

Annex to the ABC of Human Rights for Development Cooperation

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 Organisation of American States (OAS). Based in Washington D.C., the OAS has 35 member states from the Americas. The OAS is the world's oldest regional organisation, dating back to the First International Conference of American States in 1889/1890. The OAS was founded in 1948 with the signing in Bogotá, Colombia, of the Charter of the OAS, which entered into force in 1951 and was subsequently amended by different protocols.

Today, among OAS objectives are the strengthening of peace and security, the promotion and consolidation of democracy as well as the promotion of human rights.

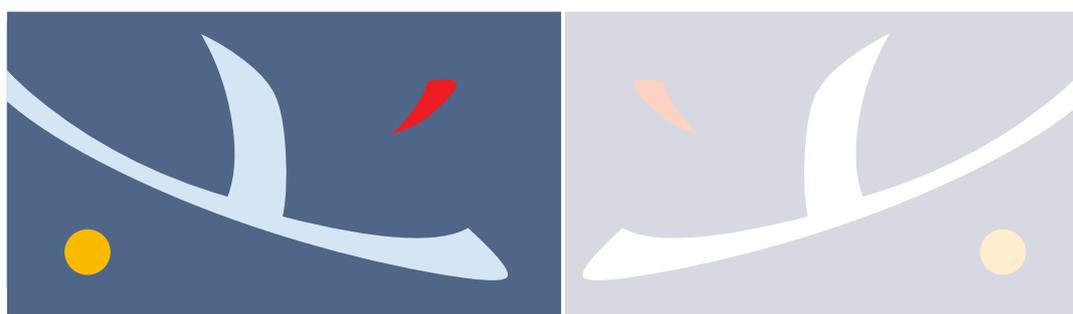
Several states, among them Venezuela, Nicaragua, Ecuador, Bolivia and other members of the Bolivarian Alliance for the Peoples of Our America (ALBA) and Brazil, support an ongoing process to reform the Inter-American human rights system, particularly the work of the Inter-American Commission on Human Rights. Reform proposals refer, among others, to

the petition and case system, the adoption of precautionary measures, and the equitable funding of the Inter-American rapporteurships, especially of the Special Rapporteur on Freedom of Expression, who reports on freedom of expression violations throughout the Americas. 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 with regard to its working procedures.

This tool, complementary to our ABC of Human Rights for Development Cooperation (PDF, 135 KB), 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. Core Inter-American human rights instruments

The American Convention on Human Rights of 1969 (American Convention) is based on the OAS Charter of 1948 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 (1948), it contains civil and political as well as economic, social and cultural rights. In addition to those, it expressly 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](#) (PDF, 92 KB, not barrier-free) that those rights of the American Declaration that are also guaranteed by the OAS Charter (e.g. prohibition of torture or discrimination) do constitute legal obligations for all OAS member states.

The American Convention builds on the American Declaration, but 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). The American Convention is legally binding on those states that have ratified it. As of March 2014, 25 of the 35 OAS member states have ratified the Convention. The remaining OAS member states, USA and Canada for example, have not yet done so. Two states, [Trinidad and Tobago](#) in 1998 and [Venezuela](#) in 2012, decided to denounce the American Convention, leaving 23 active parties.

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 integrates the protection of those rights in the Inter-American System. Similar to the human rights system of the United Nations (UN), the Protocol of San Salvador provides for a reporting procedure under which states submit periodic reports to the OAS Secretary-General. Out of 35 OAS member states, 16 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. Apart from these instruments, there are a number of other regional human rights treaties.

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). Today, it has been ratified by

22 – 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 not to be discriminated against in the enjoyment of human rights (Art. 3), 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 page 5). Since the late 1990s, a [Draft American Declaration on the Rights of Indigenous Peoples](#) is being negotiated, with active participation by representatives of indigenous peoples.

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

[American Declaration on the Rights and Duties of Man](#) (1948)

[American Convention on Human Rights](#) (1969) 23

[Inter-American Convention to Prevent and Punish Torture](#) (1985) 18

[Additional Protocol on Economic, Social and Cultural Rights](#) (Protocol of San Salvador, 1988) 16

[Inter-American Convention on the Forced Disappearance of Persons](#) (1994) 15

[Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) (Convention Belém do Pará, 1994) 32

[Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities](#) (1999) 19

Last Update: March 2014

Resources

- [OAS multilateral treaties, status of ratifications](#)
- [ILO Convention 169, status of ratifications](#)

2. Human rights reporting and monitoring

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 under the American Convention are the petition procedure and the reporting procedure.

The petition procedure

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

The **inter-state communication** procedure under Art. 45 of the American Convention has been accepted by ten OAS member states. To date, 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, DOC, 245 KB), still pending.

Under the **individual petition** procedure governed by the American Convention, any person, group of persons or a non-governmental organisation (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, the protocol abolishing the death penalty, the conventions against torture, on forced disappearance and women's rights and finally trade union rights and the right to education as justiciable rights established in the Protocol of San Salvador (Arts 8 and 13).

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). The number of complaints received by the Commission has been rising over the last years (1997: 435; 2010: 1598). The Commission only accepts an individual petition if a number of formal requirements have been met, particularly having exhausted domestic remedies.

During the proceedings, the Commission asks each party to comment on the response of the other party. In addition, the Commission may carry out its own investigations, conduct on-site visits, request further information from the parties, etc. If a friendly settlement cannot be achieved, it prepares a confidential report which includes its conclusions and recommendations. It then concedes the state a period of time to remedy the situation and to comply with the recommendations. At the same time, it notifies the petitioner of the adoption of the report and allows the petitioner one month to present his or her case to the Court.

If the state has not complied with the recommendations of the Commission and accepted the contentious jurisdiction of the Court, the Commission refers the case to the Court (unless the absolute majority of its members decides otherwise, see Art. 45 Rules of Procedure of the Commission, Guy Malary v. Haiti). The Commission may issue a final report containing its final conclusions and recommendations.

Resources

- Statute of the IACHR (1979)
- Rules of Procedure of the IACHR (2013)
- Petition and Case System of the IACHR and an Informational brochure (PDF, 3 MB, not barrier-free)

The reporting procedure

The only state-reporting procedures within the Inter-American System are subject to the Protocol of San Salvador and to the Inter-American Convention on Violence against Women (Convention of Belém do Pará): 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. Art. 10 Convention of Belém do Pará requires the state to report on measures regarding the prevention and prohibition of violence against women to the Inter-American Commission of Women.

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). Finally, it issues thematic reports on specific human rights issues (see below).

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)

Thematic reports of the IACHR since 2009 include:

- Death penalty (PDF, 3 MB, not barrier-free),
- Sexual violence against women (PDF, 1 MB, not barrier-free),
- Rights of persons deprived of their liberty (PDF, 3.5 MB, not barrier-free),
- Human rights defenders (PDF, 2.5 MB, not barrier-free),
- Reproductive health (PDF, 521 KB, not barrier-free),
- Access to justice as a guarantee of economic, social and cultural rights (PDF, 725 KB, not barrier-free),
- Juvenile justice (PDF, 3 MB, not barrier-free),

- [Freedom of expression](#),
- [Indigenous groups](#) (PDF, 2.5 MB, not barrier-free),
- [Children's rights](#)

The Court

The Court was established in 1979 as an autonomous judicial institution based on the American Convention and it is seated in San José, Costa Rica. It consists of the Secretariat and seven judges. The judges convene in four ordinary sessions per year. Currently, extraordinary sessions are convened in different OAS member states in order to enhance the knowledge of the Inter-American System. The 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, 21 state parties to the American Convention have accepted the compulsory jurisdiction of the Court.

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. During 2012, the Court delivered 21 judgments, with an average proceeding duration of 19 months (2010:9; 2011:18).

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, as it did in the case of Venezuela, can submit the issue to the OAS General Assembly (Art. 65 American Convention).

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 are not legally binding, but provide an authoritative interpretation of the legal questions concerned. They allow the Court to respond to consultations by OAS member states or the OAS bodies on the interpretation of the American Convention or other treaties for the protection of human rights in the Americas.

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 numerous advisory opinions, the Court has been able to rule on essential issues such as: the admissibility of proposed [amendments to the constitution](#) (PDF, 229 KB, not barrier-free) of a state party; [court orders in emergency situations](#) (PDF, 103 KB, not barrier-free) and judicial guarantees in such situations; the [compatibility of draft legislation](#) (PDF, 119 KB, not barrier-free) with the Convention; the juridical status and [human rights of the child](#) (PDF, 785 KB, not barrier-free), or the juridical status and human rights of undocumented [migrants](#) (PDF, 632 KB, not barrier-free).

Provisional measures

The Court may adopt [provisional measures \(Spanish\)](#) 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 approval.

Resources

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

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

The [case law of 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.).

Existing case law deals primarily with civil and political rights, but there are cases concerned with economic, social and cultural rights, and the rights of vulnerable and discriminated groups. The main issues dealt with by the Court through its case law are related to:

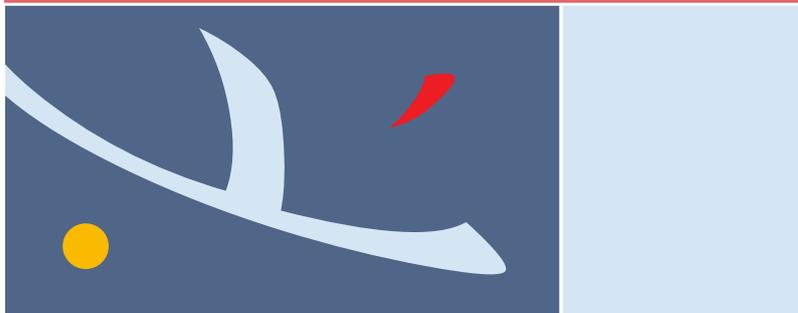
- The right to life, including the issue of death penalty
 - [“Street Children” \(Villagrán-Morales\) v. Guatemala](#) (PDF, 608 KB, not barrier-free)
- Forced disappearances
 - [Velásquez-Rodríguez v. Honduras](#) (PDF, 214 KB, not barrier-free);
 - [Bámaca-Velásquez v. Guatemala](#) (PDF, 948 KB, not barrier-free)
- Extrajudicial killings
 - [Las Palmeras v. Colombia](#) (PDF, 345 KB, not barrier-free);
 - [Mapiripán Massacre v. Colombia](#) (PDF, 1 MB, not barrier-free)
- Right to personal integrity and the prohibition of torture
 - [Maritza Urrutia v. Guatemala](#) (PDF, 470 KB, not barrier-free)
- Deprivation of liberty
 - [Tibi v. Ecuador](#) (PDF, 1 MB, not barrier-free)
- Obligation to prosecute serious human rights violations and the prohibition of amnesty laws
 - [Barrios Altos v. Peru](#) (PDF, 267 KB, not barrier-free);
 - [Gomes-Lund \(Guerrilha do Araguaia\) v. Brazil](#) (PDF, 848 KB, not barrier-free);
 - [Massacres of El Mozote and nearby places v. El Salvador](#) (PDF, 1.4 MB)
- Right to a fair trial
 - [Castillo-Petruzzi v. Peru](#) (PDF, 458 KB, not barrier-free);
 - [Cantoral-Benavides v. Peru](#) (PDF, 399 KB, not barrier-free)
- Judicial independence
 - [Constitutional Court v. Peru](#) (PDF, 262 KB, not barrier-free)
- Freedom of expression and right to receive information
 - [“The Last Temptation of Christ” v. Chile](#) (PDF, 484 KB, not barrier-free)
 - [Reyes v. Chile](#) (PDF, 354 KB, not barrier-free)
- Freedom of association
 - [Baena-Ricardo v. Panama](#) (PDF, 885 KB, not barrier-free)
- Right to privacy
 - [Tristán-Donoso v. Panama](#) (PDF, 496 KB, not barrier-free)

- Right to identity
 - [Contreras v. El Salvador](#) (PDF, 541 KB, not barrier-free)
- Right to property
 - [Cantos v. Argentina](#) (PDF, 344 KB, not barrier-free)
- Right to political participation
 - [Yatama v. Nicaragua](#) (PDF, 857 KB, not barrier-free)
- Social rights
 - [“Five Pensioners” v. Peru](#) (PDF, 434 KB, not barrier-free);
 - [Acevedo Buendía v. Peru](#) (PDF, 343 KB, not barrier-free)
- Sexual and reproductive rights
 - [Artavia Murillo v. Costa Rica](#) (PDF, 1.4 MB)
- Rights of the child
 - [“Juvenile Reeducation Institute” v. Paraguay](#) (PDF, 1.3 MB, not barrier-free)
- Non-discrimination of sexual minorities
 - [Atala Riffo and daughters v. Chile](#) (PDF, 852 KB)
- Rights of persons with disabilities
 - [Ximenes-Lopes v. Brazil](#) (PDF, 624 KB, not barrier-free)
- Gender based violence against women
 - [Miguel Castro-Castro Prison v. Peru](#) (PDF, 1.4 MB, not barrier-free);
 - [González \(“Cotton Field”\) v. Mexico](#) (PDF, 941 KB, not barrier-free)
- Rights of migrants
 - [Girls Yean and Bosico v. Dominican Republic](#) (PDF, 484 KB, not barrier-free)
- Rights of indigenous peoples
 - [Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua](#) (PDF, 811 KB, not barrier-free),
 - [Pueblo Indígena Kichwa de Sarayaku v. Ecuador](#) (Spanish)

4. Inter-American special mechanisms

Other institutions within the Inter-American context that address human rights issues are the [Inter-American Commission on Women](#), the [Inter-American Children’s Institute](#), and the [Inter-American Institute of Human Rights](#). The Inter-American Indian Institute (“Instituto Indigenista Interamericano”), founded in 1940, was closed in 2009. Its extensive documentation was transferred to the [Mexican National Autonomous University \(UNAM\)](#).

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). In 2012, the Commission created the [Unit on Economic, Social and Cultural Rights](#), vesting



it with the mandate to cooperate with the analysis and evaluation of the situation of these rights in the Americas.

The current rapporteurships are:

- Rapporteur on the Rights of Indigenous Peoples
- Rapporteur on the Rights of Migrants
- Rapporteur on the Rights of Women
- Rapporteur on Human Rights Defenders
- Rapporteur on the Rights of Persons Deprived of Liberty
- Rapporteur on the Rights of Children
- Rapporteur on the Rights of Afro-descendants
- Special Rapporteur for Freedom of Expression
- Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)

5. 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 for policy advice and 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. Thus, they should be used to formulate targets, benchmarks and indicators.

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.

6. Additional links

- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Cross-Sectoral Project "Realising Human Rights in Development Cooperation"
- German Institute for Human Rights
- OHCHR International Human Rights instruments
- Regional Network of National Human Rights Institutions in the Americas: Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano (Spanish)
- FAQs of the OHCHR on a Human Rights Based Approach to Development Cooperation (PDF, 962 KB, not barrier-free)

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