

## THE ROLE OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM IN THE PROMOTION OF THE RIGHT TO INFORMATION

*The Inter-American Human Rights System has played a fundamental role in promoting the right to information in Latin America. This learning material describes the mandate and composition of this system and describes its two main outcomes regarding the right to information: the Model Inter-American Law and the Inter-American Court's paradigmatic rulings on access to information.*

### THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

#### The Organization of American States

The Organization of American States (hereinafter “the OAS”) is “an international organization created by the States of the Americas 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).”<sup>1</sup> It is a regional organization whose activities are consistent with the Purposes and Principles of the United Nations.



Figure 1: The Organization of American States Main Building in Washington  
Source: [Organization of American States](https://www.oas.org/)

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The [OAS Charter](#) (hereinafter “the Charter”) was adopted in the Ninth International Conference of American States, held in Bogota, Colombia in 1948. Also, the current regional system of human rights formally started during this conference, with the adoption of the [American Declaration of the Rights and Duties of Man](#).

#### Regional Instruments for the Protection and Promotion of Human Rights

Since the creation of the OAS, the States of the Americas, in exercise of its sovereignty, 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. Such normative system recognizes and defines these rights, establishes its obligations, and creates organs to oversee their observance.

The American Declaration of the Rights and Duties of Man constitutes, along with the dispositions of the OAS Charter related to human rights, the preamble of other regional instruments, since it defines the protected rights and its correlative duties.

In 1978, the [American Convention on Human Rights](#) or “Pact of San José” (hereinafter “the American Convention”) entered into force. This instrument was relevant as it enhanced the effectiveness of the Inter-American Commission on Human Rights (hereinafter “the IACHR”) which had been created in 1959; established an Inter-American Court of Human Rights (hereinafter “the Court”); and modified the legal nature of the instruments on which the institutional structure is based.<sup>2</sup>

In its first part, the American Convention establishes States’ obligations related to the respect of the human rights protected thereof, as well as the duty of the adoption of local dispositions necessary for such rights to become effective. In its second part, it establishes the means of protection: the IACHR and the Court. As of this date, 25 Member States of the OAS are parties to the American Convention.

In connection to the above, the basic documents of the Inter-American System include the American Declaration of the Rights and Duties of Man and the American Convention. These instruments are followed by conventions and/or protocols that handle the following themes: [torture](#), [death penalty](#), [violence against women](#), [forced disappearance of persons](#), discrimination against persons with disabilities and [economic, social and cultural rights](#).

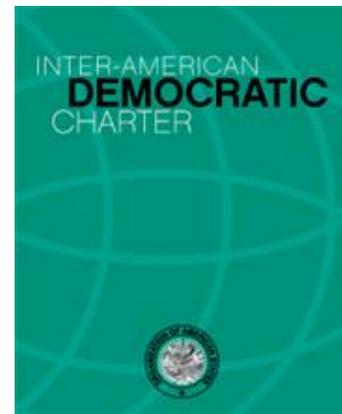


Figure 2: Cover of the Inter-American Democratic Charter

Source: [Inter-American Program on Education for Democratic Values and Practices](#)

In addition, there are also included 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 must be taken into consideration as well.

### Organs of the Inter-American Human Rights System

The Inter-American Human Rights System is composed by two main organs: the Inter-American Commission and the Inter-American Court.

#### A. The Inter-American Commission on Human Rights (“IACHR”):

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 in the region and to serve as a consultative organ of the OAS in human rights matters.

The IACHR was created in 1959 and its Statute approved in 1960.

### *Composition of the IACHR*

The IACHR is composed of seven persons, elected in their personal capacity by the General Assembly of the OAS, 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 re-elected only once.



Figure 3: Inter-American Commission on Human Rights Members

Source: [Inter-American Commission on Human Rights](https://www.oas.org/en/iachr/)

### *Functions of the IACHR*

The Commission has different functions and powers with respect to the States party to the American Convention from those that refer to the Member States of the OAS not parties thereof.

The IACHR undertakes the following activities:

- 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.
- 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.
- d) Fosters public awareness of human rights in the Americas, preparing and publishing reports on specific topics, such as the measures that should be adopted to guarantee greater access to justice; the human rights situation of, for example, children, women, migrant workers, indigenous peoples, Afro descendants, persons deprived of liberty; on freedom of expression; 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,” to prevent irreparable harm of human rights in grave and urgent cases. In addition, 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 Court and appears before it during the processing and consideration of cases.
- i) Requests advisory opinions to the Court.
- 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.<sup>3</sup>

#### B. The Inter-American Court of Human Rights (“The Court”):

In the opinion of Dr. Hector Faundez Ledesma “without prejudice of the importance of the tasks of the Commission, the Inter-American Court of Human Rights is, without a doubt, the most important organ created by the American Convention on Human Rights”.<sup>4</sup>

The American Convention formally established the creation of the Court in 1969 and its Statute was approved by the OAS General Assembly held in La Paz, Bolivia in October 1979.



Figure 4: The Inter-American Court of Human Rights Headquarters in Costa Rica  
Source: [Center for Human Rights and Humanitarian Law](#)

#### *Composition of the Court:*

The Court consists of seven judges, elected from among jurists of the highest moral authority and of recognized competence in the field of human rights. The judges are elected for a six-year term and may be re-elected 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 re-elected.<sup>5</sup>

#### *Functions of the Court:*

The Court has two principal functions: a judicial function (Articles 61, 62, and 63 of the American Convention), and an advisory function (Article 64 of the American Convention).

With respect to the judicial function, according to Article 61 of the American Convention, 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**.<sup>6</sup>

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.

Regarding the advisory function of the Court, the American Convention provides that any Member State of the OAS may consult the Court regarding the interpretation of the American Convention or other treaties concerning the protection of human rights in the American States.

In this respect, the jurisprudence of the Court consists of:

- a) Decisions and judgments (which are binding and obligatory for the States),
- b) Advisory opinions,
- c) Provisional measures, and
- d) Compliance with judgments.

We can conclude that the primary role of the Court is to watch over the respect and compliance of the dispositions of the American Convention and to protect the rights of individuals. Therefore, it is its duty to impute responsibility to the States that have committed violations against the American Convention *-this differs substantially in other international jurisdictions whose mission is to attribute individual responsibility or resolve disputes between States-*. Once the Court determines that a State has committed a violation against an individual's human right, it has broad discretion to determine the consequences and extremes of the judgment, and in consequence, the measures of restitution and reparation.

The Inter-American Court has regional equivalents, for example, the [European Court of Human Rights](#) or the [African Court on Human and Peoples' Rights](#).

## **TWO GROUNDBREAKING ACHIEVEMENTS OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM ON ACCESS TO INFORMATION**

The Inter-American Human Rights System through its various organs, the Commission, the OAS General Assembly and the Court has played an active role in advancing the right to information in Latin America. Two main achievements of the Inter-American Human Rights System stand out because they were groundbreaking and because they set the foundation for realizing the right to information in the region.

### **A Regional Standard on Access to Information: The Model Inter-American Law**

Over the past few years, the OAS has contributed extensively to promoting access to information at the regional level. In 2010, the OAS called on regional experts to draft the [Model Inter-American Law on Access to Information](#) and an [Implementation Guide](#). The Model Law sets the minimum standards for access to information that countries in the region should meet. It enforces and advances some relevant principles, such as maximum disclosure; proactive transparency measures; promoting the right to information; among others. The Model Law has its legal background



Figure 5: The Organization of American States Hall of the Americas  
Source: [Organization of American States](#)

in article 13 on Freedom of Thought and Expression of the [American Convention on Human Rights](#) and the [Declaration of Principles on Freedom of Expression](#), which acknowledges access to information as a fundamental human right and underline countries' obligations to protect and fulfil it.<sup>7</sup>

Although the Model Law was just enacted in 2010, it has already had a tangible effect on states whose parliaments and legislatures are discussing access to information legislation. In Mexico and the Dominican Republic, the OAS organised international seminars in 2011 to present the main aspects of the model legislation and to foster debate within those countries.

### Relevant regional-level Court Decisions on Access to Information

The Court has played a preeminent role in acknowledging the right to access state-held public information in Latin America. Two paradigmatic decisions of the Court stand out because they represent a turning point in enforcing the right to access information in the region:

#### *Claude Reyes et al. vs. Chile*

In 2006, after requests and appeals for accessing information on government contracts were denied by the Chilean government and the Chilean Supreme Court, a civil society organisation brought this case to the Inter-American Court. The Court ruled that the Chilean government must provide the requested information and adopt the necessary measures in terms of adopting or modifying its domestic law to ensure the right of access to state-held information.<sup>8</sup>

This decision inspired the adoption of FOIAs in other countries under the jurisdiction of the Inter-American Court, such as Nicaragua (2007), Chile (2008), Guatemala (2008), Uruguay (2008), El Salvador (2011) and Brazil (2011). In countries without a FOIA, such as Colombia, Costa Rica and Argentina, civil society has used this ruling to successfully request public information from their governments.

#### *Gomes Lund et al. vs. Brazil*

For more than three decades, family members of students and workers that were tortured by the Brazilian army and who disappeared during the 1970s tried to find answers about what happened during those years. An Amnesty Law, however, prevented them from accessing military files. The government continuously denied their requests, arguing that the archives were not available despite strong evidence that they existed. In 2010, the Inter-American Court ruled that the Brazilian Amnesty Law was incompatible with the American Convention on Human Rights and lacked legal effect. The court also issued a number of important guidelines on the question of access to information about past human rights violations.<sup>9</sup>

Thanks in part to this ruling, in October 2011, Brazil created a Truth Commission to investigate human rights violations and to ensure families of victims know what happened during the military dictatorship of 1964-1985.<sup>10</sup> The ruling was also ground breaking in the region, as it enabled citizens in other Latin American countries that also experienced military or authoritarian dictatorships to successfully push for open investigations of human rights violations.

## Lesson Learned

Some of the lessons learned are the following:

- A regional human rights system can play an active role in promoting the right to information. In the case of the Inter-American Human Rights System, the activism of several of its organs in the form of enacting a Model Inter-American Law on Access to Information or ruling in favour of the right to information set a turning point for the realization and advancement of this right in the region.
- Court rulings at the regional level acknowledging government's obligation to enforce the right to information can provide the legal support needed to make this right a reality at the national level.
- A regional framework on access to information such as the Model Inter-American Law is relevant, as it sets the minimum criteria and standards that access to information laws in the region should meet.

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<sup>1</sup> See <http://www.oas.org/en/iachr/mandate/Basics/intro.asp>

<sup>2</sup> Secretariat of the Inter-American Court of Human Rights, 2010. *Basic Human Rights Documents of the Inter-American System*. Inter-American Court of Human Rights, San José, Costa Rica

<sup>3</sup> See <http://www.oas.org/en/iachr/mandate/Basics/intro.asp>

<sup>4</sup> Faúndez Ledesma, Hector. *Inter-American System for the Protection of Human Rights: Institutional and Procedural Aspects*. Inter-American Institute of Human Rights, 3<sup>rd</sup> Edition, 2005.

<sup>5</sup> Faúndez Ledesma, Hector. *Inter-American System for the Protection of Human Rights: Institutional and Procedural Aspects*. Inter-American Institute of Human Rights, 3<sup>rd</sup> Edition, 2005.

<sup>6</sup> Inter-American Court of Human Rights, 2005. *The Inter-American Court of Human Rights, Quarter of a Century: 1979-2004*. Inter-American Court of Human Rights, San José, Costa Rica.

<sup>7</sup> Organization of American States website, '[Access to Information](#)'.

<sup>8</sup> Right2info. 2011. [Constitutional Protections of the Right to Information](#). Right2info; IACtHR. 2006. "[Order of the Inter-American Court of Human Rights Case of Claude-Reyes et al. vs. Chile](#)", September 19<sup>th</sup>, 2006.

<sup>9</sup> Right2info. 2011. [Constitutional Protections of the Right to Information](#). Right2info; IACtHR, "[Case of Gomes Lund et. al. vs. Brazil](#)", November 24<sup>th</sup>, 2010.

<sup>10</sup> "[Brazil approves Truth Commission on rights abuses](#)", *Radio Netherlands Worldwide*, October 27, 2011 and C. Osberg, "[Inter-American Court Invalidates Amnesty Law Enacted during Brazil's Military Dictatorship](#)", April 23<sup>th</sup>, 2011. The Human Rights Brief, Center for Human Rights and Humanitarian Law.