

INTRODUCTION

The leading international instruments of the Inter-American system for the protection of human rights are compiled in this publication. The objective of this compilation is to serve as a guide for users of the system. It includes the various declarations, conventions, and protocols that spell out the mandate and functions of the organs of the system -the Inter-American Commission on Human Rights (hereinafter "the IACHR", "the Commission" or "the Inter-American Commission") and the Inter-American Court of Human Rights (hereinafter "the I/A CourtHR", "the Court" or "the Inter-American Court"), as well as the obligations of the Member States of the Organization of American States (hereinafter "the OAS" or "the Organization") in the field of human rights.

The *Basic Documents* include the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration") and the American Convention on Human Rights (hereinafter "the American Convention"). These are followed by the inter-American convention against torture, the additional protocols to the American Convention on economic, social and cultural rights and on the death penalty, the inter-American conventions on violence against women, forced disappearance of persons and discrimination against persons with disabilities; as well as a list of the OAS States that are signatories to those treaties, and the current status of such ratifications. Also included are the OAS Charter and the Inter-American Democratic Charter; as well as the Declaration of Principles on Freedom of Expression, and Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. The Statutes and Rules of Procedure of the Inter-American Commission and Court are also included. Finally, the form for filing petitions alleging human rights violations before the Commission is attached. This edition of *Basic Documents* has been updated as of June 30, 2010.

This introduction to the basic documents presents information on the historical background and evolution of the regional system for the protection and promotion of human rights; a brief explanation of the leading inter-American principles in this area; and an outline that describes the establishment and evolution of the Commission and the Court, as well as an explanation of the functions and composition of those organs.

I. THE OAS AND THE EVOLUTION OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The OAS is an international organization created by the States of the Americas¹ to achieve a regional order of peace and justice, promote solidarity, and defend their sovereignty, territorial integrity, and independence (Article 1 of the OAS Charter).²

¹ The Member States of the OAS are Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, and Venezuela.

² The OAS is a regional organization as per Article 52 of the United Nations Charter, and in keeping with Article 53 of its Charter, it performs functions through the following organs: the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, the Permanent Council, the Inter-American Council for Integral Development, the Inter-American Juridical Committee, the Inter-American Commission on Human Rights, the General Secretariat, the Inter-American Specialized Conferences, and the Inter-American Specialized Organizations. In order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, the OAS has established the following as its essential purposes: (a) to strengthen the peace and security of the continent; (b) to promote and consolidate representative democracy, with due respect for the principle of nonintervention; (c) to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member States; (d) to provide for common action on the part of those States in the event of aggression; (e) to seek the solution of political, juridical, and economic problems that may arise among them; (f) to promote, by cooperative action, their economic, social, and cultural development; (g) to

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Since the creation of the OAS, the States of the Americas have adopted a series of international instruments that have become the normative basis of the regional system for the promotion and protection of human rights, through the recognition of these rights, the establishment of obligations aimed at their promotion and protection, and the creation of organs to oversee their observance.

The current system formally started with the adoption of the American Declaration of the Rights and Duties of Man at the Ninth International Conference of American States, held in Bogotá in 1948, during which the Charter of the OAS (hereinafter "the Charter") was adopted, promoting the "fundamental rights of the individual" as one of the principles on which the Organization is founded.³

The Charter was amended in 1967 at the Third Special Inter-American Conference held in Buenos Aires and in 1985 by means of the "Protocol of Cartagena de Indias", signed during the 14th special session of the Organization's General Assembly. The Protocol of Washington (1992) made additional changes and established that one of the fundamental purposes of the OAS is to promote, through cooperative action, the economic, social and cultural development of the Member States and to help eradicate extreme poverty in the hemisphere.

Full respect for human rights is enshrined in various sections of the Charter, reaffirming the importance that the Member States attribute to it. Accordingly, the Charter emphasizes that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man." The Charter establishes that the IACHR is a principal organ of the OAS, whose function is to promote the observance and protection of human rights and to serve as a consultative organ of the OAS in human rights matters.

II. THE REGIONAL INSTRUMENTS FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

The American Declaration of the Rights and Duties of Man Adoption: May 2, 1948

The American Declaration is the first general international human rights instrument. Approximately eight months following its adoption, the United Nations adopted the Universal Declaration of Human Rights. The American Declaration establishes that "the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human

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eradicate extreme poverty, which constitutes an obstacle to full democratic development; and (h) to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States (Article 2 of the Charter).

³ In addition, several resolutions on human rights were adopted, among them some on the civil and political rights of women and the economic status of working women. In addition, the "Inter-American Charter of Social Guarantees" was adopted; in it the governments of the Americas proclaim "the fundamental principles that must protect workers of all kinds" and that constitute "the minimum rights workers must enjoy in the American states, without prejudice to the fact that the laws of each state may extend such rights or recognize others that are more favorable," since "the state attains its goals not only by recognizing the rights of citizens alone, but also by concerning itself with the fortunes of men and women, considered not only as citizens but also as human beings," and consequently must guarantee at the same time "respect for political and spiritual freedoms, together with the realization of the postulates of social justice." See the texts of both conventions in International Conferences of American States, Second Supplement, 1945-1954, Washington, D.C., Pan American Union, 1956, pp. 172, 173, 192, 195-203.

personality." Accordingly, the States of the Americas recognize that when the state legislates in this area, it does not create or grant rights, but rather recognizes rights that exist independent of the formation of the State. Both the Commission and the Court have established that despite having been adopted as a declaration and not as a treaty, today the American Declaration constitutes a source of international obligations for the Member States of the OAS.⁴

The American Convention on Human Rights ("Pact of San José, Costa Rica")
Adoption: November 22, 1969. Entry into force: July 18, 1978

The beginnings of the American Convention go back to the Inter-American Conference held in Mexico in 1945, which entrusted the Inter-American Juridical Committee with preparing a draft declaration. That idea was taken up anew at the Fifth Meeting of Ministers of Foreign Affairs that met in Santiago, Chile, in August 1959, in which it was decided to promote the drafting of a human rights convention. The original draft Convention was prepared by the Inter-American Council of Jurists, submitted to the Permanent Council of the OAS, and opened up for comments by the States and the Inter-American Commission. In 1967 the Commission submitted a new draft Convention. In order to analyze the various drafts, the OAS convened an Inter-American Specialized Conference on Human Rights, which met in San José, Costa Rica from November 7 to 22, 1969. The entry into force of the American Convention in 1978 enhanced the effectiveness of the Commission, established an Inter-American Court of Human Rights, and modified the legal nature of the instruments on which the institutional structure is based.

In its first part, the American Convention establishes States' obligations and enunciates the human rights protected thereof. In its second part, the American Convention establishes the means of protection: the IACHR and the I/A Court HR, which it declares to be organs competent "with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention." As of June 30 2010, 24 Member States of the OAS are parties to the American Convention.⁵

The Inter-American Convention to Prevent and Punish Torture
Adoption: December 9, 1985. Entry into force: February 28, 1987

In 1985, in the context of the General Assembly where amendments to the Charter of the OAS were adopted in the Protocol of Cartagena de Indias, the Member States adopted and opened for signature the Inter-American Convention to Prevent and Punish Torture. This Convention includes a detailed definition of torture and of the liability for committing this crime. The States parties not only undertake to punish severely the perpetrators of torture, they also agree to adopt measures to prevent and punish any other cruel, inhuman, or degrading treatment within their respective jurisdictions. According to the terms of this treaty, persons accused of torture cannot elude the action of justice by fleeing to the territory of another State party.

⁴ See IACHR, Resolution No. 3/87, Case 9647, James Terry Roach and Jay Pinkerton (United States), *Annual Report 1986-1987*, September 22, 1987, paras. 46-49; IACHR, Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra (United States), *Annual Report 2000*, April 4, 2001; I/A Court H.R., *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, July 14, 1989. Series A No. 10, paras. 35-45. See also Article 20 of the Statute of the IACHR.

⁵ As of June 30, 2010, the 24 member States of the OAS that have ratified the American Convention are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. To check the current status of ratifications of the American Convention, see the website of the IACHR, www.cidh.org.

The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador)
Adoption: November 17, 1988. Entry into force: November 16, 1999

Article 77 of the American Convention provides for the adoption of protocols with a view to gradually including other rights and freedoms within its system of protection. The Protocol of San Salvador is the additional instrument to the American Convention specifically addressing economic, social and cultural rights. The text of the Protocol is based on a draft prepared by the IACHR.

On ratifying this Protocol, the States parties "undertake to adopt the necessary measures ... to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol." Article 19 of this Protocol establishes the means of protection, including the possibility of filing individual petitions for alleged violations of Articles 8(a) and 13 regarding trade union rights and the right to education, respectively.

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty
Adoption: June 8, 1990. Entry into force: August 28, 1991

The concerted efforts to include the absolute abolition of the death penalty in the American Convention were not successful in the context of its adoption in 1969. The Protocol to the American Convention on Human Rights to Abolish the Death Penalty was approved at the 20th regular period of sessions of the OAS General Assembly. Once ratified by State parties to the American Convention, this Protocol will ensure the abolition of the death penalty throughout the hemisphere.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará")
Adoption: June 9, 1994. Entry into force: March 5, 1995

The OAS General Assembly adopted this treaty at its 24th regular period of sessions in Belém do Pará, Brazil. This instrument defines in detail the forms of violence against women, including physical, sexual, and psychological violence, based on gender, whether in the public or private sphere, and establishes that all women have the right to a life free from violence, in addition to all the human rights enshrined by the regional and international instruments. Furthermore, the Belém do Pará Convention establishes that the right of women to be free from violence includes, among others, their right to be free from all forms of discrimination. The State parties to this instrument agree to condemn all forms of violence against women and to investigate, prosecute, and punish such acts of violence with due diligence; accordingly they must both adopt policies and take specific measures aimed at preventing, punishing, and eradicating such violence against women.

The Inter-American Convention on Forced Disappearance of Persons
Adoption: June 9, 1994. Entry into force: March 28, 1996

During its 24th regular session held in Belém do Pará, Brazil, the General Assembly of the OAS approved this convention. This instrument is the first internationally to refer specifically to this complex form of human rights violation. In this treaty the States parties undertake not only to refrain from practicing, allowing, or tolerating forced disappearance, but also to punish the perpetrators, accomplices, and accessories of this crime in their respective jurisdictions. The States undertake to adopt the legislative measures necessary for defining forced disappearance as a crime and to cooperate among themselves to contribute to preventing, punishing, and eradicating this crime. This treaty also includes the crime of forced disappearance among those that justify extradition, so as to keep persons accused of this crime from evading the action of the judicial authorities by fleeing to the territory of another State party. It also

recognizes the authority of the Commission to adopt precautionary measures in cases of forced disappearance.

The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities
Adoption: June 7, 1999. Entry into force: September 14, 2001

At its 29th regular session held in Guatemala City, the OAS General Assembly adopted this treaty. The objectives of this instrument are to prevent and to eliminate all forms of discrimination against persons with disabilities, as well as to foster the full integration of these persons to society. A Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities, made up of one representative designated by each State party, is to be established to monitor compliance with the commitments acquired under this Convention.

The Inter-American Democratic Charter
Adoption: September 11, 2001

This Charter, approved by a special session of the OAS General Assembly, reaffirms that the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society, and that democracy is indispensable for the effective exercise of fundamental freedoms and human rights, which are universal, indivisible and interdependent. The Inter-American Democratic Charter establishes in its Article 8 that any person who considers that his or her human rights have been violated may lodge a complaint or petition before the inter-American system for the protection and promotion of human rights.

The Declaration of Principles on Freedom of Expression
Adopted by the IACHR at its 108th Regular Period of Sessions, held on October 2 – 20, 2000

After an extensive debate with various civil society organizations, the Commission adopted this declaration, based on a proposal prepared for by the then newly established Special Rapporteurship on Freedom of Expression. This Declaration includes principles related to the protection of the right to freedom of expression, in light of the interpretation of Article 13 of the American Convention and international standards. It includes the following principles: the right to seek, receive, and disseminate information and opinions freely; the right of every person to have access to information about himself or herself, or his or her assets, expeditiously and not onerously, whether in public or private records; the stipulation that prior censorship, interference, or direct or indirect pressure that restricts the right to freedom of expression should be prohibited by law; principles related to the plurality and diversity of media; among others.

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas
Adopted by the IACHR at its 131th Regular Period of Sessions, held on March 3 – 14, 2008

This document establishes a series of principles concerning persons subject to a regime of “deprivation of liberty.” According to this instrument “deprivation of liberty” is “[a]ny form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses.” Accordingly, the definition encompasses not only those deprived of their liberty because of crimes or infringements or non compliance with the law, but also those persons who are under the custody and supervision of other institutions, where their freedom to leave at will is restricted. Among the principles indicated in this instrument are those general principles (humane treatment, equality and non-discrimination, due process of law, among others), those related to the conditions of detention of persons deprived of liberty (health, food, drinking water, accommodation,

hygienic conditions and clothing, measures against overcrowding, contact with the outside world, work, and education, among others), and, finally, the principles related to the systems of deprivation of liberty.

III. THE ORGANS OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

A. The Inter-American Commission on Human Rights

1. Background and evolution

The Fifth Meeting of Consultation of the Ministers of Foreign Affairs, held in Santiago, Chile in 1959, adopted important resolutions regarding the development and strengthening of the inter-American human rights system. The Declaration of Santiago proclaims: "Harmony among the American republics can be effective only insofar as human rights and fundamental freedoms and the exercise of representative democracy are a reality within each one of them." It then adds that the "governments of the American States should maintain a system of freedom for the individual and of social justice based on respect for fundamental human rights."⁶

One resolution adopted at this Fifth Meeting of Consultation of Ministers of Foreign Affairs referred to human rights, stating that given the progress achieved in the area of human rights in the 11 years since the proclamation of the American Declaration and the progress, in tandem, at the United Nations and the Council of Europe, "the climate in this hemisphere is favorable to the conclusion of a convention." In addition, this resolution takes into account that several OAS instruments have enshrined and repeated that liberty, justice, and peace are based on the equal and inalienable rights of the human person. This resolution considers it essential that "such rights be protected by a juridical system, so that men will not be driven to the extreme expedient of revolt against tyranny and oppression." With that purpose in mind, said resolution entrusted the Inter-American Council of Jurists to prepare a "draft Convention on Human Rights ... [and] a draft convention or draft conventions on the creation of an Inter-American Court for the Protection of Human Rights and of other organizations appropriate for the protection and observance of those rights."⁷

In said resolution, the Fifth Meeting of Consultation of the Ministers of Foreign Affairs held in 1959, resolved:

To create an Inter-American Commission on Human Rights, composed of seven members elected, as individuals, by the Council of the Organization of American States from panels of three names presented by the governments. The Commission, which shall be organized by the Council of the Organization and have the specific functions that the Council assigns to it, shall be charged with furthering respect for such rights.

The Council of the OAS approved the Commission's Statute on May 25, 1960, and elected its first members on June 29, 1960. In 1961 the IACHR began to make visits to several countries to observe the human rights situation *in situ*. In January 1962, during the Eighth Meeting of Consultation, held in Punta del Este, Uruguay, the Ministers of Foreign Affairs considered that "notwithstanding the noble and persevering effort carried on by that Commission in the exercise of its mandate, the inadequacy of the faculties and attributions conferred upon it by its Statute" had made it difficult for the Commission to fulfill its assigned mission. For this reason, on that occasion, the ministers of foreign affairs recommended

⁶ See the complete text of the Declaration of Santiago, Chile, adopted on occasion of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, August 12 to 18, 1959, Final Act, Doc. OEA/Ser.C/II.5, pp. 4-6; available at <http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/minutes.asp>.

⁷ *Id.*, pp. 10-11.

to the Council of the OAS that it amend the IACHR's Statute to expand and strengthen its powers and authority to enable it to effectively perform the task of promoting human rights in the hemisphere.⁸

The Commission was governed by its original Statute until November 1965, when the Second Special Inter-American Conference, held in Rio de Janeiro, Brazil, resolved to modify it, finally expanding the functions and powers of the Commission, in the following terms:

Resolution XXII

Expanded Functions of the Inter-American Commission on Human Rights

The Second Special Inter-American Conference,

RESOLVES:

(...)

3. To authorize the Commission to examine communications submitted to it and any other available information, to address to the government of any American State a request for information deemed pertinent by the Commission, and to make recommendations, when it deems this appropriate, with the objective of bringing about more effective observance of fundamental human rights.

4. To request the Commission to submit a report annually to the Inter-American Conference or Meeting of Consultation of Ministers of Foreign Affairs. This report should include a statement of progress achieved in realization of the goals set forth in the American Declaration, a statement of areas in which further steps are needed to give effect to the human rights set forth in the American Declaration, and such observations as the Commission may deem appropriate on matters covered in the communications submitted to it and in other information available to the Commission.⁹

In keeping with what was resolved by the States at that conference, the Commission amended its Statute during its period of sessions held in April 1966. The main modification was the attribution of the power to examine individual petitions, and, in that framework, to make specific recommendation to Member States.¹⁰

The IACHR was established as a principal organ of the OAS with the first reform of the OAS Charter, with the adoption of the Protocol of Buenos Aires, signed in 1967. The OAS Charter indicates that pending the entry into force of the American Convention on Human Rights, the IACHR was assigned the function of overseeing observance of such rights (Article 145). The reform of the OAS Charter, which entered into force in 1970, establishes in its Article 106 that:

⁸ See the complete text of the Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Punta del Este, Uruguay, January 22 to 31, 1962, Doc. OEA/Ser.C/II.8, pp. 16-17; available at: <http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/minutes.asp>.

⁹ See transcription of Resolution XXII, "Expanded Functions of the Inter-American Commission on Human Rights," adopted by the Second Special Inter-American Conference, Rio de Janeiro, Brazil, 1965, at IACHR, Annual Report 1976, OEA/Ser.L/VII.40, doc. 5 corr.1, March 10, 1977, first section, available at: www.cidh.org. See complete text in the Final Act of the Second Conference, Official Documents OEA/Ser.C/I. 13, 1965, pp. 33 – 35.

¹⁰ IACHR, Report on the Work Accomplished during its Thirteenth Session, April 18 to 28, 1966, OEA/Ser.L/V/II.14, doc. 35, June 30, 1966, pp. 26 - 27.

There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

The Statute that currently governs the Commission was approved at the ninth regular session of the OAS General Assembly (La Paz, Bolivia, 1979). The Statute reflects the major innovations introduced by the American Convention in relation to the Commission. Accordingly, it is the Inter-American Commission –and not the Commissioners–that represents all OAS Member States. The institutional hierarchy of its members corresponds currently to that accorded to the Commission (Article 53 of the Charter). The seven members who make up the Commission are elected by the General Assembly for a period of four years (Article 3) and not by the Council of the Organization, as was provided for in the previous Statute. The function of filling any vacancies that could potentially arise vests, according to Article 11, in the Permanent Council of the OAS.

2. Composition of the IACHR

The IACHR is comprised of seven persons, elected in their personal capacity by the General Assembly of the Organization, who shall be persons of high moral character and recognized competence in the field of human rights. They are elected for a four-year term, and may be reelected only once. The board of officers of the Commission is comprised of a President, a First Vice President, and a Second Vice President, elected for a period of one year, and who may be re-elected to their respective positions only once during each four-year term.

3. Functions of the IACHR

The IACHR has the principal function of promoting the observance and defense of human rights in the Americas. Articles 18, 19, and 20 of the IACHR's Statute establish the Commission's functions and powers, clearly distinguishing the Commission's powers with respect to the States party to the American Convention from those that refer to the Member States of the Organization not parties thereof. With respect to the latter, the Commission's competence is based on the provisions of the OAS Charter and the practice of the IACHR. The Commission's competence in relation to the States parties to the American Convention is established in said treaty.

In fulfilling its mandate, the Commission:

- a) Receives, analyzes, and investigates individual petitions that allege violations of human rights, with respect to both the Member States of the OAS that have ratified the American Convention, and those Member States that have not ratified it.¹¹

¹¹ With respect to the States that have ratified the American Convention, the procedure for petitions and individual cases is governed by the provisions of Articles 44 to 51 of the American Convention, Article 19 of the Commission's Statute, and Articles 26 to 49 of its Rules of Procedure. With respect to those States not party to the American Convention, the Commission examines the international responsibility of OAS Member States based on the American Declaration, and is authorized to do so by the OAS Charter. With respect to these States, the procedure before the Commission is governed by Articles 38 to 44, 47 to 49, 51 and 52 of its Rules of Procedure, and Article 20 of its Statute.

- b) Observes the general situation of human rights in the Member States and publishes special reports on the situation in a given Member State when it considers it appropriate.
- c) Makes on-site visits to Member States to conduct an in-depth analysis of the general situation and/or to investigate a specific situation. In general, these visits give rise to the preparation of a report on the human rights situation observed, which is published and presented to the Permanent Council and General Assembly of the OAS.
- d) Fosters public awareness of human rights in the Americas. To that end, the Commission prepares and publishes reports on specific topics, such as the measures that should be adopted to guarantee greater access to justice; the effects of internal armed conflicts on certain groups; the human rights situation of children, women, migrant workers and their families, persons deprived of liberty, human rights defenders, indigenous peoples, Afro descendants, and persons deprived of liberty; on freedom of expression; citizen security and terrorism and their link with human rights, among others.
- e) Organizes and carries out visits, conferences, seminars, and meetings with representatives of governments, academic institutions, non-governmental organizations, and others for the purpose of disseminating information and fostering broader knowledge of the work of the inter-American human rights system.
- f) Recommends to the Member States of the OAS the adoption of measures that contribute to protecting human rights in the countries of the hemisphere.
- g) Asks the Member States to adopt “precautionary measures,” as provided by Article 25 of its Rules of Procedure, to prevent irreparable harm of human rights in grave and urgent cases. In addition, pursuant to Article 63(2) of the American Convention, it may ask the Inter-American Court to order the adoption of “provisional measures” in extreme grave and urgent cases to prevent irreparable harm to persons even if the case has not yet been presented to the Court.
- h) Submits cases to the Inter-American Court and appears before it during the processing and consideration of cases.
- i) Requests advisory opinions to the Inter-American Court, in keeping with Article 64 of the American Convention.
- j) Receives and examines communications in which one State party alleges that another State party has committed human rights violations recognized in the American Convention, as per Article 45 thereof.

The Commission’s Executive Secretariat provides legal and administrative support to assist the Commission to perform its functions. According to Article 13 of the Commission’s Rules of Procedure, the Executive Secretariat prepares the draft reports, resolutions, studies, and other work entrusted to it by the Commission or the President. In addition, the Executive Secretariat receives and processes the correspondence and the petitions and communications addressed to the Commission.

4. The Rules of Procedure of the IACHR

Both the American Convention and the Statute of the IACHR authorize it to adopt its own Rules of Procedure. The Inter-American Commission adopted the current Rules of Procedure, which came into force on December 31, 2009, during its 137th regular session, held from October 28 to November 13, 2009. The current Rules of Procedure include 80 articles under four titles.

Title I of the Rules of Procedure makes reference to the organization of the IACHR and has five chapters that contain the provisions on the nature and composition of the Commission, its members, the board of officers, the Executive Secretariat, and the functioning of the IACHR. Title II has six chapters, which establish the general provisions applicable to the procedure before the Commission; petitions regarding States parties to the American Convention; petitions regarding States that are not parties to the American Convention; on-site visits conducted by the Commission; the annual report and other reports; and the holding of hearings on petitions or cases as well as hearings of a general nature. Title III of the Rules of Procedure addresses the relationship of the Commission with the Inter-American Court. Chapter I defines matters relating to delegates, advisers, witnesses, and experts, while Chapter II regulates the procedure to be followed when the IACHR decides to bring a case before the Court, in keeping with Article 61 of the American Convention. Finally, Title IV sets forth the final provisions regarding interpretation of the Rules of Procedure, their amendment, and their entry into force.

As regards the approval of the latest Rules of Procedure, and the major changes that have been made, that IACHR noted that:

The central objective of these reforms is to further strengthen the Inter-American system through the enhancement of: participation by victims, guarantees to harmonize procedural participation of the parties and enhance the publicity and transparency of the system, as well as the adoption of other necessary adjustments after the 2001 reform. These modifications involve four essential components of the system for the protection of human rights: the mechanism of precautionary measures, the processing of petitions and cases, the referral of cases to the jurisdiction of the Inter-American Court, and the holding of hearings on the situation of human rights in the Member States.¹²

The recent reform to the procedural rules is complemented by the reforms to the Rules of Procedure of the Court, which entered into force on January 1, 2010, as well as by the resolution of the OAS Permanent Council which adopted the Rules of Procedure for the operation of the Legal Assistance Fund of the inter-American human rights system. The purpose of this Fund is to offer financial support to the victims of human rights violations in the region to help defray the costs related to bringing petitions and cases before the Inter-American Commission and Court.¹³

B. The Inter-American Court of Human Rights

1. Antecedents and evolution

At the Ninth International Conference of American States (Bogotá, Colombia, 1948) the States adopted Resolution XXXI entitled "Inter-American Court to Protect the Rights of Man," in which it was considered that the protection of such rights should "be guaranteed by a juridical organ, inasmuch as no right is genuinely assured unless it is safeguarded by a competent court." The Fifth Meeting of Consultation of Ministers of Foreign Affairs (1959), which, as noted above, established the IACHR, in the first part of the resolution concerning "Human Rights," charged the Inter-American Council of Jurists with the task of drawing up a draft document outlining the establishment of an "Inter-American Court of

¹² See IACHR, Press Release No. 84/09, "CIDH publishes its new Rules of Procedure," December 10, 2009, available at www.cidh.org / Press & Outreach Office section.

¹³ See "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System", OEA/Ser. G, CP/Res. 963 (1728/09), November 11, 2009, available at www.oas.org (see the English version at <http://www.oas.org/consejo/resolutions/res963.asp>).

Human Rights” and others organs for the protection and observance of those rights.¹⁴ Finally, the American Convention on Human Rights established the Inter-American Court of Human Rights in 1969; nonetheless, the court could not be established and organized until the American Convention went into force.

The States parties to the American Convention elected the first seven judges of the Court during the seventh special session of the OAS General Assembly, held in May 1979. The Court was officially installed at its headquarters in San José, Costa Rica, on September 3, 1979, and its Statute was approved by the OAS General Assembly held in La Paz, Bolivia in October 1979, by Resolution No. 448. In the course of its third session, held from July 30 to August 9, 1980, the Court completed the work on the Headquarters Agreement reached with Costa Rica. That agreement, ratified by the Government of Costa Rica, stipulates the immunities and privileges of the Court, its judges and staff, as well as the persons who appear before it.

2. Composition of the Court

The Inter-American Court consists of seven judges, elected in their 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. The judges of the Court are elected for a six-year term and may be reelected only once. The Court elects from among its members a President and Vice-President who shall serve for a period of two years, and who may be reelected.

3. Functions of the Court

According to Article 1 of its Statute, the Court is an autonomous judicial institution whose objective is to apply and interpret the American Convention. To attain this objective, the Court has two functions: a judicial function, governed by Articles 61, 62, and 63 of the American Convention, and an advisory function, governed by Article 64 thereof. With respect to the judicial function, only the Commission and the States parties to the American Convention that have recognized the jurisdiction of the Court are authorized to submit a case regarding the interpretation or application of the American Convention for its decision, on condition that the procedure before the Commission has been exhausted, which is provided for at Articles 48 to 50 of that instrument. In order for a case to be brought before the Court against a State party, the party must recognize the Court’s jurisdiction. The declaration of recognition of the jurisdiction of the Court can be unconditional for all cases, or, on condition of reciprocity, for a given period or a specific case. As of June 30, 2010, 21 States party to the American Convention have recognized the Court’s contentious jurisdiction.¹⁵

As regards the advisory function of the Court, the American Convention provides in Article 64 that any Member State of the Organization may consult the Court regarding the interpretation of the American Convention or other treaties concerning the protection of human rights in the American States. This right of consultation extends, in respect of the matters that fall under their competence, to the organs listed in Article 53 of the OAS Charter. The Court may also, at the request of any Member State of

¹⁴ IACHR, Report on the Work Accomplished during its Thirteenth Session, April 18 to 28, 1966), OEA/Ser.L/V/II.14, doc. 35, June 30, 1966, pp. 26 - 27.

¹⁵ As of June 30, 2010, the 21 States that have recognized the contentious jurisdiction of the Court are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. For an updated list of these States, see the IACHR website at www.cidh.org.

the Organization, issue an opinion concerning any of their domestic laws and the treaties concerning the protection of human rights in the American States, in keeping with Article 64 of the American Convention.

4. The Rules of Procedure of the Court

The Inter-American Court adopted its first Rules of Procedure in July 1980. These rules were based on the then Rules of Procedure of the European Court of Human Rights, which in turn were inspired by the Rules of Procedure of the International Court of Justice (ICJ). Given the need to expedite its procedure, the Court approved its second Rules of Procedure in 1991, which entered into force on August 1, 1991. Five years later, on September 16, 1996, the Court adopted its third Rules of Procedure, which came into force on January 1, 1997. The main modification is set forth in then-Article 23, which granted the representatives of the victims or their next-of-kin to present, autonomously, their own arguments and evidence in the reparations phase. That reform, which came into force on June 1, 2001, introduced a series of measures aimed at granting direct participation to the alleged victims, their next-of-kin or duly accredited representatives in all stages of the proceeding before the Tribunal. These Rules of Procedure were subsequently amended by the Tribunal on November 24, 2003 at its 61st regular period of sessions, held from November 20 to December 4, 2003, and at its 82nd regular period of sessions, held from January 19 to 31, 2009.

The most recent reform of the Court's Rules of Procedure, which entered into force on January 1, 2010, were adopted during its 85th regular period of sessions, held from November 16 to 28, 2009. The main aspects of this reform are the modifications made in relation to the role of the Commission and the victims' representatives in the procedure before the Court.¹⁶ In its transitory provisions, the Rules of Procedure of the Court provide that (1) those contentious cases referred to the Court prior to January 1, 2010, will continue to be processed, up to the issuance of the judgment, under the previous Rules of Procedure; (2) as regards those cases whose report adopted by the Commission in keeping with Article 50 of the American Convention was adopted prior to January 1, 2010, the referral of the case to the Court is governed by Articles 33 and 34 of the previous Rules of Procedure.

For more information on the Inter-American Commission on Human rights or the regional instruments for the protection and promotion of human rights, please visit the website of the IACHR at www.cidh.org.

¹⁶ See I/A Court H.R., "Statement of Motives for the Reform of the Rules of Procedure," 2009, available at www.corteidh.or.cr.