

The Inter-American Human Rights System

Introduction

Several regional organisations have developed human rights instruments and institutions, reflecting the history, culture and legal tradition of the respective region. These regional human rights systems are an important part of human rights protection and complement and reinforce the international human rights system.

The Inter-American Human Rights System was developed by the **Organization of American States (OAS)**. Based in Washington D.C., the OAS has **34 member states from the Americas**. The OAS was founded in 1948, based on the **Charter of the OAS**, which entered into force in 1951 and was subsequently amended by different protocols. Among OAS objectives are the strengthening of peace and security, the promotion and consolidation of democracy as well as the promotion of human rights.

This tool, complementary to our **ABC of Human Rights for Development Cooperation** explains the basic features of the Inter-American Human Rights System relevant for development practitioners working in the Inter-American context.

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1. Relevance for Development Cooperation

By ratifying international and regional human rights treaties, partner countries accept legally binding obligations. The treaties oblige partner countries to respect, protect and fulfil human rights of all people living in the country, with particular attention drawn to marginalised population groups such as women or the disabled. Ethnic minorities or Indigenous Peoples suffering from discrimination merit special attention. For example, states have to abstain from discrimination in access to primary education. They have to ensure that non-discriminatory access to basic health care is secured even though the health system has been privatised. Governments have to issue policies and programmes, and undertake measures to progressively establish, for example, an accessible, fair judicial system.

To identify human rights challenges, development cooperation should draw on the Commission's human rights reports and the case law of both the Commission and the Court. The country reports and case law give an overview of the respective human rights situation and provide a source of information with regard to the realisation of those standards. Also, the advisory opinions of the Court may identify useful starting points for cooperation activities aiming at improving the human rights situation in a given country and may give guidance on issues to be taken up in political dialogue, as well as in the formulation of country and sector strategies. The issues highlighted in decisions or opinions can then be integrated into programming.

If a partner country in Latin America has not ratified fundamental regional human rights treaties or protocols thereto, political dialogue can be an instrument to urge for ratification and to thereby strengthen the Inter-American Human Rights System.

Development cooperation may also support the state in implementing a judgement of the Court. By doing so, development cooperation supports the partner country in fulfilling its related obligations and empowers individuals to develop a responsible awareness of their rights.

2. Core Inter-American human rights instruments

The American Convention on Human Rights of 1969 (American Convention) is based on the OAS Charter and the American Declaration on the Rights and Duties of Man of 1948 (American Declaration). It constitutes the core of the Inter-American Human Rights System (Inter-American System).

The Inter-American System emerged with the adoption of the American Declaration. Just like the Universal Declaration of Human Rights from the same year, it contains civil and political as well as economic, social and cultural rights. In addition to those, it imposes duties on individuals, such as the duty to vote, the duty to receive instructions and the duty to obey the law. Similar to the Universal Declaration, it was adopted as a declaration, not as a legally binding treaty. However, the **Inter-American Court of Human Rights held in its Advisory Opinion** (OC-10/89) that those rights of the American Declaration that are also guaranteed by the OAS Charter (e.g. the prohibition of torture or discrimination) constitute legal obligations for all OAS member states.

While the American Convention builds on the American Declaration, it is almost exclusively concerned with civil and political rights. It contains only one provision on the progressive realisation of economic, social and cultural rights through domestic measures and international cooperation (Art. 26 American Convention). Currently, the **OAS** lists 24 ratifications of the Convention. **Trinidad and Tobago** decided to denounce the American Convention in 1998. **Venezuela** also denounced but re-ratified the Convention in 2019.

The Inter-American System has gradually expanded with the adoption of two Additional Protocols to the American Convention. The **Protocol on Economic, Social and Cultural Rights** (Protocol of San Salvador) of 1988 provides for a reporting procedure under which states submit periodic reports. Since 2010, the reports are examined by the Working Group of the protocol of San Salvador. It has developed specific indicators along which the states have to comply. 18 OAS member states have ratified the Protocol of San Salvador so far. The **Protocol to Abolish the Death Penalty** was adopted in 1990, and to date has been ratified by 13 parties.



A universal instrument particularly relevant in the Inter-American context is the International Labour Organization's (ILO) **Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)**. It has been ratified by 24 – predominately Latin American – countries. It recognises the individual and collective rights of indigenous and tribal peoples such as the right to self-identification (Art. 1), the right to be consulted and freely participate in decision making on issues of their concern (Art. 6), and the right to decide their own development priorities (Art. 7). Countries that have ratified the Convention are subject to **ILO supervision** with regards to its implementation. The Inter-American Court of Human Rights has referred to the ILO Convention 169 in numerous cases concerning indigenous rights (see below). In 2016, the **American Declaration on the Rights of Indigenous Peoples** was adopted, with active participation by representatives of Indigenous Peoples.

Core Inter-American human rights instruments (in chronological order by entry into force) and the number of ratifying states

American Convention on Human Rights (1978)	24
Inter-American Convention to Prevent and Punish Torture (1987)	18
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para) (1995)	32
Inter-American Convention on the Forced Disappearance of Persons (1996)	15
Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador) (1999)	18
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (2001)	19
Inter-American Convention against Racism, Racial Discrimination and related forms of Intolerance (2017)	6
Inter-American Convention on Protecting the Human Rights of Older People (2017)	11

Resources:

- **Basic Documents in the Inter-American System**

3. Monitoring mechanisms

Two institutions monitor human rights within the Inter-American System: the **Inter-American Commission of Human Rights** (the Commission or IACHR) and the **Inter-American Court of Human Rights** (the Court).

The Commission

The Commission, established in 1959, is based in Washington D.C. and consists of seven independent experts (commissioners) who act in their individual capacity. The **principal function of the IACHR** is to promote the observance and protection of human rights in the Americas, in particular by receiving individual complaints. The main procedures of the Commission are two petition procedures and the reporting procedure.

In March 2013, the Commission adopted its new **Rules of Procedure**, as a result of a two-year consultation process with governments and civil society groups, in order to offer more transparency to member states.

The petition procedures

There are two petition procedures: an inter-state communication and an individual petition procedure.

The **inter-state communication** procedure allows states to petition the Commission if another state has breached the Convention (Art. 45). It has been accepted by only ten OAS member states and it has been used in only two cases: **Nicaragua v. Costa Rica** (2007), where the Commission declared the communication to be inadmissible, and **Ecuador v. Colombia** (2010), which ended in an amicable settlement.

Under the **individual petition procedure** governed by the American Convention, any person, group of persons or a non-governmental organization (NGO) on behalf of any of the former may submit a petition to the Commission alleging violations of the rights enshrined in the American Convention, the American Declaration or any other inter-American human rights treaty. The Commission can only refer individual cases to the Court against states that have accepted the contentious jurisdiction of the Court (see below page 4) and if complainants have exhausted domestic remedies.

During the proceedings, the involved parties have to submit their observations within four months. At any stage the Commission shall consider whether an amicable settlement is achievable. If that cannot be achieved, the Commission prepares a confidential report, which includes its conclusions and recommendations for the state. The case can be submitted to the Court if the petitioner decides so or if the state does not comply with the recommendations within the deadline given by the Commission (Art. 44). If within three months a case has not been referred to Court, the Commission may issue a final report containing its final conclusion and recommendation. A publication of the final report is possible. After finalizing the case or petition, the Commission may adopt follow-up measures, like requesting information.

The reporting procedure

According to Art. 19 of the Protocol of San Salvador, states have to submit periodic reports to the OAS Secretary-General on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol. Likewise, Art. 10 the Inter-American Convention on Violence against Women (Convention of Belém do Pará), Article 15 of the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance, and Article 35 of the Inter-American Convention on Protecting the Human Rights of Older Persons order states parties to submit reports every four years.

Apart from that, the Inter-American Commission on Human Rights publishes annual reports on its activities and the state of human rights within the region (**annual reports**). It also includes reports on the human rights situation in singular countries on the basis of on-site visits that take place on request and with the consent of the country (**country reports**). To date, the Commission has conducted **102 country visits**, with Haiti being the most visited state. Finally, it issues **thematic reports** on specific human rights issues.

The newest **thematic reports** of the IACHR include (list limited to English publications):

Migrants and Refugees from Venezuela

Organized Crime and the Rights of Children, Adolescents, and Young People in Northern Central America

Women deprived of liberty in the Americas

Natural Protection Systems and the Human Rights of Older Persons in the Americas

Labor and Union Rights in Cuba

Pandemic and Human Rights

Right to Self-Determination of Indigenous and Tribal Peoples

Childhood, freedom of expression and the Media in the Americas

Resources:

- **Protocol of San Salvador: Working Group on the adoption of final conclusions**
- **Inter-American Commission of Women**
- **Convention of Belém do Pará: Follow-up Mechanism (MESECVI)**

The Court

The Court was established in 1979 as an autonomous judicial institution and it is seated in San José, Costa Rica. It consists of seven judges, nominated by the state parties to the Convention. The American Convention confers contentious and advisory functions on the Court, and it has the authority to order provisional measures.

Jurisdiction to deal with disputes (contentious jurisdiction)

The **contentious jurisdiction** of the Court needs to be accepted separately by each state party of the American Convention. Currently, the Court has decided 520 cases concerning 22 states.



Contentious proceedings before the Court encompass an individual complaints procedure. To date, only state parties and the Commission have the right to submit a case directly to the Court. The Court's Statute, its Rules of Procedure and the American Convention govern the procedure for filing an application.

Any decision of the Court is binding and final. In case the Court found a violation, it can award reparations, which can include measures of restitution, indemnisation, satisfaction, rehabilitation and non-repetition. In 2023, the Court delivered 27 **judgments** (in the previous year, 2022: 34). The Court also monitors the compliance with its judgments (Art. 69 Rules of Procedure). This implies, first, that it must periodically request information from the states on the measures taken to comply with the said judgments, and then obtain the observations of the Commission, and the victims or their representatives. It can then assess whether the state has complied with the measures ordered, provide guidance for the state's actions to that effect and, if appropriate, convene a monitoring hearing. In cases in which a state has (persistently) not complied with its judgments, the Court can submit the issue to the OAS General Assembly (Art. 65 American Convention). Currently, **21 cases** concerning four states are monitored under Art. 65.

Jurisdiction to deal with legal questions (advisory jurisdiction)

The **advisory jurisdiction** of the Court is mandatory for all state parties to the American Convention and broader than the contentious jurisdiction: Any OAS member state (even if it is not a party to the American Convention) or OAS body may consult the Court on the interpretation of the American Convention or **any other regional or international human rights treaty** (PDF, 104 KB, not barrier-free) applicable to American states. Groups and individuals can participate in the capacity of *amicus curiae*. Advisory opinions provide an authoritative interpretation of the legal questions concerned. They allow the Court to give general legal interpretation on human rights in the Americas that go beyond the specific case.

Furthermore, at the request of an OAS member state, the Court may issue its opinion on the compatibility of domestic norms with the instruments of the Inter-American System. Advisory opinions are useful instruments for the states and for the OAS itself to enhance and expand the Inter-American body of human rights law. Through its responsiveness in **30 advisory opinions**, the Court has been able to rule on essential issues.

For example, Colombia submitted an inquiry regarding the Figure of Indefinite Presidential Re-election (Advisory Opinion OC-28/21 of June 7, 2021). Also, the Inter-American Commission on Human Rights asked for the Courts Opinion regarding the Scope of State Obligations under the Inter-American System with regard to the Guarantee of Trade Union Freedom, its relationship to other Rights, and its application from a Gender Perspective (Advisory Opinion OC-27/21 of May 5, 2021). A third example is the request of Ecuador regarding the institution of asylum, and its recognition as a human right under the Inter-American System of Protection (Advisory Opinion OC-25/18 of May 30, 2018).

Provisional measures

The Court may adopt **provisional measures** in order to prevent irremediable harm to a person's right to life or to personal integrity. The three requirements – extreme gravity, urgency and the risk of irreparable harm – have to be justified satisfactorily for the Court to grant these measures which must be implemented by the state concerned. The provisional measures can be requested by the Inter-American Commission at any time, even if the case has not been submitted to the jurisdiction of the Court, and by the representatives of the alleged victims, provided they relate to a case that the Court is examining. The Court may also issue such measures without the Commission's request.

In several cases regarding Brazil, the Court adopted provisional measures in the Matter of the Members of the Yanomami, Ye'kwana, and Munduruku Indigenous Peoples most recently in December 2023. The measures were taken in regard of irreparable harm to their right to life, right to personal integrity and health because of unauthorized people exploiting illegally the natural resources on their territories. A similar case was in the Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua. The Court extended the provisional measures due to persisting outrages against Indigenous Peoples and conflicts with “settlers” on indigenous territory.

Another example for provisional measures is the case of Brooklyn Rivera Bryan and Nancy Elizabeth Henríquez James v. Nicaragua, two members of an Indigenous Peoples' political party that had been detained. Place and conditions of their detention were unknown. The Court's provisional measures aimed at their right to life, personal integrity, health and personal freedom, as well as their political rights, being indigenous representatives.

Resources:

- **The Court's Statute**
- **The Court's Rules of Procedure** (2009, PDF, 127 KB, not barrier-free)

4. Interpretation and operationalisation of human rights in the Inter-American System

The **cases handled by the Commission** and the **case law of the Court** constitute an important source of interpretation of Inter- American human rights treaties. In addition, the annual, country and thematic reports of the Commission contribute to the interpretation and operationalisation of human rights (see above 2.).

The ample case law deals with civil and political rights as well as economic, social and cultural rights, and the rights of vulnerable and discriminated groups. Issues dealt with by the Court through its case law are related to all kind of rights guaranteed by the Convention and other human right treaties.

For example, the Judgment of October 6, 2021 in the case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, the Court held Guatemala responsible for the violation of the cultural rights and the freedom of expression of four indigenous communities. The main reason was the existing legal framework which practically was preventing the Indigenous Peoples in running their own Community Radio Stations.

In the case of Pavez Pavez v. Chile from February 4, 2022 Sandra Pavez Pavez lost her certificate of suitability because of her sexual orientation which led to the dismissal as a teacher for religious education. The Court stated that this treatment violated Ms. Pavez rights to equality, non-discrimination, personal freedom and privacy, and work.

Another case is Manuela et al. v. El Salvador, a Judgment from November 2, 2021. The Court ruled that El Salvador violated Manuela's rights to personal liberty, to fair trial and judicial protection, right to life and health. Manuela was sentenced to 30 years in prison because of an abortion seen as an aggravated homicide. Before and after her conviction Manuela suffered a non-conforming treatment in respect to human rights. She died 2010 due to missing chemotherapy.



5. Inter-American special mechanisms

Other institutions within the Inter-American context that address human rights issues are the **Inter-American Commission of Women**, the **Inter-American Children's Institute**, and the **Inter-American Institute of Human Rights**.

In 1990, following similar developments on the international level, the Inter-American Commission on Human Rights began to create thematic rapporteurships in order to devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their state of vulnerability and the discrimination they have faced historically. The aim of the thematic rapporteurships is to strengthen, promote, and systematise the Inter-American Commission's own work on the issue (Art. 41 American Convention, Art. 18 IACHR Statute, and Art. 15 IACHR Rules of Procedure). The rapporteurships are distributed among the members of the Commission. There are currently two additional special rapporteurships lead by external experts.

The current rapporteurships are:

- Rapporteurship on the Rights of Indigenous Peoples
- Rapporteurship on the Rights of Migrants
- Rapporteurship on the Rights of Women
- Rapporteurship on Human Rights Defenders
- Rapporteurship on the Rights of Persons Deprived of Liberty
- Rapporteurship on the Rights of Child
- Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination
- Special Rapporteurship for Freedom of Expression
- Rapporteurship on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons
- Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights
- Rapporteurship on Memory, Truth and Justice

6. Additional links

- **Federal Ministry for Economic Cooperation and Development (BMZ), Human Rights Strategy for German Development Policy**
- **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Sector Programme on Human Rights (global) "Implementing Human Rights in Development Cooperation"**
- **GIZ Costa Rica, Derecho Internacional Regional y Acceso a la Justicia en América Latina (DIRAJus)** (Spanish)
- **Regional Network of National Human Rights Institutions in the Americas: RINDHCA** (Spanish)

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