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INTRODUCTION

Human rights – and economic and social rights in particular – are linked inextricably to democracy, the rule of law, and development.¹ In recent years, the Organization of American States (“The OAS”) has repeatedly stressed the importance of protecting and promoting economic and social rights in the hemisphere. In each of its Annual Reports from 2002, 2003, and 2004, the OAS General Assembly has recognized and reaffirmed that universal protection and promotion of all human rights – including civil, cultural, economic, political, and social rights – is fundamental to the functioning of democratic society.²

These connections have been observed and amplified in relation to Haiti. Following its visit to Haiti in 2004, the Inter-American Commission on Human Rights (“The Commission”) declared that

fundamental problems such as extreme poverty, high illiteracy and malnutrition continu[e] to deprive Haitians of fundamental economic, social and cultural rights and at the same time exacerbate the consequences resulting from denials of basic civil and political rights.³

The Commission called upon the international community to provide Haiti with the support and assistance necessary to overcome the significant challenges that it faced in fully realizing respect for the rule of law, democracy and human rights.⁴

This brief begins with the recognition that the deprivation of economic and social rights in Haiti remains persistent and widespread. It argues that the inability of many Haitians to satisfy even basic survival rights entails violations of the right to life, the right to personal liberty and

¹ Inter-Am. C.H.R., Annual Report 2002, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003) [hereinafter IACHR Annual Report 2002], ch. II(f), *Observations and Recommendations on the Annual Report of the Inter-Am. C.H.R.*, AG/Res. 1894 (XXXII-O/02) (Adopted at the fourth plenary session on June 4, 2002).

² Inter-Am. C.H.R., Annual Report 2003, OEA/Ser.L/V/II.118, doc. 5 rev. 1 (2003) [hereinafter IACHR Annual Report 2003], ch. II(f), *Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas*, AG/Res. 1925 (XXXIII-O/03) (Adopted at the fourth plenary session held on June 10, 2003); *See also* Inter-Am. C.H.R., Annual Report 2004, OEA/Ser.L/V/II/122, doc. 5 rev. 1 [hereinafter IACHR Annual Report 2004], ch. II(f), *Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas*, AG/Res. 2030 (XXXIV-O/04) (Adopted at the fourth plenary session on June 8, 2004); *See also* IACHR Annual Report 2002, *supra* note 1, ch. II(f), *Observations and Recommendations on the Annual Report of the Inter-Am. C.H.R.*, AG/Res. 1894 (XXXII-O/02) (June 4, 2002).

³ IACHR Annual Report 2004, *supra* note 2, at ch. II(c), para. 30. The Commission noted that “the health system in Haiti is in a desperate state, where hospitals are severely understaffed and under-resourced and much of the population lacks the funds necessary to purchase crucial medicines. The scarce resources that are available have been strained by the injuries and illnesses caused by the natural disasters and the on-going violence in the country....These serious difficulties require urgent attention, to address the immediate threats to the lives and integrity of Haitians caused by the spread of disease and the lack of adequate medicine and health care, and to devise strategies for the longer-term development of Haiti’s health and education systems as well as other means of guaranteeing the fundamental social, economic and cultural rights of the country’s population.” *Id.* at ch. IV, paras. 144-45.

⁴ IACHR Annual Report 2004, *supra* note 2, at ch. II(c), para. 30.

security, and the rights of the child. These rights are protected by the Charter of the Organization of American States (“The Charter”),⁵ as reflected in key Inter-American human rights instruments, most notably the American Convention on Human Rights (“The Convention”),⁶ the American Declaration of the Rights and Duties of Man (“The Declaration”)⁷ and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”).⁸ After presenting these arguments, the brief requests that the Commission undertake a fact-finding mission to Haiti to investigate the causes and conditions of these rights deprivations.

This brief also suggests that OAS Member States (“Member States”) have concrete and specific obligations under international law with respect to the economic and social rights of the people of Haiti. It contends that Member States that contribute troops to the United Nations Stabilization Mission in Haiti (“MINUSTAH”) have identifiable obligations under Article 1 of the Convention and under the Declaration. It further suggests that under the Charter and the Inter-American Democratic Charter (“The Democratic Charter”),⁹ all Member States have general obligations with respect to economic and social rights when they take actions in bilateral or multilateral settings. Additionally, Member States who have ratified the Convention have progressive obligations under Article 26 of that instrument that apply extraterritorially.

While calling attention to the urgent nature of the violations at issue and the importance of individual and collective action to fulfill the rights of Haitians, the brief acknowledges that the precise level and extent of Member States’ economic and social obligations under these regional instruments has not yet been explicitly articulated by the Inter-American supervisory bodies. It therefore requests that the Commission refer this matter to the Inter-American Court of Human Rights (“The Court”), so that the Court might issue an Advisory Opinion affirming Member States’ human rights obligations when they act internationally.

Finally, this brief acknowledges the complexity of the issues involved in assessing Member States’ compliance with economic and social rights obligations. Using its promotional mandate, the Commission could explore the many tools that courts and human rights bodies have developed to enforce economic and social rights and remedy their violations. This brief suggests that the Commission appoint a Special Rapporteur charged with promoting the implementation of the economic and social rights enshrined in the OAS instruments. Such an appointment would stress the importance of this particular aspect of human rights within the hemisphere.

⁵ Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. [hereinafter OAS Charter].

⁶ American Convention on Human Rights, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights]. Twenty-four states have ratified the Convention.

⁷ Organization of American States, American Declaration on the Rights and Duties of Man, June 2, 1998, AG/RES. 1591 (XXVIII-O/98) [hereinafter American Declaration on the Rights and Duties of Man].

⁸ Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, Preamble, Nov. 11, 1988, O.A.S.T.S. No. 69 [hereinafter Protocol of San Salvador]. Sixteen States have signed this instrument. Thirteen States have ratified it.

⁹ Inter-American Democratic Charter, *Adopted by the OAS General Assembly* Sep. 11, 2001, 40 I.L.M. 1289 [hereinafter Inter-American Democratic Charter].

It must be noted here that this brief does not focus on the most important actor in upholding human rights in Haiti: the government of Haiti itself. While this brief recognizes that the territorial State has primary responsibility for fulfilling the rights of its own population, it is concerned with developing norms on other States' responsibilities with respect to Haiti, which until now have been underemphasized. In States like Haiti, where the international community has chosen to intervene both directly and indirectly, human rights obligations inhere to regulate those interventions and should be clarified.

Finally, this brief was not designed to impugn any specific States. Instead, it seeks to advance cooperative efforts within the Americas to fulfill economic and social rights by placing them on an equal footing with civil and political rights, and to insist on their protection whenever States act internationally. The actions of many OAS Member States to assist the people of Haiti must be applauded. What is needed in addition is a firm recognition – by the Member States and the Commission – that human rights must guide these efforts.

ARGUMENT

I. Haitians Are Suffering Gross Deprivations of Basic Survival Rights

A. Deprivation of Economic and Social Rights in Haiti is Persistent and Widespread

Haiti is at a critical juncture.¹⁰ It is the poorest nation in the Western Hemisphere and one of the poorest in the world.¹¹ The 2005 Human Development Index ranks Haiti 153 out of 177 countries on the basis of indicators such as the likelihood that an individual will live a long and healthy life, attain education, and have a decent standard of living.¹² It is apparent from the statistics that it is the very survival of the Haitian population which is at stake. Access to water is limited;¹³ food insecurity is widespread;¹⁴ and Haiti's health indicators are correspondingly

¹⁰ The President of the Security Council, *Statement by the President of the Security Council: The Question Concerning Haiti, delivered to the Security Council*, U.N. Doc. S/PRST/2005/50 (Oct. 18, 2005).

¹¹ World Bank Group, *World Development Indicators 2005* (2005), available at www.worldbank.org/data/countrydata/aag/hti_aag.pdf (listing per capita GNP in Haiti as 400 U.S. dollars per annum).

¹² U.N. Development Program (UNDP), *Human Development Report 2005: International Cooperation at a Crossroads: AID, Trade and Security in an Unequal World* (2005).

¹³ Only 71% of the total Haitian population has improved access to a water source; with 59% of the rural population having improved access to clean water. See World Health Organization (WHO) & U.N. Children's Fund (UNICEF), WHO/UNICEF Joint Monitoring Program for Water Supply and Sanitation, *Meeting the MDG Drinking Water and Sanitation Target: A Mid-term Assessment of Progress* (Aug. 2004), available at http://www.unicef.org/publications/files/who_unicef_watsan_midterm_rev.pdf.

¹⁴ Haiti has the least amount of food available per capita in the entire western hemisphere. See Pan American Health Organization (PAHO), Regional Office of the World Health Organization (WHO), *Health Situation in the Americas: Basic Indicators 2005* (2005), available at <http://www.paho.org/english/dd/ais/BI-brochure-2005.pdf> [hereinafter *Health Situation in the Americas Report*].

bleak.¹⁵ This information is not new to the Commission; indeed, it has already acknowledged the impairment of economic and social rights the Haitian population faces on a daily basis.¹⁶

To make these statistics more concrete, a snapshot of one community may be helpful. In the small settlement of Boucan Carré in Haiti's Central Plateau, the socio-medical organization Zanmi Lasanté/Partners in Health surveyed 62 households on food security.¹⁷ Living in overcrowded houses with roofs usually made of palm bark or straw and floors of dirt or other permeable materials, very few had a latrine. Families reported traveling three hours on average to reach a hospital or health center. Perhaps most distressing, 11% of the households surveyed reported that the adults had gone without food the day before the survey while 9% of the children had not eaten; and 63% of households had been able to provide only one meal to the adults and 49% had only one meal or fewer to feed their children.¹⁸

B. Ongoing Deprivations of These Rights Violate the Right to Life, the Right to Personal Liberty and Security, and the Rights of the Child

1. Economic and Social Rights are Inextricably Linked to Civil and Political Rights

While many of the rights outlined in the Convention have traditionally been considered “civil and political,” there is widespread agreement that rights are universal, indivisible and interdependent.¹⁹ Indeed, the Commission has stated that this interdependence “is nowadays unquestionable.”²⁰ Human rights have essential civil, political, economic, social and cultural components, and all of these aspects require protection.

As early as 1984, then-sitting Judge of the Inter-American Court Rudolpho E. Piza Escalante noted that the structural division of rights in the Convention “follows merely historical reasons and not juridical differences among them.”²¹ He recognized more than twenty years ago that many of the Convention's standards may apply to economic and social rights.²²

¹⁵ The life expectancy for the total population of Haiti at birth is 52.7 years and only 50% of the population has access to even rudimentary health services, and urbanites consume much of the little healthcare available. *See Id.* *See also* World Bank, *Entering the 21st Century: World Development Report 1999/2000*, at tbl.7 (1999/2000).

¹⁶ IACHR Annual Report 2004, *supra* note 2, at ch. IV, para. 144 (focusing on Haiti and citing the findings of UNDP/Government of Haiti, *A Common Vision of Sustainable Development, National Report on the Millennium Goals for Development* (Nov. 17, 2004), available at <http://www.ht.undp.org/OMD/>).

¹⁷ Statement of Partners In Health/Zanmi Lasante submitted with this brief, March, 3rd 2006, at 3.

¹⁸ *Id.*

¹⁹ *See, e.g.*, IACHR ANNUAL REPORT 2004, *supra* note 2, ch. II(f), *Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas*, AG/Res. 2030 (XXXIV/O/04) (June 8, 2004) (“reaffirming that the universal protection and promotion of human rights, including civil, cultural, economic, political, and social rights...based on the principles of universality, indivisibility, and interdependence, are fundamental to the functioning of democratic societies.”).

²⁰ Inter-Am. C.H.R., Annual Report 1993, OEA/Ser.L/V.85, doc. 9 rev. (1993) [hereinafter IACHR Annual Report 1993], 465-66.

²¹ Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion, OC-4/84, Inter-Am. Ct. H.R. (ser. A) No. 4, para. 6 (Jan. 19, 1984) [hereinafter Proposed Amendments, Advisory Opinion] (separate opinion of Judge Escalante).

²² *Id.* (“The standards of the Convention itself may be understood to be applicable to the so-called ‘economic, social and cultural rights’ to the degree and in the ways in which they are reasonably requirable in themselves.”).

The European Court of Human Rights has agreed. It has held that many of the rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms – a regional treaty arguably even more narrowly centered on traditional civil and political rights than its American counterpart – have implications of a social or economic nature.²³ The Court considered that “there is no water-tight division separating [the sphere of economic and social rights] from the field covered by the Convention.”²⁴

2. Human Rights Norms in the Americas Must be Understood in Light of the Close Relationship Between the Convention and the Declaration

Under the text of the instruments and the jurisprudence of the Inter-American human rights bodies, the Convention and the Declaration are intimately connected.

Article 29(d) of the Convention provides that no provision of the Convention may be interpreted as “excluding or limiting the effect that the *American Declaration* (...) may have.”²⁵ The Declaration must therefore be taken expressly into consideration when interpreting the Convention.²⁶

The Commission also applies the provisions of the Declaration directly to States that have not ratified the Convention. In *James Terry Roach and Jay Pinkerton v. United States*, the Commission held that the Charter called for the direct application of the Declaration to a Member State which was not a party to the Convention.²⁷ The Court confirmed this practice, recognizing that “given the provisions of Article 29(d) [of the Convention]... States cannot escape the obligations they have as members of the OAS under the declaration, notwithstanding the fact that the Convention is the governing instrument for the State Parties thereto.”²⁸ Significantly, the Court here notes that the protections included in the Declaration are often

²³ *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) para. 26 (1979) reprinted in 2 Eur. H.R. Rep. 305 (1979).

²⁴ *Id.* (“the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation.”).

²⁵ American Convention on Human Rights, *supra* note 6.

²⁶ In fact, Article 29 should also permit interpretation of the Convention in light of other regional instruments, such as the Protocol of San Salvador and the Inter-American Democratic Charter, as well as the rights enshrined in international treaties and individual States’ domestic legislation. In addition, when interpreting the Convention, the Commission has invoked other human rights norms for more than two decades. The Court has expressly approved this practice, finding it “entirely consistent with the object and purpose of the Convention [and] the American Declaration [on the Rights and Duties of Man] and the Statute of the Commission.” “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Article 64 of the American Convention of Human Rights), Advisory Opinion, OC-1/82, Inter-Am. Ct. H.R. (ser. A) No.1, para. 43 (Sept. 24, 1982) [hereinafter “Other Treaties” Subject to Consultative Jurisdiction, Advisory Opinion].

²⁷ *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Inter-Amer. C.H.R., Rep. No. 3/87, paras. 46-49 (Sept. 22, 1987) (“As a consequence of articles 3(j), 16, 51(e), 112 and 150 of the Charter, the provisions of other instruments of the OAS on human rights [including the American Declaration of the Rights and Duties of Man] acquired binding force.”).

²⁸ Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion, OC-10/89, Inter-Am. Ct. H.R. (ser. A) No.10, para. 43 (July 14, 1989). [hereinafter Interpretation of the American Declaration of the Rights and Duties of Man, Advisory Opinion].

broader than those set out in the Convention, and should be drawn upon when making sense of the Convention.²⁹

Following this logic, the Commission should look to both the Convention and the Declaration to understand the meaning of civil, political, economic and social rights protected in the hemisphere.

3. The Right to Life, the Right to Personal Liberty and Security, and the Rights of the Child Include Basic Survival Rights

Under Inter-American and international jurisprudence, the right to life, the right to personal liberty and security, and the rights of the child have been recognized as sharing minimum core economic and social rights elements. These entail basic subsistence needs and survival rights such as food, clean water, warmth, shelter and basic health care. For children and adults who live in extreme poverty, the identification and fulfillment of these minimum core economic and social rights is particularly urgent.

This section discusses the economic and social aspects which inhere in the rights protected by the Convention and the Declaration. It outlines the minimum core content of these rights, which might be summarized as the rights to basic survival and a dignified existence.

a. The Right to Life

The right to life includes a number of economic and social aspects. Both the Commission and the Court, as well as United Nations (“U.N.”) treaty-monitoring bodies and other international expert bodies on economic, social and cultural rights have expressly supported this interpretation.³⁰ In its “*Street Children*” case, the Court recognized the important economic and social aspects inherent in the right to life. It held that Article 4 of the Convention entails not only protection from arbitrary deprivation of life, but also “the right that [each person] will not be prevented from having access to the conditions that guarantee a dignified existence.”³¹ Two concurring judges noted that the protection against arbitrary deprivation of life extends to prohibit “the deprivation of the right to live with dignity.”³² In doing so, they conceptualized the

²⁹ The American Declaration includes a wide variety of economic and social rights: Article VII protects children’s rights; Article XI upholds the rights to food, clothing, housing and medical care; Article XII sets out the right to education; Article XIII pertains to the right to culture; Article XIV upholds the right to work; and Article XVI concerns the right to social security.

³⁰ See TARA MELISH, PROTECTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: A MANUAL ON PRESENTING CLAIMS 238 (Orville H. Schell Jr. Center for International Human Rights, Yale Law School 2002); See, e.g., General Comment No. 6, para. 5, U.N. GAOR, Hum. Rts. Comm., 16th Sess., Supp. No. 40, Annex V, U.N. Doc. A/37/40 (1982) [hereinafter General Comment No. 6] (“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures... [It] would be desirable...to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).

³¹ Villagràn Morales et al. Case (the “Street Children” Case), Inter-Am. Ct. H.R. (ser. C) No. 63, para. 144 (Nov. 19, 1999).

³² *Id.*, paras. 2-4 (Trinidad, J. and Burelli, J., concurring).

right to life as belonging to the domain of economic and social, as well as civil and political rights.³³

The Commission has agreed, noting that respect for the rights to life and personal integrity should “go hand in hand with improvements in the population’s living standards as regards economic, social and cultural rights.”³⁴ The implementation of these rights must be a priority for Member States.³⁵ Both the U.N. Commission on Human Rights independent expert and the U.N. Human Rights Committee have concurred.³⁶

The economic and social aspects of the right to life require protection in the face of extreme poverty.³⁷ All persons must have, at the very least, access to the minimum core content of the right to life. In the context of economic and social rights, this minimum threshold consists of the basic subsistence needs necessary for dignified human survival such as food, water, warmth, shelter, and basic health care.³⁸ Individuals who live in extreme poverty are deprived of the minimum threshold of this right.

When individuals live in extreme poverty and are unable to meet their own subsistence needs without assistance, States may be required to directly provide the services necessary to preserve life. “[W]ithout satisfaction of these basic needs, an individual’s survival is directly threatened. This obviously diminishes the individual’s right to life.”³⁹

b. The Right to Personal Liberty and Security

The right to personal liberty and security enshrined in Article 7 also has economic and social components. As with the right to life, the right to personal liberty and security is infringed where States’ acts or omissions concretely impair or threaten an individual’s ability to lead a dignified existence and to obtain the basic necessities of life, such as essential food and nutrition, clean water, and basic primary healthcare for herself and her family.⁴⁰

³³ *Id.*

³⁴ Inter-Am. C.H.R., Annual Report 1991, OEA/Ser.L/V/III.25 doc.7 (1992), ch. IV, *Situation of Human Rights in Several States: Nicaragua*.

³⁵ *Id.*

³⁶ See, e.g., *Status of Human Rights in Several Countries: Nicaragua*, IACHR Annual Report 1993, *supra* note 20 (citing *El derecho de toda persona a la propiedad individual y colectiva*, final report submitted by Luis Valencia Rodríguez, E/CN.4/1993/15 at 26-27 (Dec. 18, 1992)); General Comment No. 6, *supra* note 30, at para. 5 (“[T]he right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).

³⁷ The Commission has defined extreme poverty as “a condition of life so limited by malnutrition, disease, illiteracy, low life expectancy and high infant mortality as to be beneath any rational definition of human decency and dignity.” Inter-Am. C.H.R., Report on the Situation of Human Rights in Nicaragua, OEA/Ser.L/V/II.53, doc. 25 at 153 (1981) (citing WORLD BANK, POVERTY AND BASIC NEEDS (1980)); IACHR Annual Report 1993, *supra* note 20, at 523.

³⁸ U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Hum. Rts., *Report of the Special Rapporteur on the Realization of Economic, Social and Cultural Rights*, ¶ 52(d), U.N. Doc. E/CN.4/Sub.2/1991/17 (1991).

³⁹ IACHR Annual Report 1993, *supra* note 20, at 522-23.

⁴⁰ MELISH, *supra* note 30, at 281.

The Commission has acknowledged that personal security entails the right not to be deprived of or denied access to basic subsistence needs. It has considered that without satisfaction of these basic needs, an individual's survival is directly threatened.⁴¹ "[T]he priority of 'the rights of survival' and 'basic necessities,'" the Commission has stated, "is a natural consequence of the right to personal security."⁴² Citing the U.N. Commission on Human Rights independent expert on the right to property, the Commission has stated that a person's freedom is violated, not only by physical attacks, but also "when he [or she] is deprived of the means to live in dignity and denied the material requisites that are indispensable for a normal life."⁴³ Although these findings were made in relation to the right to property, they identify core economic and social elements of the right to life relevant beyond that context.

c. The Rights of the Child

Under Article 19 of the American Convention, every child has the right to "the measures of protection required by his [or her] condition as a minor."⁴⁴ The Court has held that "[b]oth the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help...establish the content and scope of the general provision established in Article 19 of the American Convention."⁴⁵ Thus, Article 19 should be understood to incorporate into the American Convention the rights of the child enshrined in other international human rights instruments, in particular the Convention on the Rights of the Child ("CRC").⁴⁶

As part of this *corpus juris*, the Court has emphasized, in particular, "the guarantee of survival and development of the child, [and] the right to an adequate standard of living."⁴⁷ Economic and social rights included in the CRC include rights to special protection and assistance;⁴⁸ the right to enjoyment of the highest attainable standard of health, facilities for the treatment of illness and rehabilitation of health, and right of access to such health care services;⁴⁹ and the right to an adequate standard of living for the child's physical, mental, spiritual, moral and social development.⁵⁰

⁴¹ IACHR Annual Report 1993, *supra* note 20, at 522-23.

⁴² Inter-Am. C.H.R., Annual Report 1989-90, OEA/Ser.L/V/II.77 doc. 7 rev. 1,(1990) ch. V at 195.

⁴³ IACHR Annual Report 1993, *supra* note 20, at 465-66 (citing *El derecho de toda persona a la propiedad individual y colectiva*, final report submitted by Luis Valencia Rodríguez, E/CN.4/1993/15 at 26-27 (Dec. 18, 1992)) (discussing the right to shelter).

⁴⁴ American Convention on Human Rights, *supra* note 6, art. 19.

⁴⁵ The "Street Children" Case, Inter-Am. Ct. H.R. (ser. C) No. 63, para. 194; *See also* Juridical Condition and Human Rights of the Child, Advisory Opinion, OC-17/2002, Inter-Am. Ct. H.R. (ser.A) No. 17, para. 24 (Aug. 28, 2002) (the Convention on the Rights of the Child "should be used as a source of law by the Court to establish 'the content and scope' of the obligations undertaken by the State through Article 19 of the American Convention, specifically with respect to identification of the 'measures of protection' to which the aforementioned precept refers.").

⁴⁶ Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448 (entered into force Sept. 2, 1990) [hereinafter Convention on the Rights of the Child]. One hundred ninety-two States have ratified the CRC. Thirty-four OAS Member States have ratified the CRC.

⁴⁷ The "Street Children" Case, Inter-Am. Ct. H.R. (ser. C) No. 63, para. 196.

⁴⁸ Convention on the Rights of the Child, *supra* note 46, art. 20.

⁴⁹ *Id.* at art. 24(1).

⁵⁰ *Id.* at art. 27(1).

C Ongoing Deprivations of These Rights Violate the Economic and Social Rights Set Forth in the OAS Charter, Interpreted in Light of the Declaration, the Convention, and the Protocol of San Salvador

In the Inter-American system, individuals and populations benefit from the economic and social rights which are both specified and implied by the OAS Charter. In light of the text of the key regional human rights instruments, as well as decisions of the Court and the Commission, the Charter should be understood to encompass the *corpus juris* of rights set forth in the Convention, the Declaration, and the Protocol of San Salvador. These texts may in turn be interpreted in light of other regional and international instruments. Reading the Charter in light of these texts and decisions suggests that a host of economic and social rights are protected within the Inter-American system.

1. The OAS Charter Sets Forth Important Principles of Economic and Social Rights

The Charter sets forth general principles of economic and social rights that apply to all Member States. It calls for cooperative action to promote economic and social development in the hemisphere,⁵¹ and notes that an essential purpose of the OAS is to eradicate extreme poverty.⁵² Notably, the Charter specifies the goals of ensuring basic survival rights such as food and nutrition,⁵³ and health and sanitation.⁵⁴

2 Article 26 of the Convention Confirms that the OAS Charter Implies Economic and Social Rights Beyond Those Specified in Its Text

Article 26 of the Convention protects and promotes “the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”⁵⁵ Thus, not only does the Charter set forth economic and social “standards”; those standards also imply explicit conceptions of economic and social rights which are developed, protected and furthered by the other the Inter-American human rights instruments.

⁵¹ OAS Charter, *supra* note 5, art. 2(f).

⁵² *Id.* at art. 2(g).

⁵³ *See Id.* at art. 34(j) (“Proper nutrition, especially through...efforts to increase the production and availability of food”).

⁵⁴ *See Id.* at arts. 34(i) (“Protection of man’s potential through the extension and application of modern medical science”), and 34(l) (“Urban conditions that offer the opportunity for a healthful, productive and full life.”); *see* Protocol of San Salvador, *supra* note 8, art. 10 (“(1) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. (2) ...State Parties agree to recognize health as a public good and, particularly to adopt the following measures to ensure that right....”).

⁵⁵ American Convention on Human Rights, *supra* note 6, art. 26.

3. The American Declaration Defines the Fundamental Economic and Social Rights Referred to in the Charter

The Court has expressly recognized that the American Declaration defines the fundamental human rights referred to in the OAS Charter.⁵⁶ The Court has held that the OAS Charter “cannot be interpreted and applied as far as human rights are concerned without relating its norms...to the corresponding provisions of the Declaration.”⁵⁷ The Declaration sets forth a panoply of economic and social rights. These include basic survival rights such as the right to food, the right to medical care, and the rights of the child.⁵⁸

4. The Protocol of San Salvador May Be Considered the Most Current and Specific Articulation of Economic and Social Rights Implicit in the OAS Charter

The Protocol of San Salvador aims to reaffirm, develop, perfect and protect those economic, social and cultural rights recognized in its preceding regional and international instruments.⁵⁹ Therefore, it may be viewed as the most current and specific articulation of the economic and social rights implicit in the Charter.⁶⁰ Accordingly, the Charter’s implied rights should be understood in light of the extensive protections of economic and social rights enshrined in the Protocol. The Protocol protects survival rights including the right to health, the right to food, and children’s rights.⁶¹

II. Troop-contributing Member States are Duty-Bound to Respect and Ensure the Basic Survival Rights of the Haitian Population

While the government of Haiti owes to its population all those duties and obligations owed by any State to those within its jurisdiction, other Member States acting in Haiti also have obligations vis-à-vis the Haitians under their authority and control.

⁵⁶ Interpretation of the American Declaration of the Rights and Duties of Man, Advisory Opinion, *supra* note 28, para. 43 (“Hence it may be said that by means of an authoritative interpretation, the member states of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter.”).

⁵⁷ *Id.*

⁵⁸ See American Declaration on the Rights and Duties of Man, *supra* note 7, arts. XI (“Every person has the right to the preservation of his health through sanitary and social measures relating to food...and medical care, to the extent permitted by public and community resources.”), and VII (“All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”).

⁵⁹ Protocol of San Salvador, *supra* note 8, Preamble (“although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources.”).

⁶⁰ MELISH, *supra* note 30, at 339.

⁶¹ Protocol of San Salvador, *supra* note 8, arts. 10 (“(1) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. (2) ...State Parties agree to recognize health as a public good and, particularly to adopt the following measures to ensure that right...”), 12 (“everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.”), and 16.

During peacekeeping operations, the capacity of the host state is often severely diminished, and the military and civilian forces of multiple States take on important governmental functions. In this context, the continued application of human rights norms to States acting beyond their territory is particularly important. International human rights law has been evolving to take account of the realities of multiple State actors within the same geographical space.⁶²

Within the Inter-American system, the Commission has affirmed that human rights norms apply irrespective of national borders. This principle should guide how jurisdictional rules apply to the specific situation where a multinational force exercises control over the territory of a Member State like that of Haiti.

Under the leadership of several OAS Member States, United Nations (“U.N.”) troops are currently seeking to reestablish peace and security in Haiti. At the same time, severe deprivations of economic and social rights continue on a widespread basis.⁶³ Under these circumstances, it cannot be the case that OAS Member States may evade their human rights obligations by acting in concert. Instead, troop-contributing Member States must abide by their human rights obligations when the Haitian population comes under their authority and control.

A. Haitians are Subject to the Jurisdiction of Troop-Contributing States

1. States’ Human Rights Obligations Extend to Those Under Their Authority and Control

Article 1 of the Convention requires Member States 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.” The Convention does not define the phrase “subject to their jurisdiction.” Although a territorial limitation was included in an early draft of the Convention, it was removed during the drafting process.⁶⁴

⁶² See John Cerone, *Reasonable Measures in Unreasonable Circumstances: A Legal Accountability Framework for Human Rights Violations in Post-Conflict Territories Under U.N. Administration*, in *THE UN, HUMAN RIGHTS AND POST-CONFLICT SITUATIONS* (Nigel White and Dirk Klaasen eds., Manchester University Press, 2005) ; Rolf Kunnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in *EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES* (Fons Coomans and Menno Kamminga eds., Antwerp, 2004).

⁶³ The MINUSTAH mandate explicitly “[e]mphasizes the need for Member States, United Nations organs, bodies and agencies and other international organizations, in particular OAS and CARICOM, other regional and subregional organizations, international financial institutions and non-governmental organizations to continue to contribute to the promotion of the social and economic development of Haiti, in particular for the long-term, in order to achieve and sustain stability and combat poverty”; S.C. Res. 1542, U.N. SCOR, U.N. Doc. S/RES/1542 (Apr. 30, 2004), available at http://www.un.org/Docs/sc/unsc_resolutions04.html [hereinafter S.C. Res. 1542].

⁶⁴ An early draft of the Inter-American Convention contained a territorial limitation for its application. During negotiations, this territorial reference was deleted. See *Human Rights: The Inter-American System*, in PART II, BOOKLET 13, at 2 (Thomas Buergenthal and Robert Norris eds., 1982-1993); *Meetings of the Second Session of Committee I*, Doc 36, in *HUMAN RIGHTS*, PART II, BOOKLET 12, at 28 (1969).

Unlike the Convention, the Declaration has no provision describing its scope of application.

The Commission has consistently held that those under a State's "authority and control" are within its jurisdiction for the purpose of human rights protection. The Commission has used this jurisdictional test when determining the rights of petitioners under the Declaration despite the absence of an explicit jurisdictional provision in that instrument.

In *Coard et al. v. the United States*, the Commission found that protections could apply to conduct with an extraterritorial locus where the person concerned is present in the territory of one State but subject to the control of another.⁶⁵ The Commission specified that human rights protections apply "if a person [is] subject to [the State's] authority and control."⁶⁶ The *Coard* case emphasized that human rights protections necessarily apply extraterritorially in such circumstances, since "individual rights inhere simply by virtue of a person's humanity."⁶⁷

In *Alejandro v. Cuba*, the Commission held that a State's agents' actions in targeting and shooting down civilian pilots constituted "sufficient evidence to show that the agents of [the] State, despite being outside its territory, subjected to their authority the civil plane."⁶⁸ Having found that the persons in two civilian airplanes shot down by the Cuban military were under Cuban authority, the Commission held that the victims were within that State's jurisdiction and must be afforded human rights protection. Other decisions have echoed this rule.⁶⁹

While these rulings focused on the civil and political aspects of human rights protected in the hemisphere, the same test should apply when addressing economic and social rights. This is especially so given the much recognized interdependence and interrelation between the civil and political and economic and social rights protected by the Inter-American instruments.⁷⁰

2. MINUSTAH Exercises Authority and Control Over the Haitian Population

Given its financial resources, its geographical presence on the Haitian territory and its involvement in activities of a governmental nature, MINUSTAH should be seen as exercising de

⁶⁵ *Coard et al. v. U.S.*, Case 10.591, Inter-Am. C.H.R., Report No. 109/99, OEA/Ser.L./V/II.106, doc. 6 rev., para. 37 (1999).

⁶⁶ *Id.* para. 37

⁶⁷ *Id.*

⁶⁸ *Armando Alejandro Jr. et al. v. Cuba*, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, OEA/Ser.L./V/II.106, doc. 6 rev., para. 25 (1999).

⁶⁹ *See* Precautionary Measures for the Detainees at Guantánamo Bay (2002) ("no person, under the authority and control of a state, regardless of his or her circumstances, is devoid of legal protection for his or her fundamental and non-derogable human rights"). *See also* U.S. Military Intervention in Panama, Case No. 10.573, Inter-Am. C.H.R., Report No. 31/93 (declaring admissible case challenging killings by U.S. military in Panama).

⁷⁰ *See* Part I(B)(1), *supra*. *See also, e.g.*, *Armando Alejandro*, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, para. 25 (1999) ("when agents of a state, whether military or civilian, exercise power and authority over persons outside national territory, the state's obligation to respect human rights continues—in this case the rights enshrined in the American Declaration").

facto authority and control over the Haitian population for the purpose of applying basic human rights protections.

MINUSTAH's annual budget⁷¹ is eight percent greater than the budget of the government of Haiti.⁷² The mission employs more than 10,000 individuals (of which only a small fraction are local employees). By far the largest contingent—some 7,500 troops—is the military component, complemented by almost 1,900 civilian police officers.⁷³ The Mission is geographically present throughout the Haitian territory, with its national headquarters in Port-au-Prince, four regional headquarters, and six district offices. The military, police units, and civilian police components are currently deployed in 27 areas of responsibility. Not only is the Mission dispersed across the country, but its mandate encompasses a wide range of activities. MINUSTAH is expected to: “ensure a secure and stable environment”; assist in advancing the political process; support human rights efforts and monitor abuses; and coordinate humanitarian and development activities.⁷⁴ Finally, the Security Council instructed MINUSTAH “to assist the Transitional Government in extending State authority throughout Haiti.”⁷⁵ The mission thus explicitly encompasses several areas of shared authority with the Haitian government.

3. Troop-contributing States Retain Responsibility Over Individuals Subject to their Jurisdiction

Although the law in this area is under development, it is consistent with human rights principles to conclude that although MINUSTAH troops act under a U.N. mandate, their home States remain responsible for breaches of their human rights obligations.⁷⁶ Under public international law rules, distinct obligations bind each of the following actors: States involved in peace-keeping missions, the U.N. itself, and the Host State.⁷⁷ The volunteer participation of OAS

⁷¹ The mandate of MINUSTAH was established by S.C. Res. 1542, *supra* note 63. Its budget was increased to a total of \$518,828,500 for the period from 1 July 2005 to 30 June 2006. See S.C. Res. 1608, U.N. SCOR, U.N. doc. S/RES/1608 (June, 22 2005), available at http://www.un.org/Docs/sc/unsc_resolutions05.htm.

⁷² The Haitian budget for 2004-2005 was estimated to amount US\$ 477.8 million. Haitian Ministry of Economy and Finances, *State of Execution of Budget Expenses for Institutions and Sectors for October 2004 to September, 2005*, available at <http://www.mefhaiti.gouv.ht/leBudget/Depense%20budgetaires%20oct2004-septembre2005.htm>

⁷³ There are approximately 5000 members of the Haitian police force, the Police Nationale d'Haïti. See *First Quarterly Report of the Secretary-General on the Situation in Haiti in Compliance with Resolution AG/RES. 2147 (XXXV-O/05)*, Doc. OEA/Ser.G, CP/doc. 4065/05, 20 October 2005, at 8.

⁷⁴ *Revised Budget for the United Nations Stabilization Mission in Haiti for the Period from 1 July 2005 to 30 June 2006: Report of the Secretary General*, para. 5, U.N. Doc A/60/176 and Corr. 1 (Oct. 12 2005).

⁷⁵ S.C. Res. 1542, para. II(d). *supra* note 63, at 3. The U.N. Secretary-General noted that “MINUSTAH supported Haitian governance capacity, working closely with the Ministry of the Interior in providing support to local institutions and fostering cooperation between citizens and local authorities in rural areas.” *Report of the Secretary-General on the United Nations Stabilization Mission in Haiti*, [hereinafter Report of the Secretary-General on the MINUSTAH] para. 12, delivered to the Security Council, U.N. Doc S/2006/60 (Feb. 2, 2006).

⁷⁶ See *Articles on the Responsibility of States for Wrongful Acts*, G.A. Res. 56/83, Annex, U.N. Doc. A/Res/56/83/Annex (Dec. 12, 2001), [hereinafter *Articles on the Responsibility of States*] available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf. Article 2 states, *inter alia*, that an internationally wrongful act has occurred “when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.”

⁷⁷ A State is held responsible for the acts and omissions of its agents and of private persons and groups if their conduct is attributable to that State. See *Articles on the Responsibility of States*, Articles 4 to 11, *supra* note 76. In addition, States generally accept explicitly individualized responsibility related to the conduct of their troop contingents when signing the Status of Force Agreements with the UN. See *The Model Agreement Between the*

Member States in MINUSTAH should not preclude their responsibility toward the Haitian population. One way to analyze the apportionment of responsibility is to derive State obligations from the command that home governments retain over their troops.⁷⁸ While it was originally envisioned that the forces would act under U.N. instructions, in practice the U.N. rarely exercises exclusive authority over member state troop contingents.⁷⁹

The U.N. Human Rights Committee has determined that the exercise of “power or effective control” is sufficient for extraterritorial application of the International Covenant on Civil and Political Rights (“ICCPR”). In its General Comment No. 31, the Human Rights Committee further asserts that:

State parties are required (...) to respect and ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction... this principle also applies to those [individuals] within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.⁸⁰

Thus the Human Rights Committee envisions that States retain their individual obligations under the ICCPR while participating in a U.N. mission.⁸¹ Because of the recognized interdependence between civil and political rights and economic and social rights, the same conclusion should be drawn when economic and social rights are at stake. Therefore, whenever Member States have jurisdiction over territory or populations, they should remain bound by their economic and social rights obligations.

Once the jurisdictional basis for the human rights obligations of troop-contributing Member States has been recognized, the specific level of those obligations must be made clear.

United Nations and Member States Contributing Personnel and Equipment to the United Nations Peace-keeping Operations, Art. 8, *Report of the Secretary-General, delivered to the General Assembly*, U.N. Doc. A/46/185 (May 23, 1991), available at www.amicc.org/docs/UNContributionAgrmnt.pdf.

⁷⁸ The historical example of the KFOR in Kosovo as a multinational force involved in another State may be useful here. See John Cerone, *Outlining KFOR Accountability in Post-Conflict Kosovo*, EUROPEAN JOURNAL OF INTERNATIONAL LAW, 12, No. 3, June 2001, (summary available at <http://www.asil.org/insights/insigh54.htm>). Cerone asserts that “notwithstanding this formal affiliation with KFOR, the home governments of the KFOR contingents retain a substantial degree of residual control over their forces, exemplified by variations in each contingent’s rules of engagement and the treatment of KFOR personnel in UNMIK Regulations.”

⁷⁹ Peter Rowe, *Human Rights During Multinational Operations*, in THE IMPACT OF HUMAN RIGHTS LAW ON ARMED FORCES 226 (Cambridge University Press, 2006): “Whilst it is common for a senior officer to be placed in command of the multinational forces as a whole the reality of the situation is that he will pass his orders to the national commanders who then, in turn, will command their own national contingents.”

⁸⁰ See U.N. Human Rights Committee, *The Nature of the General Legal Obligations Imposed on State Parties to the Covenant*, General Comment No. 31, para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

⁸¹ This approach was also supported by some members of an expert group convened by the International Committee of the Red Cross. See *Application of International Humanitarian Law and International Human Rights Law to UN-Mandated Forces: Report on the Expert Meeting on Multinational Peace Operations* (Dec. 11-12, 2003), at 5, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5ZBHAZ/\\$File/IRRC_853_FD_Application.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5ZBHAZ/$File/IRRC_853_FD_Application.pdf).

B. States have a Duty to Respect the Economic and Social Rights Enshrined in the Convention and the Declaration When Acting in Haiti

The *duty to respect* is an unconditional check upon abusive state power. The Commission has found that this duty is violated whenever a State organ or person acting under the State's instruction participates in, authorizes or is complicit in acts or omissions that impair the exercise of protected rights. It applies "even when those agents act outside the sphere of their authority or violate internal law."⁸²

The Commission has affirmed that the duty to respect civil and political rights applies when Member States act extraterritorially. Although not yet tackled in case law, the obligation to respect the economic and social rights enshrined protected by Inter-American standards is equally imperative in these contexts, and should be no more controversial. Entailing primarily negative duties, the obligation to respect economic and social rights requires "non-interference by the State in the freedom of action and in the use of the resources of each individual or group in order to meet by themselves their economic and social needs."⁸³ Under this standard, whenever Member States impede the ability of people under their jurisdiction to realize their essential needs—including adequate food and water, and basic health care—they violate their duty to respect human rights.⁸⁴

This rule is easily administered in an extraterritorial context and should apply to States' actions in the social and economic realm.⁸⁵ In the Haitian context, Member States should observe the highest level of respect for the protected rights. MINUSTAH's mandate explains that the mission's goal is to establish the rule of law and "support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect

⁸² Velásquez-Rodríguez v. Honduras, Inter-Am. Ct. H.R. (ser. C) No.4, para. 170 (July 29, 1988).

⁸³ *Quito Declaration on the Enforcement and Realization of Economic, Social and Cultural Rights in Latin America and the Caribbean*, [hereinafter *Quito Declaration*] para. 28 (July 24, 1998) in 2 YALE HUM. RTS. & DEV. L.J. 215 (1999), available at <http://cesr.org/node/view/592?PHPSESSID=91...a78f9969da61bd9>.

⁸⁴ It is possible that the duty to respect the human rights obligations set out in the Inter-American standards binds States regardless of whether they have jurisdiction over particular individuals. Article 1(1) of the Convention can be read as imposing two separate levels of obligation: States Parties (a) "undertake to respect the rights and freedoms set forth herein" and (b) to ensure to all persons subject to their jurisdiction" the rights set out in the treaty. A plain reading of the text would indicate that the obligation to *ensure* protected rights extends to "all persons subject to their jurisdiction," while the duty to *respect* rights has not such limitation. Under this reading of Article 1(1), all troop-contributing Member States must *respect* Haitians' human rights, even if they are eventually determined to lack sufficient control and authority over particular individuals. Given this low threshold, the duty to respect may be characterized as the primary obligation to be fulfilled by troop-contributing states. See American Convention on Human Rights, *supra* note 6, Art.1

⁸⁵ Most scholars writing on this issue generally agree on the low threshold which triggers the extraterritorial duty to respect in contrast with other natures of obligations. See Fons Coomans, *Some Remarks on the Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES, at 193. Coomans remarks that "a foreign State has a rather strong obligation to change its conduct and ... is accountable for such conduct that leads to violations of ESC rights of citizens in that other country". See also Rolf Kunnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES, *supra* note 62, at 216: "States parties jointly and individually must not destroy anybody's human rights standards. Such an obligation is incumbent under all circumstances. There is no difference whether the victim lives inside or outside the territory or whether the destruction is taking place individually or in cooperation with others."

human rights.”⁸⁶ A failure to respect economic and social rights would directly contradict this mandate. MINUSTAH should not create obstacles for Haitians’ access to crops, wells, hospitals and schools. It should not, for example, commandeer school or hospital buildings as sites for its offices or command posts. It must not appropriate sources of water for its employees’ own consumption when doing so would diminish the capacity of the local Haitian population to meet their needs. It cannot impede the movement of agricultural commerce by blocking roads or waterways.

C. States Have a Duty to Ensure the Economic and Social Rights Enshrined in the Convention and the Declaration When Acting in Haiti

The *duty to ensure* requires that Member States take positive measures aimed at maximizing individuals’ ability to enjoy protected rights. Although the Commission has not had the opportunity to determine the extent to which the duty to ensure applies when States act outside their territory, the authority and control test indicates that States must fulfil their duty to ensure rights whenever they have jurisdiction over individuals.

States must effectively structure and manage their activities and agencies with the aim of maximizing individuals’ ability to enjoy protected rights. The Commission has held that this obligation encompasses the duty to prevent and the duty to investigate.⁸⁷ Specifically, Member States are required to ensure that their agents as well as private parties do not act – or fail to act – in a manner that is detrimental to the rights enshrined in the Convention.⁸⁸

In the context of Haiti, where Member States share jurisdiction with the government, efforts should be made to undertake actions which complement those of the government of Haiti. Member States should not seek to replace the institutions of the government of Haiti. Instead, they should fulfil their obligations by helping to build the capacity of the Haitian state while ensuring that their actions do not violate the rights of the Haitian people.

1. States have a Duty to Prevent Violations of Protected Rights in Haiti

The *duty to prevent* compels Member States to engage in positive actions in order to avoid the violation of protected rights. The steps to be taken may include the use of “legal, political, administrative and cultural” tools.⁸⁹ Member States must also work to combat impunity. The duty to prevent has been analyzed as including obligations to (i) regulate, (ii) monitor, (iii) conduct impact studies, and (iv) remove structural obstacles.⁹⁰

In the Haitian context, to fulfil the obligation to prevent, troop-contributing Member States would be required to implement adequate monitoring measures to identify obstacles that impede the ability of individuals under their jurisdiction to enjoy basic economic and social rights. The failure to do so would be contrary to the recommendations of the Commission that

⁸⁶ S.C. Res. 1542, *supra* note 63, at 3 (para. III(a)).

⁸⁷ Velásquez-Rodríguez, *supra* note 82, para. 166.

⁸⁸ *Id.*

⁸⁹ *Id.* para. 175.

⁹⁰ See MELISH, *supra* note 30, at 161.

States should “guarantee conditions that enable people to gain access to food, health services and education... [and] should reform basic economic and political structures that inhibit the development of such conditions.”⁹¹ Since external factors may also prevent a State’s policies from having their intended effect, this failure is not dispositive of a State’s responsibility for a violation of a protected right. It is, however, a good indication of a State’s “lack of due diligence to prevent the violation,” and in the Haitian context it could guide improvements in interventions by troop-contributing Member States.⁹²

2. States have a Duty to Ensure that Haitians Can Access the Minimum Core of Survival Rights

As the Commission has recognized, States Parties are obligated “regardless of the level of economic development, to guarantee a minimum threshold of [protected] rights.”⁹³ The U.N. Committee on Economic, Social and Cultural Rights has long stressed the immediate obligation of States to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” to food, health care, and shelter.⁹⁴ The Maastricht Guidelines echo the same principle and stress the unconditional obligation of States to ensure “minimum essential levels of each of the rights [...]”⁹⁵

In the Haitian context, the duty to ensure would require Member States to adopt measures aimed at guaranteeing that all Haitians have access to “at an absolute minimum, basic subsistence rights.”⁹⁶ Since troop-contributing States share jurisdiction with the government of Haiti, and because the government has the primary obligation to fulfil the rights of its people, this obligation should be fulfilled through cooperative efforts aimed at building the capacity of the Haitian state to fulfil these rights in the long-term. Thus, Haitians should be guaranteed regular access to a minimum amount of safe water,⁹⁷ to adequate food,⁹⁸ and to basic health

⁹¹ IACHR ANNUAL REPORT 1993, *supra* note 20, at 538.

⁹² Velásquez-Rodríguez, *supra* note 82, paras. 172-73.

⁹³ IACHR ANNUAL REPORT 1993, *supra* note 20, at 524.

⁹⁴ The mere fact that at a large scale, a given population is deprived of the most fundamental means of subsistence – food, health, shelter, and education – might characterize a violation of that State’s obligations. *See The Nature of the States Parties Obligations*, U.N. Comm. on Economic, Social, and Cultural Rights [hereinafter UNCESCR], General Comment No. 3, para. 10, (Dec. 14, 1990) [hereinafter General Comment No. 3].

⁹⁵ Given the object and purpose of human rights instruments, the obligation to ensure access the minimum core of survival rights should not be understood as precluding any obligations beyond the satisfaction of these basic rights. States remain accountable for the full realization of the totality of the rights protected by the Inter-American standards. From this perspective, the minimum core content should be envisioned as initial immediate obligations. *See The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, para. 9 (Jan. 26, 1997) reprinted in INT’L COMMISSION OF JURISTS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A COMP. OF ESSENTIAL DOCUMENTS 79 (1997), available at http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html

⁹⁶ *Report of the Special Rapporteur on the Realization of Economic, Social and Cultural Rights*, UNCESCR, para. 55, U.N. Doc. E/CN.4/Sub.2/1991/17 (1991) [hereinafter *Report of Special Rapporteur 1991*].

⁹⁷ *See Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15: The Right to Water*, UNCESCR, para. 37, U.N. Doc. E/C.12/2002/11 (Nov. 26, 2002).

⁹⁸ *See Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 12: The Right to Adequate Water*, UNCESCR, para. 8, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

care.⁹⁹ In this vein, the U.N. Secretary General has highlighted the urgent needs of the Haitian people and has urged Member States to take steps to improve living conditions in Haiti.¹⁰⁰

3. States have a Duty to Investigate Violations of Protected Rights in Haiti

Accountability forms the overarching principle of human rights. Accordingly, under all circumstances, “[t]he State is obligated to investigate every situation involving a violation of the rights protected” in the Inter-American system.¹⁰¹ Such investigations “must be undertaken in a serious manner (...) An investigation must have an objective and be assumed by the State as its own legal duty.”¹⁰² While the tools of investigation may vary in relation to social and economic rights, there is no reason not to apply the duty to investigate in this context.

In the Haitian setting, troop-contributing Member States witness on a daily basis the obstacles that Haitians subject to their jurisdiction face when attempting to enjoy the basic survival rights protected by the Convention. Member States’ duty to investigate should be interpreted to require positive actions aimed at understanding and removing the obstacles preventing full rights enjoyment. As with the obligations to prevent and ensure, the obligation to investigate should be carried out in cooperation with the Haitian government.

III. All OAS Member States Have a Duty to Work Cooperatively and Effectively to Ensure that Haitians Enjoy Basic Survival Rights

A. The OAS Charter and the Democratic Charter Call on Member States to Work Together to Fulfill Economic and Social Rights

Both the Charter of the Organization of American States and the Inter-American Democratic Charter suggest that Member States have obligations with respect to economic and social rights that extend beyond their borders. When they act internationally within the hemisphere, Member States must take cooperative steps to eliminate extreme poverty.

1. The OAS Charter Recognizes the Shared Responsibility of Member States to Eliminate Extreme Poverty in the Region

Among the core purposes of the OAS is the promotion, through cooperative action, of economic and social development.¹⁰³ The Charter cites the elimination of extreme poverty as one of its founding principles, and states that this shared responsibility is tied closely to fulfillment of

⁹⁹ *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights*: General Comment No. 14: The Right to the Highest Attainable Standard of Health, *See* UNCESCR, paras. 43-45, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

¹⁰⁰ *Report of the Secretary-General on the MINUSTAH*, *supra* note 75, para. 56 (“Assistance can include the provision of basic medical, educational and agricultural supplies and supporting small-scale infrastructure projects that can generate short-term employment.”).

¹⁰¹ Velásquez-Rodríguez, *supra* note 82, paras. 176-177.

¹⁰² *Id.*

¹⁰³ *See* OAS Charter, *supra* note 5, art. 2(f).

representative democracy.¹⁰⁴ In furtherance of these goals, Member States have agreed to “join together in seeking a solution (...) whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State.”¹⁰⁵

The Charter declares that

Inter-American cooperation for integral development is the common and joint responsibility of the Member States, within the framework of the democratic principles and the institutions of the inter-American system. It should include the economic, social, educational, cultural (...) fields (...) without political ties or conditions.”¹⁰⁶

The Charter specifies that this cooperation should be continuous, channeled through multilateral organizations wherever possible,¹⁰⁷ and that States should contribute in accordance with their resources and capabilities.¹⁰⁸

In the Haitian context, the Charter responsibility to cooperate would indicate that the international community should maintain its financial and structural support to the government of Haiti. International and regional financial institutions have a key role to play in contributing to the capacity of the State to fulfill economic and social rights. The resources allocated should be used to undertake actions needed to protect core rights. At the same time, OAS Member States acting within MINUSTAH should strive to ensure that the mission achieves its mandate through human-rights based actions, tackling security and economic and social rights with the same weight.

2. The Democratic Charter Emphasizes the Shared Responsibility of OAS Member States for Fulfilling Basic Economic and Social Rights

Like the OAS Charter, the Inter-American Democratic Charter (“The Democratic Charter”) sets forth Member States’ obligations with respect to economic and social rights. It recognizes that these obligations are shared, and that they have international effect. Additionally, the Democratic Charter emphasizes the close relationship between democracy and human rights.¹⁰⁹

In its preamble, the Democratic Charter notes the interdependence of democracy and economic growth and social development. It recognizes that “the fight against poverty, and

¹⁰⁴ See OAS Charter, *supra* note 5, art. 3(f) (“elimination of extreme poverty is an essential part of the promotion and consolidation of representative democracy and is the common and shared responsibility of the American States.”).

¹⁰⁵ See *id.* art. 37.

¹⁰⁶ See *id.* art. 31.

¹⁰⁷ See *id.* art. 32.

¹⁰⁸ See *id.* art. 32.

¹⁰⁹ See Inter-American Democratic Charter, *supra* note 9, art. 3 (“Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms.”); see also *id.* art. 11 (“democracy and social and economic development are interdependent and are mutually reinforcing.”).

especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of Member States.”¹¹⁰

Article 12 of the Democratic Charter notes that poverty, illiteracy, and low levels of human development adversely affect the consolidation of democracy. Under this provision, OAS Member States are “committed to adopting and implementing all those actions required to (...) reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries in the hemisphere.”¹¹¹ This commitment is the shared responsibility of all Member States.

Haiti’s situation can only be ameliorated through simultaneous economic and social improvements and civil and political stabilization. This is true not only because all human rights are indivisible and interrelated, but also because of the particulars of Haitian history.¹¹²

B. Article 26 of the Convention Requires State Parties to Immediately Adopt Measures Aimed at Progressively Fulfilling Economic and Social Rights in Haiti

Article 26 sets forth a general obligation for all “State Parties [to] undertake to adopt measures, both internally and *through international cooperation*...with a view to achieving progressively, by legislation or other appropriate means, the full realization” of protected rights.¹¹³ This general obligation is to be achieved “through international cooperation,” and envisions no territorial limits. The “progressivity principle” has been found applicable to all protected rights in the Convention.¹¹⁴ While the question of whether Article 26 may give rise to individual complaints remains open, the existence of the obligation is not in question.

The formulation of the duty to adopt measures “both internally and through international cooperation” presents two types of conduct – internal and international – which are required of Member States. States must take cooperative steps that are aimed at fulfilling economic and social rights within the Hemisphere. Since Haiti is the poorest country in the Americas, the duty to cooperate internationally means that Member States should join together to ameliorate the suffering of its people.

Because the language of Article 26 of the Convention is identical to that found in Article 2 of the International Covenant on Economic, Social, Cultural Rights (“ICESCR”), Article 26 of

¹¹⁰ *Id.* Preamble (“economic growth and social development based on justice and equity, and democracy are interdependent and mutually reinforcing.”).

¹¹¹ *Id.* art 12.

¹¹² *Report of the Secretary-General on the MINUSTAH*, *supra* note 75, para. 22 (“Effective promotion of stability in Cite Soleil will require supplementing security activities with development and humanitarian efforts, which can palpably improve conditions in the area and provide opportunities for progress.”)

¹¹³ *Emphasis added.* American Convention on Human Rights, *supra* note 6, art. 26.

¹¹⁴ *See* Proposed Amendments, Advisory Opinion, *supra* note 21, para. 6; *See also* IACHR ANNUAL REPORT 1993, *supra* note 20, at 538.

the Convention may be understood in light of the U.N. Committee on Economic, Social and Cultural Rights' expert interpretation of the ICESCR.¹¹⁵

Article 2 of that treaty requires States to “take steps, individually and through international assistance and co-operation, especially economic and technical,” to fulfill the rights set out in the Covenant. The U.N. Committee on Economic, Social and Cultural Rights has emphasized that “international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.”¹¹⁶

The U.N. Committee has explained that the concept of progressive realization “imposes an obligation to move as expeditiously and effectively as possible towards [the full realization of economic, social and cultural rights].”¹¹⁷ Similarly, the Inter-American Commission has noted that the progressivity principle “imposes on States, with immediate effect, the general obligation to constantly seek to attain the rights enshrined in the instruments, without any backsliding.”¹¹⁸ Thus, States have a legal obligation to formulate and adopt measures which contribute to the progressive realization of economic and social rights. These measures should be undertaken in a manner which constantly and consistently advances towards the full realization of these rights.¹¹⁹

Drawing from these sources, Article 26 should be understood to impose on States three immediate obligations. First, States must make a plan for the progressive realization of protected rights. According to the U.N. Committee on Economic, Social and Cultural Rights, the duty to plan entails “the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect [protected rights].”¹²⁰ Similarly, the Quito Declaration asserts: “Progressiveness implies that the State should *immediately set strategies and goals to achieve full effectiveness of economic, social and cultural rights*, with a verifiable system of indicators that allow for full supervision...”¹²¹ Additionally, some national courts have included the reasonableness standard within the progressivity obligation.¹²²

¹¹⁵ See *Reporting by State Parties*, General Comment No. 1, UNCESCR, para. 3, U.N. Doc. E/1989/22 (1989). [hereinafter General Comment No. 1]; See also *The Domestic Application of the Covenant*, General Comment No. 9, UNCESCR, para. 7, U.N. Doc. E/C.12/2000/4 (Dec. 3, 1998). [hereinafter General Comment No. 9].

¹¹⁶ General Comment No. 3, *supra* note 94, para. 14. This view is “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself.”

¹¹⁷ *Id.* para. 9.

¹¹⁸ Inter-Am. C.H.R., Second Report on the Situation of Hum. Rts. in Peru, OEA/Ser.L/V/II.106, doc. 59 rev. ch. VI, para. 11 (2000) [hereinafter PERU REPORT 2000] (emphasis added).

¹¹⁹ *Id.* para. 11.

¹²⁰ See General Comment No. 1, *supra* note 115, para. 4.

¹²¹ Quito Declaration, *supra* note 83, para. 29(d)ii (emphasis added).

¹²² See *Government of the Republic of South Africa v. Grootboom*, 2000 (11) BCLR 1169 (2001 (1) SA 46) (CC). In this case, the South African Constitutional Court interpreted Section 26(1) and (2) of the South African Constitution, which provided that “the state must take reasonable legislative and other measures (such as policy and programmes) to achieve the progressive realisation of this right,” as requiring “the state to devise and implement, within its available resources, a comprehensive and co-ordinated programme to realise the right of access to adequate housing.” Such a program, further, “should provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.”

Second, progressivity implies that States must implement their plan of action with due diligence and in good faith. A State's limited resources, while relevant for assessing which efforts may be possible, cannot be admitted as an argument for refusing that State's obligations altogether. Thus, according to the U.N. Committee on Economic, Social and Cultural Rights, progressivity may be achieved by "[devising] strategies and programs" and implementing "low-cost targeted programmes."¹²³ The Quito Declaration notes that "[i]n all cases, it is the State's responsibility to justify its inertia, delay or deviation in attaining these objectives."¹²⁴

Finally, progressivity shifts the burden to States to justify any retrogressive actions that could diminish any of those rights.¹²⁵ The flexibility of the progressivity tool should not be used to the detriment of its object and purpose. The Commission has concluded that "a worsening in the effective observance of economic, social, and cultural rights may constitute a violation, among other provisions, of Article 26 of the American Convention."¹²⁶

IV. OAS Member States Should Augment and Improve Their Cooperative Efforts Toward Fulfilling These Rights

As widespread violations of the economic and social rights of the Haitian population continue, OAS Member States have come together to take concrete steps aimed at fulfilling those rights. Through participation in the U.N. mission in Haiti and the Interim Cooperation Framework ("ICF"),¹²⁷ States have joined forces to address the most dire needs of the Haitian population. Under the MINUSTAH mandate, troop-contributing OAS Member States are working to establish a secure and stable environment in Haiti, to assist with the political process, coordinate humanitarian efforts, and to ensure progress is made toward fulfilling human rights.¹²⁸ As part of the ICF process, OAS Member States – as bilateral donors and Member States of the Inter-American Development Bank – have pledged to assist in strengthening political governance and promoting national dialogue; strengthening economic governance and contributing to institutional development; promoting economic recovery; and improving access to indispensable services. Each of these cooperative efforts is directly related to the basic survival rights of the Haitian population. If MINUSTAH and the ICF succeed, large numbers of Haiti's people will enjoy greater nutrition, have access to potable water, and be able to visit a doctor when they are ill.

¹²³ General Comment No. 3, *supra* note 94, paras. 11-12.

¹²⁴ Quito Declaration, *supra* note 83, para. 29(d) (emphasis added).

¹²⁵ General Comment No. 3, *supra* note 94, para. 9 ("[A]ny deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.")

¹²⁶ PERU REPORT 2000, *supra* note 118, ch. VI, para. 13.

¹²⁷ The Interim Cooperation Framework is a two-year plan for donor cooperation aimed at building Haitian infrastructure, institutions, and improving access to basic services. The ICF was created by the Transitional Government of Haiti and a group of four international institutions: the United Nations, the World Bank, the European Commission, and the Inter-American Development Bank. At its inaugural conference in July 2004, more than \$1 billion in assistance was pledged. Along four "strategic axes," the donors and Transitional Government agreed to implement programs cooperatively during the two year transitional period. See Republic of Haiti, *Interim Cooperation Framework: 2004-2006 – Summary Report*, [hereinafter Republic of Haiti], available online at: <http://haiticci.undg.org/index.cfm?Module=ActiveWeb&Page=WebPage&s=introduction&NewLanguageID=en> .

¹²⁸ See MINUSTAH Mandate, S.C. Res. 1542, *supra* note 63.

Both MINUSTAH and the ICF entail a pledge by the actors involved to use a “rights-based approach” in their implementation. For MINUSTAH, the rights-based approach is embodied in a number of U.N. documents and standards that have been embraced as part of the U.N. reform process.¹²⁹ In relation to development assistance, policy guidelines known as the “Common Understanding” concerning human rights-based programming have been adopted for use by all agencies. The Common Understanding encompasses the following three principles:

1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.¹³⁰

Similarly, the ICF recognizes human rights as a “cross-cutting theme”¹³¹ applicable to every sector of work and includes a “Checklist on Human Rights Issues” to help these sectors integrate human rights into their activities. Encompassing the different areas covered by the cooperation framework, the checklist affirms that:

By applying key human rights principles (...) in research, information gathering, analysis and in the generation of priority outcomes, the various sectors will ensure that their contribution is more sustainable, participatory and inclusive.¹³²

Despite these efforts, severe deprivations continue. The MINUSTAH mandate, while including human rights as one of three areas of focus, does not explicitly include economic and social rights.¹³³ MINUSTAH reports that it has been unable to carry out many of its human rights activities, and some of its most important economic and social projects.¹³⁴ In relation to social

¹²⁹ The U.N. Secretary-General called on all U.N. entities to integrate human rights into their activities in 1997. *See Renewing the United Nations: A Programme for Reform, Report of the Secretary-General*, U.N. Doc. A/51/950 (14 July 1997). Following that direction, many U.N. agencies worked to integrate a human rights-based approach to their work.

¹³⁰ *See The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among U.N. Agencies, Report of the U.N.D.G.* (available online at: http://portal.unesco.org/shs/en/file_download.php/20ce988a40bad5d3fa1b02000403bccbStatement+on+a+Common+Understanding+of+HRBA.pdf).

¹³¹ Republic of Haiti, *supra* note 127, at 39-40.

¹³² ICF, *Checklist on Human Rights Issues* (available online at: <http://haiticci.undg.org/uploads/HR1.checklist.doc>).

¹³³ S.C. Res. 1542, *supra* note 63.

¹³⁴ *See Performance Report on the budget of the United Nations Stabilization Mission in Haiti for the period 1 July 2004 to 30 June 2005, Report of the Secretary-General*, U.N. Doc. A/60/646, 18-21 (6 January 2006). The report notes that a wide variety of human rights activities planned for the period under review were not carried out.

and economic conditions, a January 2006 budget performance report explains that while “full access to drinking water and medical services” was to be an indicator of achievement for the mission, at the end of the reporting period, “71 per cent of the population remains without access to potable water and 40 per cent of the population remains without access to health services.”¹³⁵

As the ICF reported in February 2006, “the rural and urban Haitian population would like to see an immediate and tangible amelioration in its daily life in terms of employment, access to basic services, [and] construction and/or reconstruction of infrastructure.”¹³⁶ These shortcomings indicate that MINUSTAH and the ICF are not living up to their human rights potential. What is the role of the Commission in addressing the gap between aspiration and reality?

CONCLUSION AND REQUEST FOR REMEDIES

We believe the Commission has a specific and defined role: first, it should continue to insist that economic and social deprivations in Haiti are human rights issues. Second, it should engage actively with States concerning their multilateral and bilateral efforts in Haiti. In many instances, the Commission’s standard approaches to monitoring and promoting human rights can be applied smoothly to the problems addressed here. In other instances, the Commission may find that it needs new tools to assess States’ efforts to fulfill their duties concerning economic and social rights. We recommend three specific actions with these roles in mind.

A. On-Site Visit to Haiti Focusing on Economic and Social Rights

The Commission has repeatedly called attention to the deprivation of economic and social rights in Haiti. It has not had the opportunity, however, to focus on the nature of these violations or the role of the international community in fulfilling those rights. We respectfully request that the Commission conduct an on-site visit to Haiti focusing on economic and social rights. Such a visit would, most importantly, place the international community’s efforts in Haiti in a human rights framework. It would also allow the Commission to determine, using its traditional methods of first-hand interviews and collection of direct evidence, the extent and nature of ongoing deprivations of the economic and social rights. Inquiries could be undertaken into the activities of the various OAS Member States present in Haiti that are aimed at fulfilling the basic survival rights of the population of Haiti.

We request that the Commission make public its report containing its findings on this on-site investigation. This report would contribute significantly to the efforts to end violations of economic and social rights in Haiti. By asserting that OAS Member States have human rights obligations toward the Haitian population under their jurisdiction, the report would support ongoing efforts to prioritize such activities.

Examples include the launching of a nationwide human rights education program and delivery of a train-the-trainers program for local human rights organizations.

¹³⁵ *Id.*

¹³⁶ UNDP, *Le Cadre de Coopération Intérimaire: ‘Etat d’avancement’*, Feb. 21, 2006 (“La population haïtienne urbaine et rurale souhaite voir une amélioration immédiate et tangible dans sa vie quotidienne en termes d’emploi, d’accès aux services de base, de construction et/ou de réhabilitation d’infrastructures.” (informal translation).

B. Request for an Advisory Opinion of the Inter-American Court of Human Rights on the Obligations of Member States for Economic and Social Rights Outside their Territory

This brief has argued that OAS Member States have concrete and specific obligations under international law with respect to the economic and social rights of the people of Haiti. It contends that Member States that contribute troops to the United Nations Stabilization Mission in Haiti have identifiable obligations under the Inter-American human rights instruments. It further suggests that under the OAS Charter and the Inter-American Democratic Charter all OAS Member States have general obligations with respect to the economic and social rights of Haitians when they take actions in bilateral or multilateral settings. Finally, it argues that Member States who have ratified the Convention have progressivity obligations under Article 26 of that instrument.

Despite the urgency of the economic and social rights situation in Haiti and the clear need for individual and collective action to rectify the violations, the existence of Member States' obligations in such settings is rarely recognized. We therefore request that the Commission refer this matter to the Inter-American Court of Human Rights, so that the Court might issue an Advisory Opinion articulating the content of Member States' human rights obligations when they act internationally.

C. Request for the appointment of a Special Rapporteur on Economic and Social Rights

The Commission has long recognized the interdependence of civil and political and economic and social rights. It has made broad statements about the importance of human development and States' efforts to achieve human rights for all. It is time to move beyond these statements, but this needs to be done carefully. While many of the norms under discussion have a clear content under international law, others are only now emerging. Similarly, the role of human rights supervisory bodies in reviewing States' efforts on economic and social rights is under development.

These concerns have been addressed by leading scholars and jurists in many regions. Concrete lessons and tools – such as the use of benchmarks and indicators, and the reasonableness review standard developed in South Africa – are available to the Commission to aid in their work. The appointment of a Special Rapporteur on Economic and Social Rights would allow the Commission to access these tools and assess their viability within the Inter-American system.

Submitted on this 3rd day of March, 2006.

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