

Embassy of the Republic of Bolivia in Costa Rica

San Jose, January 5, 2009

INTER-AMERICAN COURT OF HUMAN RIGHTS

Mr. Pablo Saavedra Alessandri
Secretary
Inter-American Court of Human Rights

Dear Mr. Secretary,

It was a pleasure to receive your note CDH-OC-21/151 of December 3, 2008, regarding the Request for Advisory Opinion submitted by the Argentine State to the above-mentioned High Court.

In connection therewith, attached you will find an annex containing the considerations of the Bolivian State on the Request for Advisory Opinion referred to above.

Yours faithfully.

P.S. Víctor Montecinos
CHARGÉ D'AFFAIRES.

Attachments: As described above.

**CLASSIFICATION: VERY URGENT
GM-DGAJ-UDR-30432008**

La Paz, December 17, 2008

To: the Secretary

I am writing to you in order to send you the considerations of the Bolivian State on the Request for Advisory Opinion submitted by the Argentine Republic by means of communication of August 14, 2008, in light of Article 64(1) of the American Convention on Human Rights (the American Convention), in relation to the institution of the *ad hoc* judge in contentious proceedings brought before the honorable Inter-American Court of Human Rights.

In this regard, the Bolivian State supports the request of the Argentine Republic regarding the need for an interpretation and reflection process on the institution of the *ad hoc* judge, to be considered in relation to the proposed amendment to the Rules of Procedure of the Inter-American Court of Human Rights, based on the jurisdictional competence thereof.

With regard to the users of the Inter-American System, the Bolivian State considers that the *ad hoc* judge institution as a possibility to be used by the States at their discretion and not as an obligation in the exercise of their broad defense powers in contentious cases, allows reaching equality of arms in the proceedings, as the victims or their next of kin are entitled to be an independent party to the case and can avail themselves of the assistance provided by the Inter-American Commission on Human Rights in the performance of its functions as an advisory body on international legal matters.

Therefore, for practical purposes, and as resulting from Order of October 30, 2008, issued in the case of *González et al. ("Cotton field") v. Mexico*, an interpretation is required from the Inter-American Court of Human Rights. In said decision, the Court stated that it would examine the institution of the *ad hoc* judge when ruling on the Advisory Opinion requested by the Argentine State.

In relation to the case referred to above, both the Inter-American Commission on Human Rights and the victims' representatives pointed out that the institution of the *ad hoc* judge should be restricted to **interstate cases in light of Article 18 of the Rules of Procedure of the Court**¹ and should not be admitted in cases

¹ Article 18 of the Rules of Procedure of the Court (**Judges ad hoc**):

1. In a case arising under Article 55(2) and 55(3) of the Convention and Article 10(2) and 10(3) of the Statute, the President, acting through the Secretariat, shall inform the States referred to in those provisions of their right to appoint a Judge ad hoc within 30 days of notification of the application.
2. When it appears that two or more States have a common interest, the President shall inform them that they may jointly appoint one Judge ad hoc, pursuant to Article 10 of the Statute. If those States have not communicated their agreement to the Court within 30 days of the last notification of the application, each State may propose its candidate within 15 days. Thereafter, and if more than one candidate has been nominated, the President shall choose a common Judge ad hoc by lot, and shall communicate the result to the interested parties.
3. Should the interested States fail to exercise their right within the time limits established in the preceding paragraphs, they shall be deemed to have waived that right.
4. The Secretary shall communicate the appointment of Judges ad hoc to the other parties to the case.

originating in individual petitions, as was established by communication of December 21, 2007 under the above-mentioned article and Article 10(3) of the Statute of the Court,² whereby the Mexican State was requested to appoint, within thirty days following the date of notification of the application, an *ad hoc* judge to hear the above-mentioned case.

Said decision was later set aside in light of the provisions of Articles 52 and 55 of the American Convention,³ Articles 4⁴ and 10(3) of the Statute of the Court and Article 18 of its Rules of Procedure, which shows the practical need for an interpretation on the *ad hoc* judge institution and for the regulation thereof.

In view of the foregoing, the Bolivian State considers that it is necessary to elucidate the circumstances under which the appointment of *ad hoc* judges would be admissible, that is, to determine whether it would be exclusively applicable in interstate proceedings, in light of Article 55(3) of the American Convention, and/or in proceedings originating in individual petitions.

Furthermore, the Bolivian State considers that it would be beneficial for the Inter-American System that those judges having the nationality of any State Party to a contentious case disqualify themselves from hearing and deciding the case (**excuse**), taking into consideration Article 55(1) of the American Convention, which sets forth that a judge who is a national of any of the States Parties to a case submitted to the Court **shall retain his right to hear the case**. Thus, for the

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5. The Judge *ad hoc* shall take an oath at the first meeting devoted to the consideration of the case for which he has been appointed.
 6. Judges *ad hoc* shall receive honoraria on the same terms as Titular Judges.

² Article 10(3) of the Statute of the Court. **Ad Hoc Judges:**

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case is a national of one of the States Parties to the case, any other State Party to the case may appoint a person to serve on the Court as an *ad hoc* judge.
3. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an *ad hoc* judge. Should several States have the same interest in the case, they shall be regarded as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.
4. The right of any State to appoint an *ad hoc* judge shall be considered relinquished if the State should fail to do so within thirty days following the written request from the President of the Court.
5. The provisions of Articles 4, 11, 15, 16, 18, 19 and 20 of the present Statute shall apply to *ad hoc* judges.

³ Article 52 of the American Convention:

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.
2. No two judges may be nationals of the same state.

Article 53 of the American Convention:

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.
2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

⁴ Article 4 of the Statute of the Court: Composition. 1. The Court shall consist of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.

2. No two judges may be nationals of the same State.

purpose of overcoming this conventional difficulty, a self-disqualification procedure might be adopted to resolve it.

Finally, it is necessary to establish the procedure to be adopted in cases where the Court declares that the judges appointed *ad hoc* do not fulfill the requirements established in Article 52 of the American Convention, that is, the possibility of replacing them. Likewise, it is necessary to regulate payment of honoraria to *ad hoc* judges with a view to preserving their independence and impartiality.

The foregoing considerations are hereby submitted to the Illustrious Inter-American Court for the purposes of Articles 60 to 63 of its Rules of Procedure.

Yours faithfully.

M. Cecilia Chacón Rendón. Vice-Minister of Foreign Affairs and Cult. Ministry of Foreign Affairs and Cult.