Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance
Working Document
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Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance

Swedish Agency for International Development Cooperation

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I. Introductory Part
Foreword

This document is one more example of the Institute’s broad and long commitment to the effective protection of human rights, especially those regarding the recognition of human diversity. The IIHR thereby manifests its intention to initiate an active and fruitful collaboration, a constructive dialogue that converges on the goal —certainly shared by the States of the Americas— of eliminating all expressions of racism, as well as all forms of discrimination and intolerance.

The IIHR will be pleased if this document facilitates the debates within the Working Group and, at the same time, aids in the adoption of a treaty that will respond to the urgent demand of the different manifestations that threaten the principle of human equality. The IIHR has prepared this document in order to support the efforts undertaken by the States and those of the Working Group to Prepare the Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

The Working Group has already carried out many activities and has held meetings with the purpose of achieving an understanding among the States and has facilitated the negotiations that, ultimately, will culminate in an inter-American treaty that decisively combats racism, on the one hand, and all forms of discrimination and intolerance, on the other. With a view to contributing to the task of the States and that of the Working Group, the IIHR, in line with its mission, has prepared this Working Document to be distributed to the Chair of the Working Group and to the Permanent Missions with the hope of being a tool that fosters the negotiations. That explains why the physical document is presented as a detachable grouping of separated sections that, coordinated with the articles of the current Draft that serves as basis for negotiations, studies and analyzes them, while at the same time making specific proposals.

The virtue of this type of document—as we have verified in the UN on the occasion of the adoption of the Draft Optional Protocol to the International Covenant of Economic, Social and Cultural Rights—is that it allows continuity in the discussions. Modifications made during negotiations may thus be perfectly reflected through concrete and specific additions to the Working Document.

This preliminary version is based on the most recent Draft, provided by the Chair of the Working Group, which reflects the level of consensus reached to date and is identified under the reference OAS/Ser.G/CAJP/GT/RDI-57/07 rev. 7 corr. 1, of 29 April 2008, the original text of which is in Spanish.

No OAS Member State may go against the current and permit the existence of racism or any form of discrimination and intolerance. Such an attitude would be a conspiracy against the basis and foundation of the modern State itself, which achieves legitimacy on its anthropocentric identification; that is, by recognizing that the human being is the
origin and end of all of its activities, that the development of his/her personality must be based on the motivating force of freedom and that the State ultimately has only an instrumental value.

There is a basic consensus on the prohibition of such practices. There is also a consensus that the proposed Inter-American Convention should contain conceptual definitions and the complementary obligations of the States. It is in this process that we wish to contribute positively and constructively.

In presenting this document and thus initiating a process of active involvement and collaboration in the creation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, the vital forces that six decades ago formed the foundations of the OAS, vital forces that from the beginning recognized human rights as the leitmotiv of the Organization, are reactivated.

Roberto Cuéllar
Executive Director
30 April 2008
Human rights, viewed on the universal level, bring us face to face with the most challenging dialectical conflict ever between “identity” and “others.” They teach us in a direct straightforward manner that we are at the same time identical and different.

Boutros Boutros-Ghali, 1993

Concern in the Organization of American States regarding the eradication of racism, all forms of discrimination and intolerance has a long history, which demonstrates its importance and relevance and, therefore, the need to advance progressively toward the elimination of those problems that unfortunately are daily forms of disrespect for human diversity, the inexorable and unquestionable basis of the richness that objectively characterizes humanity as a whole.

Addressing the different topics that make up the immense realm of human rights necessarily requires a commitment to protect and preserve human dignity. Since this is the foundation of human rights, any circumstance in which those rights are compromised will be a violation of such dignity.

There are human rights topics, however, that are definitively more related to human dignity. Those topics form the narrowest circle of human dignity, which some authors call hard-core, that is the hard nucleus of human rights, and affirm that any danger or risk that occurs in this area will result in a most profound ethical breach, an act against humanity.

What is relevant to the recognition that all human beings are equal, an axiomatic and axiological principle, is that it is the basis for the development of human rights. That recognition is therefore found in the preambles of the most important human rights instruments, having not only a symbolic, but above all a basic, value stemming from the legitimacy of all human actions.

Unfortunately, historical reality and experience demonstrate that this starting point has not necessarily succeeded in entering the hearts and souls of each human being, which demonstrates the importance of continuing to advance pari passu in all aspects of life until reaching the highest aspiration of any normative system: the transformation of what should be into what is. That latent possibility whereby each human act achieves an awareness of what conduct should be and finds in the essential values of humanity sufficient reason to direct its steps and acts toward the goals of respect and tolerance.
This necessarily leads to the following questions and reflections:

**What is an Inter-American Convention against Racism and All Forms of Discrimination and Intolerance?**

The Organization of American States has decided to draw up an Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

It should be clarified that an inter-American convention is a treaty, an agreement of the political will of the States, governed by international law, that has a given geopolitical application to the OAS Member States and, in this case, a very well established and clear purpose, which is the eradication of racism and all forms of discrimination and intolerance. This means that these States have expressed their intention to advance toward giving maximum effect to the principle of the equality of human beings.

As any treaty, an inter-American convention seeks to have an impact on the behavior of the States that become parties thereto and to have an important effect on the conduct of its different organs, both in the relationship between the State and the persons subject to its jurisdiction and among the States themselves.

This means that an inter-American convention, in establishing norms on its subject matter, has a dual juridical effect, which the legal scholars have classified as **vertical and horizontal effects**. The former deals with supra-subordination relations, that is, those that are established in the area of public law and the interaction between the State—its organs and agents—with the population, while the latter alludes to the relations that individuals establish among themselves. This obviously means that an Inter-American Convention against Racism and All Forms of Discrimination and Intolerance seeks to achieve the eradication of those vitiated practices at all possible levels of human interaction; that is, that such practices are eradicated at both the State-individual and the inter-personal relationships, the latter being the area in which it may be safely said that these types of conduct most frequently occur.

The Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, however, does not create direct obligations for individuals— unlike other expressions of international law, such as international humanitarian law- but creates them exclusively for the State, which necessarily implies that the State has a intervening and regulatory role regarding conduct among individuals.

Ultimately, a convention of this nature places the State in a dual situation, both as a body forced to refrain from any racist attitude or conduct or any other form of discrimination and intolerance and as a guarantor body, that is, obligated to prevent and to punish such conduct among individuals. In either case, the State must also ensure that the victims receive adequate reparations.
On the other hand, a convention, such as the proposed, has the advantage of not being presented as a protocol. Perhaps it would be well to describe certain technical considerations in this regard. A protocol, in international law, is an instrument that amends or complements a previously existing treaty by incorporating elements or considerations not addressed originally, or by broadening its terms. To become a State Party to a protocol, the State must be a party to the principal instrument—the instrument that it is complemented or amended by the protocol. If this Convention were presented as a Protocol to the American Convention on Human Rights—the principal OAS human rights instrument—only the States that had ratified the latter could be bound by it.

Unfortunately, not all the OAS Member States are parties to the American Convention, which means that the possibilities of dealing with the subject matter of the proposed Convention would have to be a specific obligation and would be very narrow.

In this regard, it is worth emphasizing the wise decision of establishing a convention that is independent of the American Convention on Human Rights, but is a thematic treaty that would make it possible for States that, for whatever reason, are not parties to the American Convention to become parties to this new inter-American convention. This would provide an opportunity for the combat against racism and all forms of discrimination and intolerance to be an item of a hemispheric common agenda and not only of the group of States that have ratified the Pact of San José.

The non-protocollary nature of the Convention would also make it possible that it contain not only its own substantive aspects, but also its own procedural standards, even though it was inspired or based, directly or indirectly, on what is established in the American Convention. An inter-American convention would, moreover, achieve a regional standard for the Americas.

**Why is it necessary to have an Inter-American Convention against Racism and All Forms of Discrimination and Intolerance?**

This question requires a response in two areas that are complementary. The need arises and is based on the lamentable and unfortunate evidence that racism, as well as discrimination and intolerance, remains and occasionally grows in the Americas. That is what justifies the need for this Convention.

But there is also a formal juridical reason that allows us to understand this necessity. It arises from the existence of a central and regulatory principle of the OAS, which is that of human equality. A convention such as this reflects and projects concrete steps, legally enforceable, that would contribute to the States of the Americas collaborating to give effect to the principle of equality among human beings.

This principle has now been recognized as a standard of *jus cogens*—of imperative international law—and, as a result, it represents a highest and indispensable value and essential content. A standard of *jus cogens* has the prodigious virtue of giving a sense of
verticalization to the legal system, either national or international, creating thus an *ordre public* that prevails as a limit to any power, including sovereignty, which is the distinctive and characteristic feature of States.

Notwithstanding that virtue derived from the juridical nature of the principle, there is a strong consubstantial weakness, which is that the standard of *jus cogens* by its very nature is at the same time synthetically and paradoxically omni-comprehensive. This implies that it is highly abstract. The standard of *jus cogens* establishes that human beings are equal in dignity and rights – by no means does it imply eliminating or obviating the differences that exist among individuals – and consequently it obligates a treatment that it is respectful and subservient to that principle. However, it does not give a precise definition of the concrete conduct that it requires. An example will help clarify. As a result of the evolution of international law, the prohibition of torture is nowadays a standard of *jus cogens*. Torture is, therefore, not permissible under any circumstances but the norm does not explain what should be understood as torture to the point that, with respect to the Americas and from an international viewpoint, there are now three different concepts of torture: that arising from the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also of United Nations, but applicable to the American States that are parties thereto) and that of the Inter-American Convention to Prevent and Punish Torture (applicable to its States Parties).

This is not the moment to enter into a discussion on how the Law of Treaties resolves these differences and what is the best solution that the Law of Human Rights offers from the perspective of the principle *pro persona*. What is important is to demonstrate that the standard of *jus cogens*, although it has an indisputable superior and undeniable value, requires standards that make it operative or, in other words, that reduce its degree of abstraction.

We are not dealing with standards of implementation because the enforceability of the standards of *jus cogens* is immediate, but rather with standards that, upon making operational their content, facilitate their level of effectiveness.

The American States not only recognize the importance of that principle as a factor to legitimize their actions, but, with the firm purpose that it be operative, achievable, have engaged in the effort to draft, adopt and foster the entry into force of this Inter-American Convention that contains concrete measures and steps that must be observed, attended to and implemented in order to eradicate racism and all forms of discrimination and intolerance. The Inter-American Convention that the States are currently debating is not the source of the prohibition of the conduct that is the object of the treaty, since that source is, as has been stated, a standard of *jus cogens*; the Convention nevertheless imposes specific obligations on the States.
It is also necessary to place strategically the context of this laudable effort to draft the Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. This Convention does not appear in a juridical vacuum, but has a long historical background, especially the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly on December 21, 1965 in Resolution 2106 A (XX), which entered into force on January 4, 1969.

This International Convention—the first universal human rights treaty—was adopted in a very concrete and specific political context, in which important historical processes were developing both in the area of decolonization—mainly in African and some South-East Asian countries—and in the recognition of equal rights principally in the United States of America. The initial phrases of the memorable I Have to Dream address of Dr. Martin Luther King acknowledge that historic moment: I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation.

When the International Convention was adopted an important qualitative leap was occurring in history. In this regard, it was a pioneering tool. However, reality has changed drastically and severely, and not necessarily in the definitive eradication of racial discrimination. On a par with the migratory phenomena of the present time there are new forms of intolerance, no longer only concerning peoples of African descent, but involving many other human diversities, not only because of their phenotypical characteristics, but also due to any other characteristic or social condition, such as health, gender identity or nationality.

The distancing of equality among human beings has become much more complex and requires complex and decisive responses. Thus, this Inter-American Convention has an enduring historical value. Its purpose is to improve, strengthen and enlarge the margins of protection already offered by the International Convention. The OAS Member States have one more opportunity to make a notable contribution to the development of human rights, as they have done on so many other occasions.

In addition to this strategic value in historical terms, there are other elements that justify the need for the Inter-American Convention, which are derived from its nature and which may be listed as follows:

1. Strengthens the international mechanisms of protection toward human dignity.

2. Reveals the urgency to attack of root causes of racism, as well as all forms of discrimination and intolerance.

3. Imposes specific obligations on the State, both to respect and to ensure, with respect to racism and all forms of discrimination and intolerance.
4. Elevates the juridical level of important international advances, mainly those found in the Declaration of Durban.

5. Promotes changes in the juridical order of the countries and allows the visibilization of different political and social sectors and actors.

6. Mobilizes the judicial branches toward a greater sensitivity concerning human diversity.

7. Permits the development of specific jurisprudence on the eradication of racism and all forms of discrimination and intolerance, both internationally and through application by domestic courts.

The Inter-American Convention against Racism and All Forms of Discrimination and Intolerance: a long process

The need to have an Inter-American Convention on this matter is not whimsical, but reflects a valuable historical process, with countless previous actions within the OAS.

These historical processes may be found even prior to the existence of the OAS itself. Thus, the Eighth International Conference of American States in its Resolution XXXVI determined that every persecution for racial or religious reasons was contrary to the political and legal regimes of the American States, to the point of linking the concept of democracy with the principle of equality.

The memorable Inter-American Conference on Problems of the War and Peace – the indisputable foundation of the inter-American system – in its Resolution XLI reaffirmed the principle of equality for all persons and recommended that the American States make every effort to prevent all discrimination for reasons of race or religion. In its Resolution LX it condemned “the procedures of cruel racial persecution employed by Hitlerism against the Jews.”

In the same vein, the Tenth Inter-American Conference held in 1954, in its Resolution XCIV – and explicitly to combat international Communism – recommended that the American States “adopt or strengthen, whenever it is deemed necessary, legal and educational measures to make effective the abolition of racial discrimination.”

Subsequently, the Meeting of Heads of States, held in Punta del Este, in 1967, emphasized, through the Declaration of the Presidents of America, the need to make racial equality effective.

When the Summits of the Americas were initiated the subject began to take on a greater dynamic. The First Summit, held in Miami in 1994, in its Declaration of Principles, was emphatic in pointing out the obligation to eradicate discrimination and its Plan of Action had concrete measures that the States should implement, especially through the
guarantee of universal access to quality education, basic health services and the strengthening of the role of women in society.

In the Declaration of Santiago, emanating from the Second Summit of the Americas, held in Santiago in 1998, the subject of discrimination occupied an important space, the commitment of which is important to reiterate:

We will combat every form of discrimination in the Hemisphere. Equality of rights and opportunities between women and men for the purpose of securing a dynamic participation of the woman in every field of work in our countries constitutes a priority task. We will promote full integration of the indigenous populations and of other vulnerable groups into political and economic life, respecting the characteristics and expressions which strengthen their cultural identity. Special efforts will be taken in order to guarantee human rights of all migrants, including migrant workers and their families.

The Plan of Action from the same meeting made several contributions toward the eradication of discrimination in the Americas.

More categorically and comprehensively, at the Third Summit of the Americas, held in Quebec in 2001, it was stated that:

We reaffirm our commitment to protect the human rights and fundamental freedoms of all, including those who are vulnerable, marginalized, disabled or require special protection. We are committed to the eradication of all forms of discrimination, including racism, racial discrimination, xenophobia and other related intolerance in our societies, as well as to the promotion of gender equality, and to achieving the full participation of all persons in the political, economic, social and cultural life of our countries.

And its Plan of Action recognized the efforts of the OAS to achieve an Inter-American Convention against Racism and All Forms of Discrimination and Intolerance in the following terms:

[The Governments of the participating States in the Third Summit of the Americas] Recognize the importance of the Regional Preparatory Conference of the Americas against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance held in Santiago, Chile, in December 2000, and undertake to participate actively in the World Conference to be held in South Africa in 2001, promoting its objectives and stressing that political platforms based on racism, xenophobia or doctrines of racial superiority must be condemned as incompatible with democracy and transparent and accountable governance;

Support efforts in the OAS to consider the need to develop an inter-American convention against racism and related forms of discrimination and intolerance;
The Declaration of Nuevo León, resulting from the Special Summit of the Americas, held in 2004, again recognized the need, in order to respond to the challenges of the 21st century, to achieve through education the development of the peoples of the Americas, without any discrimination or exclusion. It also made special reference to the discrimination suffered by persons with HIV/AIDS.

The point was so relevant that the Summit Report 2001-2003 Advancing in the Americas, Progress and Challenges evaluated the advances that had been make in the Americas in the struggle against racism, racial discrimination, xenophobia and related forms of intolerance, pointing out as praiseworthy elements the Regional Preparatory Conference of Chile, prior to the Summit of Quebec and to the World Conference of Durban, as well as the requests that the Inter-American Commission on Human Rights and the Justice Studies Center of the Americas conduct studies on affirmative action and on racial discrimination in the area of the administration of justice, respectively.

More recently, the Declaration of Mar del Plata, which contains the consensus achieved at the Fourth Summit of the Americas, held in 2005, pointed out the following:

We reaffirm our strong commitment to confronting the scourge of racism, discrimination, and intolerance in our societies. These problems must be fought at all levels of government and the wider society. The Inter-American System also has a vital role to play in this process by, among other activities, analyzing the social, economic, and political obstacles faced by marginalized groups and identifying practical steps, including best practices, on how to combat racism and discrimination. To this end, we support the implementation of the OAS Resolution, AG/RES. 2126 (XXXV O/05) that led to the establishment of a Working Group in charge of, inter alia, the preparation of a Draft Inter-American Convention against Racism and all Forms of Discrimination and Intolerance, and lend encouragement to that Working Group to combat racism, discrimination, and intolerance through available means as a matter of the highest priority. We also recall our commitment to fully implement our obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

The Summits of the Americas have had an important influence on political decision-making that ultimately has an impact on the OAS, particularly its General Assembly. It should, therefore, not be surprising that the political will expressed at the Summits has an impact within the OAS. The combat of racism and all forms of discrimination and intolerance is one of those areas where this has occurred.

In this regard, Resolution AG/RES. 1271 (XXIV-O/94) is a point of reflection in calling upon the OAS organs, agencies “to adopt timely and effective measures to foster tolerance and eliminate racist and discriminatory behavior.”

Subsequently, Resolution AG/RES. 1712 (XXX-O/00) entrusted the Permanent Council with studying the need to prepare a draft inter-American convention to prevent, punish
and eradicate racism and all forms of discrimination and intolerance. In compliance with that decision the Committee on Juridical and Political Affairs of the OAS Permanent Council decided, by means of Resolution CP/CAJP-1682/00, to send a questionnaire to the States and to civil society organizations on the aforementioned need. Many States, including Uruguay, United States of America, Colombia, Dominica, Ecuador, Panama, Guatemala, Peru, Argentina, Costa Rica, Antigua and Barbuda, and Mexico, responded to the questionnaire.

This process had important input from the Department of International Law, the Inter-American Juridical Committee and the Inter-American Commission on Human Rights, which contributed studies and opinions of great utility for the elaboration of the Inter-American Convention. It is worth recalling what the Executive Secretary of the Inter-American Commission on Human Rights, Santiago Canton, in emphasizing the strategic value of the proposed Convention, expressed:

> From this perspective, the IACHR supports regulatory developments involving human rights in the inter-American context. The IACHR understands regulatory developments to mean explicit provisions on specific areas or rights that will expand the degree of protection recognized internationally. This means that in areas where there are already treaty standards, as in the case of racial discrimination, regulatory development should mean providing more and better protection for the rights already recognized.

On December 9, 2004, the Committee on Juridical and Political Affairs held a special session in order to share experiences and best practices for the adoption of measures against racism and all forms of discrimination and intolerance, in which there was an important participation of experts on the topic. With the purpose of joining efforts in the struggle against racism, discrimination and intolerance, the Inter-American Commission on Human Rights announced, on February 25, 2005, the creation of the post of Special Rapporteur on the Rights of Afro-descendants and against Racial Discrimination.

In that context and with that degree of evolution, the OAS General Assembly, by Resolution AG/RES. 2126 (XXXV/O-05), adopted decisions that concluded in the formation of the Working Group to Prepare the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. The Working Group immediately demonstrated its enthusiasm and dynamism by organizing a special session on November 28-29, 2005 to examine and discuss the nature of a future Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

As a result of this special session, the States began to make specific contributions. On April 16, 2006 the Working Group circulated the first Provisional Draft Inter-American Convention, prepared by the Chair, to which various States made comments, observations and contributions.
The Working Group thus designed a methodology that resulted in the preparation of the Draft Inter-American Convention. Since then, various documents have been prepared leading to the present version for the OAS General Assembly (June 1-3 in Medellin, Colombia) as part of the commemoration of 60th anniversary of the OAS.

It is important to make a clarification-comparison among the working methods used in the UN and the OAS regarding Working Groups charged with drafting norms. It concerns open-ended working groups, whereby anyone who receives accreditation may attend and participate in its sessions but only States may vote. OAS working groups to date have not opted to be open-ended, but this particular Working Group has permitted and fostered the participation of civil society, which should be truly recognized.

It should be remembered that, in inaugurating the memorable 1993 International Conference on Human Rights in Vienna, the then UN Secretary General, Boutros Boutros-Ghali, coined a phrase that succinctly reveals the need to advance toward a model of inclusion, respect and tolerance in light of human diversity. He stated that:

Human rights, viewed on the universal level, bring us face to face with the most challenging dialectical conflict ever between “identity” and “others.” They teach us in a direct straightforward manner that we are at the same time identical and different.

There is no doubt that this dialectical conflict is today’s challenge in the Americas. The Inter-American Human Rights Institute wishes to contribute to meeting successfully that challenge, initially through this document the purpose of which is to become an active working tool in the negotiations that are held in the Working Group to Prepare the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

**The involvement of the Inter-American Institute of Human Rights**

This document is comprised of observations, contributions and recommendations that we trust will be useful for the task of the Working Group. It is a modular, or more exactly detachable, document the purpose of which to aid in the continuity of the negotiations. The document is not a static contribution, nor is it a commentary to serve as a reference for a given moment. On the contrary, it attempts to be a tool for a process so that the different versions that are approved in the Working Group may be nonetheless provided feedback by the IIHR and thus is a tool that accredits the evolution and development of the legislative history of the Inter-American Convention.

The observations, contributions and recommendations are based on an analysis of each article of the current version of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, which is still being debated in the Working Group. The IIHR, in making its analysis, has utilized the technique of highest input–highest output, that is, that once the version of the Draft Convention was understood in all of its scope, it was questioned whether this was the broadest scope possible and
whether it would lead to the Convention’s object and purpose—to combat racism and all forms of discrimination and intolerance—and, if it did not, to identify what elements of its object and purpose were not included and accordingly should be incorporated—highest input—in order then to proceed to formulate a substitute that reflected a sense of greater comprehension—highest output.

This intellectual process is divided in the working document into three sections, namely, scope and evaluation, normative references and recommendations. It is worth pointing out that the normative references section is a comparative search between the current proposal and what exists in the topic in the norms of the inter-American and universal systems. Save a few exceptions, mainly in the context of definitions, the sources in this area were somewhat more than treaty-based. Since the document analyzes each article separately and includes the IIHR proposals at the end of the section on each article, there is an integrated IIHR proposal at the end of the document, as an appendix.

Complementarily, two papers are presented that serve as a frame of reference on the evolution of racism and a systematization of the experiences of the organized civil movement of Afro-descendants to achieve effective international legal commitments for the eradication of racism, all forms of discrimination and intolerance.

The IIHR’s mission restricts it to making an evaluation based solely on what is desirable to achieve the greatest possible human rights protection. The working document, therefore, takes a position in line with that mission, which is what inspires all of IIHR work, based on doctrinal and academic foundations. The political evaluation of the proposal is the responsibility of the States. The IIHR simply contributes its technical expertise to the negotiations and drafting of the Inter-American Convention.

The preparation of this IIHR publication represents an important effort of its Department of Civil Society Entities, for which I wish to thank my colleague Gilda Pacheco, Director of the Department, for the wise decision to promote this process. I must also thank Cristina Zeledón, Official of the Rights of Indigenous Populations Program and the Combat Racism Program, for coordinating and supervising the implementation of this effort and for her future efforts with respect to this document. My thanks also extend to Larissa Tristán Jiménez, consultant of the Program, for all her collaboration.

I must also express my gratitude to the group of consultants that has developed the content of this document. I refer to Quince Duncan Moodie for his conceptual contribution on racism and racial discrimination; to Carlos Minott Maitland for systematizing the experience of the Afro-descendant movement in its permanent struggle against racism, discrimination and intolerance; and to Carlos Rafael Urquilla Bonilla for the analysis and formulation of specific proposals on the text that serves as a basis for the debates in the Working Group.

I wish to express a special public gratitude to María Cristina Pereira da Silva, Chair of the Working Group to Prepare a Draft Inter-American Convention against Racism and
All Forms of Discrimination and Intolerance, for allowing our participation in this process and for providing us such ample information and pertinent documentation. Moreover, this publication would not have been possible without the support and economic contribution of the Swedish Agency for International Development Cooperation and the Ford Foundation.
II. Working Document
Preamble

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that the inherent dignity and equality of all members of the human family are basic principles of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination;

REAFFIRMING the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of racism and of all forms of discrimination and intolerance and their conviction that such discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and the purposes and principles enshrined in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Democratic Charter, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Universal Declaration on the Human Genome and Human Rights;

RECOGNIZING the duty of adopting national and regional measures to promote and encourage observance of the human rights and fundamental freedoms of all individuals and groups subject to their jurisdiction, without regard to race, color, ethnic origin, gender, age, sexual orientation, language, religion, political or other opinion, national or social origin, economic status, migrant, refugee or displaced status, birth, stigmatized infectious-contagious condition, genetic trait, disability, debilitating psychological distress or other social condition;

CONVINCED that the principles of equality and non-discrimination among human persons are dynamic democratic concepts that foster the promotion of effective legal equality and presuppose an obligation on the State’s part to adopt special measures to protect the rights of individuals or groups that are victims of discrimination, in any area of human endeavor, whether public or private, with a view to cultivating equitable conditions for equal opportunity and to combating discrimination in all its individual, structural and institutional manifestations;
AWARE that racism has a dynamic of its own that enables it to transform itself and find new ways to propagate itself and new vehicles of political, social, cultural and linguistic expression;

TAKING INTO ACCOUNT that the victims of racism, discrimination and intolerance in the Americas are, inter alia, Afro-descendants, indigenous peoples, migrants, refugees and displaced persons and their families, as well as other racial, ethnic, sexual, cultural, religious and linguistic groups or minorities that are affected by such manifestations;

CONVINCED that certain persons and groups experience multiple or extreme forms of racism, discrimination and intolerance, driven by a combination of factors such as race, color, ethnic origin, gender, age, sexual orientation, language, religion, political or other opinion, national or social origin, economic status, migrant, refugee or displaced status, birth, stigmatized infectious-contagious condition, genetic trait, disability, debilitating psychological distress or other social condition;

DISTURBED by the fact that various parts of the world have seen a general increase in cases of intolerance and violence motivated by anti-Semitism, Christianophobia, or Islamophobia, and against members of other religious communities, including those with African roots;

RECOGNIZING that peaceful coexistence among religions in pluralistic societies and democratic States is based on respect for equality and non-discrimination among religions, and on the clear separation between the laws of the State and religious tenets;

TAKING INTO ACCOUNT that a pluralistic and democratic society must respect the ethnic, cultural, linguistic and religious identity of every person who belongs to a minority, and create the conditions that will enable that person to express, preserve and develop his or her identity;

CONSIDERING that the individual and collective experience of discrimination must be taken into account to combat the segregation and marginalization of racial, ethnic, cultural, linguistic and religious minorities and to protect the life plan of individuals in general and of minority communities;

ALARMED by the surge in hate crimes motivated by race, color, ethnic origin, gender, religion, sexual orientation, disability and other social conditions;
EMPHASIZING the basic role that education plays in promoting respect for human rights, equality, non-discrimination and tolerance, and

BEARING IN MIND that while the fight against racism and discrimination is the priority of an earlier international instrument, namely the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, it is imperative that the rights therein recognized be reaffirmed, developed, perfected and protected, in order to consolidate within the Americas, the democratic meaning of the principles of legal equality and non-discrimination.

AGREE upon the following:
Scope and evaluation

A preamble, while it is the part of a treaty that in practice offers few precepts, is the historical, philosophical, political and legal framework that responds to a single question: What motivated the negotiating States to reach the consensus that they have achieved with the text of a convention?

A preamble, therefore, plays an essential role in the interpretation and application of a convention, precisely because it allows an understanding of its raison d’être and of the bases that underlie its norms, which is no small task in enabling domestic and international authorities to understand what is intended with the Convention.

It also undoubtedly helps to resolve the lacunae, the main problem found in the application of the norms.¹

As indicated above, the preamble to a convention, or that of any legal instrument, is the climactic point where political and juridical elements coincide. Aware of that special characteristic, the IIHR considers that States are free to weigh the elements that lead to or motivate the drafting of the Convention.

Nevertheless, for purposes of clarification, the IIHR considers it highly important that the Preamble to the Inter-American Convention contains, at the very least, an express reference to what the treaty intends in order to determine, clearly and definitively, its object and purpose, which will serve as an indisputable guide for its application.

The IIHR thus recommends the inclusion of the following paragraphs to the Preamble:

RECOGNIZING that the principle of equality among human beings is a standard of jus cogens.

ENCOURAGED by the idea of resolutely combating, preventing and eradicating racism, all forms of discrimination and intolerance in the Americas.

¹ On the problem of lacunae in international law, see Hans Kelsen, Théorie du Droit International Public, in Recueil des Cours, 1953, pgs. 120-122.
Normative References

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NOTE:

- Given the special nature of the Inter-American Convention, the IIHR does not consider it necessary to make a list, which would be quite long, of the reasons that might foster its negotiation and entry into force.
In light of the foregoing, the IIHR recommends that:

1. The proposed elements of the Preamble to the draft Convention be adopted.

2. In addition, that the following two paragraphs, which the IIHR considers descriptive of the Convention’s object and purpose, be considered, studied and incorporated:

RECOGNIZING that the principle of equality among human beings is a standard of jus cogens.

ENCOURAGED by the idea of resolutely combating, preventing and eradicating racism, all forms of discrimination and intolerance in the Americas.
For purposes of this Convention:

1. Discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, based on race, color, heritage, national or ethnic origin, nationality, age, sex, sexual orientation, gender identity and expression, language, religion, political opinions or opinions of any kind including political opinions, social origin, socioeconomic status, educational level, migrant, refugee, repatriate, stateless, or internally displaced status, stigmatized infectious-contagious condition or any other mental or physical health-related condition, genetic trait, disability, debilitating psychological condition, or any other social condition whose purpose or effect is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

(Proposal by the Department of International Law: any health condition related to epidemic, endemic, job-related, or any other type of illness that can cause vulnerability, stigmas, or disabilities, or any other social condition whose purpose or effect …)

(URUGUAY: Supports a broader definition that seeks to embrace all existing categories of discrimination and maintains the expression “or any other social condition,” as a means of remaining open to new categories in the future. Uruguay considers it appropriate to make a specific reference to “stigmatized infectious-contagious condition” as this is a category in which there is strong discrimination.

(CANADA: Discrimination shall mean any distinction, exclusion, restriction or preference which is based on race, color, national or ethnic origin and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties, in any area of public or private life. This concept also includes indirect discrimination, which shall be taken to occur, in any realm of public and private life, when an apparently neutral rule, requirement, or practice cannot be readily complied with or carried out by persons belonging to a specific group, or puts this group at a disproportionate disadvantage. However, not every distinction, exclusion, restriction or preference, whether direct or indirect, will constitute discrimination if the justification for drawing
the differentiation is reasonable and objective and if the aim is to achieve a purpose which is legitimate under international human rights law.)

2. Indirect discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral (innocuous) factor, such as a provision, criterion, or practice, results in the distinction, exclusion, or restriction of the human rights or fundamental freedoms of persons belonging to a specific group, or puts them at a disadvantage, unless said factor has some reasonable objective or justification.

3. Multiple or **aggravated** discrimination is any distinction, exclusion, restriction, or preference based simultaneously on two or more of the criteria set forth in subparagraph 1 of this article, the objective or result of which is to nullify or curtail, in a **more pronounced fashion**, the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties, in any area of public or private life.

   (URUGUAY: Considers it essential to maintain the word “aggravated.”)

4. **Racism** is any distinction, exclusion, restriction, or preference pertaining to the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms, in any area of public or private life, based on the establishment of a causal link between the phenotypical or genetic characteristics of certain persons and their intellectual, personality, or cultural traits. This concept includes structural racism, which refers to a system in which public policies, institutional practices, cultural representations, and other standards generally reinforce inequality among different racial groups.

   (CANADA: Proposes deletion of this paragraph.)

   (BRAZIL: The term *racism* includes any theory, doctrine, ideology, or set of ideas and values that uphold the supposed existence of human races, establishing a supposed causal link between phenotypical and/or genetic characteristics of individuals or groups and their intellectual, cultural, or personality traits, including the false concept of one or more races superior to all other races, or allowing them to dominate, discriminate, take intolerant measures against, and persecute individuals and groups belonging, or supposedly belonging, to the races viewed as inferior. Any theory, doctrine, ideology, or set of racist ideas and values, as established in this article, is scientifically false, morally reprehensible, socially unjust, and dangerous, and should be condemned by the States Parties.)
Note:

- The delegation of Peru proposes that this paragraph, if approved, be moved to the preamble.
- The delegation of Uruguay is in favor of including a paragraph on racism in the operative part of the Convention. Likewise, it supports Brazil’s proposal, which could be merged with the present paragraph.

5. Special measures or affirmative action adopted for the sole purpose of ensuring adequate advancement of individuals and groups requiring such protection as may be necessary to ensure their equal enjoyment or exercise of one or more human rights and fundamental freedoms shall not be deemed discrimination provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued beyond a reasonable period or once their objectives have been achieved.

6. Intolerance is the set of acts or manifestations that convey disrespect, rejection, or contempt for human dignity and the richness and diversity of the world’s cultures, religions, ideologies, traditions, and human forms of expression, quality, and ways of being.

(CANADA: Proposes deletion of this paragraph.)

Note:

- Some delegations expressed concern that the limitation in this article may be considered a restriction on freedom of expression.

7. (BRAZIL: A distinction, exclusion, restriction, or preference that has a reasonable aim or justification and that is consistent with the aims of this Convention and with the principles of inter-American human rights law will not be considered discriminatory (or discrimination).
**Scope and evaluation**

Article 1 of the Draft is the nerve center for Convention’s application and implementation when it is adopted and enters into force, precisely because the Convention’s object and purpose, as its title indicates, is the elimination of racism, all forms of discrimination and intolerance and the precision of its terms will determine the regulatory scope of the conduct that, on the basis of the Convention, will be mandatory or prohibited for the States that express their consent to be bound by the Convention.

The road towards the elimination of discrimination has been, without a doubt, one of the most traveled by international organizations since World War II. The basic texts of such organizations –the UN and OAS Charters– present as a common denominator, *inter alia*, the recognition that there are rights and freedoms that are inherent to human beings who are equal in rights and, therefore, no form of discrimination can be justified.

Developing a concept of discrimination has not been easy and has had a very interesting historical evolution. The strategic utility of defining what the Convention is intended to combat is thus important in that it should be addressed precisely, from a scientific perspective, especially that of the social sciences, but at the same time it should be broad and encompassing enough so that the Convention does not face conceptual limitations or obstacles of unforeseen eventualities that might emerge in the not-to-distant future.

In the specific case of the discrimination, it is important to note that all international human rights treaties, especially those in the universal and inter-American systems, coincide in prohibiting such practices. There is no doubt, therefore, that the current prohibition of discrimination has achieved the fundamental and ultimate standard of *jus cogens*, being thus a central element in the creation of an *ordre public* and providing a purpose and a sense of verticalization of the rest of international law –and of the domestic law that is derived from it– so that the prohibition of non-discrimination may now be considered an essential value of humanity that operates as source and legitimation of the capacity to create and produce norms. All standards, including those that have a particular modality of existence, as is the case of *soft law*, lose or lack legitimacy whenever they are opposed to the aforementioned principle. This may now be extended to any human act. 2

The strategic importance of the definition of discrimination is even greater. In the current stage of international regulatory development it is understood that the prohibition of discrimination belongs to the realm of *jus cogens*. But what is discrimination? Or

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more exactly, what are the acts that imply discrimination? The response to the question evokes, once again, the crucial historical challenge that this Convention signifies for the advancement of human rights within the OAS and, based on the ideas of universality, indivisibility and interdependence, the scope and advances that this Convention achieves will also have a transcendent universal effect on human rights.

The definition that is adopted will simultaneously aid in arriving at an operational definition of intolerance to the extent that the characteristic, defining and differentiating trait of discrimination, in contrast to other inequities, is very clearly identifiable.

Thus it is always more advisable, an adage of wisdom inspired by justice, to have a provision sufficiently open to encompass all of the factors or reasons that promote or encourage the practice of discrimination so that the temporal projection of the Convention and the broad and valuable efforts of the States and the participants in the Working Group transcend a specific moment and become an augury of the codification of the eternal values of humanity.

**Discrimination**

In the UN, and to a much lesser degree in the OAS, for certain historical reasons the struggle against discrimination has in the main been fought to protect specific sectors or areas. This has been a process that could be said to be inductive; a process of historical aggregation that, because of particularities and specificities, has managed to achieve and forge sufficiently broad norms prohibiting discrimination. This process in the OAS has not been as strong, precisely because the most acute development in prohibiting discrimination, from a regulatory perspective, is the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities.

On the other hand, from a jurisprudential perspective the Inter-American Court of Human Rights, in fulfilling its emblematic task, has from the very beginning reflected on the necessity of having as broad a conceptualization of discrimination as possible without leaving hooks that could be used to hang new forms or means of discrimination. That jurisprudence embraced a holistic commitment to the absolute prohibition of discrimination. It is memorable, then, that the initial step in this regard, when its advisory jurisdiction was invoked regarding a draft amendment to the Costa Rican Constitution, the Court pointed out, utilizing an inverse definition, that:

> Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things.

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Thus, with impeccable subtlety and complementing a norm of its European counterpart that served as a basis for the decision, the Inter-American Court conceptualized discrimination as a difference in treatment, illegitimately motivated or directed, that is, contrary to justice, reason or the nature of things. Therefore, discrimination means a difference in treatment that is unjust, irrational or contrary to the nature of things.

Although this definition is probably not worthy of an encyclopedic study and while there is no doubt as to its jurisprudential functionality, it is an important contribution to an exact, appropriate definition of discrimination. The Inter-American Court, when it issued its opinion, had available norms, especially in the universal system, to have given a precise definition of discrimination. Not having done so, however, clearly demonstrates the dialectic nature of the history of identifying and conceptualizing discrimination. While the regulatory development of those times revealed different modalities of discrimination –what previously had been called the inductive process– the historical challenge posed the ethical need not to limit it in specific cases, but rather to have a definition more akin to trans-temporality, generality and abstraction; in short, the broadest possible. The silence in the Court’s opinion regarding preparing a list of reasons, occasions or factors corresponds precisely to the need to understand that discrimination is something that can respond to practically any reason.

Human rights, from a political point of view, imply an equilibrium among human beings and between them, the State and the international community. A human rights violation necessarily means breaking that figurative or ideal equilibrium and results in an imbalance of power in the relations, which translates, from the angle of human rights, in an elimination or limitation of the recognition, enjoyment or exercise of such rights. The result of every discriminatory act is precisely a human rights violation and this presupposes a prior exercise of “cataloguing” human beings, whereby a determined “type” of human being has and may enjoy or exercise fully his or her consubstantial rights, while other “types” will have fewer rights or will have them recognized less broadly and the latter cannot enjoy or exercise such rights or enjoy or exercise them with a smaller amplitude than the former.

“Cataloguing” is the figurative screening or filtering of human beings and those who do not meet the characteristics that are established by the screen or filter may have the recognition, enjoyment and exercise of their rights limited or nullified. This may be done by the State or by individuals and may be either de facto or de jure. Screening human beings implies a process of selection or choice that responds to criteria –that the Inter-American Court simply classified as unjust, unreasonable or unnatural– and that in the experience of United Nations has mainly been identified casuistically, but the challenge of the Convention is to go beyond that numeros clausus vision and achieve the permanent elimination of discrimination, no matter the motive.

Up to this point there are two essential elements in the determination of discrimination, a sort of “causal” relationship –or more exactly of intent or even reckless negligence– namely, the process of screening and the result translated into a denial or reduction in
the recognition, enjoyment or exercise of human rights. When a motive emerges—unjust, unreasonable and/or unnatural— in that relation, there is the tendency to call discrimination by many names, giving rise to many forms of discrimination. Since the mandate of the Working Group is to draft a treaty that, inter alia, combats all forms of discrimination its conceptual framework should be the broadest possible, without limitations.

The Working Group’s mandate deviates from the historical process reflected in the prolix identification of the forms of discrimination that within the sphere of the UN includes all imaginable areas and sectors. There is no reason, not even intuitive, to continue a process of specific prohibitions of discrimination. On the contrary, the complexity of this history, on the one hand, and the phenomenon of discrimination, on the other, are intellectual sources that allow the conclusion that now is the moment to conceptualize discrimination, no matter what it might be called.

In the text of the Draft Convention discrimination is conceptualized in its initial stage—that of screening, as it has been figuratively named—in absolutely the same way as has been the practice in the UN and the OAS, each coming from different legal sources, such as conventions, declarations and soft law. We should, therefore, begin to define discrimination as distinction, exclusion, restriction or preference, since those four words are inclusive of the different generally accepted conceptualizations of discrimination. However, in the Convention against Discrimination in Education the verb “restrict” has been replaced with “limit.” Furthermore, in the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care this verb—or its substitute—is deleted. In the first case, both modalities are synonymous, although a simple comparison of meanings allows the clarification—even for purposes of translation—that the verb “restrict” is susceptible apparently of a greater number of grammatical objects than the verb “limit.” In any case, it has been the preferred normative practice, save the exception cited, to use the verb “restrict.” With regard to the Principles, the elimination of the verb is explained by the particular connotations of persons with mental illness, precisely because a measure can not be regarded as discriminatory that, under certain circumstances, restricts the exercise of some rights on behalf of the very people who suffer mental illness. The proposed wording, therefore, sufficiently encompasses the experiences offered by the current development of international human rights law.

It is praiseworthy that the Draft, in an unavoidable synchronization with the advances in the area, recognizes that discrimination may occur both in the public and private arenas, which shows the double role of the State, the principal subject of Public International Law, to the extent that, in combating discrimination in the public sphere, it alludes to the relationship of supra-subordination and in alluding to the private sphere, presupposes the relationship of coordination and, therefore, implies the obligation to respect and to

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4 Ibid., para. 56
ensure, inherent in the concept of the modern State whose legitimacy is based on the effective protection of human rights.

In analyzing the reasons or factors of discrimination, the Draft Convention provides a very prolix and detailed list. However, two expressions are noteworthy; namely, the stigmatized infectious-contagious condition or any other mental or physical health-related condition, and or any other social condition.

As to the former, the distinction—or, more exactly, the emphasis—is laudable in pointing out and distinguishing, on the one hand, an infectious-contagious condition, and, on the other, any other stigmatized mental or physical health-related condition. The linguistic formulation of the precept, however, would indicate that a stigmatized infectious-contagious condition would be regarded as discriminatory, as well as any other mental or physical health-related condition equally stigmatized. Thus, the problem in this formulation is that the stigmatization is a social evaluation in a pejorative, infamous, disgraceful or dishonored sense and thus as a social or collective evaluation there is not a previous or subsequent objective that would permit knowing at what moment an infectious-contagious condition, or mental or physical health-related condition has begun to be, or has stopped being, stigmatized. For the person applying the norm, internationally or domestically, it will imply equally an evaluation of the social evaluation, which means that the person applying the norm will have to assess whether the social group has already evaluated the infectious-contagious condition or any other mental or physical health-related condition as stigmatized. Furthermore, since the wording is based on a social or collective evaluation, individual or isolated evaluations that also may lead to discrimination are excluded, which would mean that an infectious-contagious condition or any other mental or physical health-related condition that is not stigmatized as a result of the social evaluation could always result in a discrimination based on the evaluation of a single person who, for any circumstance or reason, feels contempt, displeasure, disgust or any other type of prejudice or a lack of comfort with such conditions. This shows that the conditioning factor of stigmatization introduces a variable of broad indeterminateness, which affects juridical certainty. (Translator’s note. The English version of the Working Document places “stigmatized” before infectious-contagious condition.)

In fact, for the effects of combating discrimination, the reasons are not of interest because they are many and different, as may by seen in the experience of UN and in the drawing up this Draft. There may or may not be systematic discrimination with respect to a stigmatized infectious-contagious condition, such as sero-positive HIV or a developing case of AIDS or tuberculosis. Systematic discrimination may also occur with respect to mental or physical health-related conditions that are not stigmatized or are of doubtful stigmatization, such as autism, obesity, lupus, multiple sclerosis, bipolar disorder, diabetes, cyclothymia, sleep apnea or endometriosis, which may also be reasons for discrimination. The discriminatory nature of acts for those who suffer such health conditions will depend on the degree of proportionality and reasonability of the acts of deprival and/or restriction and to the extent that the rights of third persons are at
5 It must be remembered that the foregoing is an implicit element that allows distinguishing between what is discrimination and what is not, so that the ideal is not to place limitations on the determination of the reasons or motives of discrimination. The term could be perfectly replaced by health condition, that being a much more comprehensive term to combat all forms of discrimination and intolerance.

The same is true with the term social condition employed in the Draft, which follows the normative tradition in the area. It has a connotation that might be considered narrowing, in spite of the immensity of its content, in that the social condition of something is a relational consideration between the object of study and the social environment, that is, the anthropological or human exchange. While the object and purpose of the Convention would mean giving the term social condition a content so broad as to excuse any reason or factor not expressly stated to achieve that purpose it would be much clearer if, in its place, the phrase condition of any other type or nature is used. The reason for this suggestion is eminently linguistic.

In analyzing the component of the result of screening –for whatever reason– that is, the process of distinction, exclusion, restriction or preference regarding human beings, the Draft is properly broad in recognizing that it may lead to denying or curtailing the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms, enshrined in the international instruments applicable to the States Parties. This, however, should be clarified. The Draft alludes to the rights and freedoms enshrined in the international instruments applicable to the States Parties but, needless to say, that expression does not necessarily reject the rights recognized by domestic law, since in this area the principle pro persona prevails, whereby the international or domestic nature of an instrument that recognizes rights is not relevant, favoring that which recognizes a right or that which recognizes it to a greater degree or scope.6 Of course, this means civil, cultural, economic, political and social rights.

It should also be emphasized that the Draft alludes to acts that have an object or effect, which seems to be a very integrating expression of the modalities of the existence of discrimination, especially in the area of the Public International Law, since the expression, taken literally, alludes both to the intent and to the result. This is very important in determining responsibilities because an individual’s responsibility is subjective and therefore the motivation and intent of the conduct must be analyzed, giving rise to willful misconduct or blame, which necessarily implies an exercise of State evaluation at the time of adapting its domestic legislation to the norms of the Convention. In the international sphere, since the responsibility of the State is essentially objective, which coincides with the trend of the hierarchy of human rights, what is important is not the intent –the objective– but the negative result on human rights –the

5 See, American Convention on Human Rights, Arts. 30 and 32.2
6 See, inter alia, American Convention on Human Rights, Art. 29 and International Covenant on Civil and Political Rights, Art. 5
effect. The language of the precept, therefore, leaves no doubt of its enormous utility for the purposes of both the domestic and international dynamic as regards the responsibility of individuals –domestically- and the responsibility of the State –internationally.

In the area of the discrimination, the Draft also has the virtue of defining both indirect and multiple discrimination. While both are manifestations of discrimination and should remain directly included in the generic definition of discrimination, it is highly relevant to demonstrate that those modalities exist and that they are not a mere discrimination, but that they are special forms of existence.

A discriminatory practice, since it may be based on the social condition or a condition of any other type or nature of a person, may obviously imply reasons that appear not to show a “classical” or predictive discrimination. For example, deceit, fraud or occultation, which cause a special discrimination and which should not be confused with general discrimination. The text of the Draft classifies the discriminatory factor as neutral or harmless, but there are substantive differences between the two concepts that call for a definition that excludes. By analogy to the physical sciences, neutrality implies the absence of a dominant force, that is, the absence of a meaning; while harmless implies the absence of harm. In the combat against discrimination a term that implies neutrality is much broader than one that implies the absence of damage because all neutrality, in its broadest meaning, also implies, inter alia, the absence of a prejudice. In addition, indirect discrimination is a discrimination that has all the elements of discrimination, which means that it is important to point out, for purposes of an adequate understanding of the scope of the prohibition of indirect discrimination that the factor of discrimination, that is presented as neutral, has such neutrality in its intention. It is not an axiological neutrality, but an apparent neutrality that leads to deceit, overconfidence or a scam. The definition of indirect discrimination would then coincide with the jurisprudence laid down in Griggs v. Duke Power Co (401 US 424 (1971)).

With respect to the incorporation of multiple discrimination, which occurs through the combination of two or more “classical” discriminatory factors with the same results – otherwise it would not, technically speaking, be classified as discrimination– the determination of the denial or curtailment of the recognition, enjoyment or exercise of human rights and fundamental freedoms should not be accentuated because that would mean raising the standard in an unjustifiable and historically unnecessary manner. The aggravation or uniqueness of discrimination is in the combination of factors and not in the purpose or effect of the discriminatory measure. Thus, the woman who is fired from her employment only because she is a woman or because she is also an indigenous woman suffers the loss of her right to the job, or of stability in the job, even though the consequences of the loss of employment may be more severe in the second case than in the first. That is, the severity of the consequences of denying or curtailing

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7 Dictionary of the Real Academia Española
8 Ibid.
the recognition, enjoyment or exercise of a right depends on conditions that may be beyond the act of discrimination. In the example, it may be that a non-indigenous woman suffers more the loss of her employment than a woman who is indigenous, regardless of the reasons, concurring or not, of the discrimination. It is not, therefore, advisable, under any circumstance, to classify as multiple or aggravated discrimination that which, in addition to being based on two or more “classical” reasons, accentuates the effect of discrimination. The multiplicity or worsening of discrimination is in the combination of factors that fostered it, more than the degree of the harm suffered.\(^9\)

The foregoing fully coincides with the advances in the area of the International Law of State Responsibility, where harm, as a rule, is not conceived as an element integrating the wrongfulness of the act that generates responsibility, but as an element that is used to measure and determine the extent of reparations.\(^10\)

In an effort to order and clarify certain aspects that will appear infra, particularly the analysis of Article 5 of the Draft, the IIHR proposes a reformulation of the concepts of discrimination, indirect discrimination and multiple discrimination, as follows:

Discrimination is any distinction, exclusion, restriction, or preference, in any area of public or private life, that based on a factor of discrimination, whose purpose or effect is to nullify or curtail the equal recognition, enjoyment, or exercise, in conditions of equality, of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

Indirect discrimination is discrimination that exists when a discriminatory factor is presented as apparently neutral in its discriminatory intention.

Multiple discrimination is discrimination that exists because of the combination of two or more discriminatory factors.

Discriminatory factors are race, color, heritage, national or ethnic origin, nationality, age, gender, sexual orientation, gender identity and expression, language, religion, political or other opinion, social origin, socioeconomic status, educational level, migrant, refugee, expatriate, stateless or internally displaced status; health condition, genetic trait, disability, debilitating psychological condition, or a condition of any other type or nature.

\(^9\) This may be seen in the Declaration of Durban, whose paragraph 2 states: “We recognize that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer **multiple or aggravated forms of discrimination based on other related grounds** such as sex, language, religion, political or other opinion, social origin, property, birth or other status;” (Emphasis added) In the consensus arrived at in Durban, the aggravated forms are caused by the combination of discriminatory factors.

The advantage of these definitions is merely one of order. The IIHR recognizes that there are discriminatory factors, the enumeration of which should encompass all the possibilities of discrimination, and that this is the best technical name to refer to them, especially if it is taken into account that those same factors are also present for the existence of intolerance.

“Negative Lists”

As point 5, the Draft includes the so-called “negative list,” which is the determination *numerus clausus* of what should not be understood as discrimination, using the technique explicitly found in UN instruments. It is important to note that the purpose of affirmative action is to achieve a balance in the egalitarian enjoyment of rights and cannot be considered, under any rational perspective, as discriminatory. It is based on obligating mainly the State to adopt measures, through modifying legislation, jurisprudence or practices that oppose discrimination. Measures of affirmative action, therefore, become a sort of logical corollary of the inveterate duty to adapt domestic law. Their purpose is to correct discriminatory practices in that their *raison d'être* is conditioned ontologically and conceptually on a real change of circumstances and not the passage of time. The effect of measures of affirmative action should not be limited to the passage of a reasonable period of time, but rather to the full achievement of their objectives. One of the principal arguments for this is that it is, on not a few occasions, the factors or reasons for discrimination that remain in the collective conscience or subconscious, in ideologies or prejudices socially reproduced across generations that are not corrected with the simple passage of time but with a change of appraisals and mental conceptions that may take conventionally unreasonable periods of time.

In addition, based on the definition of discrimination the concept “distinctions” is often used to refer to the differentiated treatment among human beings but, without being affirmative action, its purpose, however, is to correct certain inequalities or to recognize the legal effect of factual inequalities. In that same sense, the Inter-American Court has expressed the following: 11

> Precisely because equality and non-discrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity…. There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate principles of justice.

Although it may be desirable to keep separate the categories of *discrimination* and of *distinction*, understanding that the former are prohibited, while the latter are not as long

11 *Supra* note 3, para. 56.
as they are legal, reasonable, proportional and necessary in a democratic society.\textsuperscript{12}

However, taking into account that the object and purpose of the Convention is to combat racism, all forms of racial discrimination and intolerance, the conceptualization of distinctions should not be incorporated since that would be contrary to the Convention, which could cause unnecessary confusion. Furthermore, it should be taken into account that courts decide the difference between distinction and discrimination. The situation is different with measures of affirmative action, which in their implementation may imply certain forms of treatment that might be regarded as discriminatory, which means that, from a legal perspective, it is necessary to exclude \textit{a priori} their wrongfulness. That is why some authors call measures of affirmative action, which is its specific name, positive discrimination or inverse discrimination\textsuperscript{13} and, thus, by a subtlety of language, intend to emphasize that they are acts of discrimination but that they pursue an ethically acceptable purpose or goal —positive discrimination— or that they simply involve a sector that has historically or traditionally suffered discrimination -inverse discrimination.

**Racism**

One of the riches that should be more widely valued in historical terms in the drafting of the Convention is that of the incorporation of racism. It is important to distinguish racism from racial discrimination. Racism undoubtedly substantiates, explains, motivates, stimulates or reproduces practices of racial discrimination, but it is much more than that. Racism leads inexorably to practices of racial discrimination, but to pretend to reduce it to those practices is an inexcusable error.

A characteristic of racism is the pretended, but false, association with a causal link between the phenotypical and/or genetic characteristics of certain persons and their intellect, culture or personality and based on that circumstance attempt to justify discriminatory practices and practices of domination, exploitation, segregation and intolerance of the supposed superior races over the inferior races. Racism is, therefore, not an act, or set of acts, as is discrimination, but it is something more that may be stated, as the Delegation of Brazil has wisely suggested, as an inclusive theory, doctrine, ideology or set of ideas and values that proclaim, support, reproduce, perpetuate or implement the idea of those —presumed- links and that, therefore, support, promote, stimulate, aid and/or tolerate the existence of discrimination for racial reasons, as well as the domination, exploitation, segregation and intolerance between races.

\textsuperscript{12} \textit{Supra} note 5.

\textsuperscript{13} \textit{JUAN CARLOS VELASCO ARROYO}, Discriminación Positiva y Protección de las Minorías. Logros y Consecuencias Indeseadas, in \textit{GUILLERMO HOYOS AND ÁNGELA URIBE (Comps.)}, Convergencia entre Ética y Política (Siglo del Hombre, editores), 1997, p. 85
Thus, combating racism transcends and complements the struggle against all forms of discrimination and intolerance, especially when their factors or reasons are supported or based on considerations of race. Racism is not only a factor or cause of discrimination and intolerance.

The point is to find an adequate and appropriate definition of racism. The definition under discussion appears to continue the confusion between racism and racial discrimination. It is, however, necessary to reiterate that such identification, although it might exist, is not exhaustive. Racism transcends, it goes far beyond, racial discrimination. The basis of racism is the claim of superiority among races. That claim may take many forms, from “scientific” doctrines and theories to beliefs or ideas and may be manifested in acts that, as has been indicated, may be racial discrimination but may also be domination, exploitation, segregation, persecution, discrimination and intolerant practices.

Certain adverbs and adjectives may be employed whose use is not whimsical. It has been pointed out that racism presupposes an intended and false causal relationship between phenotypical and genetic traits with certain intellectual, personality and/or cultural characteristics. It may be that if the phrase “intended and false” were eliminated, we would have an antiquated definition of racism. However, scientific findings show that the intended classification or taxonomy of human beings by races is no longer valid.\textsuperscript{14} The European experience and surely that of the most industrialized countries of the Americas, which have been targets of migration show that racist activities are not now motivated exclusively by the causal relationship between phenotypical and genetic traits with certain features, but that they now have elements associated with economic and social variables, such as unemployment or the reduction of social benefits that are sometimes involved in this complex phenomenon, which explains modern forms of discrimination.\textsuperscript{15} It is, however, necessary to recall that these factors are not only present in persons belonging to different races, but also in any foreigner who, for the economic reasons that led to his or her migration, accepts conditions that are less than the traditional of the receptor countries, which are always superior to those of the countries generating migration. That argument is also present, therefore, not only in racism but also in nationalism and even xenophobia.

Racism, however, continues to be expressed as a question of different races among whose relations there is a feeling of superiority and domination and the association of the phenotypical and genetic traits and other features is an excuse or apparent reason.\textsuperscript{16}

\textsuperscript{15} Ibid.
\textsuperscript{16} See, Declaration of the World Conference on Racism, Racial Discrimination, Xenophobia and the Related Forms of Intolerance, A/CONF.189/12, para. 27.
In light of the foregoing, a definition of racism should recognize the bases on which racism and its modalities of expression rest or feed on. The IIHR, thus, proposes that racism be understood as any theory, doctrine, ideology, set of ideas or values that upholds the supposed existence of human races, establishing an alleged causal link between the phenotypical or genetic traits of certain persons, on the one hand, and their intellectual, personality and/or cultural traits, on the other hand, pursues or manifests the justification, explanation or demonstration of the existence of one or more superior races.

In spite of incorporating a definition of racism –about which much has been written and produced, mainly by UNESCO– it is important to take into account that complex migratory, economic and sociological phenomena are creating new expressions of racism, as societies advance toward mixed races and universality. The idea of a definition of racism, therefore, should be simultaneously functional to achieve the object and purpose of the Convention but also sufficiently flexible to allow for contemporary or modern forms of racism. The IIHR is convinced that the proposed definition captures both the functionality and the flexibility required to achieve those ends.

Racism has concrete manifestations or at least typical manifestations, such as exclusion, invisibility, stigmatization, marginalization and territorial aggression, and violence or racial hatred.

Exclusion, as a manifestation of racism, is the lack of involvement of a person or persons identified with an inferior race or races in decision-making, in high positions and in the social, political, economic and legal dynamic, such as a limited or non-existent access to public services, employment and access to justice. Invisibility, as a manifestation of racism, is the elimination from or absence in the census, the omission of the historical contribution of persons belonging to “inferior races” to the economic, social, legal, political or cultural development of a community, country or the entire world, as well as the absence of the perspective and vision of “inferior races” in forming public policy, laws and institutional behavior. Stigmatization consists of attributing to persons belonging to “inferior races” behaviors that diminish or limit their capacities in contrast to “superior races” or that imply anti-values or negative conceptions that may become internalized, individually or collectively, and therefore taking on the characteristics of reduced or limited capabilities, or anti-values, causing or being able to

18 GRUPO DE ABOGADOS-AS ESPECIALISTAS DE AMÉRICA LATINA Y EL CARIBE, Informe de Situación de Discriminación por Racismo en las Américas, Documento de Trabajo para Audiencia Temática ante la Comisión Interamericana de Derechos Humanos, 2008, p. 28 et seq.
19 Ibid., pp. 28-30.
20 Ibid., pp. 30-31.
cause complexes or shame. Marginalization and territorial aggression is the belief that the members of “inferior races” live in or preferably come from a specific geographical area of a country that generally has lower socio-economic indices, such as health, infant mortality, economic development, electrification, water supply and sewerage systems and that is associated with delinquency and danger. Marginalization and territorial aggression is, therefore, a sort of exclusion, invisibility and stigmatization not directed at persons but at certain territorial entities –provinces, communities, neighborhoods, etc.– where persons belonging to “inferior races” live. Finally, any kind of hatred and violence against a person or group of persons belonging to “inferior races” is also a manifestation of racism.

In previous manifestations of racism, belief in racial superiority is a sine qua non element. Some of these practices could ultimately be racial discrimination, but the difference is the degree of conscience and motivation in the executor of the conduct with regard to an alleged racial superiority in the sense that, should it exist, the act would be racism and in the absence of that motivation of superiority, although other motivating elements, such as ignorance, are included, the conduct, to the extent that it results in a denial of a human right, will be racial discrimination.

The forms of manifestation of racism should be part of its definition in order to reduce the margins of interpretation or judging with an illustrative list. A complete definition of racism for the effects of the Convention would be the following:

Racism is any theory, doctrine, ideology, set of ideas or values that upholds the supposed existence of human races, establishing an alleged causal link between the phenotypical or genetic traits of certain persons, on the one hand, and their intellectual, personality and/or cultural traits, on the other hand, pursues or manifests the justification, explanation or demonstration of the existence of one or more superior and inferior races.

Racism shall include every conduct, act, institutional practice, norm, public policy or cultural representation that provokes, stimulates, preserves or perpetuates, in a person or group of persons belonging to or supposedly belonging to races viewed as inferior, as appropriate, any of the following situations:

a. Exclusion is the limited or non-existent access to, inter alia, public services, employment, health, education, justice, political participation and that results in the systematic lack of participation in decision-making, in holding high positions and in the social, political, economic and legal dynamic.

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21 Ibid., pp. 31-32.
22 Ibid., pp. 32-34.
23 Ibid., p. 17.
b. Invisibility is the elimination from or absence in the census, the omission in the historical contribution to the economic, social, legal, political or cultural development of a community, country or the entire world.

c. Stigmatization is attributing behavioral characteristics that diminish or limit human capabilities or that imply anti-values or negative conceptions so that they become internalized, individually or collectively, and are assumed as their own, causing or being able to cause complexes or shame in such persons.

d. Marginalization and territorial aggression is the situation whereby a specific geographical area or territorial entity, such as a province, community or neighborhood generally has lower socio-economic indices, such as health, infant mortality, economic development, electrification, water supply and sewerage systems, as well as other basic services and conditions of existence, and/or which are commonly considered areas of violence, crime, danger or any other negative characteristic.

e. Hatred and violence of any type or nature.

**Intolerance**

With regard to intolerance, the Draft Convention introduces a concept whose amplitude would make it difficult to implement. It is sufficient to note that, according to the proposed definition –the set of acts or manifestations that convey disrespect, rejection, or contempt for human dignity and the richness and diversity of the world’s cultures, religions, ideologies, traditions, and human forms of expression, quality and ways of being- intolerance is all-encompassing, as is racism and discrimination. In other words, racism and discrimination, carried out for any reason, would express or would be manifestations of intolerance.

For purposes of the Convention, the IIHR considers much more convincing a definition that would contain elements and, rather than entering into its conceptualization, its specific manifestations should be analyzed. Such expressions are behaviors that imply aggression, violence, mockery, intimidation, contempt, repugnance, hatred and any other form of rupture of living together in juxtaposition and integrally from a vision of what is irreducibly human.

Therefore, the IIHR, in an effort to collaborate and contribute to the preparation of the Convention, wishes to propose the following functional definition of intolerance:

*Intolerance is conduct that, without falling properly within the concepts of racism or discrimination as defined by this Convention, involves the realization or implies...*
rejection, repudiation, contempt, violence, hatred, criminal or repressive action, in any area of public or private life, against any person or group of persons who are deliberately selected on the basis of a or some discriminatory factors.

It is important to clarify that intolerance, or more precisely the prohibition of other manifestations of intolerance, is not an unlawful restriction to freedom of expression. Article 13.5 of the American Convention on Human Rights states the following:

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

The expression “any other similar (lawless) action” found in the Convention would broaden the scope of this standard and transcend any apology and may be extended to other manifestations.

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With a view to offering an ordered and systematic proposal, based on the foregoing and arranged according to the title of the Convention, the IIHR proposes the following reformulation or conceptual rethinking of a new Article 1 that summarizes the discussions as follows:

For purposes of this Convention:

1. Racism is any theory, doctrine, ideology, set of ideas or values that upholds the supposed existence of human races, establishing an alleged causal link between the phenotypical or genetic traits of certain persons, on the one hand, and their intellectual, personality and/or cultural traits, on the other hand, pursues or manifests the justification, explanation or demonstration of the existence of one or more superior and inferior races.

   Racism shall include every conduct, act, institutional practice, norm, public policy or cultural representation that provokes, stimulates, preserves or perpetuates, in a person or group of persons belonging to or supposedly belonging to races viewed as inferior, as appropriate, any of the following situations:

   a. Exclusion is the limited or non-existent access to, inter alia, public services, employment, health, education, justice, political participation and that results in the systematic lack of participation in decision-making, in holding high positions and in the social, political, economic and legal dynamic.
b. Invisibility is the elimination from or absence in the census, the omission in the historical contribution to the economic, social, legal, political or cultural development of a community, country or the entire world.

c. Stigmatization is attributing behavioral characteristics that diminish or limit human capabilities or that imply anti-values or negative conceptions so that they become internalized, individually or collectively, and are assumed as their own, causing or being able to cause complexes or shame in such persons.

d. Marginalization and territorial aggression is the situation whereby a specific geographical area or territorial entity, such as a province, community or neighborhood generally has lower socio-economic indices, such as health, infant mortality, economic development, electrification, water supply and sewerage systems, as well as other basic services and conditions of existence, and/or which are commonly considered areas of violence, crime, danger or any other negative characteristic.

e. Hatred and violence of any type or nature.

2. Discrimination is any distinction, exclusion, restriction, or preference, in any area of public or private life, that based on a factor of discrimination, whose purpose or effect is to nullify or curtail the equal recognition, enjoyment, or exercise, in conditions of equality, of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

Discriminatory factors are race, color, heritage, national or ethnic origin, nationality, age, gender, sexual orientation, gender identity and expression, language, religion, political or other opinion, social origin, socioeconomic status, educational level, migrant, refugee, expatriate, stateless or internally displaced status; health condition, genetic trait, disability, debilitating psychological condition, or a condition of any other type or nature.

3. Indirect discrimination is discrimination that exists when a discriminatory factor is presented as apparently neutral in its discriminatory intention.

4. Multiple discrimination is discrimination that exists because of the combination of two or more discriminatory factors.

5. Intolerance is conduct that, without falling properly within the concepts of racism or discrimination as defined by this Convention, involves the realization or implies rejection, repudiation, contempt, violence, hatred, criminal or repressive action, in any area of public or private life, against any person or group of persons who are deliberately selected on the basis of a or some discriminatory factors.
Because Article 1 introduces definitions the IIHR also deems it necessary to add two others that, being very operational from the perspective of international law, may clarify the scope of certain provisions. They deal with the idea of “State parties” and “Member States.”

6. **States Parties** are those States that, in accordance with Article 19 of this Convention and rules of the Law of Treaties, have manifested their consent to be bound by this Convention and for which this Convention is in force.

7. **Member States** are the Member States of the Organization of American States.

Finally, Article 1 is the only article in Chapter I, entitled “Definitions and Scope of Application.” However, the Chapter only includes definitions that make operative and facilitate the applicability of the Convention. It does not deal with the scope of application of the Convention, which is also governed by the Law of Treaties, and the Convention is not introducing rules opposed to the latter. Therefore, the title of Chapter 1 should be “Definitions.”
## Normative References

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<td><strong>Charter of the Organization of American States</strong></td>
<td><strong>Charter of the United Nations</strong></td>
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| **Article 3.1**  
The American States reaffirm the following principles: … i) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex. | **Article 1.2**  
To develop friendly relations among nations based on respect for the principle of equal rights self-determination of peoples, and to take other appropriate measures to strengthen universal peace |
| **Article 45.a**  
The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: a) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity and economic security; | **Article 1.3**  
To achieve international co-operation in solving problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. |
| **American Declaration of the Rights and Duties of Man** | **Article 55.c**  
With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: … c. universal respect for, and observance of, human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion. |
| **Article II**  
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. | **Universal Declaration of Human Rights** |
| **American Convention on Human Rights** | **Article 1**  
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. |
| **Article 1.1**  
The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons for race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. | **Article 2**  
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. |
| **Article 24**  
All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law. | |
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<td><strong>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights</strong></td>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination</strong></td>
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<td><strong>Article 3</strong></td>
<td><strong>Article 1.1</strong></td>
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<td>The States Parties to this Protocol undertake to guarantee the exercise of the rights set forth here, without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.</td>
<td>In this Convention, the term &quot;racial discrimination&quot; shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.</td>
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<td><strong>Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women</strong></td>
<td><strong>Article 1.4</strong></td>
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<td><strong>Article 4.f</strong></td>
<td>Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.</td>
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<td>Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied regional and international human rights instruments. These rights include, among others: … the right to equal protection before the law and of the law.</td>
<td><strong>International Covenant on Civil and Political Rights</strong></td>
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<td><strong>Article 6.a</strong></td>
<td><strong>Article 2.1</strong></td>
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<td>The right of every woman to be free from violence includes, among others: a. the right of women to be free from all forms of discrimination.</td>
<td>Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
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<td><strong>Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities</strong></td>
<td><strong>Article 26</strong></td>
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<td><strong>Article 1.2</strong></td>
<td>All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
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<td>Discrimination against persons with disabilities</td>
<td><strong>International Covenant on Economic, Social and Cultural Rights</strong></td>
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<td>a. The term &quot;discrimination against persons with disabilities&quot; means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.</td>
<td><strong>Article 2.2</strong></td>
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| b. A distinction or preference adopted by a State party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If under a State’s internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration | The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion,
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Inter-American Democratic Charter

**Article 9**
The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

**Declaration of Principles on Freedom of Expression**

**Article 2**
All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

**Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas**

**Principle II**
Every person deprived of liberty shall be equal before the law and be entitled to equal protection of the law and the tribunals. They shall also have the right to maintain their guarantees and exercise their fundamental rights, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty.

Under no circumstances shall persons deprived of liberty be discriminated against for reasons of race, ethnic origin, nationality, color, sex, age, language, religion, political or other opinion, national or social origin, economic status, birth, physical, mental, or sensory disability, gender, sexual orientation, or any other social condition. Therefore, any distinction, exclusion, or restriction that is either designed to or has the effect of undermining or impeding the recognition, enjoyment, or exercise of the internationally recognized rights of persons deprived of liberty, shall be prohibited.

Measures designed exclusively to protect the rights of women, particularly the rights of pregnant women and nursing mothers; of children; of the elderly; of those who are sick or suffering from infections such as HIV/AIDS; of persons with a physical, mental, or

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Convention on the Elimination of All Forms of Discrimination against Women

**Article 1**
For the purposes of the present Convention, the term "discrimination against woman" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Article 4**
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Convention on the Rights of the Child

**Article 2.1**
States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**Article 2.2**
States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

**Article 1.1**
The present Convention is applicable, except as

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**NOTICE**

The text provided here is a natural representation of the content as it appears in the document. It is intended to assist in understanding and referencing the document accurately. Further details or context may be necessary for a comprehensive understanding.
sensory disability; as well as of indigenous peoples, afro-descendants, and minorities shall not be considered discriminatory. These measures shall be applied in accordance with the law and international human rights law, and shall always be subject to review by a judge or other competent, independent, and impartial authority.

Persons deprived of liberty in the context of an armed conflict shall be afforded special protection and attention in conformity with the special juridical regimen established by the norms of international humanitarian law, complemented by the norms of international human rights law.

The measures and sanctions imposed on persons deprived of liberty shall be applied impartially, based on objective criteria.

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<td>otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.</td>
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Article 7
States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without discrimination of any kind such as to sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Convention on the Rights of Persons with Disabilities

Article 2
For the purposes of the present Convention: …

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

Article 4.1
States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

Article 5.1
States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

Article 5.3
In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

Article 5.4
Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.
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| **Article 6**
| States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

### Article 7

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interest of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

### Other complementary sources

**Declaration and Programme of Action of the International Conference on Human Rights, Vienna 1993**

**Action Plan B.1.19**
The World Conference of Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion programme in the field of human rights.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**

**Article 4.1**
States shall take measures where required to ensure that persons belonging to minorities may exercise fully and
**INTER-AMERICAN SYSTEM**

effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

**Declaration on the Race and the Racial Prejudices**

**Article 1.1**

All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.

**Article 1.2**

All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.

**Article 2**

1. Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.

2. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practise it, divides nations internally, impedes international cooperation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

3. Racial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification.
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<tr>
<td>Article 3</td>
<td>Any distinction, exclusion, restriction or preference based on race, color, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide.</td>
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**Article 4**

1. Any restriction on the complete self-fulfillment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted.

2. One of the most serious violations of this principle is represented by apartheid, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security.

3. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

**Declaration on the Rights of Indigenous Populations**

**Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Convention against Discrimination in Education**

**Article 1.1**

For the purposes of this Convention, the term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education ….
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<tr>
<td>Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief</td>
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<tr>
<td><strong>Article 2</strong></td>
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<tr>
<td>1. No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.</td>
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<td>2. For the purposes of the present Declaration, the expression &quot;intolerance and discrimination based on religion or belief&quot; means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.</td>
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<td><strong>UN Principles for Older Persons</strong></td>
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<td><strong>Principle 18</strong></td>
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<td>Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.</td>
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<tr>
<td>Declaration on the Rights of Mentally Retarded Persons</td>
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<td><strong>Article 1</strong></td>
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<tr>
<td>The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.</td>
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<tr>
<td>Declaration on the Rights of Disabled Persons</td>
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<tr>
<td><strong>Article 2</strong></td>
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<tr>
<td>Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.</td>
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<tr>
<td><strong>Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care</strong></td>
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<td><strong>Principle 1.4</strong></td>
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<td>There shall be no discrimination on the grounds of mental illness. &quot;Discrimination&quot; means any distinction, exclusion or preference that has the effect of nullifying...</td>
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or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of the present Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

**Standard Minimum Rules for the Treatment of Prisoners**

**Rule 6.1**
The following rules shall be applied impartially. There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Basic Principles for the Treatment of the Prisoners**

**Principle 2**
There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

**Principle 5**
1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, color, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

**Rules of the United Nations for the Protection of the Minors Deprived of his Freedom**

**Rule 4**
The Rules should be applied impartially, without discrimination of any kind as to race, color, sex, age, language, religion, nationality, political or other

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opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

**UN Standard Minimum Rules for Non-custodial Measures**

**Rule 2.2**
The Rules shall be applied without any discrimination on the grounds of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

**UN Standard Minimum Rules for Juvenile Justice**

**Rule 2.1**
The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Declaration of Basic Principles of Justice for the Victims of Crimes and Abuse of Power**

**Article 3**
The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

**Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

**Principle and Guideline 25**
The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

**Declaration on Social Progress and Development**

**Article 1**
All peoples and all human beings, without distinction as
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<td>to race, color, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it.</td>
<td>Universal Declaration on the Human Genome and Human Rights</td>
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<td><strong>Article 2</strong></td>
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<tr>
<td>a) Everyone has a right to respect for their dignity and for their rights regardless of their genetic characteristics.</td>
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<td>b) That dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity.</td>
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<td>Employment Policy Convention (ILO)</td>
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<td><strong>Article 1.2.c</strong></td>
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<td>The said policy—an active policy designed to promote full, productive and freely chosen employment—shall aim at ensuring that:…c. there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin.</td>
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<td>Freedom of Association and Right to Organize (ILO)</td>
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<td><strong>Article 2</strong></td>
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<td>Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.</td>
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<td><strong>Article 1.1</strong></td>
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<tr>
<td>Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.</td>
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<td>Abolition of Forced Labor Convention (ILO)</td>
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<td><strong>Article 1</strong></td>
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<td>Each Member of the International Labor Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or...</td>
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<td>compulsory labor: … e) As a means of racial, social, national or religious discrimination.</td>
<td><strong>Convention on the Reduction of Statelessness</strong></td>
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<td><strong>Article 9</strong></td>
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<td>A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.</td>
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<td><strong>Convention relating to the Status of Stateless Persons</strong></td>
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<td><strong>Article 3</strong></td>
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<td>The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.</td>
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<td><strong>Convention relating to the Status of Refugees</strong></td>
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<td><strong>Article 3</strong></td>
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<td>The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.</td>
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<td><strong>Geneva Conventions (I, II, III and IV)</strong></td>
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<td><strong>Common Article 3, paragraph 1:</strong></td>
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<td>In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following:</td>
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<td>1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or on any other similar criteria.</td>
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<td><strong>Protocol Additional (I) to the Geneva Conventions</strong></td>
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<td><strong>Article 9.1</strong></td>
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|                          | This Part, the provisions of which are intended to ameliorate the conditions of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status or on any
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<td>other similar criteria.</td>
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**Article 75.1**

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any similar criteria. Each Party shall respect the person, honor, convictions and religious practices of all such persons.

**Protocol Additional (II) to the Geneva Conventions**

**Article 2.1**

This Protocol shall be applied without any adverse distinction founded on race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.
Recommendations

In light of the foregoing, the IIHR recommends that:

1. The Draft Convention maintain definitions on racism, all forms of discrimination and intolerance, since this is the conceptual framework that enables an understanding of the scope of the Convention’s object and purpose.

2. A current definition of racism should have the sufficient functionality to encompass the traditional forms of racism and should simultaneously have enough flexibility to combat contemporary forms of this phenomenon.

3. With regard to the definition of discrimination, the Draft Convention contain a very good and precise definition that incorporates the advances that have been made in the area of international law.
   
   a. Nevertheless, the term “stigmatized infectious-contagious condition or any other mental or physical health-related condition” should be replaced with “health condition” for the reasons stated in “Scope and evaluation.”
   
   b. Similarly, although it is understood that the word “condition” is broad enough to include any other discriminatory reason or factor, for greater conceptual and/or linguistic clarity it should be replaced by the expression “condition of any other kind or nature.”

4. It is important that the Draft Convention maintain separately from the generic definition of discrimination, definitions regarding indirect discrimination and multiple or aggravated discrimination, emphasizing in the latter case that the severity of the discrimination is found in the combination of two or more reasons or factors of discrimination and not necessarily in the harm caused, which is now considered an element that does not determine the unlawfulness of an international conduct, but rather the scope of reparations.

5. The addition of a negative list introduced in the Draft coincides with the advances that have been made in the area of international law in the sense of expressly excluding affirmative action from the notion of discrimination.
   
   a. In this same regard, affirmative action, to the extent that its purpose or raison d’être is the modification of conduct and discriminatory practices, should continue until its purposes have been achieved and should not be devalued, repealed or abandoned by the simple passage of time. Implementation of measures of affirmative action creates obligations of result –duty to achieve- and not simply obligations of means –duty to act in good faith.
b. It is not recommended that, in a Convention whose object and purpose is to combat racism, all forms of discrimination and intolerance, the *negative list* include, as acts that do not involve discrimination, those that are simple distinctions, regarded as lawful under human rights law, since this may lead to unnecessary confusion. In any case, experience shows that the jurisprudence is better able to evaluate—by its casuistic method—the distinctions than a general vision that might be found in a convention.

6. The definition of intolerance should be sufficiently functional so as to be distinguished from those of racism and of all forms of discrimination and, at the same time, sufficiently broad to express all expression of rejection, repudiation or disrespect of human diversity. It should be clarified, however, that under Article 20.5 of the American Convention on Human Rights intolerance must not imply any restriction to freedom of expression.

7. Complementarily and incorporating some of the ideas indicated *supra*, in the first place, the name of Chapter I (Definitions and Scope of Application) be changed to “Definitions” and, in the second place, that the following comprehensive formulation of Article 1 be considered and studied, totally or partially, by the Working Group.

**Article 1**

*For purposes of this Convention:*

1. **Racism is any theory, doctrine, ideology, set of ideas or values that upholds the supposed existence of human races, establishing an alleged causal link between the phenotypical or genetic traits of certain persons, on the one hand, and their intellectual, personality and/or cultural traits, on the other hand, pursues or manifests the justification, explanation or demonstration of the existence of one or more superior and inferior races.**

   Racism shall include every conduct, act, institutional practice, norm, public policy or cultural representation that provokes, stimulates, preserves or perpetuates, in a person or group of persons belonging to or supposedly belonging to races viewed as inferior, as appropriate, any of the following situations:

   a. **Exclusion is the limited or non-existent access to, inter alia, public services, employment, health, education, justice, political participation and that results in the systematic lack of participation in decision-making, in holding high positions and in the social, political, economic and legal dynamic.**

   b. **Invisibility is the elimination from or absence in the census, the omission in the historical contribution to the economic, social, legal, political or cultural development of a community, country or the entire world.**
c. Stigmatization is attributing behavioral characteristics that diminish or limit human capabilities or that imply anti-values or negative conceptions so that they become internalized, individually or collectively, and are assumed as their own, causing or being able to cause complexes or shame in such persons.

d. Marginalization and territorial aggression is the situation whereby a specific geographical area or territorial entity, such as a province, community or neighborhood generally has lower socio-economic indices, such as health, infant mortality, economic development, electrification, water supply and sewerage systems, as well as other basic services and conditions of existence, and/or which are commonly considered areas of violence, crime, danger or any other negative characteristic.

e. Hatred and violence of any type or nature.

2. Discrimination is any distinction, exclusion, restriction, or preference, in any area of public or private life, that based on a factor of discrimination, whose purpose or effect is to nullify or curtail the equal recognition, enjoyment, or exercise, in conditions of equality, of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

Discriminatory factors are race, color, heritage, national or ethnic origin, nationality, age, gender, sexual orientation, gender identity and expression, language, religion, political or other opinion, social origin, socioeconomic status, educational level, migrant, refugee, expatriate, stateless or internally displaced status; health condition, genetic trait, disability, debilitating psychological condition, or a condition of any other type or nature.

3. Indirect discrimination is discrimination that exists when a discriminatory factor is presented as apparently neutral in its discriminatory intention.

4. Multiple discrimination is discrimination that exists because of the combination of two or more discriminatory factors.

5. Intolerance is conduct that, without falling properly within the concepts of racism or discrimination as defined by this Convention, involves the realization or implies rejection, repudiation, contempt, violence, hatred, criminal or repressive action, in any area of public or private life, against any person or group of persons who are deliberately selected on the basis of a or some discriminatory factors.

6. States Parties are those States that, in accordance with Article 19 of this Convention and the rules of the Law of Treaties, have manifested their consent to be bound by this Convention and for which this Convention is in force.

7. Member States are the Member States of the Organization of American States.
Article 2

All human beings have the right to equal treatment before the law and to protection against racism, discrimination, and intolerance, in the public or private sphere.

Note:
- The delegation of Uruguay considers that the final draft here should coincide with the title of the Convention.
Scope and evaluation

Article 2 incorporates the first substantive element of the Convention by reiterating, in accordance with international law, that all persons are equal before the law and that they have the right to the equal protection of the law. The advance in the Convention is that of stating precisely that the protection of the law, which must be equal and without discrimination, should also be directed to protection against racism and all forms of discrimination and intolerance.

The prohibition of discrimination and equality before the law are two different concepts or ideas, but are highly reciprocal. The law is an internal act of a State, which means that it is an act that directly impacts and permeates the domestic legal framework of that State. The law is created by the State so that by elevating the precept that all persons are equal before the law, what is being established is a determination in the relationship between the State and everyone within its jurisdiction in the sense that in exercising its law-making powers the State may not create differentiated treatments of discrimination –everyone is equal before the law–.

This provision also obligates States to develop the possibilities that arise as an unavoidable and immediate consequence of the foregoing. While the State must refrain from discriminatory acts, it must also be a guarantor in the sense of offering, through the law, the necessary protection against racism, all forms of discrimination and intolerance. Not only what may be done by law –whose prohibition corresponds to what has been indicated in the–previous paragraph- but also what the State itself does materially and what individuals may do, protected or not by the domestic legal framework.

The obligations that are created for a State Party under the Convention would, therefore, be the following:


b) Provide protection by law (read, domestic legal framework) against racism, all forms of discrimination and intolerance. Such protection implies, in turn:

   a. A legal framework of protection against racism, all forms of discrimination and intolerance that the State commits de facto.

b. A legal framework of protection against racism, all forms of discrimination and intolerance that individuals might commit under the existing legal framework (i.e. racism, all forms of discrimination and intolerance de jure committed by individuals).

c. A legal framework of protection against racism, all forms of discrimination and intolerance that individuals might commit in their inter-personal actions, taking advantage of legal lacunae (i.e. racism, all forms of discrimination and intolerance de facto committed by individuals).

In developing the possibilities of providing protection through the law –in the modalities indicated supra– Article 2 must be interpreted within the normative complex of the Convention, and the interrelationship between the Convention and the AMERICAN CONVENTION ON HUMAN RIGHTS. Thus the word “protection” employed by this Convention may be understood to coincide with the duty to ensure in Article 1.1 of the AMERICAN CONVENTION and therefore the obligations derived from that duty of protection implies the obligations to prevent, ensure and repair, that is, to adopt all necessary measures so that acts of racism, all forms of discrimination or intolerance committed by individuals or by acts attributable to the State do not occur and that those that do occur are investigated and those responsible are punished, which may even, depending on the severity of the case, involve criminal sanctions, so that the victim is ultimately granted reparation under the concept of full reparations, which means terminating the harmful acts, guaranteeing that they will not be repeated, restitutio in integrum, if possible, compensation and measures of satisfaction.

It should be noted that the final phrase of Article 2 in the sense that protection should be provided against racism, all forms or racial discrimination or intolerance, in the public and private spheres, precisely captures the horizontal effect of human rights law, which departs from the classical vision in which only the State was seen as a presumed violator of human rights in its relation of supra-subordination to persons subject to its jurisdiction. Human rights violations may now also be committed horizontally or through coordination among persons. What occurs is that in the international protection of human rights, contrary to what occurs in international criminal law, only the State is responsible, which means that the acts of individuals are considered acts of the State, which occurs, inter alia, in cases of acquiescence or tolerance, but also in those of omission of the duty of care –position of guarantor– of the State. These elements, however, are already incorporated in the definitions of discrimination and intolerance introduced in the IIHR’s suggested Article 1 and, therefore, it is not necessary to repeat that those areas are dealt with or encompassed by said actions.

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[^3]: It is a consequence derived from the principle of good faith. See; Vienna Convention on the Law of Treaties, Art. 31.1.
An act that normally is not a State act in violation of human rights may involve its international responsibility, not for the act of the individual *per se*, but for the lack of protection or sufficient guarantee, that is, for not having adopted the reasonably necessary preventive measures, not having investigated or tried adequately those responsible and/or not having granted adequate reparations to the victim,\(^4\) taking into account that the obligations to prevent and to investigate and prosecute are obligations of means –*duty to act in good faith/obligation of moyens*– and not of result –*duty to achieve/obligation of resultat*–,\(^5\) and therefore the State’s international responsibility not only arises because an act of racism, discrimination or intolerance occurred between individuals but because the prevention was not reasonable or the investigation and trial were mere formalities condemned *a priori* to failure (*best endeavors*).

The proposed Article 2 should necessarily be understood in connection with the obligation to adapt domestic law in that legal protection against racism, all forms of discrimination and intolerance presupposes a State effort to enact legislation that prohibits, punishes and discourages them. The State must also review, amend, and/or repeal any law that, directly or indirectly, protects, fosters or tolerates racism, all forms of discrimination and intolerance.

With the sole purpose of maintaining the Convention congruent with the protected rights, the following change is suggested in the language of Article 2:

*All human beings have the right to equal treatment before the law and to protection against racism, discrimination and intolerance, in the public or private sphere.*

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\(^4\) *INTER-AMERICAN COURT OF HUMAN RIGHTS*, *COURT INTERAMERICANA DE DERECHOS HUMANOS*, *Velásquez Rodríguez Case*, Serie C No. 4, para. 172.

### Normative references

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<tr>
<td><strong>American Declaration on the Rights and Duties of Man</strong></td>
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<td><strong>Article II</strong></td>
<td><strong>Article 7</strong></td>
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<tr>
<td>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.</td>
<td>All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</td>
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<td><strong>American Convention on Human Rights</strong></td>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination</strong></td>
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<td><strong>Article 1.1</strong></td>
<td><strong>Article 2</strong></td>
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<td>The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, 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.</td>
<td>1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:</td>
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<tr>
<td><strong>Article 24</strong></td>
<td>a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;</td>
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<tr>
<td>All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.</td>
<td>b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;</td>
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<tr>
<td><strong>Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women</strong></td>
<td>c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetrating racial discrimination wherever it exists;</td>
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<td><strong>Article 4.f</strong></td>
<td>d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;</td>
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<td>Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied regional and international human rights instruments. These rights include, among others: … the right to equal protection before the law and of the law.</td>
<td>e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.</td>
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<tr>
<td><strong>Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas</strong></td>
<td>2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and complete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal</td>
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<td><strong>Principle II</strong></td>
<td>protection.</td>
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<td>Every person deprived of liberty shall be equal before the law and be entitled to equal protection of the law and the tribunals. They shall also have the right to maintain their guarantees and exercise their fundamental rights, except for those rights which exercise is temporarily limited or restricted by law and</td>
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for reasons inherent to their condition as persons deprived of liberty.

enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

**International Covenant on Civil and Political Rights**

**Article 2.1**
Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 26**
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Convention on the Elimination of All Forms of Discrimination against Women**

**Article 2**
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

a) To embody the principle of the equality of men and women in their national Constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

e) To take all appropriate measures to eliminate
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<td>discrimination against women by any person, organization or enterprise;</td>
<td>f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;</td>
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<tr>
<td>g) To repeal all national penal provisions which constitute discrimination against women.</td>
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**Convention on the Rights of Persons with Disabilities**

**Article 5.1**
States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

**Article 5.2**
States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

**Article 12.2**
States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
In light of the foregoing, the IIHR recommends that:

1. The proposal of the Draft Convention be maintained and adopted in the sense that in addition to emphasizing equality before the law, every human being has the right to the equal protection of the law against racism, all forms of discrimination and intolerance, as conceptualized in Article 1

2. That, with a view to contributing to the debate, the following alternative text, which is merely a formal adjustment, to Article 2, be considered:

   **Article 2**

   *All human beings have the right to equal treatment before the law and to equal protection against racism, all forms of discrimination and intolerance, in the public or private sphere.*
Article 3

Every human being has the right to the equal recognition, enjoyment, exercise, and protection of all human rights and fundamental freedoms enshrined in their domestic law and in the international instruments applicable to the States Parties, at both the individual and collective levels.

(CANADA: Proposes deletion of the text in bold.)
Scope and evaluation

If the essence of discrimination is mainly the denial or curtailment of the recognition, enjoyment and exercise of human rights, the relevance of Article 3 is to be lauded.

This is the article on non-discrimination. In ensuring that every person has the right to the recognition, enjoyment, exercise, –and the fortunate addition– protection of human rights, we are speaking about the law of human rights, which is the starting point of the human rights protective systems.

In the first place, Article 3 takes a position that has always been identified with the juridical culture of the Americas by recognizing that the maximum and highest source of human rights is the inherent dignity of the individual, so that all the legal framework can do is to recognize, but not create, human rights. Stated in other terms, legal positivism is in this area and realm, a source of recognition or evidence of the ethical reality. This conception leads inexorably toward the adoption of anthropocentrism, the philosophy that places the human being as the raison d’être of the State and, ergo, of the international community. Thus, if the role that the State fulfills or should fulfill is what Archibald Cox has called the plumbing function, which means that the State –and more specifically its constitutional justice- should be a plumber, unblocking and eliminating the obstructions within society that impede the flow of democracy and of inclusion. The plumbing function thus is a mechanism that opens and synthesizes the effort to recognize rights, permits and tolerates that individuals enjoy and exercise them within their limits and provides mechanisms of protection.

When a State disregards some of those functions, the State itself or individuals may excessively exert their rights, pressuring and therefore diminishing and even denying recognition of those rights or their enjoyment or exercise and even their concrete protection. In short, the functional fault of the State encourages, promotes, tolerates or does not impede the existence of, inter alia, practices arising from racism, all forms of discrimination or intolerance.

The prohibition of racism, all forms of discrimination or intolerance presents, as the other side of the coin, the right of every person that his or her human rights are recognized, that their enjoyment and exercise are respected and that there exist specific mechanisms of protection to oversee those rights.

There is no doubt that the language of Draft Article 3 reveals the conceptual and legal advances that have been made regarding the central topic of the Draft and its juridical effect. That progress is also seen in the idea that the source of the recognition of human rights is not exclusive of what international law offers, but rather that the domestic legal order itself is a source of the recognition of such rights, a recognition that may
ultimately be even superior to that offered on the international plane, since this is, by antonomasia, supplementary to the domestic.

It is also important to highlight that the rights of human beings are holistic, which means that they are not only rights of an individual order or that are enjoyed individually vis-à-vis other individuals or society. Human beings also have collective rights, that is, rights whose ownership does not belong to each individual, but to human collectivities, to particular peoples, although their enjoyment and exercise may be individual and that they may be protected by such means as the so-called class actions that make it possible that a single person of the affected group may achieve protection for the collective body that is the holder of the rights.
### INTER-AMERICAN SYSTEM

**American Declaration of the Rights and Duties of Man**

**Article II**
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.

**American Convention on Human Rights**

**Article 1.1**
The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons for race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 4.**
Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments.

### UNIVERSAL SYSTEM

**Universal Declaration of Human Rights**

**Article 7**
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 28**
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 30**
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**International Covenant on Civil and Political Rights**

**Article 2.1**
Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
In view of the foregoing, the IIHR recommends that:

1. The proposed Article 3 be maintained and adopted in the sense that, in addition to recognizing the human rights identified in the sources of the domestic and international legal orders, those human rights are recognized individually and collectively.
The States Parties to this Convention recognize the collective rights of indigenous peoples and, when pertinent, of persons of African descent that are indispensable for their existence, well-being, and integral development as peoples, *inter alia*, the right to their collective action; to their social, political, and economic organization; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer, make use of, and control their habitats and natural resources.

(BRAZIL: The States Parties to this Convention pledge to protect the collective rights of indigenous peoples and of other peoples and ethnic groups that are indispensable for their existence, well-being, and integral development as peoples, *inter alia*, the right to their collective action; to access to public services and assets; to their social, political, and economic organization; their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer and control their lands, territories, and natural resources, in accordance with the law of the States Parties.)

(CANADA: Proposes deletion of this paragraph.)

Note:
- The possibility of eliminating this article was raised. One of the reasons is the Organization has a working group devoted solely to this issue. Additionally, this is a matter still under discussion, one that, even in the UN Declaration on the Rights of Indigenous Peoples, has not been approved by some countries.
Scope and evaluation

Article 4 refers to the recognition of certain rights of indigenous and Afro-descendant peoples. The question that may be asked is What value does this article add to the struggle against racism, all forms of discrimination and intolerance?

From the perspective of human rights, it may be said that the value added is that of a reaffirmation of the rights of groups that traditionally and historically have been harmed or affected by practices of racism and even by practices of discrimination and intolerance.

The proposal seeks to make visible those sectors and some of their most elementary rights as a vindication of their claims in the sense that, although from a linear perspective the object and purpose of the Convention would be sufficient to avoid -assuming the faithful compliance of its deontological provisions- that such groups suffer the effects of discrimination, intolerance or racism, it is no less certain that the technique of specific recognition and visibility offers a sort of double or reinforced guarantee of protection.

At the same time the proposed provision has the virtue of creating specific obligations for States, or at least diminishing the degree of generality or abstraction with which certain State obligations are presented. That circumstance allows the provision to contribute to the juridical certainty of the States, peoples and individuals with respect to the application of the future Convention.

It is important, however, to deal in formalities. In the area of human rights, if an act has a value, it is to clarify the scope of the norm. Through interpretation and mainly through the effect of the pro persona principle, the scope of human rights norms tends to be expansive and broadening. However, everything that contributes, beginning with the linguistic or literal formulation of the precepts to specify concretely the scope of the norm, does so not only with respect to its implementation by States, but also to the international supervision that the Convention will provide. This would mean the elimination of evaluative criteria that could justify the exclusion of specific groups and the substitution of those evaluative criteria for categorical assertions that would allow a clear appreciation of the scope of the norms.

In choosing between a restrictive provision and one that is more open, the pro persona principle -applied in the drafting phase of an international instrument– and the expansive sense of human rights should foster a preference for the latter. This would avoid the need for future protocols that would include, with the obvious delay, what was excluded or that would avoid that the jurisprudence recognize the excluded groups, which, while it might be desirable to the extent that jurisprudence always plays an integrating role, it
exposes recognition to the inevitable variability of jurisprudence, the result of the variations of composition of the bodies responsible for the jurisprudence.

The proposal of the Presidency of the Working Group, however, establishes that the obligation of the States Parties is to recognize, or more exactly is to not not recognize these rights. In this regard, the proposal of Brazil has a much broader progressive sense by stating that the obligation is to protect those rights. Both actions are not exclusive. In fact, they are complementary. However, in the inter-American system there are two expressions that reflect a clear content—and they have already been mentioned in other articles– which are the obligations to respect and to ensure.

There is no doubt on the strategic importance of including this provision and for the same reason that motivates its inclusion, it would be preferred to have an alternative that opens the possibility of recognizing other sectors and that the State has obligations to respect and to ensure, as they already have based on the American Convention on Human Rights. The IIHR deems it important to submit to the decision of the Working Group the following language for Article 4 of the Draft Convention.

The States Parties undertake to respect and to ensure the collective rights of indigenous peoples, of Afro-descendants and of other peoples and ethnic groups that are indispensable for their existence, well-being, and integral development, inter alia, the right to their collective action; to access to public services and goods; to their social, political and economic organization; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer and control their lands, territories and natural resources, in accordance with the applicable norms.

It is important to recognize that just because there are drafts of international instruments or international instruments already adopted by the OAS or even the UN, which deal with the same matter as this provision, is not sufficient reason to omit it from the Draft.

In fact, advances in human rights have been made by recognizing the diversity of groups and situations, which has resulted in instruments for specific sectors or topics, which could have been said to be unnecessary because they were already found in some treaty of a general nature. It is impossible, however, to doubt the importance that such “reiterations” have had in the effective progress of human rights.¹

¹ In this sense the International Convention against All Forms of Racial Discrimination would have been unnecessary, given the norms of the International Covenant on Civil and Political Rights, on the one hand, and the International Covenant on Economic, Social and Cultural Rights, on the other.
### Normative references

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<tr>
<td>None</td>
<td>International Covenant on Civil and Political Rights</td>
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<td><strong>Article 27</strong></td>
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<td>In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own cultural, to profess and practice their own religion, or to use their own language.</td>
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<td></td>
<td><strong>Declaration on the Rights of the Indigenous Populations</strong></td>
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<td><strong>Article 2</strong></td>
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<td>Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.</td>
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<td><strong>Article 3</strong></td>
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<td>Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</td>
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<td><strong>Article 4</strong></td>
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<td>Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</td>
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<td><strong>Article 5</strong></td>
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<td>Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.</td>
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<td><strong>Article 6</strong></td>
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<td>Every indigenous individual has the right to a nationality.</td>
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<td><strong>Article 7</strong></td>
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<td>1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the...</td>
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| group to another group. | Article 8  
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.  
2. States shall provide effective mechanisms for prevention of, and redress for:  
   a. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;  
   b. Any action which has the aim or effect of dispossessing them of their lands, territories or resources;  
   c. Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;  
   d. Any form of forced assimilation or integration;  
   e. Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.  
Article 9  
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.  
Article 10  
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.  
Article 11  
1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.  
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.  
Article 12  
1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial |
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<td>objects; and the right to the repatriation of their human remains.</td>
<td>2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.</td>
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**Article 13**
1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 14**
1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Article 15**
1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

**Article 16**
1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural
Article 17
1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20
1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21
1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
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<td><strong>Article 22</strong></td>
<td>1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.</td>
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<td>2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.</td>
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<td><strong>Article 23</strong></td>
<td>Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.</td>
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<tr>
<td><strong>Article 24</strong></td>
<td>1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.</td>
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<tr>
<td>2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.</td>
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<td><strong>Article 25</strong></td>
<td>Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</td>
</tr>
<tr>
<td><strong>Article 26</strong></td>
<td>1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</td>
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<td>2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</td>
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</table>
| 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
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<tr>
<td><strong>Article 27</strong></td>
<td>States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</td>
</tr>
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</table>
| **Article 28**           | 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.  
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress. |
| **Article 29**           | 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.  
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.  
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented. |
| **Article 30**           | 1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.  
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. |
| **Article 31**           | 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional
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<td>knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.</td>
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<tr>
<td>2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.</td>
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<tr>
<td><strong>Article 32</strong></td>
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<tr>
<td>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</td>
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<tr>
<td>2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</td>
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<td>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</td>
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<tr>
<td><strong>Article 33</strong></td>
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<tr>
<td>1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.</td>
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<tr>
<td>2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.</td>
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<tr>
<td><strong>Article 34</strong></td>
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<tr>
<td>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</td>
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<tr>
<td><strong>Article 35</strong></td>
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<td>Indigenous peoples have the right to determine the responsibilities of individuals to their communities.</td>
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<tr>
<td><strong>Article 36</strong></td>
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<tr>
<td>1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including</td>
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activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.

2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

**Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

**Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration. The indigenous populations have right to the self-determination. In view of that right they determine freely their political condition and pursue freely their economic, social, and cultural development.

**Convention concerning Indigenous and Tribal Peoples (ILO)**

**Article 7**

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples...
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concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

**Article 8**
1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

**Article 9**
1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

**Article 10**
1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.
2. Preference shall be given to methods of punishment other than confinement in prison.

**Article 11**
The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

**Article 12**
The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.
**Article 13**

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

**Article 14**

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

**Article 15**

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

**Article 16**

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such
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<td>relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.</td>
<td>3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.</td>
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<td>3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.</td>
<td>4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.</td>
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<td>5. Persons thus relocated shall be fully compensated for any resulting loss or injury.</td>
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<tr>
<td>Article 17</td>
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<tr>
<td>1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.</td>
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<tr>
<td>2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.</td>
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<tr>
<td>3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.</td>
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<tr>
<td>Article 18</td>
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<tr>
<td>Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.</td>
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<tr>
<td>Article 19</td>
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<tr>
<td>National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:</td>
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<td>(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;</td>
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<td>(b) The provision of the means required to promote the development of the lands which these peoples already possess.</td>
<td>(b) The provision of the means required to promote the development of the lands which these peoples already possess.</td>
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<td>Article 20</td>
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<tr>
<td>1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and</td>
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conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
   (a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;
   (b) Equal remuneration for work of equal value;
   (c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
   (d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:
   (a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
   (b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
   (c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
   (d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Article 21
Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22
1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.
2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.
3. Any special training programmes shall be based on the economic environment, social and cultural conditions and
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<td>practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.</td>
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**Article 23**

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

**Article 24**

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

**Article 25**

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

**Article 26**

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.
INTER-AMERICAN SYSTEM

Article 27
1. Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. They shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28
1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29
The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30
1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.
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<tr>
<td><strong>Article 31</strong></td>
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<tr>
<td>Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.</td>
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<tr>
<td><strong>Article 32</strong></td>
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<tr>
<td>Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.</td>
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**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**

<table>
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<tr>
<th>Article 1.</th>
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<tr>
<td>1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.</td>
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<td>2. States shall adopt appropriate legislative and other measures to achieve those ends.</td>
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<tr>
<th>Article 2</th>
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<tbody>
<tr>
<td>1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.</td>
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<tr>
<td>2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.</td>
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<td>3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.</td>
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<td>4. Persons belonging to minorities have the right to establish and maintain their own associations.</td>
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<td>5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.</td>
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<tr>
<td><strong>Article 3</strong></td>
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</tr>
<tr>
<td>1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.</td>
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</tr>
<tr>
<td>2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.</td>
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</tr>
<tr>
<td><strong>Article 4</strong></td>
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<tr>
<td>1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.</td>
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<tr>
<td>2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.</td>
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<tr>
<td>3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.</td>
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</tr>
<tr>
<td>4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.</td>
<td>4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.</td>
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<tr>
<td>5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.</td>
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</tr>
<tr>
<td><strong>Article 5</strong></td>
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<tr>
<td>1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.</td>
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<tr>
<td>2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.</td>
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Recommendations

In light of the foregoing, the IIHR recommends that:

1. There be an article that specifically and explicitly confirms the need to preserve the rights that, as peoples, indigenous peoples, as well as Afro-descendants and other peoples and ethnic groups have.

2. With a view to contributing to the preparation of the Draft Convention and recognizing that collective rights are not exclusive for indigenous peoples or for persons of African descent, but that there exist other peoples and ethnic groups that, with less political prominence, should also enjoy the respect and guarantee of their basic and essential rights of existence, well-being and integral development, the following text as Article 4 of the Draft Convention be considered:

   **Article 4**

   The States Parties undertake to respect and to ensure the collective rights of indigenous peoples, of Afro-descendants and of other peoples and ethnic groups that are indispensable for their existence, well-being, and integral development, inter alia, the right to their collective action; access to public services and goods; to their social, political and economic organization; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer and control their lands, territories, and natural resources, in accordance with the applicable norms.
Article 5

[For purposes of this Convention and based on the definitions in the preceding articles and the criteria set forth in Article 1.1, the following are among the measures or practices that must be classified as discriminatory and prohibited by the State:]

(CANADA: For the purposes of this Convention, and taking into consideration human rights and fundamental freedoms, States Parties shall classify as discriminatory and take appropriate measures in response to:)

i. Public or private support provided to discriminatory and racist activities or that promote intolerance, including the financing thereof;

(CANADA: State financing of unlawful discriminatory activities)

ii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of any [racist or discriminatory] materials, understood as being any image or depiction of ideas or theories that advocate, promote, or incite hatred or violence against individuals or groups by reason of any of the criteria set forth in [Article 1.1];

(CANADA: Willful publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that advocate, promote, or incite hatred or violence against individuals or groups by reason of any of the criteria set forth in Article 1.1)

iii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of materials that condone or justify acts that constitute, or have constituted, genocide or crimes against humanity, as defined in international law;

(Some delegations, such as Peru and Mexico, propose adding something to clarify this paragraph, such as defining disparagement and to whom it is directed.)

(CANADA: Willful publication, circulation, or dissemination, by any means of communication, including the Internet, of materials that advocate, promote or incite acts that constitute genocide or crimes against humanity, as defined in international law)

VENEZUELA proposes incorporating into this subparagraph the text of the American Convention on Human Rights contained in Article 13.5.

iv. Violence motivated by any of the criteria set forth in Article 1.1;
Note: The Canadian delegation has made a proposal for the following paragraph and has proposed that this subparagraph be deleted.

v. [Criminal activity instigated by hate, in which the victim or the victim’s property is chosen intentionally on the basis of any of the criteria set forth in [Article 1.1];]

(CANADA: Criminal activity in which the victim or the victim’s property is chosen intentionally based on any of the criteria set forth in Article 1.1)

vi. [Any law enforcement action based on any of the criteria set forth in [Article 1.1] rather than on the person’s behavior or on objective information identifying the individual as having engaged in criminal activity;]

(CANADA: Any law enforcement action that singles out PERSONS for greater scrutiny or different treatment that is not based on INDIVIDUAL CONDUCT or behavior or on objective information)
(MEXICO AND VENEZUELA find it better to use the Durban terminology here, or to speak only of discrimination.)
(PERU proposes that the racial profile should be taken as a basis, but should be broader, in that sense, and, because of the nature of the Convention, there could be reference to a discriminatory profile.)

vii. Restricting, in an undue or unreasonable manner, the exercise of the individual rights of ownership, administration, and disposition of property of any kind based on any of the criteria set forth in [Article 1.1];

viii. [Any distinction, exclusion, restriction, or preference applied to persons, because of their multiple or aggravated victim status, the purpose or result of which is to deny or impair the equal recognition, enjoyment, exercise, or protection of rights and fundamental freedoms.]

(CANADA: Proposes deletion of this article since it is already included in Article 1.)

ix. [Any discriminatory restriction on the enjoyment of the human rights enshrined in applicable international and regional instruments and in the jurisprudence of international and regional human rights courts, particularly those applicable to minorities or groups that are in vulnerable situations and subject to discrimination;]

(CANADA: Proposes first moving this paragraph to Article 3 and then rewriting it as follows: Any discriminatory restriction on the enjoyment of the human rights enshrined in international and regional instruments, particularly those
applicable to minorities or groups that are in vulnerable situations and subject to discrimination.)

x. [Any restriction or limitation of the use of the language, traditions, customs, and culture of persons or groups who are members of minorities or vulnerable groups, in public or private activities;]

(CANADA: Any undue or unreasonable restriction or limitation of the use of the language, traditions, customs, and culture of persons or groups who are members of minorities or vulnerable groups)

xi. [Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions based on any of the criteria set forth in [Article 1.1] of this Convention;]

(CANADA: Proposes deletion of this paragraph.)
(BOLIVIA: Proposes combining subparagraphs (vi) and (x), or placing them closer together, because they are related.)
(CHAIR: Considers this article essential because it is through teaching materials that racist and discriminatory ideas become deeply rooted in a society.)
(VENEZUELA: Will propose new wording, with greater emphasis on education.)

xii. Denying access to public or private education, to fellowships, or to educational loan programs, based on any of the criteria set forth in [Article 1.1] of this Convention;

xiii. Denying access to all social, economic, and cultural rights, including the right to work, to housing, to social security, and to health;

xiv. [Conducting research or applying the findings of research into the human genome, particularly in the fields of biology, genetics and medicine, aimed at human selection, cloning, and any other method disrespectful of human rights, fundamental freedoms, and the dignity of individuals and groups of persons;]

(PERU: Highly controversial article … Why would this be considered disrespect for human rights and fundamental freedoms?)
(CHAIR: Research or research applications concerning the human genome, in particular in the fields of biology, genetics, and medicine, aimed at human selection and cloning, that prevails over respect for human rights, fundamental freedoms, and human dignity, generating any form of discrimination based on genetic characteristics.)*

*The source of this paragraph is the Universal Declaration on the Human Genome and Human Rights (Articles 10 and 11), adopted by UNESCO in 1997.
xv. Any other discriminatory conduct that falls within the definition contained in Article 1 of this Convention.

(VENEZUELA: Considers it opportune to incorporate some elements and restore others from initial versions of this draft presented by the Chair. To that end, it makes the following proposals:

- The abuse of written, audiovisual, and electronic information media and new communication technologies, including the Internet, to incite violence motivated by racial hatred.

- All doctrines of racial superiority or the dissemination of ideas based on superiority, as well as incitement to discrimination, intolerance, acts of violence, or the provocation of such acts targeted at individuals or groups of persons for reasons based on one or more of the factors listed in Article 1.1.

- State initiatives, through the adoption of anti-terrorism laws, regulations, or public or security policies that discriminate directly or indirectly against individuals or groups of persons.)
Scope and evaluation

Article 5 is one of the most important articles in that it clearly defines unlawful conduct regarding racism, discrimination and intolerance.

It is important to insist that the conduct described are projections or manifestations of racism, discrimination and intolerance and, thus, their wrongfulness should be part of the very essence of the Convention and the wrongfulness of the actions that the article identifies should not be left to the will of the States, rather the Convention should be categorical in pointing out that such acts are *per se* unlawful.

Furthermore, one of the most important efforts to determine the content of the Draft Convention lies in the precision of its terminology and the consequent distinction between racism, discrimination and intolerance. The IIHR believes that efforts toward conceptual clarification are not a mere academic exercise but in an instrument such as the present should presuppose, due to the need for juridical certainty, different behaviors because the utilization of such concepts implies differentiations that are important to take into account so as not to call discriminatory something that is not or to mistake some form of intolerance as racism. Of course, the concepts are closely linked and have as a common denominator a lack of respect for human dignity and human diversity in the world but each one of those categories implies and presupposes a differentiation with respect to the others; a differentiation that is important that it be included in the text of the Convention because, as stated, of legal certainty, although the jurisprudence may ultimately decide on those types of distinctions.

Not to do so would be to repeat the error that occurred with the topic of torture. It is clear that torture, as well as cruel, inhuman or degrading treatment or punishment, is prohibited. It is also clear, although the universal and the inter-American systems differ, that torture is any act against personal integrity, cruel, inhuman or degrading treatment or punishment but, what is the distinction between all these elements? OR Should it be said that they are the same? In fact, they are not. They imply different degrees, some more serious than others, although all are equally unlawful. The lack of a conceptual precision of terms that are so indeterminate has meant that the jurisprudence, essentially that of the European system, has had to engage in an intellectual exercise in order to draw the appropriate boundaries.

To avoid that type of confusion and to highlight and distinguish concretely racism, all forms of discrimination and the other manifestations of intolerance, and between the latter two themselves, it is important to clarify precisely each of the specific manifestations identified in this article. Although they are equally unlawful from a juridical perspective, a racist act is very different than an intolerant act. Their spheres and their emphases are not the same.
Furthermore, in classifying every act as discriminatory, as the Draft suggests, is to run the risk of making invisible racism and intolerance, practices that according to the object and purpose of the Convention—and of the essence of the Working Group’s mandate—should not remain invisible. Thus, calling a discriminatory act a practice of racism is to conceal, at bottom, that it does not concern a restriction of rights by an exclusion or differentiation based on race, as much as a conception of the world whereby there are superior and inferior races, the latter being at the mercy of the will of the former. The focus is different, the sanctions should be different and the preventive measures should be tailored to each circumstance.

In view of the foregoing, the IIHR wishes to contribute to the debate by proposing the following language:

For the purposes of this Convention and taking into account the scope of the preceding articles, especially the definitions contained in Article 1, the following conduct, measures or practices are considered unlawful:

In addition to the above, the following clauses may be grouped together because of their common applications or circumstances, at least for the purpose of analyzing them.

Clause i)

This first clause refers to conduct that, coming from the public or private sphere, gives support to discriminatory and racist activities, such support being any activity that favors, backs, promotes or encourages the carrying out of such activities, including their financing.

This provision is a direct and unavoidable consequence of the Convention’s object and purpose in the sense that, while the State must respect and ensure the right of every person or group of persons not to be discriminated against (in the triple dimension of the prevention, investigation and sanction of those responsible for the violation and the reparation of the victim), it must be concluded a fortiori that the State must also restrict or avoid those actions that, arising from the private or public sphere, endorse any type of support, sponsorship or assistance to the practices that are prohibited.

It must be noted that support is not necessarily limited to financing, although that is a very essential and important form of support, but is any sort of favoring, sponsorship, encouragement or assistance that enables discriminatory or racist practices or activities to be carried out. The determinant is to identify which are discriminatory activities and which are racist activities. Their scope may be identified by employing the definitions found in Article 1 of the Draft. In stating that an activity is discriminatory, “the activity” is undoubtedly being described, that is, qualified as a creator, producer or executor of discrimination. Thus, an activity is discriminatory when there is discrimination in the
terms defined by Article 1. This is also applicable to racist activities, i.e., they are activities that fit the definition of racism and that therefore express, manifest, involve or presuppose the preaching, asserting or promotion of theories, doctrines, ideologies or sets of ideas or values that have previously been conceptualized as racism.

Nevertheless, and in accordance with what has already been stated concerning the primary obligation contained in this provision, unlawful activities, whose support in all its extensions and manifestations should be prohibited, may also be manifestations of intolerance, which should be covered in this article.¹

It is important to seek maximum consistency with the conceptual definition found in Article 1 of the Draft. The definition of discrimination is, as may be observed, the least controversial definition, precisely because it already has a clear normative background in both the inter-American and universal systems. Although distinctions may be made and appreciated on certain subtleties or scopes, there is agreement that discrimination consists of three elements: a process of selection or distinction—screening, as it has been referred to—carried out by means of a motive or factor of discrimination—in the case of direct or indirect discrimination—or more in the case of multiple or aggravated discrimination and that results in the restriction, denial or deprival of one or more rights or in their enjoyment and exercise. The characteristic of discrimination is that it affects rights.

The definition of racism, much more difficult to agree upon, presupposes a vision or conceptualization of “races,” whereby there are superior and inferior races, the latter being at the mercy of the former and therefore exposed to domination, segregation— including apartheid—discrimination and practices of intolerance. Racism, thus, provides a «basis» for committing those acts, which may include discrimination, but which may transcend it. Racism, therefore, should not be confused with a motive for discrimination in that racism and race are not the same; racism is a source of intolerance, or more specifically, there are acts of intolerance that are based on a motivation of racism (racist speech, for example).

Furthermore, the different motives of discrimination may be motives of intolerance, with the exception that the latter do not result in the deprival, restriction or denial of rights—their recognition, enjoyment, exercise and even protection—because if they did so it would become discrimination.

¹ The IIHR believes that effort employed in the conception precision should have clear juridical effects so that the effort of conceptual clarification is not lost of confused when the practices are identified. See, GAY J. MCDougall, Manifestaciones de Racismo, Discriminación e Intolerancia Abordadas o No Abordadas en los Instrumentos Vigentes, paper presented at the Special Meeting to Examine and Discuss the Nature of a Future Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, Washington DC, November 28-29, 2005, published in OEA/Ser.G/CAJP/GT/RDI-15/05, of December 9, 2005, p. 59 et seq.
According to the language of clause i), the prohibited activity is the support, including financing, carried out in the public or private sphere, of discriminatory or racist activities that promote intolerance. There is no doubt that the goal sought is very just and ethically correct in that every racist or discriminatory activity is per se a manifestation of intolerance according to the definition of Article 1. But not every manifestation of intolerance is motivated by discriminatory or racist activities. That is why the IIHR believes that, if the current proposal remains—which is analyzed in this subsection—States’ obligation would be limited to prohibiting in their domestic legislation racist or discriminatory acts, but not acts of intolerance per se, which undoubtedly omits an important manifestation of the non-observance of the principle of human equality.

The proposed wording has, however, the virtue of not limiting the support for such activities to the subject of financing. Financing is clearly one of the central pillars for the organization of any activity but it is only one of the possible forms of support that it may be given, others being the concealing of evidence, the favoring of locales, protection or concealment of responsibilities and the offer or promise of rewards, privileges or profits.

In light of the foregoing, the IIHR, based on the proposal of the Presidency, wishes to contribute to the debate by suggesting the following language:

*private or public support, including financing, of racism, discrimination, including indirect and multiple or aggravated discrimination and intolerance;*

**Clauses ii) and iii)**

Both clauses have in common the question of publication, that is, of communicating with respect to third parties. They differ in the object of what is published or communicated. Under clause ii), an unlawful publication would be that which involves any image or representation of ideas or theories by which hatred and violence against individuals or groups is defended, promoted or incited for reasons that are covered by Article 1.1 of the Draft. What is unlawful in the publication, according to clause iii), is the approval or justification of acts that constitute or have constituted genocide or crimes against humanity, as defined in international law.

We must first recognize that the acts of publication are the same in both clauses (*publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials*), which, to give it a more coherent reading, would mean joining them in a single clause, where the reason of identification—by separate clauses or sub-clauses—is the object or content of the published material.

Clause ii) contains language that may cause confusion and may make attaining its goal difficult juridically. The proposal alludes to *any [racist or discriminatory] materials, understood as being any image or depiction of ideas or theories*” without realizing that the expression “*any materials*” has the virtue of being sufficiently broad so as to
eliminate the need for repetition by identifying some examples of any materials, which might ultimately lead to sterile discussions but which have a juridical importance, such as the scope of the concept “representation” and if such concept excludes per se the object represented, that is, if what should be prohibited is the publication of materials that represent racism, any form of discrimination or intolerance, or the publication of racist, discriminatory or intolerant materials per se. Furthermore, the part of the proposal that is between brackets would make it difficult, from a legal perspective, to implement the prohibition of publications because it obligates the implementing body first to assess whether “the materials” published are per se racist or discriminatory and then to analyze whether they also meet the other term of the prohibition, which is the content of that material, in such a way that the publication of racist materials that does not promote or encourage hatred and violence would not have to be punished.

It is important to specify what it is that is wished to be prohibited. Juridically, the general principle of freedom and the principle of juridical security, two sides of the same coin, require a precise determination of the scope of the prohibitions, since individuals are allowed to do everything that the law does not prohibit and must refrain from doing anything that is against the law. Hence, the need to determine clearly the scope of a prohibition or, in the specific case of clause ii), what material is published, circulated or disseminated. The IIHR, therefore, believes that the material whose publication, circulation or dissemination should be prohibited is both that which constitutes and that which promotes, defends or justifies racism, all forms of discrimination or intolerance in the terms set forth in Article 1 of the Convention.

In turn, clause iii) refers to genocide and crimes against humanity, but the proposal is limited exclusively to condoning or justifying acts that constitute or have constituted genocide or crimes against humanity, omitting cases of the incitement or promotion of genocide or crimes against humanity. Such incitement or promotion should also be punished. It is very probable that following the prohibition of racist speech, incitement or promotion of genocide and crimes against humanity would also be prohibited. However, the fact that these are international crimes for which there is no prescription obligates taking a specific and differentiating stance, which would make the need to include those types of actions much more apparent. This makes it advisable to take up some elements of the proposal of Canada.

Furthermore, since clause ii), as proposed only prohibits communicating or publishing materials that incite hatred or violence, but not the materials that promote racism—as its definition has been proposed in preceding pages—and even discrimination, for any of the reasons indicated in the definition.

At the same time, there is no prohibition of the dissemination of materials that promote

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2 It is curious that in all of the international instruments it is the right to liberty —general— that is joined to the right of security.
or incite practices of intolerance. Here, again, a good definition of the concepts is the key to achieving an understanding and consensus of the scope of the Convention. The proposed concept of intolerance would permit including actions that, without reaching the other two, express a repudiation or rejection of human diversity, such as the case of practical jokes, insults or offenses for any reason.

The IIHR presents the following proposal that would join and replace the current clauses ii) and iii):

*publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:*

  a. condone, promote, or incite racism, all forms of discrimination, including indirect and multiple or aggravated discrimination, and intolerance

  b. approve, justify, or condone acts that constitute or have constituted genocide or crimes against humanity, or promote or incite the realization of such acts.

Clauses iv) and v)

Clauses iv) and v) of the Draft refer to the manifestations of violence that may be translated into simple acts of violence that are not crimes or in acts of violence that are crimes. The dividing line between them may at times be very thin or it is probable that there are even areas where it is not possible to make a precise demarcation.

Taking into account the conceptual proposal of intolerance, the IIHR believes that the content of this article is subsumed in its definition (in the IIHR proposal). This proposal has the virtue that it defines intolerance residually, which means that it defines it as certain behaviors that have not managed to become racism or discrimination. Thus, if an act of violence, unlawful or not, is the denial of a human right due to one of the factors of discrimination, that act of violence is no longer intolerance but becomes discrimination. An example is a person who kills HIV-positive persons. He is committing an act of violence that is also a crime, but at the same time it is a denial of the right to life. This act cannot be regarded as an expression of intolerance. It is discrimination.

But as may be seen, the distinction is in the concept. It is not necessary to point out the specific act –violence, whether or not a crime– it is enough to prohibit the realization of the described conduct with the concept –discrimination or intolerance, for example– so that this manifestation is also prohibited.

Clause vi)
The IIHR, given the proposal of conceptualization of intolerance, completely agrees with the language of clause vi) proposed by the Presidency, but considers it included in the definition cited. Same as the preceding case.

**Clauses vii), viii), ix) and x)**

These clauses are manifestations of discrimination. In examining the definition of discrimination in the Draft Convention, it may be seen that these clauses concern discrimination in patrimonial rights (clause vii)); multiple or aggravated discrimination (clause viii), discrimination applicable to minorities or groups that are in vulnerable situations and subject to discrimination (clause ix)) and discrimination regarding those same groups in the use of their language, traditions, customs and culture (clause x)).

**Clause xi)**

The IIHR completely agrees with clause xi) of Article 5.

**Clauses xii) and xiii)**

The IIHR believes that these clauses could be deleted since they are already included in the definition of discrimination.

**Clause xiv)**

Given the existing consensus on the UNESCO Declaration on the Human Genome and Human Rights, the IIHR considers that the proposal of the Presidency of the Working Group should be supported.

**Clause xv)**

In light of the foregoing, the IIHR considers that this paragraph should be deleted.

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*  

There is no indication in the text of the Draft of the need to punish discrimination *per se* or racism or intolerance, since punishment is only indicated for supporting them (clause i)), the forms of publications that encourage that conduct (clauses ii) and iii)), violence and criminal action that combine discriminatory factors directed purposely against persons (clauses iv) and v)) and repressive acts directed against that same type of persons (clause vii)). Therefore, in order to comply fully with the object and purpose of the Convention it is necessary to identify as conduct that the States must prohibit and sanction in their domestic legal order, acts of racism, discrimination and intolerance in the different modalities that these may adopt or assume.
In this regard, in substitution of clauses vii), viii), ix) and x), the IIHR proposes the following language for the prohibitions:

* racism;*

* discrimination, including indirect and multiple or aggravated discrimination;*

* intolerance.*

Furthermore, with regard to all unlawful acts included in Article 6, it is important that the States regard as an aggravating circumstance when such acts concern minorities or groups that are in vulnerable situations or subject to discrimination.

This will be reflected in the content of Article 12.

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In light of the foregoing and in order to recapitulate the order of the suggestions regarding this article, the IIHR presents the following proposal for Article 5:

For the purposes of this Convention and taking into account the scope of the preceding articles, especially the definitions contained in Article 1, the following conduct, measures or practices are considered unlawful:

i) racism;

ii) discrimination, including indirect and multiple or aggravated discrimination;

iii) intolerance;

iv) private or public support, including financing, of racism, discrimination, including indirect and multiple or aggravated discrimination and intolerance;

v) publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:

a. condone, promote, or incite racism, all forms of discrimination, including indirect and multiple or aggravated discrimination, and intolerance

b. approve, justify, or condone acts that constitute or have constituted genocide or crimes against humanity, or promote or incite the realization of such acts.
vi) preparation and implementation of content, methodologies or pedagogical tools that reproduce stereotypes or preconceptions in relation to any of the discriminatory factors found in this Convention;

vii) conducting research on the human genome or the application of the results thereof, particularly in the fields of biology, genetics and medicine, with the purpose of selecting persons or cloning human beings that would prevail over respect for human rights, fundamental freedoms and human dignity and result in any form of discrimination based on genetic traits.

The IIHR has no doubt that, notwithstanding the quantitative reduction of the unlawful acts listed in this article, the suggested proposal is qualitatively greater and at the same time includes other conduct that attempts or conspires against human equality.

The IIHR also suggests that the title of Chapter III be changed from Acts and Manifestations of Racism, Discrimination and Intolerance to Unlawful Measures, Conduct or Practices.
ARTICLE 2
1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
   a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
   b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
   c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetrating racial discrimination wherever it exists;
   d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
   e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 3
States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4
States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article...
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<td>5 of this Convention, inter alia:</td>
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<td>(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;</td>
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<td>(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;</td>
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<td>(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.</td>
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**Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

**Convention on the Elimination of All Forms of Discrimination against Women**

**Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute
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| discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women. | **Convention on the Rights of Persons with Disabilities**

**Article 4**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:…

d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
Recommendations

In light of the foregoing, the IIHR recommends:

1. A reconsideration of the original proposal of Article 5 with a view to maintaining consistency with the conceptual definitions suggested for Article 1 so that the internal systematization of the Convention is not lost, since many concepts already encompass or subsume much of the conduct set forth in the Article.

2. Maintaining an article that clarifies, for the sake of juridical certainty, what are the unlawful conduct, measures or practices—giving that title to Chapter III—and for which, in line with its proposal for Article 1, suggests the following language for Article 5, in a systematized way, for consideration and discussion, partial or total:

For the purposes of this Convention and taking into account the scope of the preceding articles, especially the definitions contained in Article 1, the following conduct, measures or practices are considered unlawful:

i) racism;

ii) discrimination, including indirect and multiple or aggravated discrimination;

iii) intolerance;

iv) private or public support, including financing, of racism, discrimination, including indirect and multiple or aggravated discrimination and intolerance;

v) publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:

a. condone, promote, or incite racism, all forms of discrimination, including indirect and multiple or aggravated discrimination, and intolerance

b. approve, justify, or condone acts that constitute or have constituted genocide or crimes against humanity, or promote or incite the realization of such acts.

vi) preparation and implementation of content, methodologies or pedagogical tools that reproduce stereotypes or preconceptions in relation to any of the discriminatory factors found in this Convention;

vii) conducting research on the human genome or the application of the results thereon, particularly in the fields of biology, genetics and medicine, with the purpose of selecting persons or cloning human beings, that would prevail over respect for
human rights, fundamental freedoms and human dignity and result in any form of discrimination based on genetic traits.
Article 6

The States undertake to prevent, eliminate, and punish, in accordance with their domestic legislation and the provisions of this Convention, all acts and manifestations of discrimination and intolerance.

(CANADA: Proposes the following draft: The States Parties undertake to take steps to prevent, eliminate, and penalize, in accordance with their constitutions and the provisions of this Convention, all acts and manifestations of discrimination.)
Scope and evaluation

Once the Convention declares and establishes the wrongfulness of certain conduct, it is clear, logical and consequential that the States Parties must establish in their domestic legislation the prohibitions and sanctions of the conduct that is listed below, at the very least, although the domestic law of each State may expand the list of prohibited conduct in line with the object and purpose of the Convention as well as the establishment of the generic obligation to prevent the realization of such conduct, practices or measures.

The text of Article 6 should leave very clear the role of domestic law with respect to the conduct that the Convention classifies as discriminatory. That is, the State’s obligation, derived as a logical consequence of the foregoing, cannot nor should not be other than its prevention and prohibition and, therefore, a breach, either by individuals or by the State –through its agents– results in the corresponding responsibility, which should not be other than criminal.

As was shown in dealing with and commenting on Article 1, the principle of the equality of human beings and the prohibition of discrimination have reached, in the current stage of development of the Public International Law, the standard of *ius cogens* in that it encompasses essential, basic and elementary values. It is there where the non-fulfillment of such principles, by racist, discriminatory or intolerant acts, presupposes a seriousness that cannot be ignored.

Although criminal law is fragmentary and should be used *ultima ratio*, it is no less true that such characteristics should be maintained to preserve essential values. The State protects different values, rights and interests in multiple ways, but criminal law finds legitimization precisely to preserve (or attempt to preserve recognizing its own limitations) those values that because of their peculiarity and essentiality require a strengthened or qualitatively superior protective mechanism.

The IIHR thus considers that, since the purpose of this very strategic article is to prohibit and sanction conduct that manifests aberrant practices inspired, based or founded on racism, discrimination or intolerance, their illegitimate nature and the obligation –of result and not of a mere willingness to make better efforts- of the State to prohibit in its domestic penal law such conduct should be clearly set out. The wording, therefore, of the initial normative content of this article would be, for its evaluation, study and eventual approval, as follows:

*The States Parties undertake to prevent, prohibit, sanction and eradicate, in accordance with their domestic legislation and the provisions of this Convention, the conduct, practices or measures indicated in Article 5.*
The IIHR considers that this language emphasizes the role of the State’s domestic jurisdiction in helping to combat racism and its manifestations, discrimination and other manifestations of intolerance, expressions that are harmful to the principle of the equality of human beings and the prohibition of discrimination.

Of course, the IIHR does not believe that the criminal law is the only possible guarantee to avoid those practices. The States, in addition to prohibiting and sanctioning such measures or practices, should act in the area of prevention and adopt other measures to respond to the measures or practices therein described. However, that will be dealt with as concrete measures in other articles of the Convention.
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<tr>
<td><strong>Article 7</strong></td>
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</tr>
<tr>
<td>The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:</td>
<td>1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:</td>
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<td>a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;</td>
<td>(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;</td>
</tr>
<tr>
<td>b. apply due diligence to prevent, investigate and impose penalties for violence against women;</td>
<td>(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;</td>
</tr>
<tr>
<td>c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;</td>
<td>(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;</td>
</tr>
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<td>d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;</td>
<td>(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;</td>
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<td>e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;</td>
<td>(e) Each State Party undertakes to encourage, where appropriate, multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.</td>
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<td>f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;</td>
<td>2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.</td>
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<td>g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and</td>
<td>Article 3</td>
</tr>
<tr>
<td>h. adopt such legislative or other measures as may be necessary to give effect to this Convention.</td>
<td>States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.</td>
</tr>
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</table>

| **Article 8** | **Article 4** |
| The States Parties agree to undertake progressively specific measures, including programs: | States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour |
| a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected; | |
| b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are |

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based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;

c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;

d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;

e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;

f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;

g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;

h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and

i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

ARTICLE II

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society.

Article III

To achieve the objectives of this Convention, the states parties undertake:

1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but

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or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:…

Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
**INTER-AMERICAN SYSTEM**

not limited to:

a. Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;
b. Measures to ensure that new buildings, vehicles, and facilities constructed or manufactured within their respective territories facilitate transportation, communications, and access by persons with disabilities;
c. Measures to eliminate, to the extent possible, architectural, transportation, and communication obstacles to facilitate access and use by persons with disabilities; and
d. Measures to ensure that persons responsible for applying this Convention and domestic law in this area are trained to do so.

2. To work on a priority basis in the following areas:

a. Prevention of all forms of preventable disabilities;
b. Early detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities; and
c. Increasing of public awareness through educational campaigns aimed at eliminating prejudices, stereotypes, and other attitudes that jeopardize the right of persons to live as equals, thus promoting respect for and coexistence with persons with disabilities;

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(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.
Recommendations

In light of the foregoing, the IIHR recommends that:

➢ The obligations of the States that are indicated in the proposed Article 6 be maintained.

➢ In order to preserve internal systematization and in line with its preceding proposals, the following alternative for Article 6 be considered:

_The States Parties undertake to prevent, prohibit, sanction and eradicate, in accordance with their domestic legislation and the provisions of this Convention, the conduct, practices or measures indicated in Article 5._
Article 7

The States Parties undertake to adopt the special differential or preferential measures and policies needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to racism, discrimination, or intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups. Such measures or policies shall not be considered discriminatory or incompatible with the purpose or intent of this Convention, shall not lead to maintaining separate rights for different groups, and shall not be continued beyond a reasonable period or after their objective has been achieved.

(SECRETARIAT: The States Parties undertake to adopt the special or affirmative action measures defined in Article 1.5.)

(CANADA: Proposes deletion of this paragraph.)
Scope and evaluation

The purpose of Article 7, in line with the definition set forth in Article 1 and with the inclusion of the negative list, is to establish the State’s legal obligation to implement measures of affirmative action.

Given the need to preserve an internal systematization of the conceptual definitions and obligations and in an effort to improve the language of the proposal, the IIHR presents, for its discussion, the following proposal:

The States Parties undertake to adopt, on behalf of persons or groups of persons who suffer or face racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, special measures or affirmative actions in order to contribute to achieving the object and purpose of this Convention, in the manner and within the scope defined in Article 1.
**INTER-AMERICAN SYSTEM**

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

**ARTICLE III**
To achieve the objectives of this Convention, the states parties undertake:
1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:
   a. Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;

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International Convention on the Elimination of All Forms or Racial Discrimination

**Article 2**
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Convention on the Elimination of All Forms of Discrimination against Women

**Article 3**
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Convention on the Rights of Persons with Disabilities

**Article 5**
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
In light of the foregoing, the IIHR recommends the following:

Maintain the obligation of the States to implement the special measures or affirmative actions that are indicated in the draft Article 7.

Taking into account the necessity of maintaining internal systematization, the IIHR suggests, for its study and consideration, the following alternative language for Article 7:

*The States Parties undertake to adopt, on behalf of persons or groups of persons who suffer or face racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, special measures or affirmative actions in order to contribute to achieving the object and purpose of this Convention, in the manner and within the scope defined in Article 1.*
Article 8

The States Parties undertake to formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons, including educational and promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the Internet.

(CANADA: Proposes the following draft: The States Parties undertake to formulate and implement policies the purpose of which is to provide fair treatment and generate equal opportunity for all persons, including educational and promotional policies. The States Parties shall also ensure that legislation is publicly available and accessible.)

Note:
Some delegations consider that the positions of Articles 7 and 8 should be reversed, since Article 8 is the general provision and Article 7 the specific.
Scope and evaluation

The IIHR understands that the scope of this article transcends special measures or affirmative actions, including them together with measures associated with legislation on equality and the creation of opportunities for persons who face manifestations of racism, discrimination, including indirect and multiple discrimination, and other forms of intolerance, when necessary to correct and avoid the violation of the principle of equality that such conduct, practices or measures imply.

The proposal of Canada, in the part relating to legislation, introduces an element of permanence that is worth mentioning: the access and availability of legislation to the public. In this regard, it is important to note that the obligation of dissemination contained in the Working Document could be met with a single and exclusive act that would not necessarily ensure that the public had access to the legislative texts. This part of the Canadian proposal should be reconsidered.

Similarly, the IIHR agrees with the position of some delegations in the sense of ordering the standards in a logical sequence, so that current Article 8 becomes Article 7, and vice versa. With that exception, the IIHR believes this article should read as follows:

>The States Parties undertake to formulate and to apply policies that have as an objective the equitable treatment and the creation of equality of opportunities for all persons, among them, educational and promotional policies, as well as the diffusion, access and availability to the public of legislation on the matter, utilizing to this end all possible forms and means of communication, including the Internet.
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<td>1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:</td>
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<td>a. Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;</td>
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<td><strong>States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.</strong></td>
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In light of the foregoing, the IIHR recommends that:

1. The obligations of the States contained in this article be maintained.

2. Taking into account the necessity of maintaining internal systematization, the suggestion of a logical reordering, as well as some elements with the purpose of transcending the obligation of the dissemination of legislation in order to make it accessible and available to the public, be reconsidered; this article exchange places with the preceding article and the following alternative language for this article be considered.

*The States Parties undertake to formulate and to apply policies that have as an objective the equitable treatment and the creation of equality of opportunities for all persons, among them, educational and promotional policies, as well as the diffusion, access and availability to the public of legislation on the matter, utilizing to this end all possible forms and means of communication, including the Internet.*
Article 9

The States Parties undertake to adopt legislation that clearly defines and prohibits racism, discrimination, and intolerance, applicable to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces discrimination or intolerance.

(MEXICO: The States Parties undertake to adopt legislation, promulgate and/or publish, and maintain in force legislation that clearly defines and promotes discrimination and intolerance, applicable to public authorities at all levels and of all three branches of government, as well as to all natural and legal persons, in both the public and the private sectors, particularly in the areas of employment; procurement and administration of justice; participation in professional organizations; education; training; housing; health; social protection; the exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces discrimination and/or intolerance.)

(CANADA: Proposes the following draft: The States Parties undertake to adopt legislation that clearly defines and prohibits discrimination, applicable both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; and access to public services.

Each State Party shall repeal or amend any legislation that has the effect of creating or perpetrating discrimination or intolerance.)
In the analysis of Article 2 of the Draft, it was indicated that:¹

The obligations that are created for a State Party under the Convention would, therefore, be the following:


b. Provide protection by law (read, domestic legal framework) against racism, all forms of discrimination and intolerance. Such protection implies, in turn:

   i. A legal framework of protection against racism, all forms of discrimination and intolerance that the State commits de facto.

   ii. A legal framework of protection against racism, all forms of discrimination and intolerance that individuals might commit under the existing legal framework (i.e. racism, all forms of discrimination and intolerance de jure committed by individuals).

   iii. A legal framework of protection against racism, all forms of discrimination and intolerance that individuals might commit in their inter-personal actions, taking advantage of legal lacunae (i.e. racism, all forms of discrimination and intolerance de facto committed by individuals).

This article is closely related to the aforementioned Article 2 because it specifies normatively what in that article was a logical consequence in function of the context in which the Convention is framed.

However, the adaptation of domestic law should not be limited to the legislation, stricto sensu, because such a framework often presents gaps or conflicts that have been filled through jurisprudence and even practice.

The language of such an article should also be consistent with the conceptual definitions that have been used as a basis and point of departure of the Convention, which the IIHR believes requires a rethinking in those terms.

¹ See, the section on the analysis of Article 2.
In order to maintain consistency with the American Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, fundamental and complementary instruments of the inter-American system, it would be best to find a formula to integrate the obligations that both instruments impose concerning actions under domestic law, as well as the obligation to adopt measures that the latter imposes.

In view of what was noted in the analysis of Article 2 and what was stated above, the IIHR proposes, for consideration and discussion, the following language:

The States Parties undertake to adopt the necessary actions in the domestic order, including the promulgation, modification or repeal of legislative or other provisions, in order to achieve, in the public and private sectors, the prohibition of racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, so that they are protected by normative provisions (de jure) or simply as factual manifestations (de facto).
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<td>Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.</td>
<td>2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.</td>
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<td>If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.</td>
<td>1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.</td>
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<td>(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;</td>
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<td>(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;</td>
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<td>(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;</td>
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<td>(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;</td>
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<td>c. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;</td>
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</table>
Recommendations

In light of the foregoing, the IIHR recommends that:

The obligations of the States contained in this article be maintained.

Taking into account the necessity of maintaining internal systematization, the following proposal, which the IIHR deems sufficiently encompassing and clear on the scope of the adaptation of domestic law, be considered and studied:

The States Parties undertake to adopt the necessary actions in the domestic order, including the promulgation, modification or repeal of legislative or other provisions, in order to achieve, in the public and private sectors, the prohibition of racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, so that they are protected by normative provisions (de jure) or simply as factual manifestations (de facto).
Article 10

The States Parties undertake to ensure that their political and legal systems appropriately reflect the diversity within their societies in order to meet the legitimate special needs of each sector of the population.

(MEXICO: The States undertake to ensure that their distributive, legal, economic, and social and political systems appropriately reflect the diversity within their societies in order to meet the legitimate needs of all sectors of the population.)

(COSTA RICA: The States Parties undertake to address the legitimate needs of all groups and sectors of the population so that the diversity existing in society is reflected.)

(SECRETARIAT: The States Parties undertake to take the measures necessary to ensure that the diversity of their societies is respected and is reflected in all spheres of public and private activity.)

(CANADA: The States Parties undertake to encourage diversity of participation in their political and justice systems.)
Scope and evaluation

Article 10 has a very precise scope, which is to avoid the exclusion of persons or groups of persons due to discriminatory factors, starting with the recognition of the diversity that characterizes the political and legal (juridical) systems. The relevance of this obligation is that both are systems of publicity in that they are newsworthy and they are also areas of decision-making—the political system—and of the manifestation or projection of the decisions adopted—the juridical system.

In this way, any advancement in terms of the diversity in the political and legal (juridical) systems is an emblematic progress that may be imitated or replicated in other areas.

The IIHR agrees with the Draft proposal, considering it much more precise and direct than those presented by some Delegations and by the Secretariat. The IIHR supports the adoption of this provision as written, with the exception of replacing legal system with juridical system, the latter being much broader and encompassing than the former.
### Normative references

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<td><strong>Article 4</strong></td>
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<td>3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.</td>
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</table>
In light of the foregoing, the IIHR recommends that:

1. The obligations of the States contained in Article 10 be maintained.

2. The proposal set forth in the Draft of the Working Group be adopted, replacing the expression *legal system* with *juridical system*, so that the article reads as follows:

   The States Parties undertake to ensure that their political and juridical systems appropriately reflect the diversity within their societies in order to meet the legitimate special needs of each sector of the population.
Article 11

The States Parties undertake to ensure that the victims of racism, discrimination, and intolerance receive equitable treatment, equal access to the justice system, expeditious and effective proceedings, and fair compensation in the civil or criminal sphere, as applicable. In addition, they shall consider adopting the legislative measures necessary to ensure that the burden of proof will be reversed and the defendants will have to show that procedures and practices have been adopted that ensure equitable and non-discriminatory treatment.

(MEXICO: The States Parties undertake to ensure that the victims of discrimination and intolerance receive equitable treatment and equal access to the justice system, by means of expeditious proceedings in brief and reasonable periods, and fair compensation in the civil or criminal sphere, as applicable. In addition, they shall consider adopting the legislative measures necessary to ensure that the burden of proof will be reversed and the defendants will have to show that procedures and practices have been adopted that ensure equitable and non-discriminatory treatment.)

(CANADA: The States Parties undertake to take steps to encourage that the victims of discrimination receive equitable treatment, equal access to the justice system, expeditious and effective proceedings, and an effective remedy in the civil or criminal sphere, as applicable. In the context of civil proceedings, State Parties may also consider measures which would allow for an evidentiary shift to the defendant to explain any differential treatment where the complainant is first able to show discrimination.)
Scope and evaluation

The content of Article 11 is two-fold. On the one hand, it refers to measures of reparation and, on the other, to a concrete and specific procedural aspect.

With respect to reparations, it is important first to identify the victim. According to the Draft Convention it is a victim of racism, discrimination or intolerance. However, the IIHR, in order to maintain consistency with its conceptual proposal, considers that it is much more necessary that it be the victim of the manifestations of racism, discrimination or other manifestations of intolerance. Secondly, what the victims should be guaranteed is, in general, access to justice and the existence of judicial mechanisms that abide by the guarantees of due process, that work rapidly, simply and effectively, that protect the rights that have been violated\(^1\) and that offer measures to repair the harm.

Compensation of the damage, in accordance with inter-American jurisprudence, implies the following modalities, which may or may not concur, according to the circumstances:

a. Termination of the act and guarantees of non-repetition that imply a change of structural conditions and of policies, standards and/or practices so that the conduct, practices or measures cease to exist and do not reoccur, either to the specific victim or to any other person.

b. Full restitution (*restitutio in integrum*), which is the legal and factual possibility to return things to, or to what is closest to, their state before the existence of the act that constituted the specific violation.

c. Compensation, which is the economic indemnity for material and non-material damages.

d. Measures of satisfaction, which are concrete actions for the symbolic reestablishment of the honor or dignity affected by the violation, such as a public apology, the erecting of a monument, etc.

Measures of reparation should also be proportionate to the harm suffered and not to the legal nature of the procedural remedy that is available to the victim.

The second element in the proposal concerns the inversion of the burden of proof, which is a rule of exception since the generally accepted principle is that the accusing party has the obligation to prove and, generally, whoever makes a claim must provide the evidence. Under the principle of the inversion of the burden of the proof, it is the

\(^1\) See, American Convention on Human Rights, Art. 25.
accused person or the person against whom the claim is directed who must show that his or her behavior was not a manifestation of racism, a discriminatory conduct or some manifestation of intolerance.

As a rule of exception, the inversion of the burden of proof must be very clearly justified. A discriminatory practice or a manifestation of racism or some other manifestation of intolerance is not a sufficient reason to bring about the inversion of the burden of proof.

Therefore, from the perspective of Public International Law, the obligation is not that of adopting the measures for the inversion of the burden of proof, but that of considering the adoption of such measures. The problem of such a standard is that, given the essentially dispositive nature of Public International Law, such an obligation does not yield a predictable result. Furthermore, the diversity of States may result in a diversity of criteria that could ultimately be in conflict and, therefore, the sense and the advantage of resorting to a source of Public International Law, which is to standardize a minimum conduct, would be lost.

It is, therefore, recommended that the OAS, through the Inter-American Commission on Human Rights, make a detailed study and then propose to the States Parties guidelines or directives on the situations or cases in which the inversion of the burden of proof is justifiable.

The IIHR, thus, suggests a reconsideration of this article and proposes, for its consideration and study, the following language:

_The States Parties undertake to ensure to the victims of racism, discrimination and intolerance access to justice and to judicial mechanisms that, abiding by the principles of due process, are prompt, simple and effective to protect them concerning the rights that have been violated and that such mechanisms of protection develop the possibilities, according to the circumstances of each case, of the reparation of the damage, starting with the termination of the conduct, practices or unlawful measures, the guarantees of non-repetition, full restitution, compensation and measures of satisfaction._

_The States Parties shall also consider the adoption of the legislative and procedural measures necessary to ensure the inversion of the burden of proof, should such inversion be justified. The Inter-American Commission on Human Rights shall, after a detailed study on the subject, propose guidelines and directives to the States on the situations and circumstances in which such inversion is justified._
### INTER-AMERICAN SYSTEM

**American Convention on Human Rights**

**Article 25**

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:
   a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
   b. to develop the possibilities of judicial remedy; and
   c. to ensure that the competent authorities shall enforce such remedies when granted.

**Inter-American Convention to Prevent and Punish Torture**

**Article 8**

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

**Article 9**

The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture.

None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

### UNIVERSAL SYSTEM

**International Covenant on Civil and Political Rights**

**Article 2**

3. Each State Party to the present Covenant undertakes:
   a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   c. To ensure that the competent authorities shall enforce such remedies when granted.

**International Convention on the Elimination of All Forms of Racial Discrimination**

**Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

**Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.
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<td><strong>Article 7</strong></td>
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<td>The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:…</td>
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<td>f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies;</td>
<td>In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.</td>
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In light of the foregoing, the IIHR recommends that:

1. The purposes that motivate this article be maintained.

2. The following language for Article 11 be considered, for its eventual adoption:

The States Parties undertake to ensure to the victims of racism, discrimination and intolerance access to justice and to judicial mechanisms that, abiding by the principles of due process, are prompt, simple and effective to protect them concerning the rights that have been violated and that such mechanisms of protection develop the possibilities, according to the circumstances of each case, of the reparation of the damage, starting with the termination of the conduct, practices or unlawful measures, the guarantees of non-repetition, full restitution, compensation and measures of satisfaction.

The States Parties shall also consider the adoption of the legislative and procedural measures necessary to ensure the inversion of the burden of proof, should such inversion be justified. The Inter-American Commission on Human Rights shall, after a detailed study on the subject, propose guidelines and directives to the States on the situations and circumstances in which such inversion is justified.
Article 12

The States Parties undertake to consider as aggravating those acts that lead to compounded discrimination or acts of intolerance, i.e., any distinction, exclusion, or restriction based on two or more of the criteria set forth in [Article 1.1] of this Convention.

(CANADA: Proposes deletion of this article.)
Scope and evaluation

Aggravating factors are elements that magnify the responsibility of the authors of unlawful acts. From a political-penal perspective, aggravated factors are modalities that deserve a greater legal-penal reproach than the simple carrying out of an act.

In this regard, aggravating circumstances are those that with respect to the victim are deception, betrayal of confidence, increased suffering and even the futility of the reasons or purposes that caused the unlawful action.

The IIHR recalls that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance coined the expression “aggravated discrimination” to refer to multiple discrimination. It also considered that a combination of discriminatory factors should give rise to an aggravation from the criminal perspective. In addition, a discriminatory practice carried out to the detriment of minorities or persons or groups of persons in a situation or state of vulnerability or susceptible of discrimination is an aggravating factor.

The IIHR suggests the following alternative language for this article:

The States Parties undertake to consider as aggravated, for penal effects, discrimination or other manifestations of intolerance when:

a. They are based on two or more discriminatory factors.

b. They are carried out to the detriment of persons or groups of persons belonging to minorities or to groups in a state of vulnerability or susceptible of discrimination.
### Normative references

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Recommendations

In light of the foregoing, the IIHR recommends that:

1. The motivation behind this article be maintained.

2. The following language for Article 12, which would broaden the cases of aggravation, be considered for its eventual adoption:

   _The States Parties undertake to consider as aggravated, for penal effects, discrimination or other manifestations of intolerance when:_

   a. _They are based on two or more discriminatory factors._

   b. _They are carried out to the detriment of persons or groups of persons belonging to minorities or to groups in a state of vulnerability or susceptible of discrimination._
Article 13

[The States Parties undertake to conduct research on the nature, causes, and manifestations of discrimination or intolerance in their respective countries, at the local, regional, and national levels, and to collect, compile, and disseminate data on the situation of groups or individuals that are victims of discrimination and intolerance.]

COSTA RICA: The States Parties undertake to obtain (whether through their own means or by engaging services) studies on the nature, causes, and manifestations of discrimination and/or intolerance in their respective countries, at the local, regional, and national levels, and to collect, compile, and disseminate data and statistics on the situation of groups or individuals that are victims of discrimination and intolerance.

(CANADA: The States Parties undertake to encourage further research on the nature, causes, and manifestations of discrimination in their respective countries, at the local, regional, and national levels, and to collect, compile, and disseminate data, as appropriate, on the situation of groups that are victims of discrimination.)

(ANTIGUA AND BARBUDA: Believes that this obligation places a great financial strain on member states. It agrees with the delegations that suggest language such as: “member states should promote studies.” Antigua and Barbuda cannot commit the public purse to such research considering that there is no high incidence of racism.)

Note:
Some delegations, such as Brazil, Mexico, and Venezuela, consider that the obligation of the State does not exclude that of other entities, companies, or organizations, and that to use an expression such as “promote studies…” would not be sufficient in this article. Additionally, the delegation of Venezuela alludes to the importance of inclusion in this article an emphasis on education and the promotion of a culture focused on tolerance. Delegations such as those of Costa Rica and Peru consider that the objective of the studies is unclear.
Scope and evaluation

Article 13 is very important because it enables a State to adopt decisions that contribute to achieving the object and purpose of the Convention. Many actions may be taken with the same purpose, very well defined but probably not very well directed, because there is not always a clear understanding of the problems that the measures should resolve and in the spheres and areas in which they should operate.

The purpose of this article, therefore, is to generate information, both quantitative and qualitative, on the phenomena that the Convention seeks to combat, as well as their expressions. In this way the decision-makers and those who implement public policies will be clear about the phenomena, as well as baselines from which specific goals arise, measurable in time, in order to see and weigh concrete changes.

The article very ably points out that the information refers to the different levels, national, regional and local, precisely because the specific problems and the phenomenology that the Convention seeks to combat may each present a different scope. Local needs may be very different from those existing nationally, as often happens. Observing micro-scenarios is a good way to make specific progress in the area of the public policies.

One of the relevant effects of the generation and dissemination of information in this area is that of diminishing invisibility, which is already an important advance and a starting point for the political, economic, social, legal and structural changes necessary to discourage the practices that the Convention seeks to combat.
I N T E R - A M E R I C A N S Y S T E M

None

U N I V E R S A L S Y S T E M

International Convention on the Rights of Persons with Disabilities

Article 31

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
   a. Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
   b. Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.
In light of the foregoing, the IIHR recommends that:

1. The motivation behind this Article be maintained.

2. The following language for Article 13, which seeks an internal consistency with the IIHR’s proposed conceptualization, be considered for its eventual adoption:

   The States Parties undertake to conduct studies on the nature, causes and manifestations of racism, discrimination and intolerance in their respective countries, at the local, regional and national levels, and to collect, compile, and disseminate data and statistics on the situation of the groups or individuals who are victims of such conduct, practices or unlawful measures.
The States Parties undertake, in accordance with their internal legislation, to establish or designate a national institution that shall be responsible for monitoring compliance with this Convention, and shall inform the OAS General Secretariat of this institution. The representative of that national institution shall be that State’s representative on the Inter-American Committee for the Prevention, Elimination, and Punishment of Racism and All Forms of Discrimination and Intolerance.

(CANADA: The States Parties undertake, in accordance with their national laws, to designate one or more domestic mechanisms that shall be responsible for monitoring implementation of the provisions of this Convention, and shall inform the OAS General Secretariat of these mechanisms.)
Scope and evaluation

The IIHR shares the spirit of Article 14 since its purpose is to decide upon, in the area of a State’s domestic jurisdiction, the authority responsible for the follow-up of the commitments under the Convention.

This article also introduces the idea of a Committee for the Prevention, Elimination and Punishment of Racism and All Forms of Discrimination and Intolerance. There would be two mechanisms of follow-up: one national and the other international. The article requires cooperation between the national authority in charge of the follow-up of the Convention and the members of the Committee.

On this point, the IIHR considers that the location of the current article is not the most adequate and the article would be much more appropriate in Chapter V, which contains the mechanisms of protection and follow-up of the Convention.

The IIHR, however, does not share the idea of creating a new body within the OAS, especially when there are limited resources and its regular funds are normally already allocated for other priorities. Furthermore, the maturity and experience of the organs of the Inter-American human rights protective system gives them important credibility to fulfill the tasks that the Committee would have. In this regard, if anything is to be done to that system, it should be to strengthen it. Creating another body, emulating the UN treaty bodies machinery, does not necessarily contribute to that purpose.

In addition, given the words establish or designate, the IIHR considers the latter term more adequate in that it implies a preexisting institutionality and not the confusion that the word establish might cause if it is understood as creating a new institution within the state apparatus. Furthermore, as will be seen, in designating the OAS Secretary General as depository of the treaty, he should be notified of the persons responsible for the domestic fulfillment of the Convention.

The IIHR wishes to emphasize that the purpose of the norm is to have a state authority, but which cannot be thought responsible since failure to implement the Convention on the national or domestic plane will not necessarily depend on its actions. In this regard, more than given responsibility, the authority is charged with oversight so that the different state agencies play their role within the framework of the Convention. The measures of implementation of the Convention are many and varied and mean legislative, jurisprudential and public policy changes, which call for the orchestrated or coordinated action of the state powers, central and decentralized. To think that an entity is “responsible” for the domestic implementation of the Convention may turn out to be a chimera. In any case, from the perspective of international law, responsibility for the breach of the obligations arising from the Convention is wholly the State’s.
The IIHR understands that it would be an authority or mechanism that would be granted legal standing to promote domestic policy to comply with the obligations arising from the Convention and that it be a sort of visible head, at least, between the State and the non-governmental organizations and civil society in general.

The IIHR, thus, believes that the proposal should be reformulated to be congruent with Article 33 of the Convention on the Rights of Persons with Disabilities, as follows:

*The States Parties undertake, in accordance with their system of organization, to designate a national authority or institution that will be in charge domestically of the issues relating to the implementation of this Convention, conferring on it, in addition, the necessary powers to this end so that coordination in different sectors and at different levels be facilitated. The designation and the powers of the national authority or institution designated shall be communicated to the Secretary General of the Organization of American States.*
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**Article 3**
Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

**Article 17**
Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

*International Convention on the Rights of Persons with Disabilities*

**Article 33**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.
Recommendations

In light of the foregoing, the IIHR recommends that:

1. The intent regarding the existence of a national institution or authority that is designated to monitor domestically the obligations arising from the Convention be preserved.

2. Notwithstanding the above, this article be placed in Chapter V, which is specifically devoted to the institution that will be charged with supervising compliance of the obligations of the Convention.

3. The creation of a new Committee, charged with monitoring the inter-American compliance of the Convention not be approved.

4. On the basis of what is indicated in the section “Scope and evaluation,” an article on the authority or national institution be considered and studied as follows:

   The States Parties undertake, in accordance with their system of organization, to designate a national authority or institution that will be in charge domestically of the issues relating to the implementation of this Convention, conferring on it, in addition, the necessary powers to this end so that coordination in different sectors and at different levels be facilitated. The designation and the powers of the national authority or institution designated shall be communicated to the Secretary General of the Organization of American States.
Article 15

The States Parties undertake to promote international cooperation for the exchange of ideas and experiences as well as to execute programs aimed at achieving the objectives of this Convention.
Scope and evaluation

Since a multi-lateral international treaty is drafted to address a specific concern shared by the States, it is evident that such matter is on the agenda of the international community concerned. Thus, it is more than pertinent to point out and reiterate the need that the common purpose, expressed in the object and purpose of the Convention, which is the combat against racism and all forms of discrimination and intolerance, requires cooperation among the States.

The IIHR considers that the proposal of the Presidency of the Working Group should be accepted as drafted.
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Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

**Convention on the Rights of Persons with Disabilities**

**Article 32**
1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:
   (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
   (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
   (c) Facilitating cooperation in research and access to scientific and technical knowledge;
   (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.
2. The provisions of this article are without prejudice to the obligations of each State Party to fulfill its obligations under the present Convention.
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<td><strong>Article 33</strong>&lt;br&gt;1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.&lt;br&gt;2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.&lt;br&gt;3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.</td>
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Recommendations

In light of the foregoing, the IIHR recommends that:

1. An article such as the present that would explicitly indicate that achieving the object and purpose of the Convention necessarily requires cooperation among the States as well as international cooperation be maintained.

2. The text of Article 15 of the Draft Convention, as it was presented by the President of the Working Group, be adopted.
Article 15

The States Parties undertake to promote international cooperation for the exchange of ideas and experiences as well as to execute programs aimed at achieving the objectives of this Convention.
Scope and evaluation

Since a multi-lateral international treaty is drafted to address a specific concern shared by the States, it is evident that such matter is on the agenda of the international community concerned. Thus, it is more than pertinent to point out and reiterate the need that the common purpose, expressed in the object and purpose of the Convention, which is the combat against racism and all forms of discrimination and intolerance, requires cooperation among the States.

The IIHR considers that the proposal of the Presidency of the Working Group should be accepted as drafted.
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<td><strong>Article 3</strong></td>
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<td>Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).</td>
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<td><strong>Article 17</strong></td>
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<td>Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.</td>
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<td></td>
<td><strong>Convention on the Rights of Persons with Disabilities</strong></td>
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<td><strong>Article 32</strong></td>
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<td>1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:</td>
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<td>(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;</td>
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<td>(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;</td>
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<td>(c) Facilitating cooperation in research and access to scientific and technical knowledge;</td>
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<td>(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.</td>
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<td>2. The provisions of this article are without prejudice to the obligations of each State Party to fulfill its obligations under the present Convention.</td>
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</tbody>
</table>
Inter-American System

None

Universal System

Article 33

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.
Recommendations

In light of the foregoing, the IIHR recommends that:

1. An article such as the present that would explicitly indicate that achieving the object and purpose of the Convention necessarily requires cooperation among the States as well as international cooperation be maintained.

2. The text of Article 15 of the Draft Convention, as it was presented by the President of the Working Group, be adopted.
Article 16

In order to monitor the implementation of the commitments assumed by the States Parties to this Convention:

(CANADA: Proposes replacing the word “commitments” by “obligations.”)

i. Any person or group of persons, or non-governmental entity legally recognized in one or more Member States of the Organization of American States may submit to the Inter-American Commission on Human Rights petitions containing reports or complaints of violations of this Convention by a State Party. In addition, any State Party, when depositing its instrument of ratification of or accession to this Convention, or at any time thereafter, may declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed violations of the human rights established in this Convention. In such case, all the relevant procedural rules contained in the American Convention on Human Rights as well as the Statutes and the Rules of Procedure of the Commission shall be applicable.

(CANADA: Considers the term “accession” important. It also proposes that the last sentence of this paragraph read as follows: In both instances, the relevant procedural rules contained in the American Convention on Human Rights (where the State concerned is a party) as well as the Statutes and the Rules of Procedure of the Commission shall be applicable.)

ii. The States Parties may consult the Commission on questions related to the effective application of this Convention. They may also request the Commission’s advisory assistance and technical cooperation to ensure effective application of any provision of this Convention. The Commission will, to the extent that it is able, provide the States Parties with the requested advisory services and assistance.

(BRAZIL: Considers it appropriate to include the phrase: “without prejudice to the consultative competence of the Inter-American Court of Human Rights.”)

iii. Any State Party may, when depositing its instrument of ratification of or accession to this Convention, or at any time thereafter, declare that it recognizes as binding, as a matter of law and without any special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of this
Convention. In such case, all relevant procedural rules contained in the American Convention on Human Rights as well as the Statutes and Rules of Procedure of the Court shall be applicable.

(CANADA: Delete the phrase “as well as the Statutes and Rules of Procedure of the Court” at the end of the paragraph.)

iv. An Inter-American Committee for the Prevention, Elimination, and Punishment of All Forms of Discrimination and Intolerance shall be established and shall be comprised of independent experts from each of the States Parties. The first meeting of the Committee shall be convened by the Secretary General of the OAS as soon as the tenth instrument of ratification has been received, and the first meeting shall be held at the headquarters of the Organization three months later for the purpose of declaring its establishment, approving its Rules of Procedure and its Working Method, and electing its officials. That meeting shall be presided over by the representative of the country that deposits the first instrument of ratification of this Convention.

(Canada: Proposes deletion of this article.)

Note:
The delegation of Mexico proposes separating the articles that refer to the Committee and those that refer to the Commission to make this chapter clearer.)

v. The Committee shall be the forum for the exchange of ideas and experience, as well as for examining progress made by the States Parties in implementing this Convention and any circumstance or difficulty affecting the extent of compliance therewith. Said Committee may recommend to the States Parties that they adopt the appropriate measures. For this purpose, the States Parties undertake to submit a report to the Committee, within one year of its first meeting, with respect to performance of the obligations contained in this Convention. The reports that the States Parties submit to the Committee shall also contain disaggregated data and statistics on vulnerable groups. Thereafter, the States Parties shall submit reports every four years. The General Secretariat of the OAS shall give the Committee any support it requires for the performance of its functions.

(CANADA: Proposes deletion of this paragraph.)
Scope and evaluation

Article 16 is also highly important for the effectiveness of the Convention, as it establishes mechanisms of international protection and follow-up, in addition to the mechanism of domestic protection, according to what was indicated in the analysis of Article 14 of Draft.

With regard to the first part of this article, especially the use of the words *commitments* or *obligations*, it is important to point out that the word *commitments*, a common term in treaties, is the classical manner of denominating the obligations and rights of a general treaty. In fact, in accordance with the Vienna Convention on the Law of Treaties, the precise terms are *obligations* and *rights*.\(^1\) However, *obligations* could be interpreted in a literal sense, that is, that there would only be an obligation if a certain type of commitment was specifically so named. To avoid unnecessary confusion and to show clearly that the purpose of this article is to provide follow-up to the Convention, both words should be used. That redundancy is, therefore, not unnecessary but, on the contrary, ensures the greatest understanding with respect to the guarantees of follow-up and respect of the Convention. The IIHR, therefore, proposes that the text of the first part of Article 16 of the Draft Convention reads as follows:

*With the purpose of monitoring implementation of the commitments and obligations arising from this Convention, the States Parties recognize that:*

**Clause i)**

Article 16.i) deals with the possibility of using the petition system of the Inter-American Commission and the contentious jurisdiction of the Inter-American Court.

Two observations, however, are necessary. In the first place, the IIHR considers that Article 16.i) should deal with the designation of a national mechanism, that is, that the text should be similar to that which was suggested for Article 14 of the Draft. In the second place, the language of this clause could be improved by utilizing a combination of the language employed in the *ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (Art. 19.6), the *INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE* (Art. 8), the *INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS* (Arts. XIII and XIV) and the *INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN* (Art. 12).

This provision should leave no doubt as to its meaning and, therefore, the following language is suggested:

\(^1\) See, Vienna Convention on the Law of Treaties, Art. 34.
The violation of this Convention, attributable under the rules of international law to one of the States Parties, shall fall under the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in the terms of Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights, irrespective of whether the State is a party to the latter, as well as the pertinent norms of the respective Statutes and Rules of Procedure of those organs.

This would guarantee the integrity and equality of the individual petition procedures. There also remains the possibility of inter-state complaints before the Inter-American Commission and ultimately of inter-state contentious cases before the Inter-American Court.

An advantage of this language is that it moves toward the ideal of side-stepping the provision dealing with the recognition of the jurisdiction of the Inter-American Court and would result in an automatic acceptance of the inter-American jurisdiction as soon as the Convention enters into force for a State Party.

In fact, behind this possibility of automatic acceptance of the inter-American jurisdiction, both of the Commission and of the Court, there is the need to offer a special guarantee taking into account that the object and purpose of the Convention—the combat against racism, all forms of discrimination and intolerance—seek to protect a norm of *ius cogens*. This peculiarity and the importance of the underlying norm explain the need for such a special guarantee.

The mechanism proposed by the IIHR is in line with the tradition that exists in the inter-American system in the sense that, except for the case of the American Convention on Human Rights (adopted in 1969), subsequent thematic treaties (the *INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE* and the *INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS*) or regarding special groups (*INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN*) recognize the automatic acceptance of the jurisdiction of the Inter-American Court.

**Clause ii)**

Article 16 *ii*) refers to the possibilities of technical assistance of the Inter-American Commission, functions that, as the Delegation of Brazil properly points out, should not prejudice or diminish the exercise of the advisory jurisdiction of the Inter-American Court because they are two advisory mechanisms that have different characteristics.

The advisory functions of the Inter-American Commission are governed by Articles 1 and 18.e of its Statute and Article 41.e of the American Convention on Human Rights and are *advisory actions that do not deal with the interpretation of the American*
**Convention on Human Rights or of other treaties relating to the protection of human rights in the American States**, which is the language of the advisory function of the Inter-American Court. Furthermore, the advisory function of the Inter-American Commission concerns providing technical assistance to the States, within the limit of its possibilities.

The advisory function of the Inter-American Commission is general and much broader than that of the Inter-American Court, which is limited to the interpretation of certain legal instruments. In addition, only OAS Member States, through the General Secretariat, have standing to request advisory opinions of the Inter-American Commission, while standing to consult the Inter-American Court is for the OAS Member States, when they so request, and for the organs listed in the OAS Charter. Finally, the advisory function of the Inter-American Court also extends to the analysis of the compatibility between the domestic law of a State and the treaties that are part of the object of the advisory jurisdiction. In this case, standing is only for the State concerned.

The following language is, therefore, proposed to replace Article 16 ii) with a view to avoiding confusion and to distinguishing and maintaining separate, although they are complementary, the advisory functions of the Inter-American Commission and of the Inter-American Court:

*Nothing in the provisions of this Convention shall limit the capacity of the Member States, or of the organs mentioned in Chapter VIII of the Charter of the Organization of American States, amended by the Protocols of Buenos Aires, Cartagena de Indias, Washington, and Managua, to formulate queries or to request advisory opinions of the Inter-American Commission on Human Rights or of the Inter-American Court of Human Rights, respectively, according to the applicable norms.*

**Clause iii)**

Given the proposal in Article 16 i) and particularly the ideal of avoiding the optional clause of the jurisdiction of the Inter-American Court –especially since it is a matter that is based on a norm of *ius cogens* as is the principle of equality of human beings and the prohibition of discrimination– the IIHR considers that this clause should be deleted or, at least, the part regarding the recognition of the jurisdiction of the Inter-American Court.

**Clauses iv and v)**

Both clauses refer to the composition and operation of the Committee for the Prevention, Elimination and Punishment of Racism and All Forms of Discrimination and Intolerance.

The IIHR considers that this is not an opportune moment in the OAS to create the aforementioned Committee. Although there is a tendency toward complementing and
emulating the good practices among the treaty-based and the non-treaty-based mechanisms of the UN and the OAS human rights mechanisms, it is important to acknowledge the enormous structural and budgetary considerations that advise against the creation of such a Committee.

**Structural considerations**

The development of the UN treaty and non-treaty-based mechanisms has its genesis in the design, existence and organization, and even the operations, of the former UN Commission of Human Rights, which was a political organ as it was comprised of representatives of States. Thus, when universal human rights treaties began to be conceived, it was quickly observed that it was not feasible, politically or legally, to rely on an organ that functioned under criteria for political consensus to achieve the purpose of such treaties. Committees were therefore formed, comprised of persons chosen for their technical qualities – nominated by the States because of their near monopolization of international subjectivity- who offered guarantees of independence and impartiality and had the technical qualifications to make decisions and to settle individual vs. State and State vs. State disputes, when this is permitted.

The creation of the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, later named the Sub-Commission for the Promotion and Protection of Human Rights, responded to that principle.

In addition, when the Commission of Human Rights needed to advance in the study of a subject, it used Special Rapporteurs or Independent Experts who prepared reports on the basis of which the Commission adopted and/or suggested new human rights instruments.

In the case of the OAS, without entering into its origins, the Inter-American Commission on Human Rights is not comprised of representatives of States but of members in their individual capacity on the basis of their technical and academic qualifications. That is why, in addition to other historical reasons, the same organ is authorized to decide individual petitions and cases and why, except for exceptional cases, the special reports are drafted by its own members.

There are, therefore, institutional guarantees that the Inter-American Commission can perform this work and there is no need to create a special Committee that, following the line of work of UN, would not have a specific reason to exercise functions similar to that of the Inter-American Commission on a special topic.
Budgetary considerations

The creation of a new organ would mean a new budget allotment. The budgets of the Inter-American Commission and Court, as regards the OAS Regular Fund, together do not exceed 6% of the OAS budget. Of the program-budget for the year 2008, the total assigned to both organs is approximately US$5.5 million, of the US$93.5 million that is total program-budget for that same year. This shows the reduced allotment for the human right sector.

If it is decided to create the Committee, it should result in an increase in the assignment for the human rights sector. Otherwise, it would mean introducing another guest to the table, with the lessening of the already precarious budget of the two Inter-American human rights organs, which would obviously result, unacceptably, in their weakening. The alternative -the existence of a budgetary increase- should be weighed in terms of its utility, which means if the total human rights budget is increased, how to optimize its implementation? The IIHR believes that such optimization would occur if the increase contributed to improve, mainly, the operations of the Inter-American Commission, which has a more extensive competence, and the Inter-American Court with the idea that the new Convention would mean an increase in its docket. It is always better, in principle, to invest in an established structure than to begin from zero with a new structure because of certain fixed operating expenses. It would theoretically be better, therefore, to increase the budgets of the existing organs than to create a new one.

In any case, the Inter-American Commission can perform the functions that would be assigned to the Committee and under the new proposal, the inter-American system would be strengthened if many of the activities that the Inter-American Commission performs, or could perform, were directly included in this Convention.

It should also be taken into account that the Inter-American Commission conducts visits to countries, either by invitation or by the consent of the respective government. There is no reason why that function could not be specifically included in the Convention and that the old paradigm derived from a classical vision of international law as it pertains to human rights, which to a certain extent existed in 1969 when the American Convention on Human Rights was adopted, be cast aside so that the States make a declaration of the open and permanent invitation that the Commission monitor in situ compliance with the Convention.

Similarly, there could be an express reference to the public being informed of the periodic reports of the States that would complement the mechanisms of human rights

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2 AG/RES. 2353 (XXXVII-O/07)
3 The budgetary analysis by sectors is a technique generally employed for national budgets.
protection on the inter-American plane, without prejudice that the inter-American Commission could develop other methods of work derived or inspired by those already existing in United Nations.

Thus, the IIHR suggests that clauses iv and v should be reformulated, as follows:

In addition to its present functions, the Inter-American Commission on Human Rights shall have, especially with respect to this Convention, the following attributes:

1. Receive, study, analyze and formulate conclusions and recommendations on the quadrennial periodic reports that the States Parties shall submit to it. The study and analysis of these reports shall be open and public, complementing the information between the State and civil society, and the effective dissemination, access and follow-up of the conclusions and recommendations.

2. Convene open-ended working session, under the modality of “days of discussion,” that would allow addressing sensitive or relevant subjects related to the application of the Convention.

3. Adopt instruments of soft-law that contribute to the progressive development of the norms of application of the Convention.

In an effort to consolidate what has been expressed on the protective mechanisms and follow-up of the Convention, the IIHR proposes that the following be divided into separate articles:

The States Parties undertake, in accordance with their legal order, to designate an authority or national institution that will be in charge domestically of the issues relating to the compliance of this Convention, conferring on it, in addition, the necessary powers to this end so that coordination among the different sectors and levels involved be facilitated. The designation and the powers of the national authority or institution designated shall be communicated to the Secretary General of the Organization of American States.

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See the analysis of Article 14.
With the purpose of monitoring implementation of the commitments and obligations arising from this Convention, the States Parties recognize that:

The violation of this Convention, attributable under the rules of international Law to one of the States Parties, shall fall under the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in the terms of Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights, irrespective of whether the State is a party to the latter, as well as the pertinent norms of the respective Statutes and Rules of Procedure of those organs.

Nothing in the provisions in this Convention shall limit the capacity of the Member States, or of the organs mentioned in Chapter VIII of the Charter of the Organization of American States, as amended by the Protocols of Buenos Aires, Cartagena de Indias, Washington, and Managua, to formulate queries or to request advisory opinions of the Inter-American Commission on Human Rights or of the Inter-American Court of Human Rights, respectively, according to the applicable standards.

In addition to its present functions, the Inter-American Commission on Human Rights shall have, especially with respect to this Convention, the following attributes:

1. Receive, study, analyze and formulate conclusions and recommendations on the quadrennial periodic reports that the States Parties shall submit to it. The study and analysis of these reports shall be open and public, complementing the information between the State and civil society, and the effective dissemination, access and follow-up of the conclusions and recommendations.

2. Convene open-ended working session, under the modality of “days of discussion,” that would allow addressing sensitive or relevant subjects related to the application of the Convention.

3. Adopt instruments of soft-law that contribute to the progressive development of the norms of application of the Convention.
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<tr>
<th>INTER-AMERICAN SYSTEM</th>
<th>UNIVERSAL SYSTEM</th>
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<tr>
<td><strong>American Convention on Human Rights</strong></td>
<td><strong>International Covenant on Civil and Political Rights</strong></td>
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<tr>
<td><strong>Article 44</strong></td>
<td><strong>Article 28</strong></td>
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<tr>
<td>Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.</td>
<td>1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.</td>
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<td><strong>Article 45</strong></td>
<td>2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.</td>
</tr>
<tr>
<td>1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.</td>
<td>3. The members of the Committee shall be elected and shall serve in their personal capacity.</td>
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<td>2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.</td>
<td><strong>Article 40</strong></td>
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<td>3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.</td>
<td>1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:</td>
</tr>
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<td>4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.</td>
<td>(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;</td>
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<td><strong>Article 46</strong></td>
<td>(b) Thereafter whenever the Committee so requests.</td>
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<td>1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:</td>
<td>2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.</td>
</tr>
<tr>
<td>a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;</td>
<td>3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.</td>
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<td>b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;</td>
<td>4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.</td>
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<tr>
<td>c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and</td>
<td>5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.</td>
</tr>
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<td>d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.</td>
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1 Only provisions relating to the functions of the Committees concerning periodic reports are cited.
## INTER-AMERICAN SYSTEM

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
   a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
   b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
   c. there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

### Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:
   a. any of the requirements indicated in Article 46 has not been met;
   b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
   c. the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or
   d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

### Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:
   a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.
   b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
   c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
   d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.
   e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements.

## UNIVERSAL SYSTEM

### International Covenant on Economic, Social and Cultural Rights

#### Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

#### Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

### International Convention on the Elimination of All Forms of Racial Discrimination

#### Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
Article 49
If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50
1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.
2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.
3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51
1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.
2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
   (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

Article 9
1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
   (a) within one year after the entry into force of the Convention for the State concerned; and
   (b) thereafter every two years awhenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.
### INTER-AMERICAN SYSTEM

**Article 61**
1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

**Article 62**
1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

**Article 63**
1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

**Article 64**
1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

### UNIVERSAL SYSTEM

**International Convention on the Elimination of All Forms of Discrimination against Women**

**Article 17**
1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party...
**INTER-AMERICAN SYSTEM**

**Article 65**
To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

**Article 66**
1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

**Article 67**
The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

**Article 68**
1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

**Article 69**
The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights**

**Article 19**
6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the

**UNIVERSAL SYSTEM**

whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

**Article 18**
1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
(a) Within one year after the entry into force for the State concerned;
(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Article 17**
1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the
status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.

**Inter-American Convention to Prevent and Punish Torture**

**Article 8**
The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

**Inter-American Convention on Forced Disappearance of People**

**Article XIII**
For the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statute and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

**Article XIV**
Without prejudice to the provisions of the preceding article, when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

**Universal System**
Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

**Article 19**
1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations...
### INTER-AMERICAN SYSTEM

<table>
<thead>
<tr>
<th><strong>Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women</strong></th>
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<tr>
<td><strong>Article 12</strong></td>
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<tr>
<td>Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.</td>
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<tr>
<th><strong>Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities</strong></th>
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<tr>
<td><strong>ARTICLE VI</strong></td>
</tr>
<tr>
<td>1. To follow up on the commitments undertaken in this Convention, a Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities, composed of one representative appointed by each state party, shall be established.</td>
</tr>
<tr>
<td>2. The committee shall hold its first meeting within the 90 days following the deposit of the 11th instrument of ratification. Said meeting shall be convened by the General Secretariat of the Organization of American States and shall be held at the Organization’s headquarters, unless a state party offers to host it.</td>
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<tr>
<td>3. At the first meeting, the states parties undertake to submit a report to the Secretary General of the Organization for transmission to the Committee so that it may be examined and reviewed. Thereafter, reports shall be submitted every four years.</td>
</tr>
<tr>
<td>4. The reports prepared under the previous paragraph shall include information on measures adopted by the member states pursuant to this Convention and on any progress made by the states parties in eliminating all forms of discrimination against persons with disabilities. The reports shall indicate any circumstances or difficulties affecting the degree of fulfillment of the obligations arising from this Convention.</td>
</tr>
<tr>
<td>5. The Committee shall be the forum for assessment of progress made in the application of the Convention and for the exchange of experience among the states parties. The reports prepared by the committee shall reflect the deliberations; shall include information on any measures adopted by the states parties pursuant to this Convention, on any progress they have made in eliminating all forms of discrimination against persons with disabilities, and on any circumstances or difficulties they have encountered in the implementation of the Convention; and shall include the committee's conclusions, its findings, and recommendations.</td>
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### UNIVERSAL SYSTEM

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<th><strong>Convention on the Rights of the Child</strong></th>
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<tr>
<td><strong>Article 43</strong></td>
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<tr>
<td>1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.</td>
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<tr>
<td>2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.</td>
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<tr>
<td>3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.</td>
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<tr>
<td>4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.</td>
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<tr>
<td>5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.</td>
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<tr>
<td>6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.</td>
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<tr>
<td>7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remaining term.</td>
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<td>observations, and its general suggestions for the gradual fulfillment of the Convention.</td>
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<td>6. The committee shall draft its rules of procedure and adopt them by a simple majority.</td>
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<td>7. The Secretary General shall provide the Committee with the support it requires in order to perform its functions.</td>
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<td>10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.</td>
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<tr>
<td>12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.</td>
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**Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
   (a) Within two years of the entry into force of the Convention for the State Party concerned;
   (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.
### Article 72

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals; (b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional
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<td>members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties; (c) The members of the Committee shall be eligible for re-election if renominated. 6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee. 7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee. 8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide. 9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.</td>
<td>Article 73 1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention: (a) Within one year after the entry into force of the Convention for the State Party concerned; (b) Thereafter every five years and whenever the Committee so requests. 2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved. 3. The Committee shall decide any further guidelines applicable to the content of the reports. 4. States Parties shall make their reports widely available to the public in their own countries.</td>
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| Article 74 1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports. 2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the
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<td>International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide. 3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence. 4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities. 5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee. 6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered. 7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties. 8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.</td>
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**Convention on the Rights of Persons with Disabilities**

**Article 34**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.
2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.
3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the
members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35
1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.
2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.
3. The Committee shall decide any guidelines applicable to the content of the reports.
4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.
5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36
1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.
2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.
3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available
to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

**Article 37**

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.
Recommendations

In light of the foregoing, the IIHR recommends that:

1. The idea of domestic and international follow-up mechanisms of the Convention, including the system of individual petitions and periodic reports, be maintained.

2. In an effort to make their sense and interpretation clearer, the following articles, the justification of which may be found supra, be considered and studied:

The States Parties undertake, in accordance with their system of organization, to designate a national authority or institution that will be in charge domestically of the issues relating to the implementation of this Convention, conferring on it, in addition, the necessary powers to this end so that coordination in different sectors and at different levels be facilitated. The designation and the powers of the national authority or institution designated shall be communicated to the Secretary General of the Organization of American States.
With the purpose of monitoring implementation of the commitments and obligations arising from this Convention, the States Parties recognize that:

1. The violation of this Convention, attributable under the rules of international Law to one of the States Parties, shall fall under the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in the terms of Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights, irrespective of whether the State is a party to the latter, as well as the pertinent norms of the respective Statutes and Rules of Procedure of those organs.

2. Nothing in the provisions in this Convention shall limit the capacity of the Member States, or of the organs mentioned in Chapter VIII of the Charter of the Organization of American States, as amended by the Protocols of Buenos Aires, Cartagena de Indias, Washington, and Managua, to formulate queries or to request advisory opinions of the Inter-American Commission on Human Rights or of the Inter-American Court of Human Rights, respectively, according to the applicable standards.

3. In addition to its present functions, the Inter-American Commission on Human Rights shall have, especially with respect to this Convention, the following attributes:

   a. Receive, study, analyze and formulate conclusions and recommendations on the quadrennial periodic reports that the States Parties shall submit to it. The study and analysis of these reports shall be governed by the principles of oralidad and publicity, complementing the information between the State and civil society, and the effective dissemination, access and follow-up of the conclusions and recommendations.

   b. Convene open-ended working session, under the modality of “days of discussion,” that would allow addressing sensitive or relevant subjects related to the application of the Convention.

   c. Adopt instruments of soft-law that contribute to the progressive development of the norms of application of the Convention.
1. No provision of this Convention shall be interpreted as restricting or limiting a domestic law of any State Party that affords protections and guarantees equal to or greater than those established in this Convention.

2. Nothing in this Convention shall be interpreted as restricting or limiting the American Convention on Human Rights or any other international convention on the subject that affords equal or greater protections in this regard.
Scope and evaluation

Article 17 captures very well the rule of interpretation that should prevail with regard to human rights instruments, which is the *pro persona* principle whereby all interpretations and applications of the norms must prefer those that offer the broadest possible recognition or the fewest restrictions, irrespective of whether they be domestic or international.

The IIHR supports the text of the proposal included in the Draft Convention.
### INTER-AMERICAN SYSTEM

**American Convention on Human Rights**

**Article 29**
No provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights**

**Article 4**
A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

### UNIVERSAL SYSTEM

**International Covenant on Civil and Political Rights**

**Article 5**
1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**Article 47**
Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**International Covenant on Economic, Social and Cultural Rights**

**Article 5**
1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**Article 25**
Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

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**Inter-American Convention to Prevent and Punish Torture**

**Article 16**
This Convention shall not limit the provisions of the American Convention on Human Rights, other conventions on the subject, or the Statutes of the Inter-American Commission on Human Rights, with respect to the crime of torture.

**Inter-American Convention on Forced Disappearance of People**

**Article XV**
None of the provisions of this Convention shall be interpreted as limiting other bilateral or multilateral treaties or other agreements signed by the Parties.
**INTER-AMERICAN SYSTEM**

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 13**
No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

**Article 14**
No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

**Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities**

**ARTICLE VII**
No provision of this Convention shall be interpreted as restricting, or permitting the restriction by states parties of the enjoyment of the rights of persons with disabilities recognized by customary international law or the international instruments by which a particular state party is bound.

**UNIVERSAL SYSTEM**

**International Convention on the Elimination of All Forms of Discrimination against Women**

**Article 23**
Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:
(a) In the legislation of a State Party; or
(b) In any other international convention, treaty or agreement in force for that State.

**Convention on the Rights of the Child**

**Article 41**
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:
(a) The law of a State party; or
(b) International law in force for that State.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Article 80**
Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

**Convention on the Rights of Persons with Disabilities**

**Article 4**
4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.
In light of the foregoing, the IIHR recommends that:

1. The language proposed in the Draft Convention be maintained.
Article 18

The original instrument of this Convention, whose English, French, Portuguese, and Spanish texts are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.
Scope and evaluation

Article 18 is a classical provision included in all treaties signed under the auspices of the OAS and refers to the different texts in the official languages of the OAS that should be regarded as authentic.

In being designated as depositary, the Secretary General assumes the obligations that international law, both conventional and customary, recognize for the depositary of a treaty, which means that his functions are international and should be executed or performed with absolute impartiality.

The depositary’s functions, under international law, are, *inter alia*, keeping custody of the original text of the treaty, preparing certified copies in the corresponding languages and transmitting them to the States that may become parties to the treaty, receiving the signatures as well as any instrument or notification relating to the treaty and serving as a source of official information about the treaty and its effect.

That also means, of course, the transmittal of certified copies to the UN General Secretariat, as set forth in Article 102 of the UN Charter.
### Normative references

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<td><strong>Article 74</strong></td>
<td><strong>Article 53</strong></td>
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<tr>
<td>1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.</td>
<td>1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.</td>
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<td>2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.</td>
<td>2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.</td>
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<td>3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.</td>
<td><strong>International Covenant on Economic, Social and Cultural Rights</strong></td>
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<td><strong>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights</strong></td>
<td><strong>Article 31</strong></td>
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<tr>
<td><strong>Article 21</strong></td>
<td>1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.</td>
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<td>4. The Secretary General shall notify all the member states of the Organization of American States of the entry of the Protocol into effect.</td>
<td>2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.</td>
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<td><strong>Inter-American Convention to Prevent and Punish Torture</strong></td>
<td><strong>International Convention on the Elimination of All Forms of Discrimination against Women</strong></td>
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<tr>
<td><strong>Article 24</strong></td>
<td><strong>Article 30</strong></td>
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<tr>
<td>The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication, in accordance with the provisions of Article 102 of the United Nations Charter….</td>
<td>The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.</td>
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<tr>
<td><strong>Inter-American Convention on Forced Disappearance of Persons</strong></td>
<td><strong>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</strong></td>
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<tr>
<td><strong>Article XXII</strong></td>
<td><strong>Article 33</strong></td>
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<tr>
<td>The original instrument of this Convention, the Spanish, English, Portuguese, and French texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward certified copies thereof to the United Nations Secretariat, for registration and</td>
<td>1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.</td>
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<td><strong>Convention on the Rights of the Child</strong></td>
<td><strong>Article 54</strong></td>
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<tr>
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<td>The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.</td>
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**INTER-AMERICAN SYSTEM**

publication, in accordance with Article 102 of the Charter of the United Nations…

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 25**

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

**Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities**

**ARTICLE XIV**

1. The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy thereof to the United Nations Secretariat for registration and publication pursuant to Article 102 of the United Nations Charter.

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<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
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<tr>
<td><strong>Article 93</strong></td>
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<tr>
<td>1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.</td>
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<tr>
<td>2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.</td>
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**Convention on the Rights of Persons with Disabilities**

**Article 41**

The Secretary-General of the United Nations shall be the depositary of the present Convention.
In light of the foregoing, the IIHR recommends that:

1. The language proposed in the Draft Convention be maintained.
1. This Convention is open to signature by all Member States of the Organization of American States.

(VENEZUELA: Requests the insertion of the following phrase at the end: which shall send copies thereof to all States Parties.)

(CANADA: Proposes the following draft: This Convention shall be open to signature, ratification, and accession by all member states of the Organization of American States.)

2. This Convention is subject to ratification by the signatory States in accordance with the procedures set forth in their constitutions. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

(CANADA: Proposes the following draft: This Convention is subject to ratification or accession in accordance with the procedures set forth in applicable constitutions and laws. The instruments of ratification or accession shall be deposited with the General Secretariat of the Organization of American States.)
Scope and evaluation

Article 19 refers to generally accepted procedures, including inter-American practice, for States to manifest their acceptance and will to be bound by the Convention.

It is observed that the proposal does not envisage the possibility of consenting to be bound to the Convention through adhesion, which is a mechanism that is used when a State, wishing to be a party to a treaty, has not signed it beforehand or does not wish to sign it as an initial step.

Inasmuch as the inter-American system has not usually employed expressions of consent applicable in the United Nations, such as acceptance (“signed subject to acceptance” or simply “acceptance”), the importance of foreseeing the possibility of adhesion becomes even more necessary.

With regard to the first part, the proposal of the Delegation of Canada is understandable. However, for reasons of terminological precision that would allow distinguishing clearly the specificities between ratification, which implies a prior signing, and adhesion, which does not, the following language, which also makes use of the definitions found in Article 1, is suggested:

*This Convention shall be open for the signature and ratification, or adhesion, of each Member State.*

With that modification, the second part should therefore also be changed, for which the IIHR endorses the proposal of the Delegation of Canada, except that regarding the necessity that the Convention indicate that the procedures for ratification or adhesion be in compliance with domestic law. The IIHR, therefore, suggests that the second part be read as follows:

*The instruments of ratification or adhesion shall be deposited in the General Secretariat of the Organization of American States.*

The Delegation of Venezuela makes a very important contribution that the IIHR considers implicit in the natural functions of the depositary and, therefore, not necessary to be explicitly stated.
### Normative references

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<tr>
<td><strong>Article 74</strong></td>
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<tr>
<td>1. This Convention shall be open for</td>
<td>1. This Protocol shall remain open to signature and ratification or accession by any State Party to the</td>
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<td>signature and ratification by or</td>
<td>American Convention on Human Rights.</td>
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<td>adherence of any member state of the</td>
<td>2. Ratification of or accession to this Protocol shall be effected by depositing an instrument of</td>
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<td>Organization of American States.</td>
<td>ratification or accession with the General Secretariat of the Organization of American States.</td>
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<tr>
<td><strong>Article 48</strong></td>
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<tr>
<td>1. The present Covenant is open for signature by any</td>
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<td>State Member of the United Nations or member of any of</td>
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<td>its specialized agencies, by any State Party to the</td>
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<td>Statute of the International Court of Justice, and by any</td>
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<td>other State which has been invited by the General</td>
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<td>Assembly of the United Nations to become a Party to the</td>
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<td>present Covenant.</td>
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<td>2. The present Covenant is subject to ratification.</td>
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<td>Instruments of ratification shall be deposited with the</td>
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<td>Secretary-General of the United Nations.</td>
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<td>3. The present Covenant shall be open to accession by</td>
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<td>any State referred to in paragraph 1 of this article.</td>
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<td>4. Accession shall be effected by the deposit of an</td>
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<td>instrument of accession with the Secretary-General of the</td>
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<td>United Nations.</td>
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<td>5. The Secretary-General of the United Nations shall</td>
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<td>inform all States which have signed this Covenant or</td>
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<td>acceded to it of the deposit of each instrument of</td>
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<td>ratification or accession.</td>
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#### Inter-American Convention to Prevent and Punish Torture

**Article 18**

This Convention is open to signature by the member states of the Organization of American States.

**Article 19**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article 20**

This Convention is open to accession by any other American state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

#### Inter-American Convention on Forced Disappearance of Persons

**Article XVI**

This Convention is open for signature by the member states of the Organization of American States.

**Article XVII**

#### International Convention on the Elimination of All Forms of Discrimination against Women

**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.
**INTER-AMERICAN SYSTEM**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article XVIII**

This Convention shall be open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 15**

This Convention is open to signature by all the member states of the Organization of American States.

**Article 16**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article 17**

This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

**Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities**

**ARTICLE VIII**

1. This Convention shall be open for signature by all member states in Guatemala City, Guatemala, on June 8, 1999, and, thereafter, shall remain open for signature by all states at the headquarters of the Organization of American States, until its entry into force.

2. This Convention is subject to ratification.

**Article IX**

After its entry into force, this Convention shall be open for accession by all states that have not signed it.

**Article X**

1. The instruments of ratification and accession shall be deposited with the General Secretariat of the Organization of American States.

**UNIVERSAL SYSTEM**

**Article 25**

1. The present Convention shall be open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Article 25**

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Convention on the Rights of the Child**

**Article 46**

The present Convention shall be open for signature by all States.

**Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be
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<td>deposited with the Secretary-General of the United Nations.</td>
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<td><strong>Convention on the Rights of Persons with Disabilities</strong></td>
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<tr>
<td><strong>Article 42</strong></td>
<td>The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.</td>
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<tr>
<td><strong>Article 43</strong></td>
<td>The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.</td>
</tr>
</tbody>
</table>
Recommendations

In light of the foregoing, the IIHR recommends that:

1. The language of the possibilities open to States to express their consent to be bound by the Convention, in the terms that are customary in inter-American treaty law, be maintained.

2. In conformity with the above, on the basis of the proposal of the Delegation of Canada, the following language be considered for adoption:

   1. *This Convention shall be open to the signature and ratification, or adhesion, of each Member State.*

   2. *The instruments of ratification or adhesion shall be deposited in the General Secretariat of the Organization of American States.*
The States Parties may enter reservations to this Convention when signing or ratifying it, provided that such reservations are not incompatible with the aim and purpose of the Convention and relate to one or more specific provisions thereof.

(CANADA: Proposes the following draft: The States Parties may enter reservations to this Convention at the time of signature, ratification, or accession provided that such reservations are not incompatible with the object and purpose of the Convention and relate to one or more specific provisions thereof.)
Scope and evaluation

Article 20 refers to a general practice in inter-American treaty law that reservations are admissible as long as they refer to specific provisions and are not incompatible with the object and purpose of the Convention and it identifies the precise moment in which reservations may be made.

In several Inter-American instruments those moments tend to distinguish between adoption, signature, ratification, or adhesion of the treaty. However, being an instrument that is adopted within the framework of an international organization, adoption does not arise from an exclusive or unilateral act of the State,¹ but rather a resolution of the OAS General Assembly.

Therefore, if there is a possibility of being bound by the Convention through adhesion, as proposed in the preceding article, this article should be modified in the same sense for reasons of internal coherence and, therefore, the IIHR supports the proposal of the Delegation of Canada.

Nevertheless, the IIHR makes a formal observation. Both the text of the Draft Convention and the proposal of the Delegation of Canada refer to the entity authorized to make reservations as “States Parties,” but in the terms of the Vienna Convention on the Law of Treaties the States become parties to a treaty when they consent to be bound by the treaty and the treaty is in force. Once the treaty is in force, those State may not make reservations. Therefore, from a technical perspective of international law, it is not proper to refer to “States Parties” that make reservations.

That was an error that was not committed in drafting the AMERICAN CONVENTION ON HUMAN RIGHTS (Art. 75), but was committed and repeated in the ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Art. 20) and in the INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE (Art. 21) but was later corrected in the INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS (Art. XIX), the INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN (Art. 18) and more recently the INTER-AMERICAN CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (Art. XII).

Language that would avoid this error would consist of following the technique employed in the latter three treaties cited. A more rigorous technical language would recognize as

the entities that could make reservations, although by reference, the same States for which the Draft Convention recognizes the right to sign and ratify the Convention or adhere to it. It is this latter language that the IIHR considers that should be included in the Draft Convention, as follows:

The Member States may make reservations to this Convention at the time of signing, ratification, or adhesion, as long as they are not incompatible with the object and purpose of the Convention and deal with one or more of its specific provisions.

In view of Article 22 of the Vienna Convention on the Law of Treaties, it is not necessary that the Convention expressly indicate that a reservation may be withdrawn. Silence on that matter, therefore, cannot be understood as a prohibition of the withdrawal of reservations already made.
### INTER-AMERICAN SYSTEM

#### American Convention on Human Rights

**Article 75**

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

#### Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

**Article 20**

The States Parties may, at the time of approval, signature, ratification or accession, make reservations to one or more specific provisions of this Protocol, provided that such reservations are not incompatible with the object and purpose of the Protocol.

#### Inter-American Convention to Prevent and Punish Torture

**Article 21**

The States Parties may, at the time of approval, signature, ratification, or accession, make reservations to this Convention, provided that such reservations are not incompatible with the object and purpose of the Convention and concern one or more specific provisions.

#### Inter-American Convention on Forced Disappearance of Persons

**Article XIX**

The states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.

#### Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women

**Article 18**

Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

- not incompatible with the object and purpose of the

### UNIVERSAL SYSTEM

#### International Convention on the Elimination of All Forms of Racial Discrimination

**Article 20**

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

#### International Convention on the Elimination of All Forms of Discrimination against Women

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

#### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the
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<tr>
<td><strong>Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities</strong></td>
<td>Secretary-General of the United Nations.</td>
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<tr>
<td><strong>ARTICLE XII</strong></td>
<td><strong>Convention on the Rights of the Child</strong></td>
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<td>The states may enter reservations to this Convention when ratifying or accession to it, provided that such reservations are not incompatible with the aim and purpose of the Convention and relate to one or more specific provisions thereof.</td>
<td><strong>Article 51</strong></td>
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<tr>
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<td>1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.</td>
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<td>2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.</td>
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<td>3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.</td>
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<tr>
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<td><strong>Article 91</strong></td>
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<td></td>
<td>1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.</td>
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<td>2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.</td>
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<tr>
<td><strong>Convention on the Rights of Persons with Disabilities</strong></td>
<td><strong>Article 46</strong></td>
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<td></td>
<td>1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.</td>
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<td>2. Reservations may be withdrawn at any time.</td>
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In light of the foregoing, the IIHR recommends that:

1. The possibility of making reservations to the Convention be maintained.

3. In conformity with the above and on the basis of the proposal of the Delegation of Canada,

4. The following be considered, discussed and approved:

*The Member States may make reservations to this Convention at the time of signing, ratification, or adhesion, as long as they are not incompatible with the object and purpose of the Convention and deal with one or more of its specific provisions.*
Article 21

1. This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification of the Convention is deposited with the General Secretariat of the Organization of American States.

   (CANADA: Proposes the following draft: This Convention shall enter into force on the thirtieth day following the date on which the eleventh instrument of ratification of or accession to the Convention is deposited with the General Secretariat of the Organization of American States.

2. For each State that ratifies the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.

   (CANADA: Proposes the following draft: For each State that ratifies the Convention after the eleventh instrument of ratification or accession has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.)
Scope and evaluation

Article 21 deals with the entry into force of the Convention. It is a traditional and classical provision in traditional and classical language. The only question that may be raised refers to the minimum threshold of instruments of ratification and/or adhesion that must be reached and the period (vacatio legis) after that threshold has been reached for entry into force. The proposals of the Draft Convention and of Delegation of Canada differ as to the threshold but agree on the period (vacatio legis). The IIHR supports a period of thirty days after the threshold of instruments of ratification and/or adhesion has been reached. This is in line with the reiterated inter-American practice.

The threshold of instruments of ratification or adhesion should be set at two, following the practice of the most recent human rights instruments, which also is evidence of the widespread practice in the inter-American system.

Consistent with the possibility of adhering to the Convention, as was established supra, the pertinent changes should be made in determining the threshold, insisting that such threshold may be met with instruments of ratification and of adhesion.

Some drafting changes are also necessary.

The proposal of the IIHR for consideration of the Working Group, therefore, is as follows:

1. *This Convention shall enter into force the thirtieth day following the date on which the second instrument of ratification or adhesion to the Convention is deposited with the General Secretariat of the Organization of American States.*

2. *For each State that ratifies or adheres to the Convention after the second instrument of ratification or adherence has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.*
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<td>Article 74</td>
<td>Article 49</td>
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</table>
| 2. ...As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence. | 1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.  
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession. |
| **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights** | **International Covenant on Economic, Social and Cultural Rights** |
| Article 21                                                    | Article 27                                                        |
| 3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession. | 1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.  
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession. |
| **Inter-American Convention to Prevent and Punish Torture**   | **International Convention for the Elimination of All Forms of Racial Discrimination** |
| Article 22                                                    | Article 19                                                        |
| This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification is deposited. For each State ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following the date on which that State deposits its instrument of ratification or accession. | 1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.  
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession. |
| **Inter-American Convention on Forced Disappearance of Persons** | **International Convention on the Elimination of All Forms of Discrimination against Women** |
| Article XX                                                    | Article 27                                                        |
| This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification.  
For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession. | 1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.  
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession. |

**International Covenant on Human Rights**

**Article 74**

2. ...As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence. 

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights**

**Article 21**

3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession. 

**Inter-American Convention to Prevent and Punish Torture**

**Article 22**

This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification is deposited. For each State ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following the date on which that State deposits its instrument of ratification or accession. 

**Inter-American Convention on Forced Disappearance of Persons**

**Article XX**

This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification.  
For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession. 

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 21**
**INTER-AMERICAN SYSTEM**

This Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

**Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities**

**ARTICLE VIII**

3. This Convention shall enter into force for the ratifying states on the 30th day following the date of deposit of the sixth instrument of ratification by a member state of the Organization of American States.

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**UNIVERSAL SYSTEM**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Convention on the Rights of the Child**

**Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.
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<td><strong>Convention on the Rights of Persons with Disabilities</strong></td>
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<td><strong>Article 45</strong></td>
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<td></td>
<td>1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.</td>
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<td>2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.</td>
</tr>
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</table>
In light of the foregoing, the IIHR recommends that:

In line with the practice generally accepted in the inter-American system, the following language be considered for its eventual adoption:

1. *This Convention shall enter into force the thirtieth day following the date on which the second instrument of ratification or adhesion to the Convention is deposited with the General Secretariat of the Organization of American States.*

2. *For each State that ratifies or adheres to the Convention after the second instrument of ratification or adherence has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.*
Article 22

This Convention shall remain in force indefinitely, but any State Party may denounce it through written notification addressed to the Secretary General of the Organization of American States. The Convention shall cease to have force and effect for the denouncing State one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other States Parties. Such denunciation shall not exempt the State Party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.

(CANADA: Proposes the following draft: Any State Party may denounce this Convention through written notification addressed to the Secretary General of the Organization of American States. The Convention shall cease to have force and effect for the denouncing State one year after the date of receipt of the instrument of denunciation. Such denunciation shall not exempt the State Party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.)
Scope and evaluation

Article 22 governs two different, although related, situations. On the one hand, it points out that the treaty is for an indefinite period and, on the other, it governs the complaint procedure.

From the perspective of the Law of Treaties, it is absolutely irrelevant that a treaty establishes that it is of an indeterminate duration or that it does not set a specific period of its effectiveness. A principle of international law states that, in the absence of a manifestation of the will of the States with respect to its duration, a treaty is understood to last indefinitely.¹

Nevertheless, recent OAS human rights treaties tend to incorporate a clause similar to the proposal in the Draft Convention, for example the INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE (Art. 23), the INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS (Art. XXI), the INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN (Art. 24) and it is identical to that found in the INTER-AMERICAN CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (Art. XIII).

The IIHR considers that the current proposal of the Draft Convention should remain as formulated.

Normative references

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</tr>
<tr>
<td><strong>Article 78</strong></td>
<td><strong>Article 21</strong></td>
</tr>
<tr>
<td>1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.</td>
<td>A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.</td>
</tr>
<tr>
<td>2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.</td>
<td><strong>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</strong></td>
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<tr>
<td><strong>Inter-American Convention to Prevent and Punish Torture</strong></td>
<td><strong>Article 31</strong></td>
</tr>
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<td><strong>Article 23</strong></td>
<td>1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.</td>
</tr>
<tr>
<td>This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.</td>
<td>2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.</td>
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<td><strong>Inter-American Convention on Forced Disappearance of Persons</strong></td>
<td>3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.</td>
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<td><strong>Article XXI</strong></td>
<td><strong>Convention on the Rights of the Child</strong></td>
</tr>
<tr>
<td>This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to be in effect for the denouncing state and shall remain in force for the other States Parties one year from the date of deposit of the instrument of denunciation.</td>
<td><strong>Article 52</strong></td>
</tr>
<tr>
<td><strong>Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women</strong></td>
<td>A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.</td>
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<td><strong>Article 24</strong></td>
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<td>of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.</td>
<td><strong>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</strong></td>
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<tr>
<td><strong>Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities</strong></td>
<td>Article 89</td>
</tr>
<tr>
<td>ARTICLE XIII</td>
<td>1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary-General of the United Nations.</td>
</tr>
<tr>
<td>This Convention shall remain in force indefinitely, but any state party may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to have force and effect for the denouncing state one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other states parties. Such denunciation shall not exempt the state party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.</td>
<td>2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.</td>
</tr>
<tr>
<td></td>
<td>3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.</td>
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<td>4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.</td>
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<td>Article 48</td>
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<tr>
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<td>A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.</td>
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Recommendation

In light of the foregoing, the IIHR recommends that:

1. The provision proposed in the Draft Convention be maintained.
Article 23

Any State Party may submit for the consideration of the States Parties gathered during the General Assembly draft protocols in addition to this Convention, with a view to gradually including other rights within its system of protection. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

(CANADA: Proposes the following for this article:

1. Any State Party may propose an amendment to this Convention and submit it to the General Secretariat of the Organization of American States. The General Secretariat shall thereupon disseminate any proposed amendments to the States Parties.

2. Amendments shall come into force when they have been accepted by a two-third majority of the States Parties to this Convention.

3. When amendments enter into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments that they have accepted.)
Scope and evaluation

The possibility of amending the Convention by means of protocols, allows expanding the scope and protection that the Convention offers. International organizations have written or customary standards for the preparation of treaties, which of course include protocols, that must be observed and, therefore, it is not recommended that a treaty, within the framework of an international organization, establish different rules.

The proposal contained in the Draft Convention, taken directly from Article 77 of the AMERICAN CONVENTION ON HUMAN RIGHTS, should therefore be adopted.

Nevertheless, the IIHR considers that the Inter-American Commission and the Inter-American Court should also be able to propose protocols to the Convention since both organs have important functions to consider, through their reports or cases, problems drawn from experience and that go beyond juridical alternatives, imposing the need to adapt to the norms.
## Normative references

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<td><strong>Article 31</strong></td>
<td><strong>Article 51</strong></td>
</tr>
<tr>
<td>Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.</td>
<td>1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.</td>
</tr>
<tr>
<td><strong>Article 76</strong></td>
<td>2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.</td>
</tr>
<tr>
<td>1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.</td>
<td>3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.</td>
</tr>
<tr>
<td>2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.</td>
<td><strong>International Covenant on Economic, Social and Cultural Rights</strong></td>
</tr>
<tr>
<td><strong>Article 77</strong></td>
<td><strong>Article 29</strong></td>
</tr>
<tr>
<td>1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.</td>
<td>1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.</td>
</tr>
<tr>
<td>2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.</td>
<td>2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.</td>
</tr>
<tr>
<td><strong>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights</strong></td>
<td><strong>International Covenant on Economic, Social and Cultural Rights</strong></td>
</tr>
<tr>
<td><strong>Article 22</strong></td>
<td><strong>Article 29</strong></td>
</tr>
<tr>
<td>1. Any State Party and the Inter-American Commission on Human Rights may submit for the consideration of the States Parties meeting on the occasion of the General Assembly proposed amendments to include the recognition of other rights or freedoms or to extend or expand rights or freedoms recognized in this Protocol.</td>
<td>1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.</td>
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| 2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.
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<tr>
<td><strong>Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women</strong></td>
<td>2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.</td>
</tr>
<tr>
<td>Article 19</td>
<td>3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.</td>
</tr>
<tr>
<td>Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.</td>
<td><strong>International Convention for the Elimination of All Forms of Racial Discrimination</strong></td>
</tr>
<tr>
<td>Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.</td>
<td>Article 23</td>
</tr>
<tr>
<td><strong>Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities</strong></td>
<td>1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.</td>
</tr>
<tr>
<td><strong>ARTICLE XI</strong></td>
<td>2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.</td>
</tr>
<tr>
<td>1. Any state party may make proposals for amendment of this Convention. Said proposals shall be submitted to the General Secretariat of the OAS for dissemination to the states parties.</td>
<td><strong>International Convention on the Elimination of All Forms of Discrimination against Women</strong></td>
</tr>
<tr>
<td>2. Amendments shall enter into force for the states ratifying them on the date of deposit of the respective instruments of ratification by two thirds of the member states. For the remaining states parties, they shall enter into force on the date of deposit of their respective instruments of ratification.</td>
<td>Article 26</td>
</tr>
<tr>
<td><strong>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</strong></td>
<td>1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.</td>
</tr>
<tr>
<td>Article 29</td>
<td>2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.</td>
</tr>
<tr>
<td>1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the</td>
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States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

**Convention on the Rights of the Child**

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**International Convention on the Protection of the Rights of All the Migrant Workers and Members of Their Families**

**Article 90**

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General
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<td>shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether the favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.</td>
<td></td>
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<tr>
<td>2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.</td>
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<tr>
<td>3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.</td>
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**Convention on the Rights of Persons with Disabilities**

**Article 47**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in
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<td>accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.</td>
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Recommendations

In light of the foregoing, the IIHR recommends that:

1. The express possibility of proposing protocols to the Convention be maintained.

2. The standing to propose amendments to the Convention be extended to the Inter-American Commission on Human Rights and to the Inter-American Court of Human Rights.

The IIHR considers that the following language of this article be considered and studied:

*Any State Party, as well as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, may submit for the consideration of the States Parties gathered during the General Assembly draft protocols in addition to this Convention, with a view to gradually including other rights in its system of protection. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.*
The General Secretariat shall notify all member states of the Organization of the following particulars:

(a) Signatures, ratifications and accessions under the present Convention;
(b) The date of entry into force of the Convention;
(c) Any denunciation under Article 22; and
(d) Any amendment under Article 23.)
Scope and evaluation

The IIHR does not consider this provision to be necessary, since it deals with matters that are the natural and proper functions of any depositary of a treaty under general international law.
### Inter-American System

**Inter-American Convention to Prevent and Punish Torture**

**Article 24 in fine**

The General Secretariat of the Organization of American States shall notify the member states of the Organization and the States that have acceded to the Convention of signatures and of deposits of instruments of ratification, accession, and denunciation, as well as reservations, if any.

**Inter-American Convention on Forced Disappearance of Persons**

**Article XXII in fine**

The General Secretariat of the Organization of American States shall notify member states of the Organization and states acceding to the Convention of the signatures and deposit of instruments of ratification, accession or denunciation, as well as of any reservations that may be expressed.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

**Article 22**

The Secretary General shall inform all member states of the Organization of American States of the entry into force of this Convention.

**Article 23**

The Secretary General of the Organization of American States shall present an annual report to the member states of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

**Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities**

**ARTICLE XIV**

2. The General Secretariat of the Organization of American States shall notify the member states of that Organization and the states that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation, and any reservations entered.

### Universal System

**International Covenant on Civil and Political Rights**

**Article 52**

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

**International Covenant on Economic, Social and Cultural Rights**

**Article 30**

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

**International Convention on the Elimination of All Forms of Racial Discrimination**

**Article 24**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the
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<td>following:</td>
<td>(a) Signatures, ratifications and accessions under articles 25 and 26;</td>
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<td>(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;</td>
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<td>(c) Denunciations under article 31.</td>
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Recommendations

In light of the foregoing, the IIHR recommends that:

1. The proposed Article 24 of the Draft Convention regarding the natural and inherent functions that general international law recognizes for the depositaries of treaties not be adopted because such a provision is unnecessary.

2. A transitory article on the mechanisms of periodic reports should be considered and studied as a substitute for this provision, as follows:

   (TRANSITORY)
   As soon as this Convention enters in force the Inter-American Commission on Human Rights shall prepare a schedule for the presentation of the periodic reports, which includes the presentation of the initial report and subsequent quadrennial reports. Similarly, the Commission shall establish, by amending its Rules of Procedure, the elements that the periodic reports should contain and the procedural rules applicable to their dissemination.
III. Addenda
CONSEJO PERMANENTE DE LA ORGANIZACIÓN DE LOS ESTADOS AMERICANOS

COMISIÓN DE ASUNTOS JURÍDICOS Y POLÍTICOS

Grupo de Trabajo Encargado de Elaborar
Un Proyecto de Convención Interamericana Contra el Racismo y Toda Forma de Discriminación e Intolerancia

CONSOLIDATED DOCUMENT

INTER-AMERICAN CONVENTION PROJECT AGAINST THE RACISM AND ALL FORMS OF DISCRIMINATION AND INTOLERANCE

(Presented by the Presidency)
EXPLANATORY NOTE

The present version of the Consolidated Document of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance shows the modifications agreed upon by the Working Group. Words or phrases that have not yet been agreed upon but have already been subject to analysis by the Working Group appear in **boldface**. Sentences or paragraphs on which there is no consensus, either because new proposals have been submitted, including their deletion, or because a new draft has been requested, are bracketed. New proposals under consideration are enclosed in parentheses.
CONSOLIDATED DOCUMENT

INTER-AMERICAN CONVENTION PROJECT AGAINST THE RACISM
AND ALL FORMS OF DISCRIMINATION AND INTOLERANCE
(Presented by the Presidency)

DRAFT INTERAMERICAN CONVENTION AGAINST RACISM
(Canada)

INTER-AMERICAN CONVENTION PROJECT AGAINST THE RACISM,
THE DISCRIMINATION, AND THE INTOLERANCE
(Honduras)

THE STATES PARTIES OF THIS CONVENTION

CONSIDERING that the inherent dignity in every human person and the equality among the human beings are basic principles consecrated in the Universal Declaration of the Human Rights, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and the International Convention on the Elimination of All Forms or Racial Discrimination;

REAFFIRMING the given involvement of the Member States of the Organization of American States to the total and unconditional eradication of the racism and of all forms of discrimination and intolerance, and conviction de0 that such discriminatory attitudes represent the negation of universal values as the inalienable and inviolable rights of the human person and of the purposes and beginning consecrated in the Charter of the Organization of the // American States, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Democratic Charter, the Universal Declaration of the Human Rights, the International Convention on the Elimination of All Forms or Racial Discrimination and the Universal Declaration on the Human Genome and the Human Rights;

RECOGNIZING the obligation to adopt measures in the area national and regional in order to promote and stimulate the respect and the compliance of the human rights and the fundamental freedoms of all the individuals and groups subject to their jurisdiction, without some distinction by reasons for race, color,
ethnic group, sex, age, sexual orientation, language, religion, political opinions or of any other nature // national or social origin, economic position, condition of migrant, refugee or displaced person, birth, stigmatized infectious condition, genetic characteristic, deficiency, incapacitating psychological suffering or any other status;

CONVINCED that the principles of the equality and of the non-discrimination among the human beings are dynamic democratic concepts that facilitate the promotion of the effective legal equality and presuppose the duty of the State to adopt special measures for the rights of the individuals or discriminated groups, in any sphere of activity, whether it is private or public, in order to promote equitable conditions of equality // of opportunities and to combat the discrimination in all its individual manifestations, structural and institutional;*

AWARE that the phenomenon of the racism exhibits a dynamic capacity for renewal or that it makes it possible for him to assume new forms of diffusion and expression which is political, social, cultural, and linguistic;

TAKING INTO ACCOUNT that the victims of the racism, the discrimination, and the intolerance in the Americas are, among others, the African descent, the indigenous populations, the migrants, the refugees and displaced persons and its family members, other than other groups and racial minorities, ethnic, sexual, cultural, religious and linguistic affected by such manifestations;

CONVINCED that certain people and groups can live multiple forms or aggravated of racism, discrimination, and intolerance motivated by a combination of factors as the race, color, ethnic group, sex, age, sexual orientation, language, religion, political opinions or of any other nature, national or social origin, economic position, condition of migrant, refugee or displaced person, birth, condition // infectious stigmatized, genetic characteristic, deficiency, incapacitating psychological suffering or any other status;

ALARMED by the general increase, in various parties of the world, of the cases of intolerance and violence motivated by the antisemitismo, the cristianofobia and the islamofobia, as well as against members of other religious communities, including those of African matrix;

* La Delegación de Colombia deja al grupo una reflexión acerca de si esta definición es suficientemente amplia como para abarcar formas futuras de discriminación.
RECOGNIZING that the peaceful coexistence among the religions in pluralistic companies and democratic States is based on the respect for the equality and for the non-discrimination among the religions, and in the clear separation among the laws of the State and the religious precepts;

TAKING INTO ACCOUNT that a pluralistic and democratic company should respect the ethnic identity, cultural, linguistic and religious of every person that belongs to a minority, other than creating appropriate conditions that make it possible for him to express, preserve and to develop its identity;

CONSIDERING that it is necessary to take into account the individual and collective experience of the discrimination in order to combat the exclusion and marginalization of racial, ethnic, cultural, linguistic, and religious minorities and protect the project of life of the individuals in general and of those communities;

ALARMED by the increase of the hatred crimes committed by reasons for race, color, ethnic group, sex, religion, sexual orientation, deficiency, and other statuses;

UNDERLINING the key role of the education in the promotion of the respect for the human rights, of the equality, of the non-discrimination and of the tolerance, and

TAKING INTO ACCOUNT that, although the combat to the racism and the racial discrimination has been prioritized in a previous international tool, the International Convention on the Elimination of All Forms of Racial Discrimination, of 1965, it is essential that the rights in her consecrated are reaffirmed, developed, enhanced and protected, in order to consolidate in the Americas, on the basis of the comprehensive respect by the straight // of the human beings, the democratic content of the principles of the legal equality and of the non-discrimination

THEY AGREE the following:

CHAPTER I
DEFINITIONS AND SCOPE OF APPLICATION

Article 1

For the effects of this Convention:
1. Discrimination is any distinction, exclusion, restriction, or preference, in any area of public life or of private life, based in the race, the color, the ancestry, the national or ethnic origin, the nationality, the age, the sex, the sexual orientation, the identity and the expression of gender, the language, the religion, the political opinions or of any other nature included the political opinions, the social origin, the position socioeconomic, the level of education, the immigration status, of refugee, repatriate, stateless or internal displaced person; the infectious condition or any other mental or physical health stigmatized condition, the genetic characteristic, the disability, the incapacitating psychic condition, or any other status, that has the objective or the effect of annular or to limit the recognition, enjoyment or fiscal period, in conditions of equality, of one or more human rights and fundamental freedoms consecrated in the applicable international tools to the States departs.

PROPOSAL OF THE INTERNATIONAL LAW DEPARTMENT:
(every health condition related with the epidemic diseases, endemic, professional and of another nature, that could generate vulnerability, stigma or disability, or any other status, that has the objective or result ...)

PROPOSAL OF URUGUAY:
It would support an encompassing definition that tries to encompass all the categories of discrimination existing and that maintains the expression “or any other status”, as a way of maintaining a formula open to future new categories. Uruguay considers appropriate that is mentioned specifically the phrase “stigmatized infectious condition” since it concerns a category in which effectively there exists a strong discrimination.

PROPOSAL OF CANADA:
(Discrimination is any distinction, exclusion, restriction, or preference that is based in the race, the color, the offspring, the national or ethnic origin and that has as a purpose or annular effect or to limit the recognition, enjoyment or fiscal period, on the part of all the people and in conditions of equality, of one or more human rights and fundamental freedoms consecrated in the tools international applicable to the States it departs, in any area of public or private life. This concept that of indirect discrimination includes, that there is produced, in the public or private sphere, when an apparently neutral factor, as a disposal or practice, cannot be easily fulfilled or fulfilled by people who belong to a specific group, or puts it at a disadvantage disproportionately. However, not all distinction, exclusion, restriction or preference, either direct or indirect, will constitute a discrimination if the justification of such differentiation is reasonable and objective, and if the intended end is legitimate in the light of the international right of the human rights).
2. Indirect discrimination is the that is produced, in the public or private sphere, when a factor apparently (neutral) (innocuous), such as a disposal, criterion or practice, has as an effect the distinction, exclusion or restriction of the human rights or fundamental freedoms of people that belong to a specific group, or puts them at a disadvantage, unless such factor have an objective or reasonable justification.

3. Multiple or **aggravated** discrimination is any distinction, exclusion, restriction, or based preference, concomitantly, in two or more factors of the enunciations in the paragraph “1” of this article, that has as objective or annular effect or to limit, in **extreme form**, the recognition, enjoyment, or fiscal period, in conditions of equality, of the human rights and the fundamental freedoms consecrated in the applicable international tools to the States departs, in any area of public or private life.

**PROPOSAL OF URUGUAY:**
Understands fundamental to maintain the aggravated word

4. Racism is any distinction, exclusion, restriction, or preference of the recognition, enjoyment, or fiscal period, in conditions of equality, of one or more human rights and fundamental freedoms, in any area of public or private life, on the basis of the establishment of a causal entailment among the phenotypical or genetic characteristics of some people on the one hand, and its intellectual features, of personality or cultural, by another one. This concept that of structural racism includes that refers to a system in which the public policies, institutional practices, cultural representations, and other standards in general strengthen inequality between different racial groups.

**PROPUESTA DE CANADA:**
Popone que este párrafo sea borrado.

**PROPUESTA DE BRAZIL:**
(The term racism includes all theory, doctrine, ideology or set of ideas and values that sustain the alleged existence of the human races, that forge an alleged causal entailment among the phenotypical and/or genetic characteristics of the individuals or groups and its intellectual characteristics, cultural or of personality, that give body to the false notion of that exists one or more superior races to the others, which would make it possible for them to dominate, differentiate, adopt intolerant measures, and pursue individuals or groups which are belonging or supposedly belonging to the
lower races considered. Any theory, doctrine, ideology, or set of ideas and racist values, as provided for in the present article, is scientifically false, morally inexcusable, socially unjust, and dangerous and should be condemned for the States Party.)

NOTE:

- In case of being approved, the delegation of Peru proposes to pass this paragraph to the preamble.
- The delegation of Uruguay supports the inclusion of a paragraph on racism in the dispositiva party of the Convention. The proposal of Brazil that could be joined with the current paragraph is supported moreover.

5. They not constitute discrimination the special measures or those of affirmative action adopted with the exclusive end to ensure the adequate progress of the people and groups that require the necessary protection for guaranteeing them, in conditions of equality, the enjoyment, or fiscal period of one or more human rights and fundamental freedoms, whenever such measures not give rise to the maintenance of rights separated for different groups and that not // they are perpetuated beyond a reasonable period or after reached its objectives.

6. Intolerance is the set of the acts or manifestations that express disrespect, rejection, or scorn by the dignity of the human beings, the rich diversity of the cultures of the world, the religion, the ideology, the traditions, and the forms of expression, quality, and modes of human beings.

PROPOSAL OF CANADA:
Propone que este párrafo sea borrado.)

NOTE:

- Some delegations manifested the concern of which the limitation in this article is considered restrictive of the freedom of expression.

PROPOSAL OF BRAZIL:
(There is not considered discriminatory (or discrimination) the distinction, exclusion, restriction or preference whose objective or justification is reasonable and that he agrees with the objectives of this Convention and with the principles of the straight international of the human rights).
CHAPTER II
PROTECTED RIGHTS

Article 2
All people are equal to the law and have the right to equal protection of the law against the racism, the discrimination, and intolerance, in the public or private sphere.

NOTE:
• The delegation of Uruguay understands that its final drafting should coincide with the titer of the Convention.

Article 3
All people have right to the recognition, enjoyment, fiscal period, and protection, in conditions of equality, of all the human rights and fundamental freedoms consecrated in their domestic legislation and in the international tools applicable to the States Party, in the individual or collective plane.

PROPOSAL OF CANADA:
Proposes delete the reference in boldface

Article 4
The States Party of this Convention recognize the collective rights of the indigenous populations, and when it might be pertinent of the African descent, indispensable for their existence, well-being, and integrated development as people, among others, the right to its joint action; to its social organization, political and economic; to its legal systems; to its own cultures; to practice and practice its spiritual beliefs; to use its languages; and to administer, control, and take advantage of its habitats and natural resources.

PROPOSAL OF BRAZIL:
(The States Party of this Convention compromise to protecting the collective rights of the indigenous populations and of the other people and ethnic groups, indispensable for their existence, well-being, and integrated development as people, among others, the right to its joint action; access to
the services and public goods; to its social organization, political and economic; to its legal systems; to its own cultures; to practice and practice its spiritual beliefs; to use its languages; and to administer and control its soils, territories, and natural resources, in keeping with legislation of the States It Departs).

PROPOSAL OF CANADA:
Proposes delete this paragraph

NOTE:
- It is pointed out the possibility of deleting this article. One of the reasons for this there is the fact that within the Organization there exists a working group devoted exclusively to this matter. In addition, this is a subject still in discussion that even in the Declaration of the Rights of the Indigenous Populations of the UN it has not been approved by the some countries.

CHAPTER III

ACTS AND MANIFESTATIONS OF RACISM
DISCRIMINATION AND INTOLERANCE

[ACTS AND MANIFESTATIONS OF DISCRIMINATION]
(CANADA)

Article 5

[For the purpose of the present Convention, taking into account the definitions of the previous articles and considering the factors stated in the paragraph “1” of the article 1, they will be considered discriminatory and prohibited by the State, among others, the following measures or practices:]

PROPOSAL OF CANADA:
(For the purpose of the present Convention and taking into account the human rights and the fundamental freedoms, the States Party they will classify as discriminatory and they will take the actions necessary for responding to the following:)

i) the private or public support for discriminatory and racist activities that promote the intolerance, including their financing;
PROPOSAL OF CANADA:
(The financing by the Activity Status discriminatory illegal)

ii) the publication, circulation, or dissemination, by any environment of communication, including the Internet, of any material [racist or discriminatory], understood as any image or representation of ideas or theories that defend, promote, incite to the hatred and to violence against individuals or groups for based reasons in some/you of the factors stated in [paragraph “1” of article 1 //] ;

PROPOSAL OF CANADA:
(the publication, circulation, or deliberate dissemination, by any environment of communication, including the Internet, of any material that defends, promotes, or incites to the hatred and to violence against individuals or groups for reasons based in some/you of the factors stated in the paragraph “1” of the article 1)

iii) the publication, circulation, or dissemination, by any environment of communication, including the Internet, of material that, approves or justifies acts that constitute or have constituted genocide or crimes against humankind, thus defined by the international right;

PROPOSAL OF CANADA:
(the publication, circulation, or deliberate dissemination, by any environment of communication, including the Internet, of material that defends, promotes, or incites to acts that constitute genocide or crimes against humankind, thus defined by the international right)

PROPOSAL OF VENEZUELA:
Incorporate in this point, the text of the American Convention of Human Rights contained in the article 13.5

NOTE:

• Some delegations like that of Peru and Mexico propose to add something that clarifies this paragraph, how to define which is the object of the scorn and toward whom is directed.

iv) violence motivated by any of the factors stated in [paragraph “1” of article 1];
NOTE:
The delegation of Canada does a proposal for the following paragraph and thus to delete this paragraph.

v) [The criminal action instigated by the hatred, in which the victim or the landholdings of the victim is selected purposely on the basis of some/you of the criteria stated in the [paragraph “1” of article 1;] ]

PROPOSAL OF CANADA:
(the criminal action in which purposely are selected the victim or the landholdings of this due to some/you of the criteria stated in paragraph “1” of article 1;)

vi) [repressive action based on any of the factors stated in [paragraph “1” of article 1], instead of being based on the conduct of an individual or in the objective information that identifies him as a person involved in criminal activities;]

PROPOSAL OF CANADA:
(repressive action that selects given PEOPLE to submit them to a greater examination or to a different treatment that is not based on the CONDUCT or on the INDIVIDUAL conduct or on objective information)

PROPOSAL OF MEXICO AND VENEZUELA:
(Consider that in this point is better to use the terms of Durban or only speak about discrimination)

PROPOSAL OF PERU:
(It proposes that there should be taken as a basis the racial profile but, should be broader, in this regard and due to the character of this convention, one could speak about discriminatory profile.)

vii) the improper or non-reasonable restriction of the exercise of the individual rights of landholdings, management and disposal of goods of any type in relation to some/you of the factors stated in the [paragraph “1” of article 1];

viii) [the distinction, exclusion, restriction, or preference based on the multiple condition or aggravated of the victim who there have the objective or result to void or undermine the recognition, enjoyment, or exercise of straight and fundamental freedoms, as well as its protection, on equal terms with the other;]
PROPOSAL OF CANADA:
It proposes to delete this article to already be included in the article 1.

ix) [the discriminatory restriction to the enjoyment of the human rights consecrated in the international and regional applicable tools and the jurisprudence of the international and regional tribunals of human rights, especially the applicable to the minorities or groups in a state of vulnerability and susceptible of discrimination;]

PROPOSAL OF CANADA:
It proposes as first measure to transfer this paragraph to article 3 and in addition write it in the following way:
(the discriminatory restriction to the enjoyment of the human rights consecrated in the tools international and regional especially the applicable to the minorities or groups in a state of vulnerability and susceptible of discrimination)

PROPOSAL OF CANADA:
([the restriction or the limitation of the utilization of the language, uses, customs, and culture of people or groups belonging to minorities or groups in a state of vulnerability, in public or private activities;])

PROPOSAL OF CANADA:
(the restriction or the improper or unjustifiable limitation of the utilization of the language, uses, customs and culture of people or groups belonging to minorities or vulnerable groups)

xi) [the preparation and the implementation of contents, methodologies, or pedagogical tools that reproduce stereotypes or preconceptions in relation to some of the factors stated in [paragraph “1” of article 1] of this Convention;]

PROPOSAL OF THE PRESIDENCY:
He considers fundamental this article, because through the instructional aids the racist and discriminatory contents are rooted profoundly in a company.

PROPOSAL OF CANADA:
It proposes to delete this paragraph.

PROPOSAL OF BOLIVIA:
It proposes to put together or more followed the romanito vi and x to be related.
**PROPOSAL OF VENEZUELA:**
It will propose a new drafting with greater emphasis on the education.

xii) the denial to the access to the public or private education, as well as to fellowships or lending programs of the education, in relation to some of the factors stated in [paragraph “1” of article 1] of this Convention;

xiii) the denial to the access to all the social rights, economic and cultural, among them, the right to the work, to housing, to social security and to the health.

xiv) [the conducting of research or the application of the results of human genome research, in particular in the fields of biology, genetics and medicine, that note to the selection of people, the cloning of human beings and any other form of disrespect by the human rights, the fundamental freedoms and the dignity of the individuals or groups of individuals;]

**PROPOSAL OF PERU:**
Very controversial article ... ¿Por what would this be considered a disrespect to the human rights and the fundamental freedoms?

**PROPOSAL OF THE PRESIDENCY:**
(the conducting of research or the application of the results of human genome research, in particular in the fields of biology, genetics and medicine, destined to the selection of people or the cloning of human beings, that prevail on the respect for the human rights, the fundamental freedoms, and the human dignity generating any form of discrimination based on the genetic characteristics.)

xv) any other discriminatory conduct that is framed in the definition of article 1 of the present Convention.

**PROPOSAL OF VENEZUELA:**
There consider appropriate to incorporate some elements and restore others of the initial versions of this Project presented by the presidency. In this regard it makes the following proposals:

- The abuse of the written information media, audiovisual, and electronic and the new technologies of communication, including the

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* Este párrafo tiene su origen en la Declaración Universal sobre el Genoma Humano y los Derechos Humanos (artículos 10 y 11), adoptada por la UNESCO en 1997.
Internet, in order to incite to violence motivated by the racial hatred.

- Every doctrine of the racial superiority or the diffusion of ideas sound in the superiority, as well as the incitement to the discrimination to the intolerance, acts of violence or to the provocation of these acts directed against people or groups of people by reasons based on some/you of the factors stated in paragraph 1 of article 1.
- State initiatives, by means of the adoption of laws, by-laws or public or safety policies destined to the struggle against terrorism that discriminate directly or indirectly people or groups of people.

CHAPTER IV
DUTIES OF THE STATES

Article 6

The States compromise to preventing, deleting, and sanctioning, in accordance with their domestic legislation and with the provisions of this Convention, all the acts, and manifestations of discrimination and intolerance.

PROPOSAL OF CANADA:
(The States Party compromise to taking measures to prevent, delete, and penalize in accordance with their constitutional standards and with the provisions of this Convention, all the acts, and manifestations of discrimination)

Article 7

The States Party compromise to adopting the measures and the necessary special policies of differentiation or preference in order to guarantee the enjoyment or fiscal period of the rights and fundamental freedoms of people or groups that they are subject of racism discrimination or intolerance with the objective of promoting equitable conditions of equality of opportunities, inclusion, and progress for these people or groups. Such measures or policies will not be considered discriminatory nor incompatible with the object or purpose of this Convention, must not lead to the maintenance of rights separated for different groups, and must not be perpetuated beyond a reasonable period or after reached objective saying.

PROPOSAL OF SECRETARY:
(The States Party compromise to adopting the special measures or of affirmative action defined in article 1 paragraph 5.)
PROPOSAL OF CANADA:
Proposes delete this article

Article 8

The States Party compromise to formulating and to apply policies that have as objective the equitable treatment and the generation of equality of opportunities for all the people, among them, policies of educational type and of promotion, and the diffusion of legislation on the matter through all the possible means, including the mass media and Internet.

PROPOSAL OF CANADA:
(The States Party compromise to formulating and applying policies that have as objective the just treatment and the generation of equality of opportunities for all the people, among them, political of educational type and of promotion. The States Party also will make sure that legislation is accessible and is available to the public.)

NOTE:
• Some delegations consider that should be inverted the location of the articles 7 and 8 to be 8 the guideline and 7 the individual

Article 9

The States Party compromise to adopting legislation that defines and prohibits clearly the racism, the discrimination and the intolerance, applicable to all the public authorities, as well as to all the individuals and legal, both in the public and private sector, especially in the areas of employment, involvement in professional organizations, education, training, housing, health, social protection, fiscal period of the economic activity, access to the public services, among others; and to repeal or modify every legislation that constitutes or produces discrimination and intolerance.

PROPOSAL OF MEXICO:
(The States Party compromise to adopting, promulgating, and/or publishing and maintaining in effect legislation that defines and promotes clearly the discrimination and the intolerance, applicable to the public authorities of all the levels and of the three powers, as well as to all the individuals, and legal both in the public and private sector especially in the areas of employment, diligence and administration of justice involvement in professional organizations, education, training, housing, health, social protection, fiscal period of the economic activity, access to the public services, among others;
and to repeal or modify all legislation that constitutes or produces discrimination and intolerance)

PROPOSAL OF CANADA:
(The States Party compromise to adopting legislation that there defines and prohibits clearly the discrimination, applicable both in the public and private sector, especially in the areas of employment, involvement in professional organizations, education, training, housing, health, social protection, fiscal period of the economic activity and access to the public services.

Each State Party will repeal or will modify every legislation that has as a purpose to create or perpetuate the discrimination and intolerance)

Article 10

The States Departs compromise to ensuring that its political and legal systems, reflect appropriately the diversity within its companies in order to serve the particular and legitimate needs of each sector of the population.

PROPOSAL OF MEXICO:
(The States compromise to ensures that its distributive systems, legal, economic and sociopolitical, reflect appropriately the diversity within its companies in order to serve the legitimate needs of all the sectors of the population.)

PROPOSAL OF COSTA RICA:
(The States Party compromise to serving the legitimate needs of all the groups and sectors of the population, so that the diversity that exists in the company is reflected.)

PROPOSAL OF SECRETARY:
The States Party compromise to taking the actions necessary for guaranteeing that the diversity of its companies is respected and is reflected in all the spheres of the public and private activity.

PROPOSAL OF CANADA:
(The States Party compromise to promoting the diversity in the involvement in its political and judicial systems.)

Article 11

The States Party compromise to ensuring to the victims of the racism, the discrimination, and the intolerance an equitable treatment, the equal access to the system of justice, expeditious and effective processes, a just repair in the civil or penal area, as appropriate. Furthermore, they will consider to adopt the
legislative actions necessary for ensuring the investment of the burden of the proof, in such a way that it corresponds to the accused to prove the procedure adoption and practices that they ensure an equitable and non-discriminatory treatment.

**PROPOSAL OF MEXICO:**  
(The States Party compromise to ensuring to the victims of the discrimination and intolerance an equitable treatment of access to the systems of justice, through expeditious processes in brief and reasonable terms, a just repair in the area civilian or penal, as appropriate. Furthermore, they will consider to adopt the legislative actions necessary for ensuring the investment of the burden of the proof, in such a way that it corresponds to the accused to prove the procedure adoption and practices that they ensure an equitable and non-discriminatory treatment.)

**PROPOSAL OF CANADA:**  
(The States Party compromise to taking the necessary actions for promoting that the victims of the racism and the discrimination receive an equitable treatment, have equal access to the system of justice, expeditious and effective processes, and an effective remedy in the civil or penal area, as appropriate. In the civil processes, the States Party can also consider measured that permit the investment of the burden of the proof so that the accused can give an explanation on any differential treatment in the event that the plaintiff is the first one to demonstrate a case of discrimination)

**Article 12**

The States departs compromise to regarding as further difficulties those acts that involve a discrimination or acts of multiple intolerance, that is, when any distinction, exclusion or restriction is based on two or more of the criteria stated in the [paragraph “1” of article 1] of the present Convention.

**PROPOSAL OF CANADA:**  
It proposes to delete this article.

**Article 13**

[The States Party compromise to carrying on, studies on nature, causes, and manifestations of the discrimination and intolerance in the its respective countries, both at the local level, regional and national, and to collect, compile, and disseminate data and statistics on the situation of the groups or individuals who are victims of the discrimination and the intolerance.]
PROPOSAL OF COSTA RICA:
(The States It Departs compromise to counting (either because of own means or through contracting) with studies, on nature, causes and manifestations of the discrimination and intolerance in the its respective countries, both at the local level, regional and national, and to collecting, to compile and to disseminate data and statistics on the situation of the groups or individuals that are victims of // the discrimination and the intolerance.)

PROPOSAL OF CANADA:
(The States Party compromise to promoting studies on nature, causes and manifestations of the discrimination in its respective countries, both at the local level, regional and national, and to collect, compile, and disseminate data, depending on pertinent, on the situation of the groups that are victims of the discrimination)

PROPOSAL OF OLD AND BARBUDA:
Believes that this obligation places a great financial strain on Member States. Agrees with the delegations that suggests language such as: "member states should promote studies” Antigua and Barbuda cannot commit the public purse to such research taking into consideration that there is no high incidence of racism.

NOTE:
- Some delegations as Brazil, Mexico, and Venezuela consider that the obligation of the State not excludes that of other entities, companies, or organizations and that using a term such as “promoting studies ...” would not be sufficient in this article. In addition the delegation of Venezuela makes an allusion to the importance of including in this article an emphasis toward the education and the promotion of the culture focused to the tolerance.
- Delegations as those of Costa Rica and Peru consider that is not clear which is the objective of the studies

Article 14
The States Departs compromise, in accordance with its internal standardization, to establish or to designate a national institution that will be the one responsible for the follow-up of compliance of the present Convention, which will be bulletin to the General Secretariat of the OAS. The representative of such national institution will be the representative of this State in the Inter-American Committee for the Prevention, Elimination, and Sanction of the Rasismo and All Forms of Discrimination and Intolerance.

PROPOSAL OF CANADA:
(The States Departs compromise, in accordance with its national laws to designate one or more national mechanisms that hold responsible for
monitoring the implementation of the provisions of this Convention, and to inform the General Secretariat of the OAS on these mechanisms)

**Article 15**

The States Party compromise to promoting international cooperation for the exchange of ideas and experiences, as well as the execution of programs designed to meet the objectives of the present Convention.

**CHAPTER V**

**PROTECTION AND FOLLOW-UP MECHANISMS OF THE CONVENTION**

**Article 16**

With the objective of monitoring the implementation of the involvements acquired for the States party in the present Convention:

**PROPOSAL OF CANADA:**

It proposes to change the word involvements by the word obligations.

i) Any person or group of people, or nongovernmental entity legally recognized in one or more Member States of the Organization of American States, can present the Inter-American Commission on Human Rights petitions that contain complaints or complaints of violation of the present Convention by a State Departs. Furthermore, every State Party can, at the time of the deposit of its tool of ratification of this Convention, or at any later time, declare that recognizes the jurisdiction of the Commission in order to receive and examine communications in which a State Party alleges that another State Party has incurred violations of the human rights established in the present Convention. In this case, there will be applied all the pertinent procedure standards contained in the American Convention on Human Rights, as well as the Statute, and By-law of the Commission.

**PROPOSAL OF CANADA:**

(He considers important to include the term “adhesion” in Addition proposes that the last phrase of is this paragraph reads in the following way: In both cases, there will be applied the pertinent procedure standards contained in
the American Convention on Human Rights (of which the State in question it is party), as well as the Statute, and By-law of the Commission.

ii) The States Party can formulate queries to the Commission in issues related to the effective application of the present Convention. Furthermore, they can request to the Commission technical assistance and technical cooperation to ensure the effective application of any of the provisions of the present Convention. The Commission, within its possibilities, will give them technical assistance and assistance when they are requested to him.

PROPOSAL OF BRAZIL:
To include the phrase considers appropriate:
(without detriment to the advisory Jurisdiction of the Inter-American Court of Human Rights.)

iii) Every State Party can, at the time of the deposit of its tool of ratification or of adhesion to this Convention, or at any later time, declare that recognizes as binding and full and without special convention, the jurisdiction of the Inter-American Court of Human Rights on all the related cases to the interpretation or application of this Convention. In this case, there will be applied all the pertinent procedure standards contained in the American Convention on Human Rights, as well as the Statute, and By-law of the Court.

PROPOSAL OF CANADA:
Finish the paragraph in “human rights” and not include the party of the phrase “as well as the Statute and Reglamente of the Court.”

iv) An Inter-American Committee for the Prevention, Elimination, and Punishment of All Forms of Discrimination and Intolerance will be established, formed by an expert independent of each State Party. The first meeting of the Committee will be convened by the General Secretariat of the OAS as soon as there has been received the tenth tool of ratification, and this will hold its first meeting, at the headquarters of the Organization, three months after such convocation, in order to be declared constituted, to approve its By-law, its Methodology of Work and to select its authorities. Such meeting will be presided over by the representative of the country that deposits the first tool of ratification to the present Convention.

PROPOSAL OF CANADA:
Proposes delete this article

NOTE:

• The delegation of Mexico proposes to separate the articles that speak about the Committee and those which speak about the Commission in order to thus give greater clarity to this chapter.

v) The Committee will be the forum for the exchange of ideas and experiences, as well as in order to examine the progress made by the States Party in the application of the present Convention and any circumstance or difficulty that affects the degree of compliance derived from the same. This Committee can formulate recommendations to the States Party so that they adopt the measures of the case. For that purpose, the States Party compromise to submitting a report to the Committee within the year to have held the first meeting, with regard to the compliance of the obligations contained in the present Convention. The reports that present the States Party to the Committee must contain, in addition, disaggregated data and statistics of the vulnerable groups. From then on, the States Party will submit reports every four years. The General Secretariat of the OAS will give to the Committee the support that requires for the performance of its functions.

PROPOSAL OF CANADA:
Proposes delete this article

CHAPTER VI
GENERAL PROVISIONS

NOTE:

• The delegation of Canada proposes to delete the titers that accompany each article in this chapter

Article 17 Interpretation

1. The provisions nothing in the present Convention can be interpreted in the sense of restricting or limiting domestic legislation of the States Party that offers protections and guarantees which are equal or greater than the ones established in the Convention.
2. The provisions nothing in the present Convention can be interpreted in the sense of restricting or limiting the American Convention on Human Rights or other international conventions on the matter that offer equal or greater protections in this regard.

**Article 18 Deposit**

The original tool of the present Convention, whose texts in Spanish, French, English, and Portuguese are equally authentic, will be deposited in the General Secretariat of the Organization of American States.

**Article 19 Firm and ratification**

1. The present Convention is open to the firm of all the Member States of the Organization of American States.

   **PROPOSAL OF VENEZUELA:**
   He requests to incorporate at the end the following phrase:
   (which will send copy of the same to all the States Party)

   **PROPOSAL OF CANADA:**
   (The present Convention will be open to the firm, ratification, and addition of all the Member States of the Organization of American States)

2. This Convention is subject to ratification on the part of the signatory States in accordance with their respective constitutional procedures. The ratification tools will be deposited in the General Secretariat of the Organization of American States.

   **PROPOSAL OF CANADA:**
   (This Convention is subject to ratification or adhesion in accordance with the respective constitutional procedures and competent laws. The ratification or adhesion tools will be deposited in the General Secretariat of the Organization of American States)

**Article 20 Reserves**

The States departs can formulate reserves to the present Convention at the time of its firm or of its ratification, whenever they are not incompatible with the object and end of the Convention and deal with one or more of its specific provisions.
PROPOSAL OF CANADA:
(The States Party can formulate reserves to the present Convention at the
time of its firm, ratification, or adhesion whenever are not incompatible with
the objective and end of the Convention and deal with one or more than its
specific provisions)

Article 21 Coming into force

1. The present Convention will come into force the thirtieth day from the
when there has been deposited the second tool of ratification of the
Convention in the General Secretariat of the Organization of American
States.

PROPOSAL OF CANADA:
(The present Convention will come into force the thirtieth day from the when
has been deposited the eleventh tool of ratification or adhesion of the
Convention in the General Secretariat of the Organization of American
States)

2. For each State that ratifies the Convention after the second tool of
ratification has been deposited, the Convention will come into force the
thirtieth day from the when such State has deposited the corresponding
tool.

PROPOSAL OF CANADA:
For each State that ratifies the Convention after has been deposited the
eleventh tool of ratification or adhesion, the Convention will come into force
the thirtieth day from the when such State has deposited the corresponding
tool)

Article 22 Complaint

The present Convention will remain in effect indefinitely, but any of the States
Party can denounce it through written notification directed the Secretary General
of the Organization of American States. Passed a year counted starting in the date
of deposit of the complaint tool, the Convention will cease in its effects on this
State, remaining in effect for the other States Party. The complaint will not waive
the State Party imposedly by the present Convention with regard to every action
or omission occurred before the when the complaint has come into force.
**PROPOSAL OF CANADA:**
Any of the States Party can denounce the present Convention through written notification directed to the Secretary General of the Organization of American States. Passed a year counted starting in the date of reception of the complaint tool, the Convention will cease in its effects on this State. The complaint will not waive the State Party imposedly by the present Convention with regard to every action or omission occurred before the when the complaint has come into force."

**Article 23 Additional Protocols**

Any State Party can submit for the consideration of the States Party brought together on occasion of the General Assembly, projects of additional protocols to this Convention, with a view to including progressively other rights in the regimen of protection of the same. Each additional protocol should set the modalities of their coming into force, and will be applied only among the States Party of the same.

**PROPOSAL OF CANADA:**
It makes the following proposal for this article:
1. Any State Party can propose an amendment to the present Convention and present it to the General Secretariat of the Organization of American States. The General Secretariat will announce to the States Party any amendment proposal.

   2. The amendments will come into force when they have been accepted by a majority of two-thirds of the States Departs of the present Convention.

   3. When they come into force the amendments, they will be of binding character for the States Party that have accepted them, while the other States Party will continue to be obligated by the provisions of this Convention and by any previous amendment that they have accepted.

**[New] Article 24**

(The General Secretariat will give notification to all the Member States of the Organization of the following:

a) Firms, ratifications, and adhesions to the present Convention

b) The effective date of the Convention
c) Any complaint that is presented in accordance with the Article 22, and

d) Any amendment pursuant to the Article 23)
DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS OF DISCRIMINATION AND INTOLERANCE

Coordinated Proposal (IIHR)
EXPLANATORY NOTE

The present version consolidates and coordinates the specific proposals of the Inter-American Institute of Human Rights regarding the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. The text in *italics* is the Draft submitted by the Chair of the Working Group.
THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that the inherent dignity and equality of all members of the human family are basic principles of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination;

RECOGNIZING that the principle of equality among human beings is a standard of jus cogens.

ENCOURAGED by the idea of resolutely combating, preventing and eradicating racism, all forms of discrimination and intolerance in the Americas.

REAFFIRMING the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of racism and of all forms of discrimination and intolerance and their conviction that such discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and the purposes and principles enshrined in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Democratic Charter, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Universal Declaration on the Human Genome and Human Rights;

RECOGNIZING the duty of adopting national and regional measures to promote and encourage observance of the human rights and fundamental freedoms of all individuals and groups subject to their jurisdiction, without regard to race, color, ethnic origin, gender, age, sexual orientation, language, religion, political or other opinion, national or social origin, economic status, migrant, refugee or displaced status, birth, stigmatized infectious-contagious condition, genetic trait, disability, debilitating psychological distress or other social condition;

CONVINCED that the principles of equality and non-discrimination among human persons are dynamic democratic concepts that foster the promotion of effective legal equality and presuppose an obligation on the State’s part to adopt special measures to protect the rights of individuals or groups that are
victims of discrimination, in any area of human endeavor, whether public or private, with a view to cultivating equitable conditions for equal opportunity and to combating discrimination in all its individual, structural and institutional manifestations;

AWARE that racism has a dynamic of its own that enables it to transform itself and find new ways to propagate itself and new vehicles of political, social, cultural and linguistic expression;

TAKING INTO ACCOUNT that the victims of racism, discrimination and intolerance in the Americas are, inter alia, Afro-descendants, indigenous peoples, migrants, refugees and displaced persons and their families, as well as other racial, ethnic, sexual, cultural, religious and linguistic groups or minorities that are affected by such manifestations;

CONVINCED that certain persons and groups experience multiple or extreme forms of racism, discrimination and intolerance, driven by a combination of factors such as race, color, ethnic origin, gender, age, sexual orientation, language, religion, political or other opinion, national or social origin, economic status, migrant, refugee or displaced status, birth, stigmatized infectious-contagious condition, genetic trait, disability, debilitating psychological distress or other social condition;

DISTURBED by the fact that various parts of the world have seen a general increase in cases of intolerance and violence motivated by anti-Semitism, Christianophobia, or Islamophobia, and against members of other religious communities, including those with African roots;

RECOGNIZING that peaceful coexistence among religions in pluralistic societies and democratic States is based on respect for equality and non-discrimination among religions, and on the clear separation between the laws of the State and religious tenets;

TAKING INTO ACCOUNT that a pluralistic and democratic society must respect the ethnic, cultural, linguistic and religious identity of every person who belongs to a minority, and create the conditions that will enable that person to express, preserve and develop his or her identity;
CONSIDERING that the individual and collective experience of discrimination must be taken into account to combat the segregation and marginalization of racial, ethnic, cultural, linguistic and religious minorities and to protect the life plan of individuals in general and of minority communities;

ALARMED by the surge in hate crimes motivated by race, color, ethnic origin, gender, religion, sexual orientation, disability and other social conditions;

EMPHASIZING the basic role that education plays in promoting respect for human rights, equality, non-discrimination and tolerance, and

BEARING IN MIND that while the fight against racism and discrimination is the priority of an earlier international instrument, namely the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, it is imperative that the rights therein recognized be reaffirmed, developed, perfected and protected, in order to consolidate within the Americas, the democratic meaning of the principles of legal equality and non-discrimination.

AGREE upon the following:

CHAPTER I
DEFINITIONS

Article 1

For purposes of this Convention:

1. Racism is any theory, doctrine, ideology, set of ideas or values that upholds the supposed existence of human races, establishing an alleged causal link between the phenotypical or genetic traits of certain persons, on the one hand, and their intellectual, personality and/or cultural traits, on the other hand, pursues or manifests the justification, explanation or demonstration of the existence of one or more superior and inferior races.
Racism shall include every conduct, act, institutional practice, norm, public policy or cultural representation that provokes, stimulates, preserves or perpetuates, in a person or group of persons belonging to or supposedly belonging to races viewed as inferior, as appropriate, any of the following situations:

a. Exclusion is the limited or non-existent access to, inter alia, public services, employment, health, education, justice, political participation and that results in the systematic lack of participation in decision-making, in holding high positions and in the social, political, economic and legal dynamic.

b. Invisibility is the elimination from or absence in the census, the omission in the historical contribution to the economic, social, legal, political or cultural development of a community, country or the entire world.

c. Stigmatization is attributing behavioral characteristics that diminish or limit human capabilities or that imply anti-values or negative conceptions so that they become internalized, individually or collectively, and are assumed as their own, causing or being able to cause complexes or shame in such persons.

d. Marginalization and territorial aggression is the situation whereby a specific geographical area or territorial entity, such as a province, community or neighborhood generally has lower socio-economic indices, such as health, infant mortality, economic development, electrification, water supply and sewerage systems, as well as other basic services and conditions of existence, and/or which are commonly considered areas of violence, crime, danger or any other negative characteristic.

e. Hatred and violence of any type or nature.

2. Discrimination is any distinction, exclusion, restriction, or preference, in any area of public or private life, that based on a factor of discrimination, whose purpose or effect is to nullify or curtail the equal recognition, enjoyment, or exercise, in conditions of equality, of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.
Discriminatory factors are race, color, heritage, national or ethnic origin, nationality, age, gender, sexual orientation, gender identity and expression, language, religion, political or other opinion, social origin, socioeconomic status, educational level, migrant, refugee, expatriate, stateless or internally displaced status; health condition, genetic trait, disability, debilitating psychological condition, or a condition of any other type or nature.

3. Indirect discrimination is discrimination that exists when a discriminatory factor is presented as apparently neutral in its discriminatory intention.

4. Multiple discrimination is discrimination that exists because of the combination of two or more discriminatory factors.

5. Intolerance is conduct that, without falling properly within the concepts of racism or discrimination as defined by this Convention, involves the realization or implies rejection, repudiation, contempt, violence, hatred, criminal or repressive action, in any area of public or private life, against any person or group of persons who are deliberately selected on the basis of a or some discriminatory factors.

6. States Parties are those States that, in accordance with Article 19 of this Convention and the rules of the Law of Treaties, have manifested their consent to be bound by this Convention and for which this Convention is in force.

7. Member States are the Member States of the Organization of American States.

CHAPTER II
PROTECTED RIGHTS

Article 2

All human beings have the right to equal treatment before the law and to equal protection against racism, all forms of discrimination and intolerance, in the public or private sphere.
Article 3

Every human being has the right to the equal recognition, enjoyment, exercise, and protection of all human rights and fundamental freedoms enshrined in their domestic law and in the international instruments applicable to the States Parties, at both the individual and collective levels.

Article 4

The States Parties undertake to respect and to ensure the collective rights of indigenous peoples, of Afro-descendants and of other peoples and ethnic groups that are indispensable for their existence, well-being, and integral development, *inter alia*, the right to their collective action; access to public services and goods; to their social, political and economic organization; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer and control their lands, territories, and natural resources, in accordance with the applicable norms.

CHAPTER III
UNLAWFUL CONDUCT, MEASURES OR PRACTICES

Article 5

For the purposes of this Convention and taking into account the scope of the preceding articles, especially the definitions contained in Article 1, the following conduct, measures or practices are considered unlawful:

i) racism;

ii) discrimination, including indirect and multiple or aggravated discrimination;

iii) intolerance;

iv) private or public support, including financing, of racism, discrimination, including indirect and multiple or aggravated discrimination and intolerance;
v) publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:

   a. condone, promote, or incite racism, all forms of discrimination, including indirect and multiple or aggravated discrimination, and intolerance

   b. approve, justify, or condone acts that constitute or have constituted genocide or crimes against humanity, or promote or incite the realization of such acts.

vi) preparation and implementation of content, methodologies or pedagogical tools that reproduce stereotypes or preconceptions in relation to any of the discriminatory factors found in this Convention;

vii) conducting research on the human genome or the application of the results thereon, particularly in the fields of biology, genetics and medicine, with the purpose of selecting persons or cloning human beings, that would prevail over respect for human rights, fundamental freedoms and human dignity and result in any form of discrimination based on genetic traits.

CHAPTER IV
DUTIES OF THE STATES

Article 6

The States Parties undertake to prevent, prohibit, sanction and eradicate, in accordance with their domestic legislation and the provisions of this Convention, the conduct, practices or measures indicated in Article 5.

* Corresponds to clause xi of Article 5 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

** Corresponds to the Draft of the Chair of the Working Group with respect to clause xiv of Article 5 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
Article 7***

The States Parties undertake to adopt, on behalf of persons or groups of persons who suffer or face racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, special measures or affirmative actions in order to contribute to achieving the object and purpose of this Convention, in the manner and within the scope defined in Article 1.

Article 8*v

The States Parties undertake to formulate and to apply policies that have as an objective the equitable treatment and the creation of equality of opportunities for all persons, among them, educational and promotional policies, as well as the diffusion, access and availability to the public of legislation on the matter, utilizing to this end all possible forms and means of communication, including the Internet.

Article 9

The States Parties undertake to adopt the necessary actions in the domestic order, including the promulgation, modification or repeal of legislative or other provisions, in order to achieve, in the public and private sectors, the prohibition of racism, discrimination, including indirect and multiple or aggravated discrimination, and intolerance, so that they are protected by normative provisions (de jure) or simply as factual manifestations (de facto).

*** The text that appears here as Article 7 corresponds to Article 8 of the Consolidated Draft. The explanation of the change in order may be found in the section “Scope and evaluation” of Article 8 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
*v The text that appears here as Article 8 corresponds to Article 7 of the Consolidated Draft. The explanation of the change in order may be found in the section “Scope and evaluation” of Article 8 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
Article 10

*The States Parties undertake to ensure that their political and legal systems appropriately reflect the diversity within their societies in order meet the legitimate special needs of each sector of the population.*

Article 11

The States Parties undertake to ensure to the victims of racism, discrimination and intolerance access to justice and to judicial mechanisms that, abiding by the principles of due process, are prompt, simple and effective to protect them concerning the rights that have been violated and that such mechanisms of protection develop the possibilities, according to the circumstances of each case, of the reparation of the damage, starting with the termination of the conduct, practices or unlawful measures, the guarantees of non-repetition, full restitution, compensation and measures of satisfaction.

The States Parties shall also consider the adoption of the legislative and procedural measures necessary to ensure the inversion of the burden of proof, should such inversion be justified. The Inter-American Commission on Human Rights shall, after a detailed study on the subject, propose guidelines and directives to the States on the situations and circumstances in which such inversion is justified.

Article 12

The States Parties undertake to consider as aggravated, for penal effects, discrimination or other manifestations of intolerance when:

a. They are based on two or more discriminatory factors.

b. They are carried out to the detriment of persons or groups of persons belonging to minorities or to groups in a state of vulnerability or susceptible of discrimination.
Article 13

The States Parties undertake to conduct studies on the nature, causes and manifestations of racism, discrimination and intolerance in their respective countries, at the local, regional and national levels, and to collect, compile, and disseminate data and statistics on the situation of the groups or individuals who are victims of such conduct, practices or unlawful measures.

Article 14

The States Parties undertake to promote international cooperation for the exchange of ideas and experiences as well as to execute programs aimed at achieving the objectives of this Convention.

CHAPTER V
MECHANISMS OF PROTECTION AND FOLLOW-UP OF THE CONVENTION

Article 15

The States Parties undertake, in accordance with their system of organization, to designate a national authority or institution that will be in charge domestically of the issues relating to the implementation of this Convention, conferring on it, in addition, the necessary powers to this end so that coordination in different sectors and at different levels be facilitated. The designation and the powers of the national authority or institution designated shall be communicated to the Secretary General of the Organization of American States.

Article 16

With the purpose of monitoring implementation of the commitments and obligations arising from this Convention, the States Parties recognize that:

^ This article corresponds to the text of Article 15 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance as it was presented by the Chair of the Working Group.

* The content of this article is the proposal of the IIHR to replace Article 14 of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
1. The violation of this Convention, attributable under the rules of international Law to one of the States Parties, shall fall under the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in the terms of Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights, irrespective of whether the State is a party to the latter, as well as the pertinent norms of the respective Statutes and Rules of Procedure of those organs.

2. Nothing in the provisions in this Convention shall limit the capacity of the Member States, or of the organs mentioned in Chapter VIII of the Charter of the Organization of American States, as amended by the Protocols of Buenos Aires, Cartagena de Indias, Washington, and Managua, to formulate queries or to request advisory opinions of the Inter-American Commission on Human Rights or of the Inter-American Court of Human Rights, respectively, according to the applicable standards.

3. In addition to its present functions, the Inter-American Commission on Human Rights shall have, especially with respect to this Convention, the following attributes:

   a. Receive, study, analyze and formulate conclusions and recommendations on the quadrennial periodic reports that the States Parties shall submit to it. The study and analysis of these reports shall be governed by the principles of oralidad and publicity, complementing the information between the State and civil society, and the effective dissemination, access and follow-up of the conclusions and recommendations.

   b. Convene open-ended working session, under the modality of “days of discussion,” that would allow addressing sensitive or relevant subjects related to the application of the Convention.

   c. Adopt instruments of soft-law that contribute to the progressive development of the norms of application of the Convention.
CHAPTER VI
GENERAL PROVISIONS

Article 17

1. No provision of this Convention shall be interpreted as restricting or limiting a domestic law of any State Party that affords protections and guarantees equal to or greater than those established in this Convention.
2. Nothing in this Convention shall be interpreted as restricting or limiting the American Convention on Human Rights or any other international convention on the subject that affords equal or greater protections in this regard.

Article 18

The original instrument of this Convention, whose English, French, Portuguese, and Spanish texts are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.

Article 19

1. This Convention shall be open to the signature and ratification, or adhesion, of each Member State.
2. The instruments of ratification or adhesion shall be deposited in the General Secretariat of the Organization of American States.

Article 20

The Member States may make reservations to this Convention at the time of signing, ratification, or adhesion, as long as they are not incompatible with the object and purpose of the Convention and deal with one or more of its specific provisions.
Article 21

1. This Convention shall enter into force the thirtieth day following the date on which the second instrument of ratification or adhesion to the Convention is deposited with the General Secretariat of the Organization of American States.

2. For each State that ratifies or adheres to the Convention after the second instrument of ratification or adherence has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.

Article 22

This Convention shall remain in force indefinitely, but any State Party may denounce it through written notification addressed to the Secretary General of the Organization of American States. The Convention shall cease to have force and effect for the denouncing State one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other States Parties. Such denunciation shall not exempt the State Party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.

Article 23

Any State Party, as well as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, may submit for the consideration of the States Parties gathered during the General Assembly draft protocols in addition to this Convention, with a view to gradually including other rights in its system of protection. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.
TRANSITORY ARTICLE I

Once the present Convention enters into force, the Inter-American Commission shall prepare a schedule for the presentation of the periodic reports, which shall include the submission of the initial report and subsequent reports every four years. Similarly, by amending its Rules of Procedure, the Commission shall establish the elements that the periodic reports must contain and the procedural rules applicable to their examination.