

Dear Profesor Eide

We met briefly in Nantes this week at the seminar on the Optional Protocol. As you may know, the Inter-American Commission on Human Rights was asked to prepare progress indicators to be used for each group of protected rights by the San Salvador Protocol. As you know this is a very difficult task and we are in the process of gathering any relevant information. Thus I will be more than pleased if you can let me know of any documents that you may recommend in this regard.

Please feel free to contact me if you need any information on the Inter-American system.

Thanks in advance. Best regards,

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AG/RES. 2074 (XXXV-O/05)

STANDARDS FOR THE PREPARATION OF PERIODIC REPORTS PURSUANT
TO THE PROTOCOL OF SAN SALVADOR

(Adopted at the fourth plenary session, held on June 7, 2005)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.____/05), as well as resolutions AG/RES. 2030 (XXXIV-O/04) and AG/RES. 2041 (XXXIV-O/04);

CONSIDERING the provisions of the American Convention on Human Rights, Chapter III of which refers to economic, social, and cultural rights;

UNDERSCORING the entry into force, in November 1999, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador," and its ratification by 13 member states of the Organization of American States;

RECALLING that both the American Convention and the Protocol of San Salvador recognize that the essential rights of an individual are not derived from one's being a national of a certain state, but are based upon attributes of the human person;

BEARING IN MIND that, in Article 19 of the Protocol of San Salvador, the states parties undertake to submit, pursuant to the provisions of that article and the corresponding rules to be formulated for that purpose by the OAS General Assembly, periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in said Protocol; and

RECOGNIZING that, in resolution AG/RES. 2030 (XXXIV-O/04), the Permanent Council was instructed to propose standards for the preparation of the periodic reports referred to in the previous paragraph,

RESOLVES:

1. To adopt the Standards for the Preparation of Periodic Reports pursuant to Article 19 of the Protocol of San Salvador, which are appended to this resolution.
2. To instruct the Permanent Council to make proposals as soon as possible, through the Committee on Juridical and Political Affairs, on the composition and functioning of the Working Group established to examine the national reports, which would constitute qualitative progress in the area.
3. To request the Inter-American Commission on Human Rights to propose to the Permanent Council for possible adoption, pursuant to the Standards referred to in operative paragraph 1 of this resolution, the progress indicators to be used for each group of protected rights on which information is to be provided, taking into account the contributions of the Inter-American Institute of Human Rights.
4. To direct that the time periods for submission of the national progress reports that the states parties to the Protocol of San Salvador are to present begin with the Permanent Council's fulfillment of the provisions of operative paragraphs 2 and 3 of this resolution.
5. To urge member states to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador."
6. To request the Permanent Council to report to the General Assembly at its thirty-sixth regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.

APPENDIX

STANDARDS FOR THE PREPARATION OF
PERIODIC REPORTS PURSUANT TO ARTICLE 19 OF THE

PROTOCOL OF SAN SALVADOR

CONTEXT OF THE PROPOSAL

The inter-American system for the protection of human rights has regarded economic, social, and cultural rights as protected human rights since the adoption of the American Declaration of the Rights and Duties of Man, which, even today, represents for several members of the Organization of American States the regional bastion of protection for an array of rights of this nature.

The American Convention on Human Rights contains a single provision, which concerns progressive development, that establishes the obligation of states parties to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States.

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador" is a specially designed instrument for the protection of economic, social, and cultural rights and envisages international oversight through two mechanisms: the individual petition system and periodic reports.

The Protocol of San Salvador was drafted in the light of the principles of inclusion; equal access to economic, social, and cultural rights; and national growth with hopes for the future.

The aim of the initiative is to draw up guidelines and rules for the preparation of the reports contemplated in Article 19 of the Protocol of San Salvador in accordance with the system of progress indicators. Particular attention has been given to the principle of progressiveness of economic, social, and cultural rights (ESCR), understood as the adoption of public policy that recognizes ESCR as human rights, whose full realization, generally speaking, cannot be rapidly achieved and which, therefore, require a process in which each country moves at a different pace toward achieving the goal. Except as warranted in extreme cases, this principle regards regressive measures as invalid and excludes inaction.

Therefore, these standards:

- Are designed to be a useful tool for the states parties themselves to evaluate measures and strategies they adopt to ensure ESCR. In that sense, they enable conclusions to be reached with regard to the aptness of priority allocation, policy shaping, and strategy design in the reporting state, without seeking comparisons with other states.
- Are not intended to record complaints but progress.
- Include progress indicators that measure progressive advances in the adoption of policies designed to reach the desired objective. The IACHR is entrusted with proposing the aforesaid indicators, taking into account the contributions of the Inter-American Institute of Human Rights, which has experience in such matters [pursuant to resolution AG/RES. 2030 (XXXIV-O/04)].
- Avoid replication of the system provided under the International Covenant on Economic, Social and Cultural Rights.
- Respect the provisions of Article 19 of the Protocol as regards the intervention of the IACHR and the organs of the OAS.
- Adopt the principle of periodicity in the submission of reports, consistent with the system in force under all human rights treaties that use a reporting system.
- Respect the principle of progressiveness in implementation of protected rights and in the gradual identification of areas where reporting is required.
- Include the principle of reciprocity, since the work entailed in preparing the report benefits the state in return by helping it to draw up a list of its needs and a more precise definition of its wants.
- Do not create new formal structures and seek not to create budgetary obligations for the Organization.

The following standards for the preparation of periodic reports on progressive measures adopted by the states parties to the Protocol, as provided in Article 19 of that legal instrument, are presented in accordance with resolution AG/RES. 2030 (XXXIV-O/04).

STANDARDS FOR THE PREPARATION OF PERIODIC REPORTS PURSUANT TO ARTICLE 19 OF THE PROTOCOL OF SAN SALVADOR

1. The states parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador" undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol.

Note: Article 19 (1) of the Protocol of San Salvador.

2. States that are parties to the Protocol on the date it enters into force shall submit the first report within one year after that date; states that ratify or accede to the Protocol thereafter shall submit the first report within one year after the Protocol enters into force for them. Thereafter, reports shall be submitted every three years.

Note: Most of the human rights treaties signed under the auspices of the United Nations provide for a periodic reporting system and prescribe a deadline for the initial report and intervals for subsequent reports. Thus, Article 17 (1) of the International Covenant on Economic, Social and Cultural Rights and Article 40 (1) (a) of the International Covenant on Civil and Political Rights provide one year for submission of the initial report; Article 9 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination provides for the submission of the initial report within one year after entry into force for the state concerned, and thereafter every two years; Article 18 (1) of the Convention on the Elimination of All Forms of Discrimination against Women provides for an initial report within one year after entry into force for the state concerned, and thereafter every four years; Article 44 (1) of the Convention on the Rights of the Child contains the obligation to submit a first report within two years after the entry into force of the treaty for the state party concerned, and thereafter every five years.

Bearing in mind the period of time governments are in power in the countries of the region (four to six years), an interval of three years would make it possible take advantage of the terms of the executive branch and of legislatures, thus increasing the possibility of recording policy and legislative changes.

3. All reports shall be submitted to the Secretary General of the Organization of American States, who shall transmit them to the Inter-American Council for Integral Development (CIDI) for examination.

Note: Article 19 (2) of the Protocol of San Salvador. The text of the Protocol says, "to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture"; however, the councils mentioned in the original text of the Protocol of San Salvador have been combined to form the "Inter-American Council for Integral Development," which was created in 1996 by an amendment to the Charter of the Organization of American States.

4. The Secretary General shall send a copy of said reports to the Inter-American Commission on Human Rights (IACHR). Furthermore, the IACHR may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social, and cultural rights established in the Protocol of San Salvador 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.

Note: Articles 19 (2) and 19 (7) of the Protocol of San Salvador.

5. The submission of reports shall be governed by the principle of progressiveness and by a system of progress indicators.

5.1. For the purposes of this document, the principle of progressiveness shall mean the notion of gradual advancement in the creation of the conditions necessary to ensure the exercise of an economic, social, or cultural right.

5.2. A system of progress indicators makes it possible to determine, with a reasonable degree of objectivity, distances between the actual situation and the standard or desired goal. Progress in the area of economic, social, and cultural rights can be measured on the premise that the Protocol of San Salvador expresses a standard against which to assess, on one hand, constitutional compatibility, legal and institutional development, and governance practices of states; and, on the other hand, realization of the aspirations of different sectors of society expressed, *inter alia*, through political parties and civil society organizations.

5.3. Reports shall cover the different rights protected in the Protocol of San Salvador under:

- a. Articles 6 (Right to Work) and 7 (Right to Just, Equitable and Satisfactory Conditions of Work; and Article 9 (Right to Social Security)
- b. Article 8 (Trade Union Rights)
- c. Article 10 (Right to Health)
- d. Article 11 (Right to a Healthy Environment)
- e. Article 12 (Right to Food)
- f. Articles 13 (Right to Education) and 14 (Right to the Benefits of Culture).

*Note: The principle of progressiveness is enshrined in Article 1 of the Protocol of San Salvador and Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. The notion described in the second paragraph is intended to set out explicitly the accepted meaning of the principle in the context of international human rights law and, at the same time, move away from the more common interpretations that equate it with postponement *sine die*.*

The system of progress indicators is the keystone of these standards since it is the basis for the approach to be adopted concerning the information that the states are required to provide. This idea is developed in greater depth in the third paragraph.

A methodology is established that, generally speaking, is common to all treaties that provide for a reporting system and addresses each of the protected rights. In this case, the rights are grouped together according to the areas in which they operate. Accordingly, the first report should describe the situation with respect to legal protection in each area of rights at the time of entry into force of the Protocol of San Salvador for all states that accepted the undertaking before that date. In this connection, information up to January 1, 2000, would provide a "baseline" from which to measure progress. The first report should also mention any progress recorded as of the

date of its submission. Later, as indicators are added in each reporting period, it would be possible to examine each of the protected rights in greater depth, and detailed overviews would emerge.

6. In all cases, information with respect to each of the protected rights should take the following into consideration: gender equity; special needs groups (children, the elderly, and persons with disabilities); ethnic and cultural diversity, in particular with respect to indigenous peoples and persons of African descent; and involvement of civil society organizations in any progress in legislative and public policy reform.

Note: The intention is that all the information furnished should bear in mind gender, special needs groups, ethnic and cultural diversity, and participation in government. In this way, the rights protected under Articles 15 to 18 would have a crosscutting effect and make it possible to obtain meaningful information on gender and labor, gender and health, gender and education, children and labor, children and education, the elderly and social security, and persons with disabilities and education, among other possible combinations. In this way, information relating to Articles 15 to 18 would be presented in connection with information pertaining to other articles. Ethnic and cultural diversity and civil society involvement in progress in legislative and public policy reform would also provide crosscutting perspectives.

7. The Inter-American Commission on Human Rights shall propose, taking into account the contributions of the Inter-American Institute of Human Rights, the progress indicators to be used for each group of protected rights on which information is to be provided.

*Note: Resolution AG/RES. 2030 (XXXIV-O/04). It should be recalled that the idea is not to construct indices in the sense of algebraic measurements that compare all countries in the region in terms of their progress. On the contrary, the system of progress indicators studies processes and makes it possible to evaluate different areas of rights in terms of progress; identify, *inter alia*, trends, favorable conditions, and recurring obstacles; and, in that way, recommend concrete measures. Initially, a simple structure common to all the protected rights would be adopted, in order to establish a base to be developed in depth and detail.*

8. Each state party may prepare its progress report in consultation with national civil society organizations.

9. The reports submitted by the states parties to the Protocol shall be examined by a working group that will function in the framework of CIDI. This Working Group shall issue such general recommendations as it deems pertinent. It will prepare its own rules of procedure and the General Secretariat shall provide the assistance necessary for it to carry out its activities.

10. Analysis of each report shall commence within 60 days after its receipt, with the participation of all the organs or agencies of the inter-American system mentioned in Article 19 of the Protocol of San Salvador. The written reports of CIDI, the IACHR, and other organs and agencies shall be conveyed to the Working Group charged with examining the reports sufficiently in advance for them to be included in its activities. Furthermore, the Working Group may take into account any other information that its members consider relevant for the purposes of the indicators used.

11. In its evaluation, the Working Group shall bear in mind that regressive measures, in principle, are incompatible with full implementation of the Protocol, and that progressiveness, as a feature of the obligations adopted by the states parties concerned, requires a proactive attitude, and not simply inaction, in order to move toward the proposed objective.

Note: It should be recalled that regressive measures are understood as any provisions or policies whose application entails a backward step in the enjoyment or exercise of a protected right. It should be further recalled that the temporary nature of certain regressive measures arising from exceptional circumstances are subject to a different evaluation.

12. The Working Group shall present its preliminary conclusions on each duly submitted national report to the state party concerned. Following receipt of those preliminary conclusions, each state party shall have 60 days to make additional comments for analysis by the Working Group.

13. The Working Group shall adopt final conclusions on the analyzed reports by consensus. Those conclusions shall be notified to the state party in a written communication and at a meeting with the accredited permanent representative to the Organization of American States.

The Working Group shall submit an annual report to CIDI, with a view to its presentation to the General Assembly of the Organization.

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