

Pamphlet No. 5

**PROTECTION OF MINORITY RIGHTS IN THE
INTER-AMERICAN HUMAN RIGHTS SYSTEM**

Summary: All 35 members of the Organization of American States fall within the jurisdiction of the Inter-American Commission on Human Rights, which has the authority to prepare reports on the human rights situation in any country in the Americas. It also may receive and consider complaints that any state is violating the provisions of the American Declaration on the Rights and Duties of Man or the American Convention on Human Rights. The Convention creates an Inter-American Court of Human Rights, which can issue binding judgments in cases alleging violations of the American Convention. This pamphlet describes the circumstances under which minorities can use the Commission and Court to secure protection for their rights.

Organization of American States (OAS)

The OAS was founded in 1948 and has a membership of 35 states in the Western Hemisphere: 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. It is a regional organization that encompasses a wide range of political, security, and economic interests, and it has taken an active role in the promotion and protection of human rights since the 1960s. Its headquarters are in Washington, DC.

All of the OAS member States are bound by the OAS Charter and by the 1948 American Declaration on the Rights and Duties of Man. (Although the latter is only a declaration and not a treaty, the OAS deems that all of its members are politically bound to observe its provisions.) In addition, a number of more specific human rights treaties have been adopted since 1969; these include the American Convention on Human Rights (1969) and its Additional Protocols on economic, social and cultural Rights (1988, known as the Protocol of San Salvador) and the abolition of the death penalty (1990); the Inter-American Convention to Prevent and Punish Torture (1985); the Inter-American Convention on Forced Disappearance of Persons (1994); and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994). Only those states that have formally these treaties are bound by their provisions, and a current list of ratifications may be found on the OAS website: <http://www.oas.org>.

Of course, members of minority groups may be subjected to torture or disappearance, and minority women may be the victims of violence, but the most important OAS instruments for minorities are undoubtedly the American Declaration (Declaration) and the American Convention on Human Rights (Convention). As of early 2001, 24 States had ratified the Convention; twelve

of these had also ratified the protocol on economic, social, and cultural rights, and eight States had ratified the protocol on capital punishment.

The two OAS bodies most directly concerned with human rights are the *Inter-American Commission on Human Rights* and the *Inter-American Court of Human Rights*, both of which are discussed below.

The substantive rights protected

As noted above, the Declaration is applicable to all OAS member States, while the Convention is binding only on those states that have ratified it. The Declaration addresses a broad range of human rights, while the 1969 Convention is concerned primarily with civil and political rights; the latter has since been expanded by an additional protocol on economic, social, and cultural rights. It is important to bear in mind that minorities are entitled to *all* of the rights set forth in these documents, but among the rights of greatest interest to minorities are the following (the article numbers refer to the Declaration):

Article 2 guarantees equality before the law, "without distinction as to race, sex, language, creed or any other factor." Article 1 of the Convention obliges States to respect Convention rights without discrimination based on "race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition". Article 24 of the Convention provides broadly for equal protection of the law "without discrimination".

Article 3 guarantees freedom of religion. Article 12 of the Convention also provides that parents have the right to provide for the religious and moral education of their children in accord with their own convictions.

Article 4 guarantees free expression. Article 13 of the Convention also prohibits any advocacy of national, racial, or religious hatred that constitutes an incitement to lawless violence.

Article 5 guarantees that the law will protect everyone from attacks on their honor, reputation, and private and family life. [Convention articles 11 and 14]

Article 8 protects freedom of movement and the right to choose one's residence. [Convention article 22]

Article 12 sets forth the right to an education, including free primary education. There is no comparable right in the Convention, but the Protocol of San Salvador sets forth the right to education and specifies that education should foster "understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups." The Protocol also affirms the right of parents to select the type of education to be given to their children and the right of everyone to establish educational institutions in accordance with domestic law.

Article 13 sets forth the right of everyone to take part in the cultural life of the community and to the protection of intellectual property. A similar provision is included in article 14 of the Protocol of San Salvador.

Article 18 provides the right to a fair trial. Article 8 of the Convention specifies that an accused has the right to a translator or interpreter if necessary.

Article 20 guarantees the right to vote and participate in government, but article 23 of the Convention permits these rights to be limited on the basis of, inter alia, language.

Article 22 guarantees freedom of association "to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature." [Convention article 16]

Inter-American Commission on Human Rights

The Commission consists of seven independent experts, nominated by States and elected by the OAS General Assembly. It meets in Washington, DC, ~~usually~~ for two ~~two-or~~ three-week regular sessions annually. It also meets for two "extraordinary" sessions, of varying duration, annually. It may hold oral hearings or hear statements from individuals, NGO representatives, and governments. The Commission ~~also may meet in special session and~~ may conduct on-site visits, with the consent of the country concerned. All correspondence should be directed to the Commission's office in Washington, DC.

The Commission's jurisdiction is very broad, covering every OAS member State and extending to both the preparation of country-specific reports and the investigation of individual complaints about human rights violations. The Commission exercises similar authority under the American Declaration (applicable to all States) and the American Convention (applicable only to States which have ratified it). As a legal matter, it is important to know under which instrument you may be asking the Commission to act, but practice and procedure are similar under both. The Commission's authority is governed by its Statute, Regulations, and Rules of Procedure, all of which are available on the Commission's website in English and Spanish (information also is available in Portuguese and French).

Because of the small size of both the Commission and its staff, procedures may be subject to delay and may be less formal ~~often are much more informal~~ than, for example, those under the European Convention on Human Rights (see Pamphlet No. 7). ~~However, this informality also may make the Commission more easily accessible to those with little knowledge of international legal procedures.~~

Country reports

Perhaps the most unusual and effective authority of the Commission is its ability to initiate an investigation into the situation of human rights in any country in the OAS, either in response to

individual or NGO information it receives or at its own initiative. Of course, such an investigation is launched only when a majority of the Commission believes that it is warranted, and there is no way of mandating that the Commission initiate a study. Neither individuals nor NGOs have a formal role to play in this process, but it is upon information supplied by them that most of the Commission's conclusions are based.

The Commission may gather information in any way it sees fit, including through hearings or direct testimony. It usually requests the State concerned to cooperate in facilitating an on-site visit, where Commission members will meet with individuals, NGOs, and government representatives. Such a visit is obviously an excellent opportunity for minorities to present their concerns directly to the Commission and is often the occasion for a great deal of publicity.

The Commission's findings are almost always published, and they include a great deal of information on the country's legal system and social condition, as well as on the human rights issues that are of concern. They may address conditions of minorities within a State, as did recent reports. Although a State is not obligated to respond directly to the Commission's conclusions or recommendations, a public report by the Commission is a powerful means of exercising political pressure to improve human rights. Where discrimination against minorities is widespread, whether or not it is legally sanctioned, you should consider contacting the appropriate lawyer on the Commission's staff and exploring the possibility of persuading the Commission to undertake an investigation.

Individual complaints of human rights violations

Any individual, group of individuals, or NGO may file a complaint with the Commission alleging that human rights are being violated in an OAS member State. If the State is a party to the American Convention, the Convention will be the governing law; if not, the rights protected are those set forth in the American Declaration. In neither case is there a requirement that the petitioner be a victim of a violation, although the petition should refer to specific instances of alleged violations. The petition may concern a single incident and a single individual or may raise broader concerns that affect many people.

The complaint should set out the facts in as much detail as possible, including the government acts or agents that are being challenged and the human rights that they violate. As with other procedures, you must explain how you have exhausted any domestic legal remedies that are available. However, you may be excused from exhausting remedies if there is no due process in the country; access to remedies has been prevented; there is unwarranted delay in the domestic proceedings; or if the complainant was unable to obtain necessary legal assistance. The mere fact that you were unsuccessful in domestic proceedings is not enough, unless the domestic procedure itself violated human rights guarantees; the Commission is not an appellate body whose task is to review domestic decisions.

The Commission is strict in requiring that a complaint be filed within six months of the date on which domestic remedies were finally exhausted (or within six months of the incident, if there are no remedies available).

The Commission ~~may or may not~~ delivers a formal opinion as to whether a complaint is "admissible," i.e., whether it meets all of the formal requirements for submission. A preliminary analysis by the relevant staff attorney will normally result in 1) rejection of the petition as being "manifestly ill-founded," which usually means that the right complained of is not guaranteed under the Declaration or Convention; 2) a request for further information; or 3) communication of the complaint to the government concerned. If the case is urgent and there is a possibility of irreparable harm to the life or physical integrity of the victim, you may ask that the Commission adopt "precautionary measures" by requesting the State not to act in a way that would prejudice the case's final outcome. For example, the Commission may request that an execution or deportation be stayed or that the government refrain from some other action that would render the complaint moot.

If the government responds, the petitioner will have the opportunity to reply in writing. If the government does not respond or merely offers a general denial, the Commission has the authority to deem the facts alleged to be true. At any time, the petitioner (or the government) may ask for an oral hearing, although the Commission will grant such a request only when necessary. The Commission also will offer to mediate or facilitate a "friendly settlement" between the complainant and the government, which has to be agreed to by both parties. Such a settlement might include, for example, the payment of compensation; release of a person from prison; or even the government's willingness to amend a law or practice.

If there is no friendly settlement, the Commission deliberates in private and eventually prepares a report, including conclusions and recommendations, on the cases. After a three-month waiting period, the report is either sent to the Court or normally published (and reprinted in the Commission's annual report to the OAS General Assembly). The Commission's report is *not* legally binding on States, and the Commission cannot directly order release of a prisoner, payment of compensation, or amendment of a law that violates human rights. It can (and does) recommend any of these or other options, and it is then up to the State to decide whether or not to comply. States' record of compliance is far from consistent, and it may be up to the petitioner or an NGO to pressure the State to adopt the Commission's recommendations.

The process just described may take years, as ~~the Commission tends to be somewhat lax about deadlines. In addition,~~ the lack of resources makes it difficult to deal with up to 1,000 pending cases expeditiously. A favorable opinion from the Commission will represent at least an important moral and political victory, however, and the process itself may encourage the State to consider meeting the complainant's demands even before a final report is adopted. Not many individual cases have dealt with minority issues per se, although non-discrimination, freedom of expression, and freedom of religion are fundamental human rights within the inter-American system and would certainly be important issues to raise in appropriate situations.

Inter-American Court of Human Rights

Acceptance of the Court's jurisdiction is optional, even for those States that are parties to the American Convention, so the first thing you must do is confirm that the State with which you are concerned has done so. States that are not party to the Convention cannot be brought before the Court. The Court consists of seven judges, and its seat is in San Jose, Costa Rica.

The Court is empowered to issue *advisory opinions* on various aspects of human rights, including the compatibility of domestic legislation with the American Convention. To date, nearly twenty such opinions have been rendered. Only member States and OAS organs can request advisory opinions. Although, by their nature, the Court's advisory opinions are not legally binding, they are important sources of jurisprudence and should be consulted whenever relevant to a particular case or issue.

The Court also has issued final judgments in a somewhat higher number of *contentious cases*. These cases can reach the Court only after the Commission has made its report; either the Commission itself or the State concerned can refer the case to the Court. The Court hears representatives of the petitioners during its consideration, in addition to the Commission and the government, and the proceedings are relatively formal. The Court also may undertake its own investigation of the facts and hear witnesses, if it considers it necessary.

The great advantage of a judgment by the Court is that it is legally binding on the State. The Court can order compensation or other relief, and it also may award attorney's costs and reimbursement for expenses. The Court's jurisprudence to date has been relatively sparse, although it has included such important issues as the responsibility of a State for forced disappearances and several cases concerning the death penalty.

Further information and contacts

All communications to the Commission should be addressed to:

Inter-American Commission on Human Rights

1889 F Street, N.W.

Washington, DC 20006

USA

tel. +1 (202) 458-6000; fax 458-3992

Although it is unlikely that you will need to contact the Court directly, its address is simply:

Inter-American Court of Human Rights, San José, Costa Rica

There has been a great deal of writing about the inter-American system, and you can readily find additional information in both English and Spanish. A particularly useful data base of the jurisprudence of the Commission and Court may be found at the website of the Washington College of Law of American University:

<http://www.wcl.american.edu/pub/humright/digest/index.html>.