

**THE HUMAN RIGHTS OBLIGATIONS OF OAS MEMBER STATES  
PROVIDING INTERNATIONAL ASSISTANCE IN THE REGION**

**A Brief to the Inter-American Commission on Human Rights**

**for a Hearing on the Economic and Social Rights Situation in Haiti following the Earthquake  
and the Human Rights Obligations of OAS Member States  
Scheduled for March 23, 2010**

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## INTRODUCTION

Member States of the Organization of American States (OAS) have a long history of assisting Haiti. OAS Member States contribute the majority of troops to the United Nations Stabilization Mission in Haiti (MINUSTAH). They provide significant financial resources and personnel for basic services, such as medical care, and for development, in areas like agriculture. Through the years, Member States have sought to promote human rights in Haiti, sending delegations, furnishing technical assistance, and offering support.

Now, OAS Member States have laudably stepped in to help their neighbor following the catastrophic earthquake that struck the island nation on January 12, 2010. OAS Member States are providing assistance to some of the estimated three million people in desperate need who were left without the food, water, medical care, and housing necessary for survival and well-being.

The Government of Haiti has the primary obligation to guarantee these rights to its people. Under international human rights law, it must respect, protect, and fulfill the whole range of human rights—economic, social, cultural, civil and political—of all Haitians. However, in the aftermath of the earthquake, the Government of Haiti needs assistance to meet its obligations. This brief therefore does not discuss the obligations of the Government of Haiti itself. Instead, it contends that in States like Haiti, where the international community is intervening through international assistance, human rights obligations inhere to regulate those interventions.

This brief focuses on obligations common to all OAS Member States. It seeks to advance cooperative efforts within the Americas to fulfill economic and social rights. The actions of OAS Member States to assist the people of Haiti in their greatest time of need must be applauded. The Commission could guide Member States in recognizing and clarifying their human rights obligations in this regard.

**First, under Inter-American law, OAS Member States have obligations with regard to economic, social, and cultural rights.** The Charter of the OAS (the Charter), the American Declaration of the Rights and Duties of Man (the Declaration), and the American Convention on Human Rights (the Convention) recognize a wide array of economic, social, and cultural rights, binding Member States.

**Second, OAS Member States are called on to cooperate with one another to improve the human rights situation in Haiti.** Under Inter-American law, Member States have obligations to work together for economic, social, and cultural rights, particularly when a state is seriously affected by conditions it cannot remedy alone. Such cooperation requires coordination of resources and capabilities.

**Third, OAS Member States have concrete and specific obligations under international law to respect the economic and social rights of the people of Haiti.** Following the earthquake in Haiti, the Inter-American Commission on Human Rights (the Commission) provided a helpful framework to understand the obligations of OAS Member States providing international assistance in the region. The Commission reminded the Haitian government, the international community, and implementing organizations on the ground of “the importance of respecting international human

rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable.”<sup>1</sup> While the Government of Haiti has the primary obligation to guarantee the human rights of those in its territory, other Member States acting in Haiti have a minimum duty to respect human rights.

**Fourth, in order to fulfill their obligation to respect the human rights of all Haitians, OAS Member States must take an approach that brings human rights to the forefront of all assistance efforts.** They should therefore adopt and use a human rights-based approach to their assistance to Haiti, actively ensuring the goals of transparency, accountability, capacity development, participation, and non-discrimination.

**After presenting these arguments, the brief respectfully requests that the Commission use its position to draw attention to the violation of economic and social rights in Haiti and to guide States regarding their obligations when delivering assistance.** It requests that the Commission include a statement in its press release regarding this session, expressing how OAS Member States can fulfill their obligation to respect human rights, especially non-derogable rights and the rights of vulnerable populations, as they provide assistance to Haiti. We further request that the Commission conduct an on-site visit to Haiti to examine these issues *in loco*.

## ARGUMENT

### I. OAS Member States Have Economic and Social Rights Obligations under Inter-American Law

OAS Member States have obligations under the OAS Charter with regard to human rights, including economic, social, and cultural rights. Under the Charter, Member States recognize “the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.”<sup>2</sup>

The fundamental rights referred to in the Charter are further clarified by the American Declaration.<sup>3</sup> The American Declaration recognizes a wide variety of economic and social rights: children’s rights; the rights to food, clothing, housing and medical care; the right to education; the right to culture; the right to work; and the right to social security.<sup>4</sup> As the Inter-American Court of Human Rights (the Court) has held, the OAS Charter “cannot be interpreted and applied as far as human rights are concerned without relating its norms...to the corresponding provisions of the

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<sup>1</sup> Inter-Am. C.H.R., Press Release No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), available at <http://www.cidh.org/Comunicados/English/2010/11-10eng.htm> [hereinafter IACHR Press Release 11/10].

<sup>2</sup> Charter of the Organization of American States, art. 3(m) Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter]; see also *id.* at arts. 34, 45, & 49.

<sup>3</sup> Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion, OC-10/89, Inter-Am. Ct. H.R. (ser. A) No.10, at ¶ 43 (July 14, 1989) [hereinafter Interpretation of the American Declaration Advisory Opinion] (“Hence it may be said that by means of an authoritative interpretation, the member states of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter.”).

<sup>4</sup> Organization of American States, American Declaration on the Rights and Duties of Man, arts. VII, XI, XII, XIII, XIV, & XVI, June 2, 1998, AG/RES. 1591 (XXVIII-O/98) [hereinafter American Declaration].

Declaration.”<sup>5</sup> All Member States therefore are bound by the Charter and Declaration, and must uphold the fundamental rights set forth in the American Declaration.<sup>6</sup>

Member States that have ratified the American Convention also have obligations under the Convention. Article 26 of the Convention protects and promotes “the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”<sup>7</sup> According to the text of these instruments and the jurisprudence of the Inter-American human rights bodies, the Convention and the Declaration are intimately connected. Article 29(d) of the Convention provides that no provision of the Convention may be interpreted as “excluding or limiting the effect that the *American Declaration* (...) may have.”<sup>8</sup> The Declaration must therefore be taken expressly into consideration when interpreting the Convention. As the Inter-American Court has recognized, “given the provisions of Article 29(d) [of the Convention]... States cannot escape the obligations they have as members of the OAS under the declaration, notwithstanding the fact that the Convention is the governing instrument for the State Parties thereto.”<sup>9</sup>

In light of the text of the key regional human rights instruments, as well as decisions of the Court and the Commission, the Charter should be understood to encompass, at a general level, the *corpus juris* of rights set forth in the Convention and the Declaration.<sup>10</sup>

According to these sources of law, OAS Member States have a joint responsibility to cooperate for the benefit of human rights in the region. When engaging in cooperation in the region, as now in Haiti, Member States have obligations to respect human rights. As the Commission has noted, particular care should be taken to respect non-derogable rights and the rights of the most vulnerable.

## **II. OAS Member States Should Cooperate to Improve the Human Rights Situation in Haiti**

Both the OAS Charter and the American Convention indicate that OAS Member States have a shared responsibility to cooperate for the eradication of extreme poverty, promotion of development, and fulfillment of economic and social rights in the region.

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<sup>5</sup> Interpretation of the American Declaration Advisory Opinion, *supra* note 3, at ¶ 43.

<sup>6</sup> The Commission applies the provisions of the Declaration directly to States that have not ratified the Convention. *Coard et al. v. United States*, Case 10.951, Inter-Am. C.H.R., Report No. 109/99, ¶ 36 (1999); *Roach & Pinkerton v. United States*, Case 9.647, Inter-Am. C.H.R., Report No. 3/87, ¶¶ 46-49 (1987) (“As a consequence of articles 3(j), 16, 51(e), 112 and 150 of the Charter, the provisions of other instruments of the OAS on human rights [including the American Declaration of the Rights and Duties of Man] acquired binding force.”).

<sup>7</sup> American Convention on Human Rights, art. 26, Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter American Convention].

<sup>8</sup> American Convention, *supra* note 7.

<sup>9</sup> Interpretation of the American Declaration Advisory Opinion, *supra* note 3, at ¶ 43.

<sup>10</sup> Article 29 permits interpretation of the Convention in light of other regional instruments, such as the Protocol of San Salvador and the Inter-American Democratic Charter, as well as the rights enshrined in international treaties and individual States’ domestic legislation. Thus, when interpreting the Convention, the Commission has invoked other human rights norms for more than two decades. “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Article 64 of the American Convention of Human Rights), Advisory Opinion, OC-1/82, Inter-Am. Ct. H.R. (ser. A) No.1, ¶ 43 (Sept. 24, 1982) [hereinafter “Other Treaties” Advisory Opinion].

### A. Inter-American Law Provides that Member States Should Work Together to Fulfill Economic and Social Rights

The OAS has repeatedly stressed the importance of protecting and promoting economic and social rights in the hemisphere.<sup>11</sup> Both the Charter and the Convention call upon Member States to cooperate for the benefit of economic and social rights beyond their borders.

Among the core purposes of the OAS is the promotion, through cooperative action, of economic and social development.<sup>12</sup> The Charter sets the eradication of extreme poverty as an essential purpose of the OAS.<sup>13</sup> It declares that: “Inter-American cooperation for integral development is the common and joint responsibility of the Member States” and “should include the economic, social, educational, cultural ... fields.”<sup>14</sup> Notably, the Charter specifies the goals of ensuring basic survival rights such as food and nutrition,<sup>15</sup> and health and sanitation.<sup>16</sup>

Member States have similar obligations under the Convention. According to Article 26 of the Convention, “States Parties undertake to adopt measures, both internally and *through international cooperation*, especially those of an economic and technical nature, with a view to achieving progressively . . . the full realization” of fundamental rights under the Charter.<sup>17</sup> The formulation of the duty makes clear that, in addition to their duties within their territories, States should take cooperative steps that are aimed at fulfilling economic and social rights within the

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<sup>11</sup> Inter-Am. C.H.R., Annual Report 2003, OEA/Ser.L/V/II.118, doc. 5 rev. 1 (2003), ch. II(f), *Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas*, AG/Res. 1925 (XXXIII-O/03) (adopted at the fourth plenary session held on June 10, 2003); *see also* Inter-Am. C.H.R., Annual Report 2004, OEA/Ser.L/V/II/122, doc. 5 rev. 1 [hereinafter IACHR Annual Report 2004], ch. II(f), *Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas*, AG/Res. 2030 (XXXIV-O/04) (Adopted at the fourth plenary session on June 8, 2004); Inter-Am. C.H.R., Annual Report 2002, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003), ch. II(f), *Observations and Recommendations on the Annual Report of the Inter-Am. C.H.R.*, AG/Res. 1894 (XXXII-O/02) (June 4, 2002).

<sup>12</sup> OAS Charter, *supra* note 2, at art. 2(f).

<sup>13</sup> *Id.* at art. 3(f) (“[E]limination of extreme poverty is an essential part of the promotion and consolidation of representative democracy and is the common and shared responsibility of the American States.”).

<sup>14</sup> *Id.* at art. 31. The Inter-American Democratic Charter similarly recognizes that “the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of Member States.” Inter-American Democratic Charter, prml., Sep. 11, 2001, 40 I.L.M. 1289. Under Article 12 of the Democratic Charter, OAS Member States are “committed to adopting and implementing all those actions required to (...) reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries in the hemisphere.” *Id.* at art. 12.

<sup>15</sup> OAS Charter, *supra* note 2, at art. 34(j) (“Proper nutrition, especially through...efforts to increase the production and availability of food.”).

<sup>16</sup> *Id.* at arts. 34(i) (“Protection of man’s potential through the extension and application of modern medical science”); *id.* at 34(l) (“Urban conditions that offer the opportunity for a healthful, productive and full life.”); *see also* Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 10, Nov. 11, 1988, O.A.S.T.S. No. 69 [hereinafter Protocol of San Salvador] (“(1) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. (2) ...State Parties agree to recognize health as a public good and, particularly to adopt the following measures to ensure that right.”).

<sup>17</sup> American Convention, *supra* note 7, at art. 26 (emphasis added).

hemisphere. These measures should to be undertaken progressively, that is, in a manner which constantly and consistently advances toward the full realization of these rights.<sup>18</sup>

OAS Member States have undertaken to provide assistance to relief and reconstruction efforts in Haiti. As suggested by the Charter and Convention, the resources allocated should be used to undertake actions needed to ensure core rights. States should conduct assistance with the aim of fulfilling economic and social rights, as well as civil and political rights.<sup>19</sup>

**B. Member States Have a Particular Duty to Cooperate When a State in the Region Is Seriously Affected by Conditions It Cannot Remedy Alone**

In addition to the general obligation to cooperate, OAS Member States have agreed to help any State in the region facing serious challenges that it cannot overcome alone. Article 37 of the Charter reflects Member States' shared responsibility to "join together in seeking a solution ... whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State."<sup>20</sup>

Even prior to the earthquake, Haiti was the most impoverished country in the Americas and suffered severe challenges to economic development. On the occasion of its 2004 visit to Haiti, the Commission recognized that "fundamental problems such as extreme poverty, high illiteracy and malnutrition continu[e] to deprive Haitians of fundamental economic, social and cultural rights and at the same time exacerbate the consequences resulting from denials of basic civil and political rights."<sup>21</sup> It called upon the international community to provide Haiti with the support and assistance necessary to overcome the significant challenges that it faced in fully realizing respect for the rule of law, democracy and human rights.<sup>22</sup>

The Haitian government, which has the primary obligation to fulfill its citizens' human rights under international human rights law, relied upon international assistance to help provide basic services even before the earthquake. Now, it faces a crisis it cannot remedy alone. Under these circumstances, OAS Member States have a duty to "join together in seeking a solution" and enable the Haitian government to be the primary guarantor of its citizens' rights.

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<sup>18</sup> Inter-Am. C.H.R., Second Report on the Situation of Hum. Rts. in Peru, OEA/Ser.L/V/II.106, doc. 59 rev. ch. VI, ¶ 11 (2000).

<sup>19</sup> Ultimately, because all human rights are indivisible and interrelated, Haiti will need both economic and social improvements and civil and political stability for a better future. Report of the Secretary-General on the United Nations Stabilization Mission in Haiti to the UN Security Council, ¶ 22, U.N. Doc S/2006/60 (Feb. 2, 2006). ("Effective promotion of stability in Cite Soleil will require supplementing security activities with development and humanitarian efforts, which can palpably improve conditions in the area and provide opportunities for progress.")

<sup>20</sup> OAS Charter, *supra* note 2, at art. 37.

<sup>21</sup> IACHR Annual Report 2004, *supra* note 11, at ch. II(c), ¶ 30.

<sup>22</sup> *Id.*

### C. Cooperation Requires Coordination of Resources and Capabilities

The Charter specifies that Inter-American cooperation in the region should be continuous and preferably channeled through multilateral organizations.<sup>23</sup> It further indicates that States should contribute in accordance with their resources and capabilities.<sup>24</sup>

In the case of Haiti, OAS Member States should, therefore, coordinate their assistance carefully. When making pledges of resources, they should fulfill them in a timely and consistent way to ensure that cooperation is continuous and predictable. OAS Member States should work through and with international and regional organizations, including financial institutions, and the Government of Haiti for the improvement of economic, social, and cultural rights in Haiti.

### III. OAS Member States Have a Duty to Respect Human Rights When Engaging in International Cooperation to Assist Haiti

Following the earthquake in Haiti, the Commission provided a helpful framework to understand the obligations of OAS Member States providing international assistance in the region. The Commission reminded the Haitian government, the international community, and implementing organizations on the ground of “the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable.”<sup>25</sup>

While the Government of Haiti has the primary obligation to guarantee the human rights of those in its territory, other Member States acting in Haiti also have obligations vis-à-vis the Haitian people. The capacity of the host state is severely diminished and the international actors are taking on important governmental functions. In this context, respect for human rights norms by States acting beyond their territories is particularly important.

When cooperating to provide assistance to another State in the region, either bilaterally or through international organizations, OAS Member States have a minimum duty to respect human rights. With regard to economic and social rights, the obligation to respect rights requires “non-interference by the State in the freedom of action and in the use of the resources of each individual or group in order to meet by themselves their economic and social needs.”<sup>26</sup> In other words, the human rights framework requires that States do no harm to the human rights of individuals who are directly affected by their actions.<sup>27</sup> Under this standard, Member States must ensure their actions

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<sup>23</sup> OAS Charter, *supra* note 2, at art. 32.

<sup>24</sup> *Id.*

<sup>25</sup> IACHR Press Release 11/10, *supra* note 1.

<sup>26</sup> *Quito Declaration on the Enforcement and Realization of Economic, Social and Cultural Rights in Latin America and the Caribbean*, ¶ 28, July 24, 1998, in 2 YALE HUM. RTS. & DEV. L.J. 215 (1999).

<sup>27</sup> *See, e.g.,* Alejandro v. Cuba, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, OEA/Ser.L/V/II.06, doc. 3 rev. ¶ 25 (1999) (for proposition that when agents of a State exercise power or authority over persons outside national territory, the State’s obligation to respect human rights continues); *see generally* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 183, 192-93 (Fons Coomans & Menno T. Kamminga, eds. 2004); Report of the Special Rapporteur on the Right to Food, Jean Ziegler, ¶ 48, UN Doc. E/CN.4/2005/47 (2005) (“The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries.”).

do not negatively affect the ability of people to realize their essential needs—including adequate food and water, and basic health care.<sup>28</sup>

To respect these minimum survival rights, OAS Member States should ensure that their international assistance to Haiti is provided in a manner that is consistent with human rights. They should undertake a human rights assessment as part of the planning and delivery process to ensure that aid does not negatively affect human rights.<sup>29</sup> Because the Government of Haiti has the primary obligation to fulfil the rights of its people, cooperative efforts should be aimed at building the capacity of the Haitian state to fulfil these rights in the long-term.

### **A. Member States Have Particular Duties to Respect Non-Derogable Rights**

Under Inter-American law, even in times of emergency, certain rights cannot be infringed. The American Convention specifies that these include: the right to juridical personality; the right to life; the right to humane treatment, freedom from slavery, freedom from ex post facto laws, freedom of conscience and religion; the rights of the family; the right to a name; the rights of the child; the right to nationality; the right to participate in government; and the judicial guarantees necessary to those rights.<sup>30</sup> In addition, Member States may not discriminate on the grounds of race, color, sex, language, religion, or social origin, even in emergencies.<sup>31</sup>

This section focuses on three key non-derogable rights: the right to life, the rights of the child, and freedom from discrimination. As explained below, Inter-American and international jurisprudence has established that the right to life and the rights of the child share minimum core economic and social rights elements. These entail basic subsistence needs and survival rights such as food, clean water, warmth, shelter and basic health care, which must be respected even in emergencies.

#### **1. The Right to Life, Including Basic Elements of the Rights to Adequate Housing, Food, Water, and Health Care, Is Non-Derogable**

Effective realization of the human right to life is dependent on enjoyment of the right to fundamental conditions necessary to support life, including elements of the rights to adequate

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<sup>28</sup> Most scholars writing on this issue generally agree on the low threshold which triggers the extraterritorial duty to respect in contrast with other natures of obligations. See Fons Coomans, *Some Remarks on the Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 183, 193 (Fons Coomans & Menno T. Kamminga, eds. 2004); see also Rolf Kunnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 201, 216 (Fons Coomans & Menno T. Kamminga, eds. 2004) (“States parties jointly and individually must not destroy anybody’s human rights standards. Such an obligation is incumbent under all circumstances.”)

<sup>29</sup> SIGRUN I. SKOGLY, BEYOND NATIONAL BORDERS: STATES’ HUMAN RIGHTS OBLIGATIONS IN INTERNATIONAL COOPERATION 192-93 (2006).

<sup>30</sup> American Convention, *supra* note 7, at art. 27(2).

<sup>31</sup> See Juridical Condition and Rights of the Undocumented Migrants, Inter-Am. Ct. H.R. Advisory Op. OC-18/03, at 113 (Sept. 17, 2003) [hereinafter Rights of Undocumented Migrants Advisory Opinion]; see also American Convention, *supra* note 7, at art. 27(1).

housing, food, clean water, and health care. Put simply, a human being cannot survive without these. Even in emergencies, Member States must respect all component rights of the right to life.<sup>32</sup>

Under Inter-American law, the right to life—recognized by Article 4 of the Convention and Article 1 of the Declaration<sup>33</sup>—includes a right not to be deprived of or denied access to basic subsistence rights.<sup>34</sup> As the Commission has stated, “without satisfaction of these basic needs, an individual’s survival is directly threatened. This obviously diminishes the individual’s right to life.”<sup>35</sup> The Commission has further noted that respect for the right to life should “go hand in hand with improvements in the population’s living standards as regards economic, social and cultural rights.”<sup>36</sup>

The Inter-American Court on Human Rights has similarly understood the right to life as ensuring access to conditions necessary for a dignified existence, including adequate housing, food, clean water, and health care.<sup>37</sup> According to the Court, “detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights.”<sup>38</sup> It has further explained that the right to life “is more than just a right to subsist, but is rather a right to self-development, which requires appropriate conditions”<sup>39</sup> and requires adequate food, water, sanitation, medical care, and education.<sup>40</sup>

The U.N. Human Rights Committee has concurred, interpreting the right to life under the International Covenant on Civil and Political Rights to include those economic and social conditions necessary for life.<sup>41</sup> This minimum threshold consists of the basic subsistence needs necessary for dignified human survival such as food, water, warmth, shelter, and basic health care.<sup>42</sup>

<sup>32</sup> American Convention, *supra* note 7, at art. 27.

<sup>33</sup> American Convention, *supra* note 7, at art. 4; American Declaration Article 1

<sup>34</sup> Inter-Am. C.H.R., Annual Report 1993, OEA/Ser.L/V.85, doc. 9 rev. (1993), 522-23 [hereinafter IACHR Annual Report 1993]; Inter-Am. C.H.R., Annual Report 1989-90, OEA/Ser.L/V/II.77 doc. 7 rev. 1, (1990) ch. V at 195; Inter-Am. C.H.R., Annual Report 1991, OEA/Ser.L/V/III.25 doc.7 (1992), ch. IV [hereinafter IACHR Annual Report 1991].

<sup>35</sup> IACHR Annual Report 1993, *supra* note 34, at 465-66.

<sup>36</sup> IACHR Annual Report 1991, *supra* note 34, at ch. IV.

<sup>37</sup> See Villagrán Morales et al. (« Street Children ») Case, Inter-Am. Ct. H.R. (ser. C) No. 63, at ¶114 (Nov. 19, 1999) (finding that the right to life requires States not only to ensure it is not arbitrarily denied, but also that States do not prevent access to conditions that guarantee a dignified existence); Indigenous Community Yakye Axa Case, Inter-Am. Ct. H.R. (ser. C) No. 125, at ¶¶ 162-4, 221 (June 17, 2005); Sawhoyamaya Indigenous Community Case, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 170 (Mar. 29, 2006).

<sup>38</sup> *Yakye Axa Indigenous Community*, *supra* note 37, at ¶ 167

<sup>39</sup> *Sawhoyamaya Indigenous Community*, *supra* note 37, at ¶18 (Judge Garcia Ramirez, concurring).

<sup>40</sup> *Id.* at ¶230 (Judge Garcia Ramirez, concurring). In another case, the Court similarly brought the rights to education and to health care within the ambit of the right to a dignified life. *Juvenile Reeducation Institute Case*, Inter-Am. Ct. H.R. (ser. C) No. 112 ¶ 159 (Sept. 2, 2004).

<sup>41</sup> See, e.g., Hum. Rts. Committee, General Comment No. 6, The Right to Life, ¶ 5, U.N. GAOR, 16th Sess., Supp. No. 40, Annex V, U.N. Doc. A/37/40 (1982) (“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures... [It] would be desirable... to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).

<sup>42</sup> Comm’n on Hum. Rts., Report of the Special Rapporteur on the Realization of Economic, Social and Cultural Rights, ¶ 52(d), U.N. Doc. E/CN.4/Sub.2/1991/17 (1991).

Thus, OAS Member States providing assistance to Haiti have a duty to respect the non-derogable right to life, including the rights to food, water, shelter, healthcare, and education for children, which allow for a dignified existence. They must ensure their assistance to Haiti results in no negative effects on these rights.

## 2. The Rights of the Child, Protected by the Inter-American System, Are Non-Derogable

The Inter-American Court has held that the State's obligation to protect the right to life "has special modes regarding to minors."<sup>43</sup> With respect to children, the Court has established that "the measures that the State must undertake, particularly given the provisions of the Convention on the Rights of the Child, encompass economic, social and cultural aspects that pertain, first and foremost, to the children's right to life and right to humane treatment."<sup>44</sup> In other words, the State is obliged to prevent situations that might lead, by action or omission, to adverse effects on the right to a dignified life of children.<sup>45</sup>

Inter-American law creates obligations to provide special protection for children, from which OAS Member States cannot derogate even in emergencies.<sup>46</sup> Article VII of the Declaration recognizes that "all children have the right to special protection, care and aid";<sup>47</sup> Article 19 of the Convention similarly ensures the right to "the measures of protection required by his [or her] condition as a minor" to every child.<sup>48</sup> The content and scope of Article 19 is established by international law relevant to the rights of the child, in particular the Convention on the Rights of the Child (CRC).<sup>49</sup>

Children are considered a special category of persons under international law, particularly when it comes to the attainment of basic survival rights. A number of human rights treaties reflect the special status of children.<sup>50</sup> The CRC explicitly requires that State Parties take appropriate

<sup>43</sup> Gomez-Paquiyaui Brothers Case, Inter-Am. Ct. H.R. (ser.C), No. 110, ¶ 124 (July 8, 2004).

<sup>44</sup> *Juvenile Reeducation Institute*, *supra* note 40, at ¶ 149.

<sup>45</sup> Bulacio Case, Inter-Am. Ct. H.R. (ser. C), No. 100, ¶ 138 (Sept. 18, 2003).

<sup>46</sup> American Convention, *supra* note 7, at art. 27.

<sup>47</sup> American Declaration, *supra* note 4, at art VII.

<sup>48</sup> American Convention, *supra* note 7, at art. 19.

<sup>49</sup> *Villagrán Morales*, *supra* note 37, at ¶ 194; *see also* Juridical Condition and Human Rights of the Child, Advisory Opinion, OC-17/2002, Inter-Am. Ct. H.R. (ser.A) No. 17, ¶ 24 (Aug. 28, 2002) [hereinafter Human Rights of the Child Advisory Opinion] (deciding that the Convention on the Rights of the Child (CRC) "should be used as a source of law by the Court to establish 'the content and scope' of the obligations undertaken by the State through Article 19 of the American Convention, specifically with respect to identification of the 'measures of protection' to which the aforementioned precept refers"). One hundred ninety-two States have ratified the CRC. Thirty-four OAS Member States have ratified the CRC.

<sup>50</sup> Article 24 of the International Covenant on Civil and Political Rights (ICCPR) mandates that the laws of a State Party recognize a minor's special status and afford special protection to children. International Covenant on Civil and Political Rights (ICCPR), art. 24, Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The Human Rights Committee has confirmed that Article 24 relates to economic, social, and cultural rights as well and that "every possible economic and social measure should be taken . . . to eradicate malnutrition among children." Human Rts. Committee, General Comment No. 17, The Rights of the Child, ¶ 3, U.N. Doc. A/44/40 (1989); *see also* Human Rts. Committee, Concluding Observations of the Human Rights Committee (Canada), U.N. Doc. CPR/C/79/Add.105 (1999) (concerning the denial of benefits to some children of low-income families and the high poverty rate among single mothers leading to a denial of protections to which children are entitled

measures “to combat disease and malnutrition . . . through . . . provision of adequate nutritious foods and clean drinking water.”<sup>51</sup> Economic and social rights protected by the CRC include rights to special protection and assistance;<sup>52</sup> the right to enjoyment of the highest attainable standard of health, facilities for the treatment of illness and rehabilitation of health, and right of access to such health care services;<sup>53</sup> and the right to an adequate standard of living for the child’s physical, mental, spiritual, moral, and social development.<sup>54</sup>

In an advisory opinion on the rights of the child, the Court stated that “true and full protection of children entails their broad enjoyment of all their rights, including their economic, social, and cultural rights.”<sup>55</sup> The Inter-American Court has emphasized, in particular, “the guarantee of survival and development of the child, [and] the right to an adequate standard of living.”<sup>56</sup>

The right to education is especially crucial for children’s development. It is considered an “empowerment right” and “indispensable means of realizing other rights.”<sup>57</sup> Under the OAS Charter, Member States have agreed to achieve “equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development” through, among other things, the “rapid eradication of illiteracy and expansion of educational opportunities for all.”<sup>58</sup> Article 49 creates further duties for Member States to take steps to “ensure the effective exercise of the right to education.”<sup>59</sup> The right to education is also recognized in Article 13 of the ICESCR, Article 13 of the Protocol of San Salvador, and Article 12 of the American Declaration, as well as numerous other international human rights instruments, including the CRC.<sup>60</sup>

As they assist Haiti in its time of need, OAS Member States have a duty to respect the rights of the children of Haiti. In particular, assistance should be designed and targeted with children’s economic, social, and cultural rights in mind so as to ensure their survival, development, and adequate standard of living.

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under the ICCPR). The International Covenant on Economic, Social and Cultural Rights (ICESCR) Articles 10(3) and 12(2) confirm that children should receive special protection and that States should take steps necessary to ensure the healthy development of the child. International Covenant on Economic, Social and Cultural Rights, arts. 10(3) & 12(2)(a), Dec. 16, 1966, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 993 U.N.T.S. 195.

<sup>51</sup> Convention on the Rights of the Child, art. 24(2)(c), Nov. 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) [hereinafter CRC].

<sup>52</sup> *Id.* at art. 20.

<sup>53</sup> *Id.* at art. 24(1).

<sup>54</sup> *Id.* at art. 27(1).

<sup>55</sup> Human Rights of the Child Advisory Opinion, *supra* note 49, at ¶¶ 137(8), 86 & 87.

<sup>56</sup> *Villagrán Morales*, *supra* note 37, at ¶ 196.

<sup>57</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education, ¶ 1, U.N. Doc. E/C.12/1999/10 (1999).

<sup>58</sup> OAS Charter, *supra* note 2, at art. 34.

<sup>59</sup> *Id.* at art. 49.

<sup>60</sup> CEDAW, *supra* note 239, at art. 10(f).

### 3. Non-Discrimination and Equality Are Jus Cogens Norms and Thus Non-Derogable

Inter-American law is clear that under all circumstances, OAS Member States have an obligation of non-discrimination.<sup>61</sup> Article 3(1) of the OAS Charter “proclaim[s] the fundamental rights of the individual without distinction as to race, nationality, creed, or sex,”<sup>62</sup> and the Declaration makes clear that “all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”<sup>63</sup> The norm against discrimination is further confirmed by the American Convention.<sup>64</sup>

The Commission has recognized the immediate obligation of non-discrimination with regard to social, economic, and cultural rights.<sup>65</sup> Moreover, according to the Inter-American Court, “the fundamental principle of equality and non-discrimination has entered the realm of jus cogens.”<sup>66</sup> It therefore binds all States, irrespective of their adhesion to treaties.<sup>67</sup> Jus cogens norms, such as the prohibition on discrimination, are non-derogable.<sup>68</sup> Therefore, Member States must always act in a way that complies with the principle of equality and non-discrimination.

Therefore, when assisting Haiti, Member States have a duty of non-discrimination. They must ensure that their actions do not have a discriminatory effect.<sup>69</sup> Under the principle of equality, they also must take care that their assistance to Haiti does not reinforce that society’s entrenched inequalities and discrimination, regarding gender, creed, economic status, social condition, color, and language, among other categories.

#### B. OAS States Must Take Special Care to Respect the Rights of Those Most Vulnerable

OAS Member States have particular obligations to respect the economic, social, and cultural rights of those who are vulnerable and powerless in society.

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<sup>61</sup> American Convention, *supra* note 7, at art. 27.

<sup>62</sup> OAS Charter, *supra* note 2, at art. 3(1)

<sup>63</sup> American Declaration, *supra* note 4, at art. II.

<sup>64</sup> American Convention, *supra* note 7, at art. 1(1) (guaranteeing rights “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”).

<sup>65</sup> Luis Rolando Cuscul Pivaral et al. v. Guatemala, Case 642/03, Inter-Am. C.H.R., Report No. 32/05, OEA/Ser.L/V/II.124, doc. 5 (2005) (concluding that the State has an immediate obligation of non-discrimination in its fulfillment of the right to health).

<sup>66</sup> Rights of Undocumented Migrants Advisory Opinion, *supra* note 31, at 101.

<sup>67</sup> *Id.* at 110.

<sup>68</sup> See Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf. 39/27, May 23, 2969, reprinted in 63 AM. J. INT’L L. 875 (1969).

<sup>69</sup> Rights of Undocumented Migrants Advisory Opinion, *supra* note 31, at ¶ 103 (“States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of de jure or de facto discrimination.”). See also Human Rts. Committee, General Comment No. 18, Non-Discrimination, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (1989) (indicating that norms of non-discrimination prohibit indirect discrimination as well.).

The Inter-American Court has held that “any person who is in a vulnerable condition is entitled to special protection, which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights.”<sup>70</sup> To date, the Court has adjudicated a number of cases in which it identified as vulnerable groups pregnant women, children, the elderly, prisoners, mentally handicapped persons confined to State-run facilities, and indigenous peoples who have lost their ancestral lands.<sup>71</sup> The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights further specify that vulnerable groups who suffer disproportionate harm include “lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.”<sup>72</sup>

The Commission has also often noted the special protection due vulnerable groups, including women, children, indigenous peoples, female heads of household, Afro-descendants, rural women, and the displaced.<sup>73</sup> The approach taken by the Commission reflects the particular circumstances of each Member State and recognizes that persons subject to multiple forms of discrimination are especially vulnerable.<sup>74</sup>

For vulnerable groups in Haiti, such as children, the elderly, the disabled, women, and internally displaced persons, the obligation that OAS Member States respect minimum core economic and social rights is particularly urgent. To fulfill their obligation to respect the rights of these groups, Member States should prioritize assistance to the most vulnerable populations, based on their needs, rather than donor priorities, as the Committee on Economic, Social and Cultural Rights responsible for interpreting the International Covenant on Economic, Social and Cultural Rights has suggested.<sup>75</sup>

Having discussed the rights of children—a particularly vulnerable group—above, this section will focus on the rights of internally displaced persons, women, the elderly, and the disabled.

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<sup>70</sup> *Ximenes-Lopes Case*, Inter-Am. Ct. H.R. (ser. C) No. 149, at ¶ 103 (Jul. 4, 2006) (citing *Baldeon-Garcia Case*, Inter-Am. Ct. H.R. (ser. C) No. 147, at ¶ 81 (Apr. 6, 2006)); *Sawhoyamaya Indigenous Community*, *supra* note 37, at ¶ 154; *Pueblo Bello Massacre Case*, Inter-Am. Ct. H.R. (ser. C) No. 140, at P 111 (Jan. 31, 2006).

<sup>71</sup> *Ximenes-Lopes*, *supra* note 70, at ¶ 104; *Yakye Axa Indigenous Community*, *supra* note 37, at ¶ 221.

<sup>72</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, ¶ 20, U.N. Doc. E/C.12/2000/13 (Nov. 27, 2000).

<sup>73</sup> *See, e.g.*, Inter-Am. C.H.R., *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, ¶¶ 7, 37, OEA/Ser.L/V/II. Doc. 67 (Mar. 14, 2006) [hereinafter *Violence Against Women in the Armed Conflict in Colombia*]; Inter-Am. C.H.R., *Press Release No. 59/08, IACHR Issues Preliminary Observations on Visit to Jamaica* (Dec. 5, 2008), available at <http://www.cidh.org/comunicados/english/2008/59.08eng.htm>; Inter-Am. C.H.R., *Press Release 26/05, IACHR Issues Statement Regarding the Adoption of the “Law of Justice and Peace” in Colombia*, July 15, 2005, available at <http://www.derechos.org/nizkor/colombia/doc/cidhcol2.html> [hereinafter *IACHR Press Release 26/05*].

<sup>74</sup> *See, e.g.*, *Violence Against Women in the Armed Conflict in Colombia*, *supra* note 73, at ¶ 12.

<sup>75</sup> Committee on Econ. Soc. & Cultural Rts., *General Comment No. 12, The Right to Adequate Food*, ¶¶ 38 & 39, U.N. Doc. E/C.12/1999/5 (1999).

## 1. Internally Displaced Persons (IDPs)

An estimated 2.1 million people are internally displaced as a result of the earthquake in Haiti.<sup>76</sup> Under Inter-American law, they represent a vulnerable group entitled to special protection. This Commission has recognized the vulnerability of IDPs,<sup>77</sup> and the Court has concurred.

The Court in particular has underscored the importance of freedom of movement and residence<sup>78</sup> to IDPs, a right that finds protection in numerous international human rights instruments.<sup>79</sup> In its first case addressing the situation of IDPs, the Court held that the United Nations Guiding Principles on Internal Displacement,<sup>80</sup> which provide a framework of existing international humanitarian law and human rights standards for the treatment of IDPs, “illuminate the reach and content of [American Convention] Article 22.”<sup>81</sup> On the basis of the Guidelines, the Court found that the State in question had failed to establish conditions that would allow voluntary return, in safety and with dignity.<sup>82</sup> The Court has also found violations of the right to life based on the living conditions—characterized by inadequate food, clean water, adequate housing, and health care—of indigenous persons displaced from their lands.<sup>83</sup>

In accordance with their obligation to respect the rights of vulnerable groups, including freedom of movement and residence, OAS Member States should follow the United Nations Guiding Principles on Internal Displacement at all stages of planning, implementation, and evaluation of humanitarian assistance. The Guiding Principles ensure the rights of IDPs, including: non-discrimination; the right to protection and humanitarian assistance; special protection for children, the disabled, and other vulnerable populations; and the right to be informed of the fate and whereabouts of missing relatives. They should guide all assistance to the many people displaced by the earthquake in Haiti, both those who have formed spontaneous settlements in Port-au-Prince and other the earthquake-affected areas, and to those who have fled to other parts of Haiti.

## 2. Women and Girls

Women and girls represent another group particularly vulnerable to abuses, especially in times of crisis. Given the disproportionate effect of lack of food, water, and medical care on their lives, they are entitled to special protection of their economic and social rights.

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<sup>76</sup> UN Office of the Coordinator of Humanitarian Affairs, Haiti-Earthquake, Situation Report #25 2 (Mar. 1, 2010) available at [http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-836R39/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-836R39/$File/full_report.pdf) (reporting that the number of people living in spontaneous settlement sites is estimated at 1.3 million people and 604,215 people have left Port-au-Prince for outlying departments).

<sup>77</sup> IACHR Press Release 26/05, *supra* note 73.

<sup>78</sup> American Convention, *supra* note 7, at art. 22; American Declaration, *supra* note 4, at art. VIII.

<sup>79</sup> Universal Declaration of Human Rights, art. 13(1), Dec. 12, 1948, G.A. Res. 217A, U.N. Doc A/810; ICCPR, *supra* note 50, at art. 12; Protocol No. 4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, Sept. 16, 1963, Eur. T.S. No. 46; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Mar. 7, 1966, S. Exec. Doc. C, 95-2, at 4 (1978), 660 U.N.T.S. 195, 220.

<sup>80</sup> United Nations Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998).

<sup>81</sup> *Moiwana Village Case*, Inter-Am. Ct. H.R. (ser. C) No. 124 at ¶ 111 (June 15, 2005).

<sup>82</sup> *Id.* at ¶ 120.

<sup>83</sup> *Yakye Axa Indigenous Community*, *supra* note 37, at ¶¶164-68.

The American Declaration sets out a duty of “special protection, care and aid” toward pregnant and lactating women in particular.<sup>84</sup> The Inter-American Court has also found that the State must provide special attention and care to pregnant women.<sup>85</sup> Especially during the period of the pregnancy, birth, and breast-feeding, women’s access to adequate medical attention and services is essential.<sup>86</sup>

Additionally, women and girls are vulnerable to gender-based violence and therefore entitled to special protection according to Inter-American law. As this Commission has recognized, “[a]cts of violence against women are an especially extreme and grave manifestation of the discriminatory treatment women still receive in Haitian society.”<sup>87</sup> Following the earthquake, many women are without adequate shelter and sanitation facilities, leaving them even more vulnerable to gender-based violence.<sup>88</sup> Both the Commission and the Court have emphasized the importance of ensuring all human rights, including economic, social, and cultural rights, to victims of sexual violence.<sup>89</sup> The IACHR has repeatedly stated that ensuring the rights of women must be a priority for OAS member states, with the goal of guaranteeing the full and effective enjoyment of their basic rights, including freedom from gender-based violence.<sup>90</sup>

Member States must take care to respect the rights of women and girls, take their particular needs and vulnerabilities into account, and ensure their voices are heard in the design, planning, and implementation of assistance.

### 3. The Elderly and Disabled

In the Haitian context, elderly and disabled persons represent distinct vulnerable groups. Under normal circumstances, both groups face serious challenges to living a dignified life with adequate food, water, shelter, and health care. As a result of the earthquake, these difficulties are magnified; tens of thousands of people have been disabled through disfiguring injuries and amputations.<sup>91</sup>

Persons of advanced age merit special consideration by States in the Inter-American system.<sup>92</sup> The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), which aims to reaffirm, develop, perfect, and protect those economic, social and cultural rights in preceding regional and international instruments, recognizes that everyone has the right to special protection in old age.<sup>93</sup>

<sup>84</sup> American Declaration, *supra* note 4, at art. VII.

<sup>85</sup> CRC, *supra* note 51, at art. 27(3).

<sup>86</sup> *Sawhoyamaya Indigenous Community*, *supra* note 37, at ¶ 177.

<sup>87</sup> IACHR Report, *The Right of Women in Haiti to Be Free from Violence and Discrimination*, ¶ 8 (2009), available at <https://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm>.

<sup>88</sup> Refugees International, *Haiti: From the Ground Up 2* (Mar. 2, 2010), available at [http://www.refugeesinternational.org/sites/default/files/030210\\_haiti\\_groundup.pdf](http://www.refugeesinternational.org/sites/default/files/030210_haiti_groundup.pdf).

<sup>89</sup> *Paulina del Carmen Ramírez Jacinto v. Mexico*, Case 161-02, Inter-Am. C.H.R., Report No. 21/07, OEA/Ser.L/V/II.130 Doc. 22, rev. 1, ¶19 (2007); *Miguel Castro-Castro Prison Case*, Inter-Am. Ct. H.R. (ser. C) No. 160, at ¶ 449 (Nov. 25, 2006).

<sup>90</sup> *Paulina del Carmen Ramírez Jacinto*, *supra* note 89, at ¶18.

<sup>91</sup> Laurence J. Ronan & Lisa I. Iezzoni, *The Long-Term Aftershocks of Care*, BOSTON GLOBE, Feb. 9, 2010.

<sup>92</sup> *Yakye Axa Indigenous Community*, *supra* note 37, at ¶ 175.

<sup>93</sup> Protocol of San Salvador, *supra* note 16, at art. 17.

In the *Yakye Axa* case, the Court highlighted OAS Member States' duty with respect to the elderly to "take measures to ensure their continuing functionality and autonomy, guaranteeing their right to adequate food, access to clean water and health care" and to "provide care for the elderly with chronic diseases and in terminal stages, to help them avoid unnecessary suffering."<sup>94</sup>

Given the Commission's flexible approach to determinations of vulnerable groups, the large community of newly disabled in Haiti should also be considered vulnerable and entitled to special protection. As with the elderly, the Protocol of San Salvador ensures rights to work and social security for disabled persons.<sup>95</sup>

The special vulnerability of the elderly and disabled and the difficulties they face accessing assistance call for OAS Member States to take special measures to ensure assistance reaches them and they are able to participate in decisions regarding relief and reconstruction. They cannot be excluded from receiving assistance through relief, rebuilding, and reconstruction efforts to the detriment of their economic, social, and cultural rights.

#### **IV. OAS Member States Have an Obligation to Adopt a Human Rights-Based Approach to Assistance to Haiti**

In order to fulfill their obligation to respect the human rights of all Haitians, OAS Member States must take an approach that brings human rights to the forefront of all assistance efforts. They should therefore adopt and use a human rights-based approach to their assistance to Haiti, actively ensuring the goals of transparency, accountability, capacity development, participation, and non-discrimination.

A rights-based approach to assistance reinforces principles of Inter-American law, such as the indivisibility and interdependence of rights and the obligation of non-discrimination. It requires paying particular attention to groups that have been historically excluded from the political process and prohibited access to basic services. It demands building the capacity of the Haitian government to guarantee the rights of all Haitians.

Under the Charter, OAS Member States recognize as an objective "the full participation of their peoples in decisions relating to their own development."<sup>96</sup> A rights-based approach facilitates this by requiring, among other things, that the population be routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. A high degree of participation from communities, civil society, minorities, indigenous peoples, women, and other vulnerable groups is required.

Full participation also requires transparency.<sup>97</sup> At a minimum, transparency requires that information about the project be easily accessible to the community, for example via posters, meetings, and radio programs in a language known to the community. In order to ensure respect for

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<sup>94</sup> *Yakye Axa Indigenous Community*, *supra* note 37, at ¶ 175.

<sup>95</sup> Protocol of San Salvador, *supra* note 16, at art. 6 & 9.

<sup>96</sup> OAS Charter, *supra* note 2, at art. 34.

<sup>97</sup> OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development* 26 (2006), available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

the rights of Haitians, those providing assistance, including foreign donors, must be accountable to the Haitian people. Accountability means that there are effective mechanisms for all Haitians to make complaints, have their complaints investigated, and receive redress when their rights are violated.<sup>98</sup>

Because the Haitian government has the primary obligation to guarantee human rights, assistance from OAS Member States should aim to build the capacity of the government to respect, protect, and fulfill the rights of all Haitians.

## **V. Request for Remedies**

The Commission's attention to the massive ongoing violations of the human rights of the Haitian people is urgently needed. The earthquake created a human rights emergency that the Government of Haiti cannot respond to alone. Two months later, the crisis continues with millions displaced, without adequate shelter, water, sanitation, and food, with the impending rains threatening to worsen the situation and cause more death and suffering.

In light of the above discussion, we respectfully request that the Commission include a statement concerning Haiti in its press release regarding this session. More specifically, we ask the Commission to express how OAS Member States can fulfill their obligation to respect human rights, especially non-derogable rights and the rights of vulnerable populations, as they provide assistance to Haiti. We further request that the Commission conduct an on-site visit to Haiti. Such an on-site visit would allow the Commission to investigate these issues in loco.

### **A. The Commission Is Requested to Clarify the Obligations of OAS Member States in Haiti**

The Commission should use this opportunity to clarify the obligations under Inter-American law of Member States delivering assistance in the region through a statement in its press release regarding this session. Such a statement could develop the Commission's instruction to Member States to remember "the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable."<sup>99</sup>

OAS Member States would benefit from the Commission's guidance in this regard. They have already stated their commitment to further human rights through assistance to Haiti. The Commission could help OAS States put this commitment into practice.

We suggest that the Commission recommend Member States adopt and use a rights-based approach, specifically enumerating the elements of a rights-based approach. A rights-based approach to assistance to Haiti would best ensure that the cooperation of OAS Member States has a positive effect on the human rights—both economic, social, and cultural rights and civil and political rights—of all Haitians. The Commission should consider recommending all OAS Member States adopt this approach as they cooperate in the region.

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<sup>98</sup> *Id.* at 23-25.

<sup>99</sup> IACHR Press Release 11/10, *supra* note 1.

To further economic and social rights in Haiti and the American region more broadly, the Commission also should consider appointing a rapporteur on economic, social, and cultural rights.

**B. The Commission Is Requested to Conduct an On-site Visit to Haiti Focused on Economic and Social Rights**

We also respectfully request that the Commission conduct an on-site visit to Haiti focusing on economic and social rights. We call upon the Commission to visit those areas of the country where internally displaced persons have fled and rights to food, water, education, and housing are increasingly at risk, as well as Port-au-Prince and surrounding areas. We ask that the Commission make a particular effort to interview the most vulnerable Haitian citizens, especially women, children, the disabled, the elderly, and the poor. The rapporteurs on the rights of women, on the rights of the child, and on Haiti and the Delegate for the OAS Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador on Economic, Social and Cultural Rights should all come on the visit.

Such a visit would place the international community's efforts in Haiti in a human rights framework. It would also allow the Commission to determine, using its traditional methods of first-hand interviews and collection of direct evidence, the extent and nature of ongoing deprivations of the economic and social rights. Inquiries could be undertaken into the activities of the various OAS Member States present in Haiti that are aimed at fulfilling the basic survival rights of the population of Haiti. The Commission could also investigate to what extent international efforts comply with principles of transparency, accountability, capacity development, participation, and non-discrimination.

If the Commission chooses to undertake a visit, we request that the Commission make public the report with its findings. This report would contribute significantly to efforts to address violations of economic and social rights in Haiti and to build the capacity of the government and people of Haiti. By clarifying that OAS Member States have human rights obligations toward the Haitian population when they deliver assistance, the report would support ongoing efforts to ensure assistance respects human rights of the people living in recipient countries.

**CONCLUSION**

This brief has demonstrated the ways in which OAS Member States have obligations to cooperate with each other and to respect economic, social, and cultural rights, especially non-derogable rights and rights of vulnerable groups, when they engage in international assistance. Given the dire situation in Haiti as a result of the earthquake and the central role played by OAS Member States in providing assistance, this Commission should take the opportunity to provide guidance to Member States.

Submitted on this 9th day of March, 2010.

Respectfully submitted by:




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Elizabeth Sepper  
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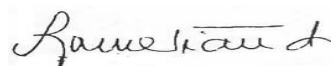
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Mario Joseph  
Bureau des Avocats Internationaux



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Brian Concannon  
Institute for Justice & Democracy in Haiti



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Loune Viaud  
Zanmi Lasante

A handwritten signature in black ink, appearing to be 'DB' with a large loop at the end.

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Donna Barry  
Partners In Health