THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

October 5, 2012

Hon. José de Jesús Orozco Henríquez
President
Inter-American Commission on Human Rights
Washington D.C. 20006

Dear President Orozco:

The United States commends the Inter-American Commission on Human Rights for commencing a process to improve and strengthen its procedures and practices for carrying out the mandate granted by the OAS Charter, which is "to promote the observance and defense of human rights and to serve as a consultative organ" of the OAS. In response to the Commission's call for comments on the documents it has circulated related to this initiative, and in light of the report adopted by the OAS Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System, the Government of the United States is pleased to submit a number of observations for consideration by the Commission.

In presenting these observations the United States stresses its full support for the mandate and role of the Commission, acknowledges the Commission's historic success in identifying and promoting remedies for gross violations of human rights, and underlines the crucial role that the protection of human rights continues to play in the hemisphere. The independence and autonomy of the Commission, acting within the bounds of its mandate, are fundamental. By improving the ability to carry out its work, the Commission can sustain its role as one of indispensable pillars of the Inter-American human rights system.

The United States offers comments on specific areas where the Commission can improve its practices and procedures and thereby strengthen the overall effectiveness of its work. In particular, these comments suggest ways to decrease backlog and delay; improve transparency, including the clear application of

applicable law and fact; and prioritize the core human rights concerns for which the Commission is best suited.

I. Individual Petition System (including friendly settlement)

The United States commends the Commission for efforts it has made to address the backlog of pending petitions. We believe it is crucial to continue these efforts and to implement additional procedures to speed up intake and routine processing of petitions. Because "justice delayed is justice denied," the delay in processing applications fundamentally threatens the Commission's ability to function effectively.

We believe it is important that the Commission be prepared to make changes in how it applies its rules, organizes its work, and carries out its procedures to eliminate these delays. While we understand inadequate resources are a factor, we believe that steps can be taken to achieve this goal within a limited budget. First, there is a great deal of information available about mass claims processing by domestic and international bodies that the Commission should draw on to make its procedures as efficient and cost-effective as possible. Second, the United States believes the Commission should undertake a review of its priorities for addressing petitions, as well as the balance between handling petitions and other parts of its mandate, to ensure that its available resources are focused as effectively as possible on its priorities. Third, the Commission should consider the kinds of petitions it is best positioned to address: as a body with limited resources that complements the national and provincial justice systems in the countries of the region, the Commission should not attempt to take action in every situation brought to its attention where individuals and communities are at risk. Rather it should take up those cases where applicable international human rights obligations are specifically implicated, the requirements for admissibility are met, and where the Commission's intervention is necessary.

Strict adherence to procedural rules is important for the Commission both to address the backlog and to enhance its credibility. As a body with a quasi-judicial role that is often called on to review the consistency of domestic legal proceedings with international standards, it is important for the Commission to ensure that its own handling of petitions is carried out in compliance with applicable procedures and with full transparency. In order to provide maximum transparency to petitioners and States in cases where petitions are granted or denied, Commission communications should set forth clearly and specifically how it applies standards of admissibility, including the requirement that domestic remedies be exhausted.

When addressing the merits of a petition the Commission should state the specific provisions of relevant international instruments or treaties at issue, as well as the relevant facts, and analyze their applicability to the petition at hand.

In many cases – particularly where similar facts and allegations are raised in multiple petitions – processing can be made more efficient through the use of template communications and checklists. The United States encourages the Commission to speed up the transition to full online access to petitions, reports, and recommendations.

The Commission is encouraged to improve the use and effectiveness of friendly settlements, but should seek specific additional funding and staff for these efforts, which can be quite demanding of personnel resources.

II. Precautionary Measures

The United States believes that the Commission should carefully review, particularly in light of Article 25.2 of its Rules, its practices for requesting States to take precautionary measures. Such recommendations should be rare because they may be made only in the most serious cases involving the likelihood of imminent and irreparable harm to persons, and according to the factors spelled out in Article 25.4 of its Rules. If the Commission applies effectively the standards outlined in the Rules for determining that precautionary measures are warranted, the legal basis for such measures will be better understood and accepted. By contrast, a lack of rigor in applying the standards may increase the likelihood that precautionary measures will not be carried out. Requests to States to seek precautionary measures cannot be justified, for example, only on the potential harm to the persons for whom they are sought. Decisions should be made in a written determination that explains why, in light of the standards and other factors set out in the Rules, they are called for, with reference to the specific provisions of applicable international instruments or treaties and to the relevant facts at issue.

By their nature precautionary measures – as opposed to decisions on the merits of a petition – are only temporary, and this should also be plainly stated in the Commission's requests to States to take precautionary measures. In cases where permanent or indefinite – as opposed to temporary – measures are appropriate, the case should be processed as a petition. Finally, in a case where the Commission believes a State has not effectively responded to the Commission's requests to take precautionary measures, it should consider bringing the matter to the Court, where applicable.

III. Monitoring Country Situations

A core feature of the Commission's mandate as a consultative organ of the OAS is its monitoring and reporting function. For several decades the Commission has been justly praised for the substantial assistance it has provided under this part of its mandate to individuals who have suffered gross violations of their human rights and in guiding Member States of the OAS in addressing systematic human rights violations. This role has never been easy or comfortable either for the Commission or for the OAS Member States. It requires the Commission to determine that its intervention is necessary, to investigate and raise criticisms of States' laws and practices, and to assist and consult with States on how to improve the protection of human rights. The Commission should exercise this mandate by addressing the most pressing, systemic violations. It would undermine the effectiveness of the Commission if it would attempt to address simultaneously the situation of human rights in all States of the OAS.

In creating the Commission the OAS Member States had the wisdom and the courage to realize that it was only through ensuring the autonomy, independence, and expertise of the Commission to address the most pressing human rights concerns that they would further their central goal of promoting the observance and protection of human rights in the region. In carrying out this part of its mandate, therefore, the Commission should continue to apply independently and objectively the five criteria established for determining that it should monitor individual country conditions.

IV. Promotion, Universality and Transparency

Promoting the protection of human rights in all the OAS Member States and serving as a consultative organ for the OAS are core parts of the Commission's mandate and should not be threatened by unaddressed backlogs in petitions and precautionary measures. The Commission should continually look for ways to balance and prioritize its work as circumstances change. Promotion is a function that can be carried out universally and at many levels, and is well suited to attracting voluntary funding and cooperative partners. The Commission should actively pursue such assistance for this part of its mandate.

Transparency should be a core value and a consistent feature of the Commission's work. Efforts should be made to complete a transition to wholly

electronic processes that can be more easily used for individuals, groups, defenders, petitioners, and States to consult the Commission's current and historic work and to stay abreast of pending matters. With regard to the operations and function of the Commission, its Strategic Plan is a model for the OAS in making clear, comprehensive information on the IACHR available to Member States and the public.

Conclusion

The United States offers these observations and recommendations in the spirit in which they were solicited by the Commission – in order to promote the strengthening of the Commission's procedures and practices and ensure that the Commission can carry out its entire mandate in the most efficient and effective way. We understand that this is the beginning of a continuing process of interaction between the Commission, the Member States, and civil society to achieve the best system possible to advance human rights in the hemisphere.

The United States welcomes the Commission undertaking this process of review and reform. Under the Inter-American human rights system, the initiative is with the Commission to make recommendations and changes in procedures. At the same time, as a consultative body of the OAS we are confident that the Commission will take the Member States' views seriously and consider them carefully.

The United States looks forward to further consultations with the Commission, Member States of the OAS, and members of civil society aimed at strengthening the work of the Commission.

Sincerely,

Carmen Lomellin

Carmen Lomellin
Ambassador