/RES.2407 (XXXVIII-O/08), the Member States reaffirmed their commitment to continue strengthening and improving the Inter-American system for the promotion and protection of human rights and, in that regard, recognized as a positive step the broad process of reflection on the Inter-American system for the promotion and protection of human rights within the framework of the Committee on Juridical and Political Affairs (hereinafter, "CJPA") of the Permanent Council of the OAS and the importance of the informal sessions held as part of the work of the CJPA, as well as the exchange of proposals and comments related to the strengthening and improvement of the Inter-American system of Human Rights among Member States and the organs of the system.

Furthermore, in Resolution AG/RES.2408 (XXXVIII-O/08), the General Assembly invited the Inter-American Court and its judges to continue participating in the dialogue with Member States, within the framework of the process of reflection on the strengthening of the Inter-American system; likewise, it invited the Court to take into account the proposals and comments of Member States presented in the framework of the joint study of April 4, 2008, regarding the functioning of the Inter-American system by Member States and the members of the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") and the Inter-American Court, as well as the contributions of civil society. Furthermore, it thanked the Court for its willingness to dialogue with the Member States in order to reach a common view in the event of possible reforms to its Rules of Procedure.

In this spirit of dialogue, the Inter-American Court asked the different actors and users of the Inter-American system to present the comments they deemed pertinent

in relation to several topics to be considered during the first phase of the process of reflection, in relation to the following issues: procedure to monitor compliance with the judgments; procedure to monitor compliance with provisional measures; hearings of the Court's sessions to be held away from its seat; procedural moment to present the *amicus curiae*; presentation of briefs by electronic means; time limit to submit the brief containing pleadings, motions, and evidence and the answer to the application; deadlines to present the annexes to the briefs presented by the parties; testimonial and expert evidence; appropriate procedural moment to replace the expert witness or witness and to challenge them and the qualification of the victim's statement rendered in a case. To address this matter, the Court had originally invited all interested parties to submit their observations no later than December 8, 2008; this deadline was extended on December 2 that same year and expired on January 19, 2009. Additionally, it indicated that there were other topics still pending discussion and that it would request the observations of the interested parties on such issues in the near future, all of this as part of the constructive, participatory, and transparent communication between the Inter-American Court and the different actors before it.

In response to the invitation made by the Inter-American Court, the following actors of the system presented their observations:

- a. The Inter-American Commission on Human Rights;
- b. The States of Brazil, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, México, Uruguay, and Venezuela;
- c. Several civil organizations, namely, CEJIL (Center for Justice and International Law), Instituto de Defensa Legal (*Legal Defense Institute*), Coordinadora Nacional de Derechos Humanos (*National Coordinator of Human Rights*), Centro de Estudios Legales y Sociales (*Center for Legal and Social Studies*), Fundación para el Debido Proceso Legal, (*Association of the Due Process of Law*) Comisión Colombiana de Juristas (*Colombian Commission of Jurists*), Colectivo de Abogados "José Alvear Restrepo" (*Jose Alvear Restrepo Lawyers' Collective*), Grupo Interdisciplinario por los Derechos Humanos (*Interdisciplinary Group for Human Rights*), Fundação Interamericana de Defesa dos Direitos Humanos y Justiça Global, and
- d. Instituto de Defensa Pública de Guatemala (*Guatemalan Institute of Public Defense*).

The great majority of the observations submitted to the Tribunal consider the recent practice of the Court of holding public hearings away from its headquarters to be a positive development. Likewise, in Resolution AG/RES.2408 (XXXVIII-O/08), the General Assembly considered that one way of promoting the Inter-American system is by holding periods of special sessions away from the seat of the Court. Based on the foregoing, the Court considers it is appropriate to include a provision after the current Article 12 of the Rules of Procedure to establish, in terms similar to that of Article 3 of its Statute, the Tribunal's practice of holding hearings away from its seat.

In order to adapt its functioning to the technological changes, the Tribunal stipulated in Article 15 the practice of recording the audio of the hearings and the deliberations of the Tribunal.

The Court regulated, in Article 22, the possibility for a State to appoint the Deputy Agent or Agents it deems fit for its defense.

Furthermore, in order to provide further clarification regarding the procedure of provisional measures and to regulate its constant practice, the Tribunal has decided to add or modify certain subsections to the current Article 25 (new Article 26) to regulate its practices by establishing the power of the Court or its President to require information on a request for provisional measures from a State, the Commission, or the beneficiaries' representatives before making a decision on the matter; to require from other sources of information, relevant data on the case that may allow the Court to evaluate the situation of gravity and urgency and the effectiveness of the measures; and the possibility of holding public and private hearings on provisional measures.

Regarding the submission of the briefs during the proceeding, several actors within the Inter-American system indicated that the seven-day deadline established in the current Article 26 (new Article 27) of the Rules of Procedure is, in practice, insufficient for the submission of the original documents and annexes sent electronically. For that reason, the Tribunal has decided to modify that article, extending the deadline to twenty-one days.

Taking into consideration that the representatives of the alleged victims are the ones who take legal actions on behalf of them during the proceeding before the Tribunal, the Court decided that the application shall not be notified to the original claimants, but only to the alleged victim or to the people accredited as his or her representative, as stipulated in subsection 1 of Article 35 (new Article 36).

In this sense and in order to strengthen the participation of the alleged victim in the procedure, the Court decided that the time limit granted to present the brief containing the pleadings, motions, and evidence shall start running as of receipt of the application and the annexes thereto; therefore, Article 36 (new Article 37) has been modified.

Moreover and in order to achieve greater procedural balance in contentious proceedings before the Court, where the participation of the alleged victims is allowed through the presentation of a brief containing pleadings, motions, and evidence, the Tribunal has decided to modify the deadline established in Article 38 (new Article 39) of the Rules of Procedure to allow a respondent State to submit an answer to the Commission's application and to the autonomous brief filed by the alleged victim or his or her representatives within the term of two months as from receipt of this latter brief and the annexes thereto. With this reform, the deadline for the State to present its answer shall never be less than four or greater than six months from the date that the application is submitted to the Court, in accordance with the amended Articles 26 and 36 (new Articles 27 and 37).

Several of the observations submitted to the Tribunal indicated the need to regulate the submission of the *amici curiae*. For that reason, the Court has deemed it pertinent to add an article after the current Article 39 establishing that the *amici curiae* may be submitted to the Tribunal, together with its annexes, within the fifteen days following the public hearing. In the cases in which no public hearing is held, such briefs shall be submitted within the fifteen days following the corresponding Order that set the deadline for the submission of final arguments and documentary evidence.

In order to improve the way the Court receives and processes evidence, and in consideration of the observations presented, the Court considered it appropriate to

reform the Rules of Procedure so that the declarations of the alleged victims are no longer qualified as testimonial declarations and, therefore, are no longer needed to be given under oath. In this sense, the declarations of the alleged victims shall be assessed, within the context of the case, taking into account the special characteristics of such statements. Additionally, it considered it fitting to reformulate Articles 49 and 50 (new Articles 52 and 53) in order to unify the deadline and procedural moment in which parties may object to witnesses and expert witnesses.

In order to clarify the case-law of the Court, the Tribunal considered it was appropriate to omit from the Rules of Procedure any reference to the next-of-kin of the alleged victims, given the fact that, according to the legal opinion the Court has held for many years now, under certain circumstances, those shall be considered as alleged victims of any violation of the rights recognized in the American Convention and may be beneficiaries of the reparations that, in each case, the Tribunal determines, as long as they have been identified as such in the Commission's application. In this way, said next-of-kin shall be considered alleged victims and all the provisions in reference to the victims, including the ones in the previous paragraph, shall be applicable.

Moreover, in order to improve the duty enshrined in Article 45 (new Article 47) of the Rules of Procedure, the Court decided to establish the possibility of commissioning the Secretariat to carry out the preliminary proceedings for taking evidence only in those cases where it is impossible for the Tribunal to proceed according to the terms of subsection 4 of said article.

The Court also decided to add a provision after the current Article 46 (new Article 48), in order to regulate the possibility of replacing the witnesses initially proposed by the parties. In this sense, in order to guarantee legal certainty in the procedure before the Court, it was determined that in order for the parties to propose the replacement of the statement of an alleged victim, witness or expert witness, they have to establish legal grounds for such request.

The Court deemed it fitting to reform Article 47.1 so as to regulate the power of the Tribunal to designate expert witnesses in the adversarial cases brought before it, in order to rely on further scientific, artistic, technical or practical knowledge regarding the disputed facts.

In Resolution AG/RES.2408 (XXXVIII-O/08), the General Assembly took note of the recent practice of the Court of holding private hearings on the procedure to monitor compliance with its Judgments, and of the fact that those States who presented observations to the Tribunal, as well as civil society organizations, expressed their approval of such practice. For that reason, the Court has decided to establish this practice in its Rules of Procedure by adapting the current Article 14(1) and adding an article after the current Article 59.

Finally, the Tribunal has decided to continue with the process of procedural reforms with a view to strengthen the Inter-American system, improve the efficiency in the proceedings and guarantee the procedural balance among the parties. To that end, it shall continue the dialogue with the Member States, the OAS competent organs, and civil organizations. Particular emphasis is given to the consultation and coordination with the Inter-American Commission given the fact that, within the pending issues, there are adjustments and clarifications to be made necessary for the role of the Inter-American Commission in the process of contentious cases, as well as

provisional measures before the Court. Therefore, the Court shall also continue the dialogue with the Inter-American Commission.

## **RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

Approved by the Court during its XLIX Ordinary Period of Sessions, held from November 16 to 25, 2000,<sup>1</sup> and partially amended by the Court during its LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009.

### **PRELIMINARY PROVISIONS**

#### **Article 1. Purpose**

1. These Rules regulate the organization and establish the procedure of the Inter-American Court of Human Rights.
2. The Court may adopt other Rules as may be necessary to carry out its functions.
3. In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Court shall decide.

#### **Article 2. Definitions**

For the purposes of these Rules:

1. the term "**Agent**" refers to the person designated by a State to represent it before the Inter-American Court of Human Rights;
2. the term "**Deputy Agent**" refers to the person designated by a State to assist the Agent in the discharge of his duties and to replace him during his temporary absences;
3. the term "**amicus curiae**" refers to the person who is unrelated to the case and to the proceeding and who submits to the Court a reasoning about the facts contained in the application or legal considerations over the subject-matter of the proceeding, by means of a document or an argument presented in the hearing.<sup>2</sup>
4. the expression "**General Assembly**" refers to the General Assembly of the Organization of American States;

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<sup>1</sup> The first Rules of Procedure of the Court was approved by the Tribunal in its III Ordinary Period of Sessions, held from June 30 to August 9, 1980. The Court amended the Rules of Procedure during its XXIII Ordinary Period of Sessions, held from January 9 to 18, 1991; during its XXXIV Ordinary Period of Sessions, held from September 9 to 20, 1996; during its XLIX Ordinary Period of Sessions, held from November 16 to 25, 2000; and during its LXI Ordinary Period of Sessions, held from November 20 to December 4, 2003.

<sup>2</sup> Added by the Court during its LXXXII Ordinary Period of Sessions, in the session held on January 29, 2009