

**Preventing and Remediating Human Rights Violations
through the International Framework**

**Opportunities for Attorneys and Advocates
in the United States**



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The International Human Rights Framework

Human rights are those activities, conditions, and freedoms that all human beings are entitled to enjoy, by virtue of their humanity. They include civil, political, economic, social and cultural rights. Human rights are inherent, inalienable, interdependent, and indivisible, meaning they cannot be granted or taken away, the enjoyment of one right affects the enjoyment of others, and they must all be respected.

However, only governments are in a position to put in place the laws and policies necessary for protection of human rights and to regulate private and public practices that impact individuals' enjoyment of those rights. Therefore, we think of national governments ("states") as the guarantors, or violators, of human rights.

Human Rights

- **Cannot be given or taken away**
- **Include civil, political, economic, social, and cultural rights**
- **Are interdependent and indivisible**

In the post-World War II period, international consensus crystallized around the need to identify the individual rights and liberties which all governments should respect, and to establish mechanisms for both promoting states' adherence to their human rights obligations and for addressing serious breaches. Thus, in the decade following the war, national governments cooperated in the establishment of the United Nations (UN),¹ the Organization of American States (OAS),² and the Council of Europe (COE),³ each including among its purposes the advancement of human rights.

These intergovernmental organizations then prepared non-binding declarations or binding treaties which spelled out the specific liberties understood to be human rights, including the Universal Declaration of Human Rights,⁴ American Declaration of the Rights and Duties of Man,⁵ and the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁶ By the end of the 1950s, these three systems had each established mechanisms for the promotion and protection of human rights, which included the (former) UN Commission on Human Rights, the Inter-American Commission on Human Rights, the (former) European Commission of Human Rights, and the European Court of Human Rights.

¹ Charter of the United Nations, Jun. 26, 1945, 1 U.N.T.S. XVI [hereinafter UN Charter].

² See Charter of the Organization of American States, April 30, 1948, 119 U.N.T.S. 3, *entered into force* Dec. 13, 1951; amended by the protocols of Buenos Aires, Cartagena, Washington and Managua [hereinafter OAS Charter].

³ Statute of the Council of Europe, May 5, 1949, 87 U.N.T.S. 103, E.T.S. 1.

⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

⁵ American Declaration on the Rights and Duties of Man, May 2, 1948, O.A.S. Res. XXX, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949).

⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS 5; 213 UNTS 221, *entered into force* Sept. 3, 1953 [hereinafter European Convention on Human Rights].

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In subsequent decades, each oversaw the drafting of human rights agreements on specific topics⁷ and created additional oversight mechanisms, which now include the United Nations treaty bodies and Universal Periodic Review, the Inter-American Court of Human Rights, and the European Committee of Social Rights.

More recently, other intergovernmental organizations have also established, or begun to establish, regional human rights treaties and monitoring mechanisms. In Africa, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights monitor state compliance with the African Charter on Human and Peoples' Rights.⁸ The decline of the Soviet Union spurred the formation of the Organization for Security and Co-operation in Europe (OSCE) which recognized dialogue on human rights, political and military relations, and economic development as being equally important to sustained peace and stability across Europe and the (former) Soviet states.⁹ In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) is in the process of developing a regional human rights commission,¹⁰ and the League of Arab States in 2009 created the Arab Human Rights Committee.¹¹

International Human Rights Framework

Regional components – those established by regional intergovernmental organizations like the Organization of American States

International or universal components – those established by the United Nations, with actual or potential authority to review all 193 UN Member States' human rights practices.

There is no hierarchical relationship between regional and international bodies. Their work can be somewhat duplicative, but given the variations in state ratification and the different mandates, working methods and possible outcomes of the various mechanisms, advocates will rarely have to choose between two bodies that are equally able to provide the desired result.

⁷ See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212; American Convention on Human Rights, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969); Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, *entered into force* Feb. 28, 1987, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc. 6 rev.1 at 83, 25 I.L.M. 519 (1992); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Oct. 10, 1994, E.T.S. 126, *entered into force* Feb. 1, 1989.

⁸ African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, 245; 21 I.L.M. 58, 59 (1982).

⁹ Charter of Paris for a New Europe, Paris, 21 November 1990, 2nd Summit of Heads of State or Government, Conference on Security and Co-operation in Europe (CSCE); and Budapest Summit Declaration: Towards a Genuine Partnership for a New Era, Budapest, 21 December 1994, 4th Summit of Heads of State or Government, Conference on Security and Co-operation in Europe (CSCE). For details on origins of the OSCE, see <http://www.osce.org/who>.

¹⁰ See ASEAN Intergovernmental Commission on Human Rights, Terms of Reference, <http://www.asean.org/publications/TOR-of-AICHR.pdf>.

¹¹ See Mervat Rishmawi, *The Arab Charter on Human Rights and the League of Arab States: An Update*, HUMAN RIGHTS L. REV.10:1 (2010), 169-178.

In addition, the UN, Inter-American, and African systems appoint individual experts to monitor human rights conditions in a range of priority areas, such as arbitrary detention and discrimination. These experts are often called rapporteurs. The Council of Europe's Commissioner for Human Rights fulfills a similar role, although his mandate is not issue-specific.¹² The UN High Commissioner for Human Rights supports and coordinates the UN's human rights activities, in addition to independently addressing issues of concern through country visits, dialogue with stakeholders, and public statements, much as rapporteurs do.¹³

When states ratify human rights treaties, they codify their obligations to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions. Regional and international oversight bodies contribute to state compliance and provide opportunities for redress and accountability that may be non-existent or ineffective at the national level. However, becoming party to a treaty or agreeing to oversight by a supranational body remains voluntary.¹⁴ The level of participation in the international human rights framework varies among states. The United States of America is among the least engaged, as measured by treaty ratification and acceptance of international complaints mechanisms.¹⁵

U.S. Human Rights Obligations

The United States of America has signed a number of international and regional human rights treaties,¹⁶ but has ratified fewer. A treaty only becomes legally binding on a state when it is ratified and this process varies from country to country. In the United States, the President may ratify a

¹² See Council of Europe, Commissioner for Human Rights, Mandate,

http://www.coe.int/t/commissioner/Activities/mandate_en.asp.

¹³ See Office of the High Commissioner for Human Rights, About Us, Who We Are,

<http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>.

¹⁴ In order to join the European Union, states must also join the Council of Europe, which requires ratifying the European Convention on Human Rights and submitting to the jurisdiction of the European Court of Human Rights. Also, the UN Human Rights Council is authorized to review the human rights practices of all 193 UN Member States.

¹⁵ The United States is one of 28 states that have ratified five or fewer of the twenty United Nations human rights treaties and protocols, as of May 2012, out of 195 states. See Office of the High Commissioner for Human Rights, Ratification status of international human rights treaties,

<http://www.ohchr.org/Documents/HRBodies/HRChart.xls>.

¹⁶ These include the International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976; Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981; Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990; Convention on the Protection and Promotions of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), *entered into force* May 3, 2008; and, the American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

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treaty only upon the advice and consent of the Senate, which must approve the treaty by a two-thirds vote.¹⁷ Pursuant to Article I of the U.S. Constitution, ratified treaties become the “supreme law of the land” and must be adhered to at all levels of government, including state and local bodies.¹⁸ However, it is important to note that a state may submit reservations, understandings or declarations (“RUDs”) when becoming party to a treaty that limit or alter the treaty’s application to that state.¹⁹ The U.S. has introduced RUDs asserting that a treaty is not “self-executing,” meaning that individuals have no private right of action to enforce its provisions in domestic courts unless and until Congress passes a law granting such recourse.²⁰ Congress has enacted such legislation with regard to the Convention against Torture, for example.²¹

The human rights treaties and protocols that the U.S. has ratified, and is therefore bound by, are the:

- International Covenant on **Civil and Political Rights**²² (1992)
- International Convention on the Elimination of All Forms of **Racial Discrimination**²³ (1994)
- Convention Against **Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁴ (1994)
- Optional Protocol to the Convention on the Rights of the Child on the **Sale of Children**, Child Prostitution and Child Pornography²⁵ (2002); and the
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of **Children in Armed Conflict**²⁶ (2002).

¹⁷ See U.S. Const., art. II, § 2.

¹⁸ See U.S. Const., art. VI. See also Harold Hongju Koh, United States Department of State, *Memo for Executive Branch Agencies*, <http://www.state.gov/documents/organization/137293.pdf>.

¹⁹ For more information on the ratification process, including RUDs, see Penny M. Venetis, *Making Human Rights Treaty Law Actionable in the United States: The Case for Universal Implementing Legislation*, 63 ALABAMA L. REV. 97 (2011), available at <http://www.law.ua.edu/pubs/lrarticles/Volume%2063/Issue%201/3-Venetis.pdf>; Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDs*, 3 U. St. Thomas L. J. 311 (2005), available at <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1085&context=ustlj>.

²⁰ See, e.g., David Sloss, *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties*, 24 YALE J. INT’L L. 129 (1999).

²¹ Torture Convention Implementation Act, 18 U.S.C. § 2340A (2009).

²² International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

²³ International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

²⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

²⁵ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), entered into force January 18, 2002.

These instruments were drafted under the auspices of the United Nations, and their implementation is overseen by various UN mechanisms.

In addition, as a founding member of the Organization of American States, the United States is among those countries that adopted the **American Declaration on the Rights and Duties of Man**²⁷ in 1948. The Inter-American Commission on Human Rights monitors the United States' compliance with the provisions of the American Declaration and although this instrument is not a treaty, the Inter-American Commission considers the Declaration to be a source of binding international obligations.²⁸

Other instruments relevant to the protection and promotion of human rights in the United States are the Vienna Convention on Consular Relations,²⁹ which *inter alia* grants foreign nationals the right to have their consulate notified of their arrest in another country, and the Protocol Relating to the Status of Refugees, which addresses the identification and rights of refugees (in connection with the Convention Relating to the Status of Refugees³⁰).³¹

Human Rights Advocacy in the United States

For many decades, advocates and attorneys in the United States have turned to international human rights norms to advance social justice and civil rights causes.³² Organizations actively engaged in using advocacy and litigation to implement international human rights standards in the United States include: the American Civil Liberties Union,³³ Center for Constitutional Rights,³⁴ Human Rights First,³⁵ the Center for Justice and Accountability,³⁶ U.S. Human Rights Network,³⁷ Center for Reproductive Rights,³⁸ National Economic & Social Rights Initiative,³⁹ the Center for Justice and International

²⁶ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* February 12, 2002.

²⁷ American Declaration on the Rights and Duties of Man, n, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/Ser.L/V/II.23 doc.21 rev.6 (May 2, 1948); *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003).

²⁸ 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 of July 14, 1989. Series A No. 10; para. 24.

²⁹ Vienna Convention on Consular Relations, art. 36, 596 U.N.T.S. 261, *entered into force* 19 March 1967.

³⁰ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954.

³¹ Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, *entered into force* Oct. 4, 1967.

³² *See generally*, Bringing Human Rights Home: A History of Human Rights in the United States (2009).

³³ ACLU, Human Rights Program, <http://www.aclu.org/human-rights>.

³⁴ <http://ccrjustice.org/>

³⁵ <http://www.humanrightsfirst.org/>

³⁶ CJA, Countries, United States, <http://cja.org/article.php?list=type&type=409>.

³⁷ <http://www.ushrnetwork.org/>

³⁸ Center for Reproductive Rights, Our Regions, United States, <http://reproductiverights.org/en/our-regions/united-states>.

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Law,⁴⁰ and the International Indian Treaty Council,⁴¹ in addition to many university and law school programs engaged in the study or practice of human rights advocacy, such as Northeastern University's Program on Human Rights and the Global Economy⁴² and Columbia Law School's Bringing Human Rights Home Network.⁴³

Many state and federal courts have interpreted international law, including the U.S.' international treaty obligations, in the context of alleged violations of individual rights. Some of this litigation has concerned individual civil liability for human rights violations carried out in foreign countries, for which the federal Alien Tort Statute⁴⁴ (or, Alien Tort Claims Act) provides a remedy. Alien Tort Statute jurisprudence began with the Second Circuit Court of Appeals' 1980 decision in *Filártiga v. Peña-Irala*,⁴⁵ which dealt with the torture of a Paraguayan national by a Paraguayan official who later emigrated to the United States.⁴⁶ More recent Alien Tort Statute litigation has sought to hold individuals and corporations accountable in U.S. courts for violations of international law. The viability of some avenues of litigation under the Alien Tort Statute is currently under review by the U.S. Supreme Court.⁴⁷

Other cases have dealt with social justice and civil rights concerns in the United States. U.S. Supreme Court decisions citing international law include *Roper v. Simmons*,⁴⁸ dealing with the imposition of the death penalty on juveniles, and *Lawrence v. Texas*,⁴⁹ striking down that state's anti-sodomy law. State courts have looked to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights in interpreting a wide variety of individual rights, in contexts ranging from incarceration to education to the provision of welfare.⁵⁰ State and federal courts have also applied the Vienna Convention on Consular Relations, such as in *Commonwealth v. Gautreaux*⁵¹

³⁹ NESRI, Human Rights, <http://www.nesri.org/human-rights/human-rights-in-the-united-states>.

⁴⁰ <http://cejil.org/en>

⁴¹ <http://treatycouncil.info/home.htm>

⁴² <http://www.northeastern.edu/law/academics/institutes/phrge/>

⁴³ http://www.law.columbia.edu/center_program/human_rights/HRinUS/BHRH_Law_Net

⁴⁴ 28 U.S.C. § 1350.

⁴⁵ 630 F.2d 876 (2d Cir. 1980).

⁴⁶ For more information on the case, see Center for Constitutional Law, Our Cases, Past Cases, *Filártiga v. Peña-Irala*, <http://ccrjustice.org/ourcases/past-cases/fil%C3%A1rtiga-v.-pe%C3%B1-irala>.

⁴⁷ See, e.g., Robert Barnes, *Supreme Court to Weigh Ending Foreigners' Ability to Sue over Rights Abuses Abroad*, Washington Post, Mar. 5, 2012, http://www.washingtonpost.com/politics/court-to-consider-question-of-overseas-lawsuits/2012/03/05/glQAYfNqtR_story.html. See also SCOTUSBlog, Case Files, *Kiobel v. Royal Dutch Petroleum*, <http://www.scotusblog.com/case-files/cases/kiobel-v-royal-dutch-petroleum-et-al/>.

⁴⁸ 543 U.S. 551 (2005).

⁴⁹ 539 U.S. 558 (2003).

⁵⁰ See, e.g., *Bixby v. Pierno*, 4 Cal. 3d 130 (Cal. 1971); *Santa Barbara v. Adamson*, 27 Cal. 3d 123 (Cal. 1980); *Am. Nat'l Life Ins. Co. v. Fair Employment & Housing Comm'n*, 32 Cal. 3d 601 (Cal. 1982); *In re White*, 97 Cal. App. 3d 141 (Cal. Ct. App. 1979); *Boehm v. Superior Court*, 178 Cal. App. 3d 494 (Cal. Ct. App. 1986); *State v. Robert H.*, 118 N.H. 713 (N.H. 1978), *overruled in part by In re Craig T.*, 147 N.H. 739 (N.H. 2002); *Bott v. DeLand*, 922 P.2d 732 (Utah 1996); *Pauley v. Kelly*, 162 W.Va. 672 (W. Va. 1979). For explanations of these and other examples, see The Opportunity Agenda, *Human Rights in State Courts* (2008) and (2011).

⁵¹ 458 Mass. 741 (2011).

and *Valdez v. Oklahoma*.⁵² These cases represent a small sampling of human rights litigation in U. S. courts, and are in addition to non-litigation strategies incorporating international norms, which a wide variety of organizations employ in their public education, legislative lobbying and other advocacy work.

Advantages of the International Human Rights Framework

- **May provide stronger, more detailed protections than domestic law**
- **Creates spaces for direct or indirect dialogue with the federal government that may not otherwise be available**
- **Can be used to increase both domestic and international pressure for changes in practice or policy, through added publicity and involvement of different stakeholders**
- **Complaints mechanisms can give victims an opportunity to have their stories heard, discover the truth, obtain reparation, and hold the government accountable**
- **Not subject to many of the procedural requirements and formalities of litigation in state or federal court**
- **Documents (and in certain circumstances, substantiates) allegations of human rights violations in lasting, official records that can be viewed by anyone in the world**

⁵² 46 P.3d 703 (Okla. Crim. App. 2002), as discussed in Martha F. Davis, *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. REV. L. & SOC. CHANGE 359 (2006).

The United Nations System: Structure and Components

The United Nations (UN) system for human rights comprises two categories of bodies: Charter-based bodies and treaty-based bodies. In the first category are those established by UN resolutions pursuant to the Charter of the United Nations.⁵³ The Charter-based bodies include the Human Rights Council, Universal Periodic Review, and Special Procedures. Being established through UN resolutions, these Charter-based bodies are mechanisms that seek to promote respect for human rights primarily through political dialogue; they therefore have no mandate to decide on individual cases or issue legally binding decisions or recommendations. However, these bodies' mandates allow them to monitor all UN Member States and promote all human rights standards, whether found in the UN resolutions, treaties, or other commitments.

United Nations Human Rights System

Charter-based bodies – established under the UN Charter; broad and diverse mandates for human rights promotion through intergovernmental and independent expert monitoring

Treaty-based bodies – established by UN treaties; mandates limited to individual treaty; monitor State Parties' implementation through reporting and sometimes complaints; interpret treaty provisions

In the second category are treaty-based bodies, established by United Nations treaties on particular areas of human rights law. Ten such bodies currently exist. They monitor the implementation of individual treaties by: receiving and reviewing state reports on their own compliance, issuing general comments on the meaning of the treaty provisions and – in the case of five bodies – by evaluating individual complaints.

Frequently, a separately negotiated Optional Protocol to the main treaty may establish additional standards on a particular issue or expand a treaty-based body's mandate, such as by establishing an individual complaint mechanism. Because they are created by separate treaties, these bodies vary in their composition and authority, according to whether a state has ratified the related treaty or optional protocol.

Finally, as a practical matter for human rights advocacy at the UN, a highly relevant body is the Committee on Non-Governmental Organizations (NGO Committee), formed under the UN Economic and Social Council (ECOSOC). The NGO Committee has a primarily gatekeeper role in reviewing non-governmental organizations' applications for consultative status with the UN and providing a recommendation to the full ECOSOC for the application to be granted or denied.

⁵³ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI. The Charter establishes the United Nations as an intergovernmental organization with specific organs for inter-State dialogue, cooperation, and oversight.

Charter-Based Bodies

Within the United Nations system, several mechanisms are responsible for the promotion and monitoring of *all* UN Member States' respect for human rights. The origins of these mechanisms can be found in the United Nations Charter, which created the UN Economic and Social Council (ECOSOC).⁵⁴ ECOSOC established the Commission on Human Rights, which was later replaced by the Human Rights Council, the body that now manages the other Charter-based human rights mechanisms, namely, the Universal Periodic Review and the Special Procedures.

UN Charter-based Bodies

- **Human Rights Council** – Established in 2006 by the UN General Assembly to promote universal respect for human rights and address human rights violations. Replaced the Commission on Human Rights. Manages a complaint procedure for gross human rights violations.
- **Universal Periodic Review** – Designed to be a cooperative mechanism based on dialogue that reviews all UN Member States' fulfillment of human rights obligations.
- **Special Procedures** – Includes Special Rapporteurs, Special Representatives, Independent Experts, and Working Groups both inherited from the Commission on Human Rights and newly created by the Human Rights Council to support the monitoring and promotion of human rights.

Human Rights Council

The Human Rights Council (HRC) was established in 2006 as a subsidiary body to the UN General Assembly by Resolution 60/251 and replaced the Commission on Human Rights.⁵⁵ The HRC is an intergovernmental institution created to promote “universal respect for the protection of all human rights and fundamental freedoms for all” and “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.”⁵⁶ It serves as a forum for dialogue among states and also manages the Universal Periodic Review, Special

⁵⁴ *Charter of the United Nations*, Chapter X: The Economic and Social Council.

⁵⁵ United Nations Office of the High Commission for Human Rights, About the Council, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>. The Human Rights Commission was established in 1946 with the initial task of drafting the Universal Declaration of Human Rights and its UN mandate was then expanded over time. See, <http://www2.ohchr.org/english/bodies/chr/docs/brief-historic.doc>.

⁵⁶ UN General Assembly resolution A/RES/60/251, decision paragraphs 2 and 3.

Procedures (experts appointed to monitor thematic priority areas and states with serious human rights problems), and a complaint mechanism.

The creation of this new human rights body also sought to divest the many criticisms of the former Commission on Human Rights, which ranged from admitting Member States with failing human rights records to politicizing human rights issues through the prevalent practice of “naming and shaming.” One essential practice of the Commission on Human Rights continued by the HRC was to grant standing for non-government actors to participate at HRC Sessions, which was unprecedented for a UN body directly overseen by the UN General Assembly.⁵⁷

The HRC is composed of 47 Member States elected from the UN General Assembly to staggered three year terms, with a specified number of seats going to each major geographic region.⁵⁸ General Assembly resolution 60/251 states that Members States should be elected considering “the contribution of candidates to the promotion and protection of human rights” and “members elected to the Council shall uphold the highest standards in the promotion and protection of human rights”.⁵⁹ In practice, these standards are open to wide interpretation with some less than exemplary Member States seeking election to the HRC.⁶⁰

Since the formation of the HRC, the only suspension of an HRC Member States has been Libya, which was suspended in March 2011 in reaction to widespread government violence against civilian protests

⁵⁷ UN General Assembly resolution A/RES/60/251, decision paragraph 11 holds that:

“the participation of and consultation with observers, including states that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.”

⁵⁸ United Nations Office of the High Commission for Human Rights, Membership of the Human Rights Council, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>, and UN General Assembly resolution A/RES/60/251, decision paragraphs 7. The 47 Member States have a fixed regional distribution of 13 African states, 13 Asia-Pacific states, 6 Eastern European states, 8 Latin American and Caribbean states, and 7 Western European and other states. As of May 2012, the current HRC Member States (year term expires) are: Angola (2013), Austria (2014), Bangladesh (2012), Belgium (2012), Benin (2014), Botswana (2014), Burkina Faso (2014), Cameroon (2012), Chile (2014), China (2012), Congo (2014), Costa Rica (2014), Cuba (2012), Czech Republic (2014), Djibouti (2012), Ecuador (2013), Guatemala (2013), Hungary (2012), India (2014), Indonesia (2014), Italy (2014), Jordan (2012), Kuwait (2014), Kyrgyzstan (2012), Libya (2013), Malaysia (2013), Maldives (2013), Mauritania (2013), Mauritius (2012), Mexico (2012), Nigeria (2012), Norway (2012), Peru (2014), Philippines (2014), Poland (2013), Qatar (2013), Republic of Moldova (2013), Romania (2014), Russian Federation (2012), Saudi Arabia (2012), Senegal (2012), Spain (2013), Switzerland (2013), Thailand (2013), Uganda (2013), United States of America (2012), Uruguay (2012).

⁵⁹ UN General Assembly resolution A/RES/60/251, decision paragraphs 8 and 9.

⁶⁰ As one example, Iran nominated itself in 2010 to represent the Asia-Pacific region on the HRC, but later withdrew following Qatar also declaring its own nomination, rather than face a competitive election. Just days after its HRC withdrawal, Iran was elected to the Commission on the Status of Women in what was understood to be a behind the scenes *quid pro quo*.

in the country.⁶¹ A central and persistent challenge in the election of HRC Member States is that governments, for the most part, remain reluctant to make political waves within their respective regional groups by forcing a competitive election. This leads to the predominance of no contest or “clean” slates where only one country is nominated for each membership seat available for the region.

The HRC Presidency rotates annually among HRC Member States.⁶² The principle office of the HRC is housed within the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva, Switzerland where OHCHR staff provides support to the HRC President in organizing HRC Sessions and serving as liaison with non-government actors seeking to engage with the HRC.⁶³

The substantive work of the HRC takes place primarily in the arena of Regular Sessions and Special Sessions. HRC Regular Sessions are held no fewer than three times a year, usually in March, June, and September.⁶⁴ The agenda and program of work for each Session are established with respect to any adopted HRC resolutions and in consultation among Member States. Regular Sessions take place for a minimum of ten weeks annually and include presentation of human rights reports and interactive dialogues with Special Procedure or Member States, panel discussions and debates on a wide range of human rights issues, and consideration of Universal Periodic Review reports.⁶⁵ Each Session concludes with the adoption of formal HRC resolutions, each by consensus or a majority vote.

HRC Special Sessions address urgent human rights situations arising between Regular Sessions and may be called at the request of any HRC Member State with the support of at least one third of the HRC Member States.⁶⁶ Having a more narrow remit than Regular Sessions, Special Sessions usually occupy a few days with programs of work focused on the discussion of the urgent human rights situation raised and deliberations around the concluding resolution to be adopted by the HRC.

General Assembly resolution 60/251 explicitly acknowledges that “non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights” and further decides the HRC should work “in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society.”⁶⁷

⁶¹ Libya was reinstated as a HRC Member State in 18 November 2011 following the fall and replacement of its government.

⁶² As of May 2012, Uruguay serves as the HRC President.

⁶³ About the Council, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

⁶⁴ HRC Sessions, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx>; and UN General Assembly resolution A/RES/60/251, decision paragraph 10.

⁶⁵ See for reference, HRC Session 19 (March 2012) agenda annotations

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-1_en.pdf, program of work <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/PoW19HRC.pdf>, and orders of the day <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/OrderOfDay.aspx>.

⁶⁶ *Id.*, fn 64.

⁶⁷ UN General Assembly resolution A/RES/60/251, preamble paragraph 11 and decision paragraph 5 (h).

There are several practical channels for achieving this access and cooperation. Prior to all Sessions any non-governmental organizations and individuals may submit written reports and statements relevant to a Session's agenda.⁶⁸ The HRC also sets aside time at both Regular and Special Sessions for non-governmental actors to deliver oral statements from the floor of the HRC chamber. Oral statements are a key opportunity for direct advocacy on the agenda issues; however the priority given to oral statements by Member States limits the number of non-government actors able to speak at each Session.

Non-government actors are also permitted space in proximity to Sessions for holding side events where presentations of reports or panel discussions can be arranged to engage with governments and other non-government actors. Additionally, appointments can be scheduled with the government representatives of HRC Members States, but as their time can be difficult to obtain, informal meetings - whether after side events or even in the halls adjacent to the HRC chambers - are more common.

However, significant barriers impede actual presence at HRC Sessions, not only due to the travel costs involved but also because physical access to the UN buildings where HRC Sessions take place is restricted to individuals accredited through organizations holding consultative status with ECOSOC.

In addition to the Universal Periodic Review and Special Procedures mechanisms described in greater detail below, the HRC receives complaints alleging patterns of gross human rights violations, which are considered by the Working Group on Communications and may be referred to the Working Group on Situations. The Working Group on Situations reports substantiated claims of consistent patterns of gross violations to the HRC and makes recommendations for action.⁶⁹ Complaints may be submitted by individuals, groups, or non-governmental organizations.

Universal Periodic Review

UN General Assembly resolution 60/251 in 2006 also established the Universal Periodic Review (UPR) as a peer review mechanism for the assessment and advancement of human rights in all 193 UN Member States. As set out by the General Assembly, the HRC is mandated to:

Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all

⁶⁸ The technical guidelines to follow for submitting written reports or statements can be found in *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, available at: <http://www.ohchr.org/EN/PublicationsResources/Pages/HumanRightsProgramme.aspx>.

⁶⁹ See Human Rights Council Resolution 5/1: Institution-building of the United Nations Human Rights Council § IV: Complaint Procedure. See also UN Office of the High Commissioner for Human Rights, Human Rights Bodies, HRC, Complaint Procedure, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>; UN Human Rights Council, *Background Press Release: HRC Working Group on Communications to Hold 10th Session in Geneva from 23 to 27 April 2012*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12077&LangID=E>.

States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.⁷⁰

The HRC reviews UPR reports three times per year at the end of the HRC Regular Sessions in Geneva, with 14 countries being reviewed each Session.⁷¹ Each UPR Session is facilitated by a *troika* (group of three) of HRC Member States, but these sessions are open to participation by all UN Member States whether or not elected members of the HRC, as well as to non-governmental stakeholders.⁷² OHCHR staff provides administrative support and serves as liaison with non-government actors throughout the UPR.

In the first UPR cycle, 48 Member States were reviewed each year over a four year period, while in the second UPR cycle approximately 42 Member States are scheduled for review each year over a four-and-a-half-year period.⁷³ The increased cycle duration was based on feedback gathered from Member States and non-government actors with the objective that fewer states will be reviewed each UPR Session, but more time will be allocated to each review. The first cycle concluded in October 2011 and a second cycle began in March 2012. The first UPR of the United States of America took place in November 2010 and the country's next review is scheduled for June 2015.⁷⁴

The UPR process includes several formal engagement opportunities, such as during consultations on the national report submitted by the Member State under review, via written submissions to the HRC from non-government actors, and through oral submissions at the presentation of the written UPR reports.

The Member State under review prepares and submits a national report on its own human rights record and developments. The UPR guidelines recommend that this national report be prepared “through a broad consultation process at the national level with all relevant stakeholders” including civil society and other local non-governmental actors.⁷⁵ However, such consultations have been frequently neglected owing to a lack of Member State willingness to engage with critical national

⁷⁰ UN General Assembly resolution A/RES/60/251, decision paragraph 5 (e). Further details of UPR process, modalities and outcomes are established by resolution A/HRC/5/21.

⁷¹ UPR reviews are formally conducted by the UPR Working Group of the HRC, however the UPR Working Group comprises all 47 HRC Member States, so for simplicity here HRC will be used in lieu of UPR Working Group. See, UN resolution A/HRC/5/1, Annex section 1, Universal Periodic Review Mechanisms, paragraph 18.

⁷² UN resolution A/HRC/5/1, Annex section 1, Universal Periodic Review Mechanisms, paragraph 18.

⁷³ 48 Member States are scheduled for review in 2013, 2014 and 2015. Only 28 Member States are scheduled for review in 2012 and 45 Member States are scheduled for review in 2016. See the full schedule for reference at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

⁷⁴ Universal Periodic Review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

⁷⁵ UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 15 (a).

voices, insufficient national resources allocated to support national consultations, or last-minute government attention to the preparation of the Member State national report.

This national report is also supplemented by a compilation prepared by the OHCHR of country-specific information “contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents”.⁷⁶

Apart from the national consultations on the Member State national report, the UPR process also enables non-governmental actors to submit first hand information on the situation of human rights in the Member State under review.⁷⁷ National human rights institutions are particularly encouraged to submit written reports. Non-governmental submissions should focus on covering the five-year period prior to the review and submissions for the second UPR cycle should further address relevant peer recommendations by Member States from the first UPR cycle. The UPR technical guidelines call for non-government submissions to have a maximum length of 2,815 words for an individual submission and 5,630 words for a joint submission by a coalition.⁷⁸ The precise deadlines for non-government written submissions to each UPR Session are periodically announced by the OHCHR, but are roughly 8 months ahead of the UPR Session where national reports will be reviewed.⁷⁹ All non-government submission are then compiled and condensed by OHCHR into a summary non-governmental report for distribution to all Member States.⁸⁰

Each UPR Session consists essentially of the oral presentation of national reports by the Member States under review along with the summaries prepared by the OHCHR, followed by an Interactive Dialogue allowing for oral comments and peer recommendations by any UN Member State. Similar to HRC Sessions, time is also set aside for non-governmental actors to deliver oral statements in furtherance of their written submission. Again however, priority is given to oral statements by Member States, which limits the number of non-government actors able to speak at each UPR Session.

In addition to written submissions and oral statements at UPR Sessions, access to government representatives is available to non-government actors through space for holding side events and direct meetings. These engagements often take place with Member States who are supportive of a particular human rights issue and will frequently focus on advocating for particular language to be included in a Member State’s peer recommendations to the Member State under review.

⁷⁶ UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 15 (b).

⁷⁷ UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 15 (c).

⁷⁸ See, *UPR: Practical Guide for Civil Society* for the complete requirements pertaining to non-government submissions: <http://www.ohchr.org/EN/HRBodies/UPR/Documents/PracticalGuideCivilSociety.pdf>.

⁷⁹ Contributions and participation of “other stakeholders” in the UPR, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>.

⁸⁰ UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 15 (c).

Following the Interactive Dialogue, the troika of HRC Member States, supported by the OHCHR, drafts a written summary of all oral statements and peer recommendations presented, and the Member State under review will commonly – although not always – indicate which peer recommendations are rejected or accepted.⁸¹ The final UPR Session report is subsequently adopted by a plenary of all HRC Member States.⁸²

In-person advocacy with government representatives at UPR Sessions is vital for advocacy on Member State peer recommendations; although challenges include travel costs and physical access to the UN buildings being restricted to organizations with ECOSOC consultative status. A further key shortcoming for UPR advocacy during the first cycle has been an unfortunate deficit of both government and non-government follow-up on the accepted and rejected peer recommendations. This indicates the tendency of the UPR to only focus attention on a country situation once every five years and therefore highlights the need to break this temporal isolation by linking UPR advocacy efforts to other ongoing national and international advocacy channels.

Special Procedures

In support of its efforts to monitor and promote human rights, the HRC assumed the Special Procedures established by the Commission on Human Rights in the form of Special Rapporteurs, Special Representatives, Independent Experts, and Working Groups.⁸³ The HRC President formally appoints nominated individuals to fulfill each mandate, with approval by the HRC Member States.⁸⁴ The HRC President will also seek nominations and advice on appointments from non-government actors actively engaged with the HRC and many appointments come from academics, civil society, or other non-government sectors.⁸⁵

A new Special Procedure mandate can be created by resolution at any HRC Session if there is wide demand for the new mandate. As an informal rule, HRC Member States favor thematic focused rather than country focused mandates. Currently there are 35 thematic mandate Special Procedures and 10 country mandate Special Procedures.⁸⁶ A thematic Special Procedure mandate is limited to a three-years and a country mandate is limited to one-year period, at which point mandates are reviewed by the HRC for renewal; a mandate holder may serve for up to six years.⁸⁷

⁸¹ UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 18.

⁸² UN resolution A/HRC/5/21, Annex section 1, Universal Periodic Review Mechanisms, paragraph 32.

⁸³ Special Procedures of the HRC, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

⁸⁴ Nomination, Selection and Appointment of Mandate Holders, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Nominations.aspx>. See also, UN resolution A/HRC/5/21, Annex section 2, Special Procedures, paragraphs 52 and 53.

⁸⁵ UN resolution A/HRC/5/21, Annex section 2, Special Procedures, paragraph 42.

⁸⁶ For a full list of all thematic mandates see <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx> and for all country mandates see <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>.

⁸⁷ UN resolution A/HRC/5/21, Annex section 2, Special Procedures, paragraphs 45 and 60.

Special Procedure mandate holders are not remunerated for their services; although they do receive some administrative and logistical support through the OHCHR.⁸⁸ As a result, appointed individuals usually maintain their professional occupations and also tend to be very open to, or even reliant on, collaboration with non-government actors to fulfill their far-reaching monitoring and reporting responsibilities. The Special Procedures, particularly Special Rapporteurs, are therefore prime conduits for non-governmental organizations and individuals to have their testimonies heard in relation to human rights issues.

Regular submission of written reports and information relevant to a Special Procedure mandate are highly encouraged.⁸⁹ There are also often opportunities for in-person meetings on the sidelines of HRC sessions where a Special Procedure may present a periodic report, at expert seminars arranged by specific mandate holders, or at the Annual Meeting of all Special Procedures that occurs every June following the HRC Regular Session.⁹⁰ The Special Procedures also undertake occasional country or regional visits where they seek to meet with both government representatives and a wide spectrum of non-government actors. Special Procedures may also participate as individuals when invited to public seminars or other human rights events.

Along with the many opportunities for engagement with the Special Procedures, advocates must recognize the limitations of these mechanisms. The voluntary nature of the work, combined with limited institutional support, result in inherently limited capacity. This can also lead Special Procedures to speak more frequently on global issues and less directly address individual cases or human rights problems at a country level, except for in extraordinary circumstances. Country visits by a Special Procedures in their official capacity also require a formal invitation from the host country's government.⁹¹ A limited few Member States have standing invitations open to one or more Special Procedures. However, because invitations to Special Procedures are entirely voluntary, a Member State wishing to avoid scrutiny may simply decline to provide an invitation and ignore formal requests for conducting a country visit.

As of May 2012, the following thematic Special Procedures have been established:

- Working Group of Experts on People of **African descent**
- Special Rapporteur on the **sale of children**, child prostitution and child pornography
- Working Group on the issue of human rights and **transnational corporations** and other business enterprises
- Independent Expert in the field of **cultural rights**

⁸⁸ Special Procedures of the HRC, Introduction, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

⁸⁹ Guidelines for submitting specific information to the Special Procedures can be found at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

⁹⁰ Expert seminars and consultations, <http://www.ohchr.org/EN/HRBodies/SP/Pages/SeminarsConsultations.aspx>, and Annual Meeting, <http://www2.ohchr.org/english/bodies/chr/special/meeting.htm>.

⁹¹ *Id.*, fn 88.

- Special Rapporteur on human rights **defenders**
- Independent Expert on the promotion of a **democratic** and equitable international order
- Working Group on arbitrary **detention**
- Working Group on enforced or involuntary **disappearances**
- Special Rapporteur on the right to **education**
- Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, health and sustainable **environment**
- Special Rapporteur on extrajudicial, summary or arbitrary **executions**
- Special Rapporteur on the right to **food**
- Independent Expert on the effects of **foreign debt** and other related financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights
- Special Rapporteur on the promotion and protection of the right to **freedom of opinion and expression**
- Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of **hazardous substances and waste**
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health**
- Special Rapporteur on adequate **housing**
- Special Rapporteur on the situation of human rights and fundamental freedoms of **indigenous peoples**
- Representative of the Secretary General on the human rights of **internally displaced persons**
- Independent expert on human rights and **international solidarity**
- Special Rapporteur on the **independence of judges and lawyers**
- Working Group on the use of **mercenaries** as a means of impeding the exercise of the right of peoples to self-determination
- Special Rapporteur on the human rights of **migrants**
- Independent Expert on **minority** issues
- Independent Expert on human rights and extreme **poverty**
- Special Rapporteur on contemporary forms of **racism**, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on freedom of **religion** or belief
- Special Rapporteur on contemporary forms of **slavery**, including its causes and consequences

- Special Rapporteur on the promotion and protection of human rights while **countering terrorism**
- Special Rapporteur on **torture**
- Special Rapporteur on adverse effects of the illicit movement and dumping of **toxic and dangerous products** and wastes on the enjoyment of human rights
- Special Rapporteur on **trafficking** in persons, especially in women and children
- Special Rapporteur on the promotion of **truth, justice, reparation** and guarantees of non-recurrence
- Special Rapporteur on **violence against women**, its causes and consequences
- Independent Expert on the issue of human rights obligations related to access to safe drinking **water and sanitation**
- Working Group on the issue of **discrimination against women** in law and in practice

Civil Society Engagement with the UN System

Human Rights Council

- ✓ Submitting written reports and statements relevant to the Session agenda
- ✓ Making oral statements during the Session
- ✓ Holding side events to engage with governments and non-governmental actors
- ✓ Meeting with Member States' Human Rights Council representatives

Universal Periodic Review

- ✓ Consulting with the state under review in the preparation of its report
- ✓ Submitting information on the state's human rights record, for inclusion in the Summary of Stakeholders' Information
- ✓ Suggesting questions or recommendations that other states should make to the state under review
- ✓ Making oral statements during the presentation of the UPR reports

Special Procedures

- ✓ Submitting written reports and information relevant to the mandate
- ✓ Meeting with the mandate holders during Human Rights Council Sessions, Annual Meeting of Special Procedures or expert seminars
- ✓ Helping organize and participating in a Special Procedure's in-country visit

Treaty Bodies

- ✓ Consulting with the state in the preparation of its report
- ✓ Submitting "shadow reports" during the review of a state's periodic report
- ✓ Suggesting topics that treaty body members should focus on in their review
- ✓ Where available, presenting individual complaints (not authorized against the U.S.)

Civil society can also follow up on implementation of these bodies' recommendations.

Treaty-Based Bodies

The United States has ratified few of the UN human rights treaties or their optional protocols, these being the three conventions dealing with civil and political rights, torture, and racial discrimination, in addition to two protocols dealing with child prostitution and children in armed conflict. The United States' implementation of these instruments is monitored by the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, and the Committee on the Rights of the Child.

Human Rights Committee

The Human Rights Committee (HR Committee) is an independent body established by the International Covenant on Civil and Political Rights (ICCPR) for the monitoring of State Parties' adherence to the civil and political rights enumerated within the treaty.⁹² The ICCPR entered into force in 1976 and has 167 State Parties as of May 2012.⁹³ The ICCPR was one of the first, and remains one of the core international instruments underpinning the international human rights framework. The scope of rights covered by the treaty's 27 Articles is extensive and includes, just to name a few: self determination; equal rights of men and women; freedom from torture; freedom of movement; prohibition of ex post facto laws; freedom of opinion and expression; protection of the family; and the rights of minorities to culture, religion, and language.⁹⁴

The HR Committee comprises 18 human right experts nominated and elected by State Parties to serve four-year terms, with half of the members elected every two years.⁹⁵ All members of the HR Committee are required to be nationals of the State Party nominating them, though no two HR Committee members may be nominees of the same state and all members should "be persons of high moral character and recognized competence in the field of human rights."⁹⁶

The HR Committee meets three times a year, normally in March, July, and November at either the UN Headquarters in New York or the UN Offices in Geneva.⁹⁷ As the March Session is typically held in New York, this can be a key opportunity for advocates based in the United States.

The primary function of the HR Committee is reviewing reports submitted by State Parties on their adherence to the human rights specified in the first 27 Articles of the ICCPR. State Parties are required to submit reports whenever requested by the HR Committee, which in standard practice is

⁹² HR Committee, <http://www2.ohchr.org/english/bodies/hrc/>.

⁹³ ICCPR, <http://www2.ohchr.org/english/law/ccpr.htm>. For the full list of State Parties, see UN Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

⁹⁴ The full text of the ICCPR is available at: <http://www2.ohchr.org/english/law/ccpr.htm>.

⁹⁵ ICCPR, Part IV, Articles 28 and 32.

⁹⁶ ICCPR, Part IV, Articles 28, 29, and 31.

⁹⁷ HR Committee, Sessions, <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>.

roughly every four years.⁹⁸ Although not specifically mentioned in the ICCPR, the HR Committee has also adopted the practice of inviting country-specific written submissions from non-governmental actors and affording non-governmental actors several occasions to provide oral statements at the Sessions in which State Party reports are reviewed.⁹⁹

All State Party reports are reviewed during interactive Sessions between HR Committee members and the State Party being reviewed, and at the conclusion of each session the HR Committee issues observations on concerns and recommendations to the State Party.¹⁰⁰ The HR Committee identifies select concluding observations in need of state improvement and follow-up reporting to the committee during the one-year period following the primary consideration of the state report.¹⁰¹

However, some State Parties are years behind in their reports to the HR Committee and a few have never submitted the initial report required by the ICCPR. As a result, the HR Committee has occasionally decided to review a Member Party's human rights record even in the absence of a State Party report and based solely on non-governmental sources of information. In these extraordinary instances, the HR Committee only adopts preliminary observations that are submitted to the State Party under review but not publically published.¹⁰²

Derived from Article 40 of the ICCPR, another key function undertaken by the HR Committee has been the consideration and publication of General Comments on the interpretation of human rights provisions contained in a specific article of the ICCPR or on a relevant thematic issue, such as State Party reservations and declarations to the ICCPR.¹⁰³ The HR Committee consults with a full spectrum of stakeholders, including State Parties, non-governmental actors and even other treaty bodies and UN agencies, when drafting their General comments.¹⁰⁴

As of May 2012, the HR Committee has adopted 34 General Comments.¹⁰⁵ Although State Parties may still put forward through declarations and understandings their own interpretation of ICCPR obligations, the HR Committee General Comments are widely considered to be definitive and at minimum place a high burden on a State Party to explain any derogations from the interpretation of rights clarified by the General Comments.¹⁰⁶

⁹⁸ ICCPR, Part IV, Article 40.

⁹⁹ HR Committee, Working Methods, <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, fn 97.

¹⁰² *Id.*, fn 99.

¹⁰³ *Id.*

¹⁰⁴ HR Committee, General Comments, <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

¹⁰⁵ *Id.*

¹⁰⁶ There is also a procedure established by Article 41 of the ICCPR for the HRCComm to review inter-state complaints of non-compliance with ICCPR provision, but to date this procedure has never been used by a State Party. See Complaint Procedures, <http://www2.ohchr.org/english/bodies/petitions/index.htm#interstate>. Further details on the HRCComm can be found at: <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

The U.S. was last reviewed under the ICCPR when the HR Committee considered its overdue second and third reports together in July 2006.¹⁰⁷ The U.S. subsequently has also submitted its fourth periodic report.¹⁰⁸ A list of human rights issues for consideration in the review of this fourth report will be developed and adopted by the HR Committee in New York during its Session on 11-28 March 2013.¹⁰⁹ The U.S. has signed neither the ICCPR First Optional Protocol establishing an individual complaints mechanism for the HR Committee, nor the ICCPR Second Optional Protocol for the abolition of the death penalty.¹¹⁰

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) is an independent body of experts established by International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to monitor State Parties' implementation of the treaty.¹¹¹ The convention entered into force in 1969 and there are 175 State Parties to the ICERD as of May 2012.¹¹² Building on the UN Declaration on the Elimination of All Forms of Racial Discrimination of 1963 (General Assembly resolution 1904 (XVIII)), the ICERD specifically directs State Parties to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”¹¹³

The CERD comprises 18 human right experts nominated and elected by State Parties to serve four-year terms with half of the members elected every two years.¹¹⁴ All members of the CERD are required to be nationals of the State Party nominating them, although only one CERD member from a State Party is permitted and all members should be of “high moral standing and acknowledged impartiality”.¹¹⁵ The CERD meets twice a year, usually in February and August, at the UN Offices in Geneva, Switzerland.¹¹⁶

The primary function of the CERD is reviewing reports submitted by State Party on their efforts to eliminate racial discrimination as specified in the first seven Articles of the ICERD. State Parties are required to submit reports every two years and whenever requested by the CERD.¹¹⁷ The CERD has

¹⁰⁷ HR Committee, 87th Session, <http://www2.ohchr.org/english/bodies/hrc/hracs87.htm>.

¹⁰⁸ HR Committee, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.USA.4.doc>.

¹⁰⁹ HR Committee, 107th Session, <http://www2.ohchr.org/english/bodies/hrc/hracs107.htm>.

¹¹⁰ UN Treaty Collection, ICCPR First OP, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en and ICCPR Second OP,

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

¹¹¹ CERD, <http://www2.ohchr.org/english/bodies/cerd/index.htm>.

¹¹² The full text of the ICERD is available at: <http://www2.ohchr.org/english/law/cerd.htm>. For the full list of State Parties see UN Treaty Collection, ICERD, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

¹¹³ ICERD, Part I, Article 2.

¹¹⁴ ICERD, Part I, Article 8.

¹¹⁵ *Id.*

¹¹⁶ CERD, Sessions, <http://www2.ohchr.org/english/bodies/cerd/sessions.htm>.

¹¹⁷ ICERD, Part II, Article 9.

also adopted working procedures that invite written submissions from non-governmental actors and provide for meetings between CERD members and non-governmental actors to be arranged on the sidelines of CERD Sessions.¹¹⁸ All State Party reports are reviewed during interactive Sessions between CERD members and the State Party being reviewed, and at the conclusion of each session the CERD issues observations detailing its concerns and recommendations to the State Party.¹¹⁹

Even more so than with the ICCPR, and perhaps in part due to the more frequent reporting requirements, some State Parties are years behind in their reports to the CERD and numerous have never submitted a report as required by the ICERD. As a result, the CERD now regularly reviews a Member Party's efforts to eliminate racial discrimination in terms of the ICERD, even in the absence of a State Party report and based solely on non-governmental sources of information. In these cases, the CERD issues unpublished recommendations to the State Party under review and includes a chapter on State Party reporting non-compliance in the CERD annual report to the UN General Assembly.¹²⁰

The CERD has also adopted an **early warning procedure** whereby the CERD of its own volition looks into situations involving possible racial discrimination in a Member Party territory. As of May 2012, the CERD has examined 58 cases where urgent or preventative measures required the CERD to decide on recommendations, or issue statements or letters to the State Party concerned.¹²¹

Derived from Article 9 of the ICERD, another key function undertaken by the CERD has been the consideration and publication of General Recommendations (analogous to the HR Committee's General Comments) on the correct interpretation of human right provisions either contained in a specific Article of the ICERD or on a relevant thematic issue.¹²² As of May 2012, the CERD has adopted 34 General Recommendations.¹²³ Although State Parties may still put forward through declarations and understandings their own interpretation of ICERD obligations, the CERD General Recommendations are widely considered to be definitive and at minimum place a high burden on a State Party to explain any derogations from the interpretation of rights clarified by the General Recommendations.¹²⁴

The CERD last reviewed the U.S. under the ICERD when considering the country's fourth and sixth reports together in February 2008.¹²⁵ The U.S. has yet to submit any subsequent reports and the CERD has also not scheduled any review procedures of the U.S. in absence of a State Party report.

¹¹⁸ CERD, Working Methods, <http://www2.ohchr.org/english/bodies/cerd/workingmethods.htm>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ CERD, Early Warning, <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about>.

¹²² CERD, General Recommendations, <http://www2.ohchr.org/english/bodies/cerd/comments.htm>.

¹²³ *Id.*

¹²⁴ There is also a procedure established by Articles 11-13 of the ICERD for the CERD to review inter-state complaints of non-compliance with ICERD provisions, but to date this procedure has never been used by a State Party. See Complaint Procedures, <http://www2.ohchr.org/english/bodies/petitions/index.htm#interstate>.

¹²⁵ CERD, 72nd Session, <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>.

The U.S. has not made a declaration recognizing the individual complaint mechanism in terms of Article 14 of the ICERD and therefore the CERD does not have the authority to consider any individual complaint against the U.S.¹²⁶

Committee against Torture

The Committee against Torture (CAT) is an independent body of experts established by Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) to monitor State Parties' implementation of the treaty.¹²⁷ The Convention against Torture entered into force in 1987 and 150 states are parties as of May 2012.¹²⁸ The Convention against Torture builds on the prohibitions contained in Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR by further elaborating on the definition of torture and laying out standards to which Member Parties should adhere.¹²⁹

The CAT comprises 10 human right experts nominated and elected by State Parties to serve four year terms with half of the members elected every two years.¹³⁰ All members of the CAT are required to be nationals of the State Party nominating them, although only one HR Committee member from a State Party is permitted, and should be of "high moral standing and recognized competence in the field of human rights".¹³¹ The CAT meets twice a year, normally May and November, at the UN Offices in Geneva, Switzerland.¹³²

As with other UN treaty bodies, the primary function of the CAT is to review reports submitted by a State Party on their measures for prohibiting torture as specified in the first 16 Articles of the Convention against Torture. State Parties are required to submit reports every four years.¹³³ The CAT has also adopted working procedures that invite written submissions from non-governmental actors and provide for briefings between CAT members and non-governmental actors prior to CAT Sessions.¹³⁴ All State Party reports are reviewed during interactive Sessions between CAT members and the State Party being reviewed, and at the conclusion of each Session the CAT issues observations on concerns and recommendations to the State Party.¹³⁵

The CAT also struggles with some State Parties falling behind in the submission of the state reports required by the Convention against Torture. In response, the CAT in 2007 adopted a new optional

¹²⁶ UN Treaty Collection, ICERD, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

¹²⁷ CAT, <http://www2.ohchr.org/english/bodies/cat/index.htm>.

¹²⁸ The full text of the Convention against Torture is available at: <http://www2.ohchr.org/english/law/cat.htm>. For the full list of State Parties, see UN Treaty Collection, Convention against Torture http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

¹²⁹ Convention against Torture, Part I, Articles 1-16.

¹³⁰ Convention against Torture, Part II, Article 17.

¹³¹ *Id.*

¹³² CAT, Sessions, <http://www2.ohchr.org/english/bodies/cat/sessions.htm>.

¹³³ Convention against Torture, Part II, Article 19.

¹³⁴ CAT, Participation of NGOs, http://www2.ohchr.org/english/bodies/cat/follow_up_ngo.htm.

¹³⁵ CAT, Working Methods, <http://www2.ohchr.org/english/bodies/cat/workingmethods.htm>.

reporting procedure whereby the CAT may prepare prior to the submission of a Member Party report a list of issues for the Member Party to address. This optional procedure, while not adopted by all Member Parties, has received favorable feedback from many and has resulted in more timely submissions of reports by Member Parties.¹³⁶

Article 20 of the Convention against Torture also mandates the CAT to confidentially inquire into specific and reliable reports of systematic torture within the territories of a Member Party, unless the Member Party has submitted a reservation to the treaty stating otherwise. As of May 2012, the CAT has undertaken seven such confidential inquiries but has exercised its discretion in only publishing three of the final inquiry reports.¹³⁷

Derived from Article 19 of the Convention against Torture, another key function undertaken by the CAT has been the consideration and publication of General Comments on the interpretation of treaty provisions either contained in a specific Article of the Convention against Torture or on a relevant thematic issue.¹³⁸ As of May 2012, the CAT has adopted only two General Comments, with one additional draft General Comment pending.¹³⁹ Although State Parties may still put forward through declarations and understandings their own interpretation of Convention against Torture obligations, the CAT General Comments are widely considered to be definitive and at minimum place a high burden on a State Party to explain any derogations from the interpretation of rights clarified by the General Comments.¹⁴⁰

The CAT last reviewed the U.S. under the Convention against Torture when considering the U.S. second periodic report in May 2006.¹⁴¹ The U.S. has not submitted any subsequent reports and has also yet to respond to the list of issues prepared by the CAT in 2011 under the optional reporting protocol.¹⁴² The U.S. has not made a declaration recognizing the individual complaint mechanism in terms of Article 22 of the Convention against Torture and therefore the CAT does not have the authority to consider any individual complaint against the U.S.¹⁴³ The U.S. has also not signed the

¹³⁶ CAT, New Optional Reporting Procedure, <http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm>.

¹³⁷ CAT, Confidential Inquiries, http://www2.ohchr.org/english/bodies/cat/confidential_art20.htm.

¹³⁸ CAT, General Comments, <http://www2.ohchr.org/english/bodies/cat/comments.htm>.

¹³⁹ *Id.*

¹⁴⁰ There is also a procedure established by Article 21 of the Convention against Torture for the CAT to review inter-state complaints of non-compliance with Convention against Torture provisions, but to date this procedure has never been used by a State Party. See Complaint Procedures, <http://www2.ohchr.org/english/bodies/petitions/index.htm#interstate>. Further details on the CAT can be found at: <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>.

¹⁴¹ CAT, 36th Session, <http://www2.ohchr.org/english/bodies/cat/cats36.htm>.

¹⁴² CAT, Reports due in 2011, <http://www2.ohchr.org/english/bodies/cat/reports2011.htm>.

¹⁴³ UN Treaty Collection, Convention against Torture, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

Optional Protocol establishing the Subcommittee on Prevention of Torture, which is mandated to visit the prisons of State Parties.¹⁴⁴

Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) is an independent body of experts established by the Convention on the Rights of the Child (Child Convention) to monitor State Parties' implementation of the treaty and two Optional Protocols.¹⁴⁵ The Child Convention entered into force in 1990 and currently has 193 State Parties, making it the most widely-ratified convention in history.¹⁴⁶ Across 41 Articles, the Child Convention applies human rights values to the unique situation of children and recognizes the essential role parents hold in the protection of a child's rights.¹⁴⁷

The CRC comprises 18 human right experts nominated and elected by State Parties to serve four-year terms, with half of the members elected every two years.¹⁴⁸ All members of the CRC are required to be nationals of the State Party nominating them, although only one HR Committee member from a State Party is permitted and all members should be of "high moral standing and recognized competence in the field covered by this Convention."¹⁴⁹ The CRC meets three times a year, normally January, May, and September, at the UN Offices in Geneva, Switzerland.¹⁵⁰

As with the other UN treaty bodies, the primary function of the CRC is to review reports submitted by a State Party on their child protection measures as specified in the Child Convention. State Parties are required to submit reports every five years.¹⁵¹ While Article 45 of the Child Convention authorizes the CRC to invite information from any "competent body," the CRC has also adopted working procedures that invite written submissions from non-governmental actors and may invite non-governmental actors to orally present additional information to CRC members at closed-door meetings prior to CRC Sessions.¹⁵² All State Party reports are reviewed during interactive Sessions between CRC members and the State Party being reviewed, and at the conclusion of each session the CRC issues observations on concerns and recommendations to the State Party.¹⁵³

The CRC also encounters some State Parties falling behind in the submission of reports, but most State Parties have maintained compliance. To date the CRC has only issued letters to State Parties as

¹⁴⁴ UN Treaty Collection, CAT OP, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9-b&chapter=4&lang=en.

¹⁴⁵ CRC, <http://www2.ohchr.org/english/bodies/crc/index.htm>.

¹⁴⁶ The full text of the Child Convention is available at: <http://www2.ohchr.org/english/law/crc.htm>. For the full list of State Parties, see UN Treaty Collection, Child Convention,

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en.

¹⁴⁷ Child Convention, Part I, Articles 1-41.

¹⁴⁸ Child Convention, Part II, Article 43.

¹⁴⁹ *Id.*

¹⁵⁰ CRC, Sessions, <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

¹⁵¹ Child Convention, Part II, Article 44.

¹⁵² CRC, Guidelines for Partners, <http://www2.ohchr.org/english/bodies/crc/partners.htm>.

¹⁵³ CRC, Working Methods, <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm>.

reminders of their reporting obligations, but has yet to take the further step of instituting a review procedure in the absence of a State Party report.¹⁵⁴

Derived from Article 45 of the Child Convention, the CRC also undertakes the key function of publishing General Comments on the correct interpretation of treaty provisions either contained in a specific Article of the Child Convention or on a relevant thematic issue.¹⁵⁵ As of May 2012, the CAT has adopted 13 General Comments.¹⁵⁶ Although State Parties may still put forward through declarations and understandings their own interpretation of Child Convention obligations, the CRC General Comments are widely considered to be definitive and at minimum place a high burden on a State Party to explain any derogations from the interpretation of rights clarified by the General Comments.

The U.S. and Somalia are the only two countries in the world that have signed, but not ratified the Child Convention. However, in an unusual and unprecedented twist, the U.S. has ratified both the First Optional Protocol on the Involvement of Children in armed conflict and the Second Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Therefore, the U.S. has not been reviewed by the CRC under the Child Convention, but rather its initial reports were reviewed under the two Optional Protocols in May 2008.¹⁵⁷

The U.S. subsequently submitted its second periodic reports under both Optional Protocols and a pre-session working group meeting will review those reports on June 18-22, 2012 in Geneva, Switzerland.¹⁵⁸ A Third Optional Protocol to the Child Convention establishing an individual communications mechanism has been opened for State Party signature, but has not been signed by the U.S. and furthermore is pending the 10 State Party ratifications needed for its entry into force.¹⁵⁹

Committee on Non-Governmental Organizations

The Committee on Non-Governmental Organizations (NGO Committee) was established in 1946 as a subsidiary body to ECOSOC.¹⁶⁰ The details of the NGO Committee's mandate have been updated several times since its establishment, but its primary function is to hold annual meetings for the consideration of NGO applications for consultative status with the UN and recommend approval or denial of those applications to ECOSOC.¹⁶¹

¹⁵⁴ *Id.*

¹⁵⁵ CRC, General Comments, <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

¹⁵⁶ *Id.*

¹⁵⁷ CRC, 48th Session, <http://www2.ohchr.org/english/bodies/crc/crcs48.htm>.

¹⁵⁸ CRC, 61st-62nd pre-sessional working group, <http://www2.ohchr.org/english/bodies/crc/crcwg6162.htm>.

¹⁵⁹ UN Treaty Collection, Child Convention Third OP, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

¹⁶⁰ NGO Committee, <http://www.un.org/esa/coordination/ngo/committee.htm>.

¹⁶¹ *Id.*

Although the NGO Committee is not specifically human rights focused, it is nonetheless very relevant to human rights advocates because it acts as a key gatekeeper to the UN. Numerous forms of access to the UN are routinely made contingent on an organization's consultative status, but the most visible and critical instances are in the registration for various UN events and obtaining the proper accreditation to enable actual, physical access to UN buildings where most official meetings are convened.

This gatekeeper role has become all the more relevant in the past decade as the NGO Committee has become increasingly politicized; some Member States have actively blocked consultative status applications for both national and international human rights organizations. Further, the NGO Committee's preference for making decisions on recommendations by consensus, along with low political will among Member States to force a straight up-down vote by NGO Committee members, contribute to the lack of efficiency. These factors can mean that an application for ECOSOC consultative status submitted by a human rights organization may become tied up for years in endless discussions and requests for further information by a few, or even a single, Member States without any referral or recommendation to ECOSOC for either approval or denial.

However, it is important to note that the final decision on granting consultative status remains with the full session of ECOSOC Member States. In recent years there have been a few exceptional cases where the full membership of ECOSOC has granted an organization consultative status, disregarding the NGO Committee's recommendation to the contrary. These exceptions, although uncommon, nonetheless indicate an important role for non-government actors in building long-term pressure on Member States of the NGO Committee and ECOSOC to counteract the delays in considering and deciding on applications for non-governmental consultative status.

Committee on Non-Governmental Organizations

- **Subsidiary to the UN Economic and Social Council (ECOSOC)**
- **Key gatekeeper to NGO access at the United Nations**
- **Reviews NGO applications for consultative status with the UN and provides recommendation to ECOSOC that the application be granted or denied**

The Inter-American System: Structure and Components

The Inter-American System for the protection of human rights is a regional human rights system created under the auspices of the Organization of American States (OAS), an intergovernmental body. The Inter-American System is made up of two entities: the Inter-American Commission on Human Rights (IACHR, or Commission) and the Inter-American Court of Human Rights (IACtHR, or Court). Each has different functions, although both decide individual complaints against Member States, hold public hearings, and can recommend immediate action by states when an individual or the subject matter of a pending complaint is at risk of irreparable harm.

The United States of America is a member of the OAS. However, the U.S. is not a party to the Inter-American Court of Human Rights, meaning that only the Commission has the authority to monitor human rights conditions and receive complaints concerning alleged human rights violations by local, state or federal authorities in the U.S.

Civil Society Engagement with the Inter-American System

- **Requesting thematic hearings before the Commission**
- **Submitting petitions alleging specific human rights violations**
- **Informing thematic and country rapporteurs on issues of concern through meetings, written submissions, and in-country visits**

The Organization of American States

The Organization of American States was created in 1948 with the signing of the Charter of the Organization of American States, although its roots date back to 1889.¹⁶² The Member States' purpose in creating a new international body in which governments of the Americas could collaborate and communicate was “to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.”¹⁶³ The OAS today focuses on four key themes, or pillars: democracy, human rights, security, and development.

The principal decision-making body of the OAS is the General Assembly, which holds regular meetings annually, and in which all Member States have a vote. Other OAS organs include the Inter-American Juridical Committee and specialized organizations, such as the Pan American Health Organization, Inter-American Children's Institute, and the Inter-American Commission on Women, which work with civil society and governments to monitor and promote these issues.

All thirty-five independent states of the Americas belong to the OAS. They are: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba,

¹⁶² Organization of American States, Our History, http://www.oas.org/en/about/our_history.asp.

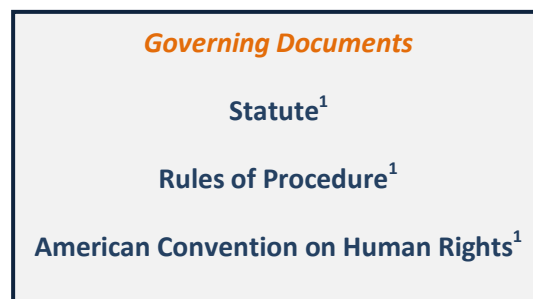
¹⁶³ Charter of the Organization of American States, art. 1.

¹⁶⁴ Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, ¹⁶⁵ Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela. The OAS is headquartered in Washington, D.C. and has offices in most of the Member States.¹⁶⁶

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is one of the main, independent organs of the OAS, and is headquartered in Washington, D.C. It monitors OAS Member States' compliance with the American Declaration on the Rights and Duties of Man (American Declaration) and the American Convention on Human Rights (American Convention), in addition to other specialized regional human rights treaties through on-site observation, reporting, dialogue with states and civil society, and adjudication of individual complaints.

In 1959, the OAS created the Inter-American Commission on Human Rights through a resolution adopted by the Fifth Meeting of Consultation of Ministers of Foreign Affairs; the Commission came into being when its Statute was approved by the OAS Permanent Council in 1960.¹⁶⁷ That same year, the IACHR held its first session.



The IACHR is responsible for promoting “the observance and protection of human rights” in all OAS Member States, and serves as an advisory body of the OAS on human rights issues.¹⁶⁸ The Commission interprets its mandate progressively and in line with the *pro homine* principle, which requires that legal obligations be read in the manner most beneficial to human beings.¹⁶⁹

The Commission’s work is focused in three main areas: the individual complaints system, monitoring human rights conditions, and identifying and attending to priority thematic areas, such as the rights of indigenous peoples. The Commissioners, either individually or in groups, carry out on-site visits to

¹⁶⁴ Cuba was excluded from participation in the OAS from 1962 to 2009. See Resolution AG/RES. 2438 (XXXIX-O/09). It has not resumed an active role in the organization.

¹⁶⁵ Honduras was temporarily suspended from July 2009 to June 2011. Resolution AG/RES. 2 (XXXVII-E/09). These suspensions did not impact the States’ international legal obligations or the competence of the Inter-American Commission on Human Rights to monitor human rights conditions in their territories.

¹⁶⁶ Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, 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, Trinidad and Tobago, Uruguay, and Venezuela.

¹⁶⁷ OAS, About the OAS, Our Structure, Inter-American Commission on Human Rights, http://www.oas.org/en/about/commission_human_rights.asp.

¹⁶⁸ OAS Charter, art. 106.

¹⁶⁹ IACHR, What is the IACHR?, <http://www.oas.org/en/iachr/mandate/what.asp>.

observe human rights conditions in the OAS Member States or to investigate particular issues of concern; these visits are often followed by a published report on the country or topic.

Beginning in 1965, with an amendment to its Statute, the IACHR gained the authority to examine individual complaints of human rights violations by OAS Member States.¹⁷⁰ The Commission evaluates these complaints, called “petitions”, to determine if a Member State has violated an individual’s or group’s human rights and to identify how the state should compensate the victim and avoid similar injustices in the future. As part of this process, the Commission holds public hearings to hear evidence and arguments, and issues decisions on the admissibility and merits of petitions. In some circumstances, the Commission may refer cases to the Inter-American Court of Human Rights.

The Inter-American Commission is composed of seven human rights experts who serve in their individual capacities for four-year terms, which may be renewed once. The Commissioners are nominated by states and elected by the OAS General Assembly. They generally live outside Washington, D.C., but meet at least three times per year to hold hearings and working meetings and to make decisions on petitions and cases. Public hearings on cases and issues of concern are held during the May and October sessions. Throughout the year, the staff of the Executive Secretariat manages correspondence with petitioners and Member States and prepares cases and petitions for decision by the Commissioners.

The Inter-American Institute of Human Rights

- Established in 1980 in Costa Rica
- Research and educational institution
- Supports the Inter-American System

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is the judicial organ of the Inter-American System for the protection of human rights. The Court sits in San Jose, Costa Rica and is an autonomous body of the Organization of American States.

The Inter-American Court was created by the American Convention on Human Rights, which was adopted in 1969 but only entered into force in 1978. Twenty-four states are parties to the American Convention.¹⁷¹ In 1979, the States Parties elected the first judges to the Court and in 1980, the OAS General Assembly approved its Statute.

The Court interprets and applies the American Convention on Human Rights, but may issue judgments only against those Member States that have accepted its jurisdiction and only when the

¹⁷⁰ See David J. Padilla, *The Inter-American Commission on Human Rights of the Organization of American States: A Case Study*, AM. U. INT’L L. REV.9, no. 1 (1993): 95-115, 95, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1455&context=auilr>.

¹⁷¹ Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Uruguay and Venezuela.

case is referred to the Court by the Inter-American Commission or a state and if the state has failed to comply with the Commission's decision. Although twenty-four states are parties to the American Convention, only twenty-one Member States have accepted the Court's contentious jurisdiction. The Court can also issue advisory opinions, in which it provides a detailed interpretation of a specific human rights obligation when so requested by a state or an organ of the OAS.

The Court is composed of seven jurists, elected by the OAS General Assembly in their individual capacities, to six-year terms which may be renewed once. Like the Inter-American Commission, the Court is not in session year-round. Rather, the judges convene for hearings and deliberations approximately five times per year. At least once per year, the Court meets outside Costa Rica in another OAS Member State, as a way of increasing access to and familiarity with its work.

Limitations on the System's Mandate

The Inter-American System, like other international human rights bodies, is meant to complement national judicial systems. Petitioners must generally exhaust domestic remedies by trying to resolve the issue using regular legal proceedings in their own country first. Provided that due process and fair trial rights are respected, and that the laws being applied conform to human rights standards, the Inter-American bodies will not second-guess local judges' evaluation of the facts or law. The Commission and Court cannot decide individual guilt or innocence.

Rights Protected by the Inter-American Instruments

American Declaration of the Rights and Duties of Man

- 35 Member States, including the United States
- world's 1st general international human rights instrument
- covers civil, political, economic, social and cultural rights
- includes individual duties
- applied by the Inter-American System when States have not ratified the American Convention

All countries in the Americas have agreed to respect the human rights identified in the American Declaration of the Rights and Duties of Man. The Inter-American Commission and Court consider the Declaration to be binding upon Member States because the principles it contains have are viewed by the OAS and its Member

States as commitments and obligations, even though it was adopted in 1948 as a declaration of principles, rather than as a legal agreement, or treaty.¹⁷²

The American Declaration and Convention both address the rights to: life, liberty, personal integrity, equality, freedom of religion, freedom of thought and expression, freedom of association and

¹⁷² 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 of July 14, 1989. Series A No. 10; para. 24.

assembly, privacy, family life, movement, fair trial, property, judicial protection, honor and dignity, a name, protection of children, nationality, participation in government, and property.

The American Declaration includes additional rights related to work, social security, leisure time, education, and the benefits of culture. The meaning of the rights protected by the Declaration and Convention is continually evolving.

Twenty-four countries are party to the American Convention on Human Rights, which is the principal source of those states' human rights obligations within the Inter-American System.¹⁷³

American Convention on Human Rights

- 24 Member States
- principally covers civil and political rights
- Article 26 enshrines a commitment to progressive realization of economic, social and cultural rights
- contains provisions on the composition, powers, and procedures of the Inter-American Commission and Court

OAS Member States have also adopted a number of specialized treaties dealing with specific prohibited practices (such as torture) or the rights of particular groups (such as persons with disabilities). These specialized conventions, protocols, and statements of principles are:

- Inter-American Convention to Prevent and Punish **Torture**
- Additional Protocol to the American Convention on Human Rights in the Area of **Economic, Social and Cultural Rights** (“Protocol of San Salvador”)
- Protocol to the American Convention on Human Rights to Abolish the **Death Penalty**
- Inter-American Convention on the Prevention, Punishment and Eradication of **Violence against Women** (“Convention of Belem do Pará”)
- Inter-American Convention on **Forced Disappearance** of Persons
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with **Disabilities**
- Declaration of Principles on **Freedom of Expression**
- Principles and Best Practices on the Protection of **Persons Deprived of Liberty** in the Americas

As of May 2012, the United States has not ratified any of these additional treaties.

¹⁷³ Trinidad and Tobago withdrew from the American Convention, through a denunciation effectuated in 1998. See [http://www.oas.org/juridico/english/sigs/b-32.html#Trinidad and Tobago](http://www.oas.org/juridico/english/sigs/b-32.html#Trinidad%20and%20Tobago)

Individual Petition System

The petition system is one of the three pillars of the Inter-American Commission's work, and is designed to allow individuals to receive a fair and neutral assessment of the state's compliance with its human rights obligations in specific instances. The Commission plays a quasi-judicial role, receiving evidence and arguments from both the alleged victim and the Member State before reaching a determination as to whether the state violated the individual's rights and, if so, what the state must do to repair the damage and prevent similar violations in the future.

In addition to petitions involving extrajudicial executions and criminal due process violations, the Commission has recently evaluated petitions involving the rights of sexual minorities, indigenous communities and migrants, environmental justice, and workplace safety.

Key Terms

- **Petitioner:** the individual, group or organization presenting the petition. The petitioner may be represented by an attorney or organization, and is not necessarily the same person as the victim.
- **Admissibility:** whether the petition falls within the Commission's mandate and meets basic requirements
- **Merits:** whether the State is responsible for a specific violation of its Inter-American human rights obligations
- **Friendly Settlement:** an agreement reached between the State and petitioner/victim as to the State's responsibility and any reparations to be made, thereby foregoing a decision by the Commission on the merits.
- **Exhaustion of domestic remedies:** lodging the complaint with domestic courts or agencies and attempting to resolve the problem or obtain redress through appropriate administrative and legal proceedings, before turning to the Inter-American System. Exhaustion generally requires appealing to the highest court with jurisdiction. Domestic remedies must be exhausted unless they are unavailable, insufficient or ineffective.
- **Six-month rule:** the petition must be submitted to the Inter-American Commission within six months of notification of a final decision in the legal proceeding that exhausted the victim's domestic remedies. If exhaustion is not required, the petition must be submitted within a reasonable time.
- **Non-duplication:** the same complaint cannot be submitted to multiple international human rights mechanisms. While the understanding of what kinds of mechanisms are duplicative of one another varies between systems, the Inter-American Commission would likely reject a complaint that has also been submitted to a United Nations treaty body complaint procedure, for example.

Overview of the Minimum Requirements

In order to be considered, a petition must contain the following information and statements:

- the identity and contact information of the petitioner;
- whether the petitioner's identity should be withheld from the Member State;
- the date, place and details of the alleged violation of a right protected by an Inter-American instrument;
- if possible, the victim's name and the name of any public authority with knowledge of the situation;
- the Member State responsible for the alleged violation, due to its action, acquiescence or omission;
- the steps taken to exhaust domestic remedies, or an indication that exhaustion was impossible;
- that the petition has been submitted within 6 months of exhaustion of domestic remedies, or otherwise within a reasonable time;
- whether the petition has been submitted to another international settlement proceeding.¹⁷⁴

If the petition does not meet these minimum requirements, the Commission will not examine its admissibility or merits.

In order for the petition to survive the admissibility phase and proceed to the merits phase, the petitioner must demonstrate that:

- the facts alleged, if true, constitute a possible violation of the American Declaration or Convention;
- the victim did in fact exhaust domestic remedies, or that such remedies were unavailable, ineffective, or insufficient; and,
- the petition complies with the six-month time limit, or reasonable time limit.¹⁷⁵

Petitioners should provide a full explanation to show these requirements have been met and keep the Inter-American Commission informed, in writing, of significant developments after submitting the petition. Supplemental or updated information may be submitted at any time, but it is important that the initial petition contain information sufficient to demonstrate that the minimum requirements have been satisfied. Always keep the Executive Secretariat informed of changes in the petitioner's contact information or representation.

¹⁷⁴ See Rules of Procedures of the Inter-American Commission on Human Rights, art. 28.

¹⁷⁵ See *id.*, arts. 27, 28, 31, 32, 34.

Preparing a Petition

Petitions and requests may use the standard form and can be submitted online or by mail, email or fax. The Commission produces a petition form in print and on its website, which may be used to request precautionary measures or submit a petition. Additional information to support the petition may be submitted via email, fax or mail.

A Note on Language

Whenever possible, petitions should be written in an official language of the Member State allegedly responsible for the violation.

The person who submits the complaint is called the “petitioner”. While a victim may submit a petition on his or her own behalf, this is not necessary. The petitioner may be an individual or group of people or a nongovernmental organization recognized by any OAS Member State. If the petitioner and victim are not the same person, the petitioner can request that the Commission keep his or her identity confidential.

The Commission must always have the petitioner’s current contact information.

BASIC INFORMATION

The petition must provide specific information about the alleged violation, the petitioner, and the victim.

- ✓ **Who** is the victim?
- ✓ **What** harm occurred that violated a protected right?
- ✓ **Where** did the violation take place?
- ✓ **How** is the harm attributable to the state?
- ✓ **When** did the violation occur?

Who: Identify the victim(s), who may include family members if they also suffered harm. Individually name the victims or identify the specific group or community to which they belong.

What: Describe the alleged harm in detail. How did a situation, occurrence or series of events keep an individual or group from enjoying certain human rights?

If the state has not ratified the American Convention, the petition must allege violations of rights protected by the American Declaration. Indicate which article or articles of the American Declaration, American Convention or other regional instrument the state has allegedly violated.

Where: Identify the country where the violation occurred and the Member State responsible for its occurrence. These are usually the same country, but may be different or multiple countries. Generally, the complaint is made against the state where the victim suffered harm, but a petitioner may allege that more than one state is responsible for related violations or that one state is responsible for harm that occurred in another state’s territory.

How: Explain why the government is responsible for the harm, through the actions, acquiescence or omissions of the state itself or its representatives. A state can be held responsible for the effects of its laws and for the conduct of its agents, including their actions or omissions, when acting in their official capacity. Whenever possible, identify the specific officers, agencies, law or policies that caused or allowed the violation to occur.

When: Identify the date or timeframe of the alleged violation, which must be *after* the state joined the OAS or became a party to the American Convention. The timing of an alleged violation is related to the petitioner's ability to meet the procedural requirements of exhaustion of domestic remedies and timeliness.

EXHAUSTION OF DOMESTIC REMEDIES

Generally, the victim must exhaust domestic remedies, which means initiating and carrying out the civil or criminal proceedings that would enable a domestic court to directly repair the harm, hold the state accountable, or require the state to provide reparation. Victims are generally required to appeal to the highest court of appeals that has jurisdiction if a successful outcome is not reached in the lower courts.

Exhaustion is not required when domestic remedies are unavailable, ineffective or insufficient. This may mean, for example, that domestic law provides no remedy capable of leading to the relief sought, that the domestic judicial system has been unreasonably slow in resolving the matter, or that the domestic courts have consistently refused to recognize the right asserted by the petitioner.

SIX-MONTH RULE

Submit the petition within six months of when the victim was notified of the final judicial decision that exhausted his or her domestic remedies. If domestic remedies are unavailable, ineffective or insufficient, the petition must be submitted within a "reasonable time." The length of time considered "reasonable" depends on the particular circumstances and may be many years, depending on the conduct of the alleged victim and the state and the surrounding context. But, a petitioner should not wait beyond the point when it becomes apparent that the state likely will not remedy the violation on its own.

The Decision Process

Petitions are processed in three sequential stages: initial evaluation, admissibility, and merits. A petition must meet the requirements of each stage in order to move on to the next. In certain circumstances after its own decision on the merits, the Commission may refer a case to the Court, which then issues a judgment on admissibility, merits and reparations. All evidence, arguments and other communications intended to be considered by the Commission must be submitted in writing, or at a hearing held by the Commission.

Stage	Parties Involved	Decision Maker	Outcome
Initial Evaluation	Petitioner	Secretariat	Opened for Processing or Closed
Admissibility	Petitioner & State	Commission	Decision on Admissibility
Merits	Petitioner & State	Commission	Decision & Recommendations
Referral to Court	Petitioner & Victim	Commission	Referral or Published Decision
Court	Petitioner & State	Court	Judgment & Reparations

INITIAL EVALUATION

Within a few weeks of receiving a petition, the Registry section of the Inter-American Commission’s Executive Secretariat assigns the petition a number and sends written acknowledgment of its receipt to the petitioner. The Registry staff will then evaluate the petition’s compliance with the requirements set out in Article 28 of the Commission’s Rules of Procedure. Further, the evaluation considers whether the petitioner has alleged facts that – if true – constitute a possible violation of the state’s human rights obligations. For this reason, in particular, although the petition form only asks for minimal information, it is important to provide details on each of these requirements.

Petitions are evaluated in order of receipt, unless there are particularly urgent reasons to evaluate a petition sooner– such as very young or old age or terminal illness of the victim or a widespread and very serious situation. In this stage, the Commission relies only on information submitted by the petitioner. The Member State is not involved.

At the end of its initial evaluation, the Registry decides to either: open the petition for processing or close the petition with no further analysis. If the information provided is inadequate or insufficient, the Executive Secretariat may request additional information from the petitioner.

ADMISSIBILITY

If the petition is opened for processing, the file is transferred to the section of the Executive Secretariat with responsibility for that country, and the petition and evidence are sent to the Member State for its response, or observations, which it must submit within two months. In the admissibility stage, the Inter-American Commission is authorized to help negotiate a friendly settlement between the parties.

The Commissioners consider the arguments and evidence of the state and petitioner, and may hold a hearing or working meeting to gather additional information from the parties. Based on both parties’ arguments, the Commission decides if it has jurisdiction and whether the petition meets the exhaustion and timeliness requirements. If there is an indication that the matter has been submitted to another international settlement proceeding, the Commission will evaluate whether that proceeding is duplicative of its own process. Finally, the Commissioners determine whether the

petitioner has alleged facts that constitute a possible violation of the state's human rights obligations.

The Commission publishes its decision on admissibility and sends it to the state and petitioner. If the petition is admissible, it is given a case number and enters the merits phase. Sometimes, the Commission will decide the merits at the same time as admissibility and issue only one report—such as when the victim alleges a violation of due process that also prevented him or her from exhausting domestic remedies.

The admissibility phase can generally last two or three years, depending on the number of times the petitioner and state submit written arguments and evidence, and on the caseload of the relevant section of the Executive Secretariat.

MERITS

The petitioner and then the state each have three months to submit initial arguments on the merits, and may submit additional information in writing or in working meetings or a public hearing before the Commission. The Commissioners decide whether the state is responsible for a violation of the victim's rights.

If the Inter-American Commission finds a violation, it prepares a preliminary report and list of recommendations for how the state can repair the violation and prevent its reoccurrence. The state has three months to demonstrate that it will comply with the recommendations; otherwise, the Commission either publishes the merits report or refers the case to the Inter-American Court. The United States has not ratified the American Convention, nor has it accepted the Inter-American Court's jurisdiction; therefore, the Commission cannot submit cases against the United States to the Inter-American Court.

COMPLIANCE

After a decision on the merits by the Inter-American Commission or a judgment by the Inter-American Court, the parties report on compliance with the recommendations.¹⁷⁶ Petitioners should maintain a relationship with the victim and with local organizations that can provide information and help advocate for state compliance.

Seeking Financial or Legal Support

Once the petition is admitted or the Commission indicates it will consider the admissibility jointly with the merits, the petitioner can request financial assistance from the Commission for the costs of pursuing the case, including the expense of gathering and submitting evidence and attending the Commission's hearings in the case. In cases before the Court, if the victims are not represented by an attorney, the Court may appoint an "Inter-American defender" or provide money for legal representation through the Victims' Legal Assistance Fund.

¹⁷⁶ See Rules of Procedure of the Inter-American Commission on Human Rights, art. 48; Rules of Procedure of the Inter-American Court of Human Rights, art. 69.

Caseloads and Processing Times

The Commission receives approximately 1,500 petitions each year, but has not had the capacity to process as many complaints as it receives for at least the past decade, leading to the creation of a significant backlog.¹⁷⁷ The Registry section of the Commission’s Executive Secretariat is working to eliminate the backlog and reduce processing times for the completion of the initial evaluation. During the admissibility and merits phases, the Commission’s decisions are often delayed by the parties’ requests for deadline extensions.

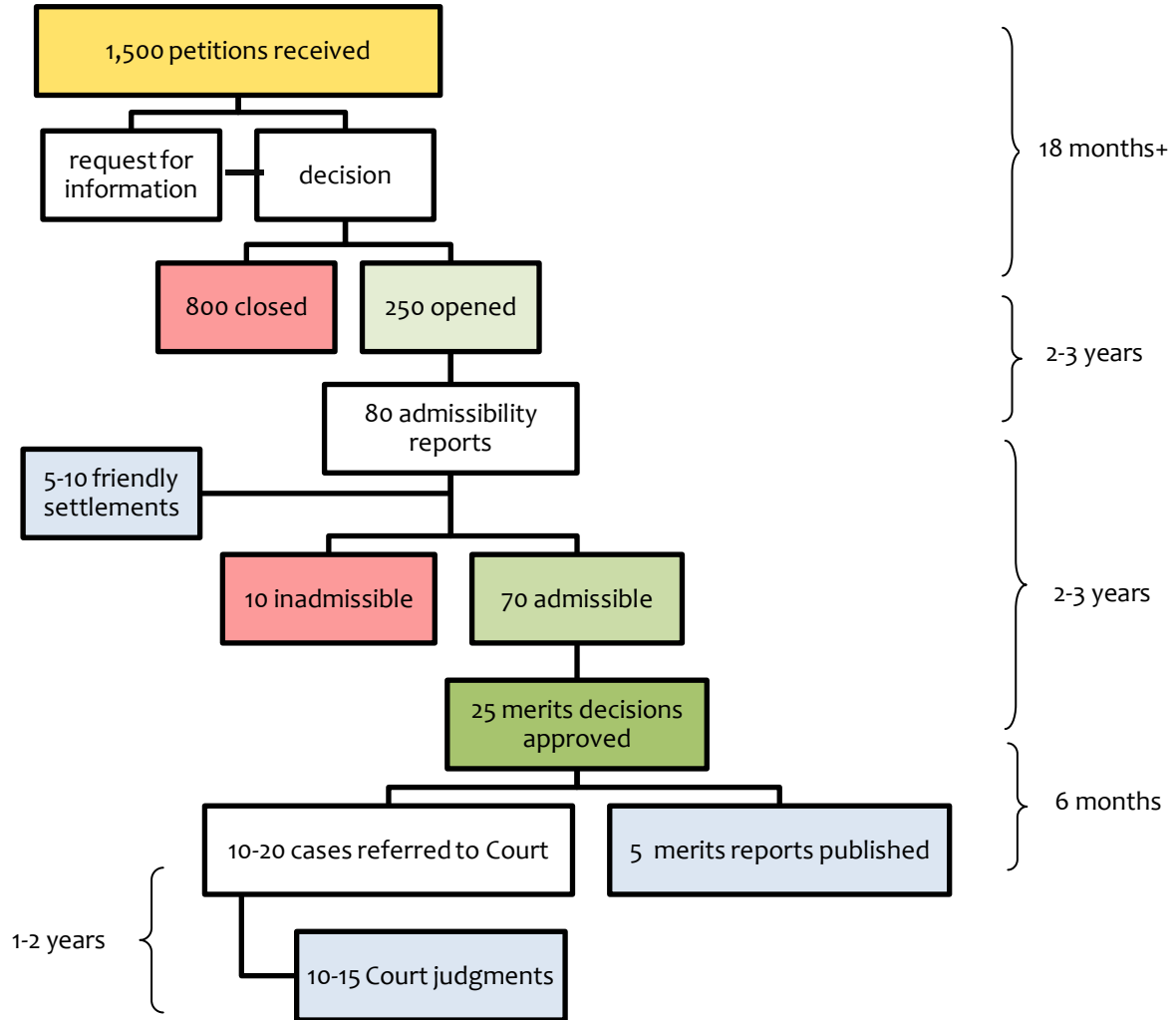
Year	Petitions Received	Opened	Admissibility / Inadmissibility	Merits Approved	Friendly Settlement	Hearings	Submitted to Court
2011	1,658	262	67/11	25	8	91	23
2010	1,598	275	73/10	25	11	88	16
2009	1,431	122	62/15	20	4	89	12
2008	1,323	118	49/10	17	4	93	9
2007	1,456	126	51/14	13	5	105	14
2006	1,325	147	56/14	29	10	120	14
2005	1,330	150	53/16	19	8	98	10
2004	1,319	160	45/9	18	3	103	12
2003	1,050	115	37/10	30	11	103	15
2002	979	83	18/6	12	2	116	7
2001	885	96	36/22	17	8	102	5
2000	658	110	35/21	27	13	92	3
Total	15,012	1764	582 / 158	252	87	1,200	140

Of the approximately 1,500 petitions received each year, many are rejected during the initial evaluation and only a fraction will eventually be the subject of a merits report or Court judgment.

¹⁷⁷ Inter-American Commission on Human Rights, Annual Report of the Inter-American Commission on Human Rights 2011, Ch. III: The Petition and Case System, p. 59 (2012), available at <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>. The 2011 annual report states that 6,134 petitions were pending initial evaluation at the end of that year, in addition to a total of 1,645 petitions and cases pending in the admissibility and merits phases.

THE INTER-AMERICAN SYSTEM

This chart illustrates the petition processing system, with approximate processing times and numbers of the petitions or cases that advance through each phase every year.



Emergency Protection: Provisional and Precautionary Measures

Both the Court and Commission can ask the government to take action to protect an individual or community in immediate danger of serious and irreversible harm. These orders are called “provisional measures” when granted by the Commission, or “precautionary measures” when ordered by the Court. Precautionary measures can be requested to protect any individual, group or community under the jurisdiction of an OAS Member State, whether or not the person is named as a victim in any pending petition. The Commission can also act on its own initiative without a request from the would-be beneficiary.¹⁷⁸

Requests for precautionary measures may use the standard form and can be submitted online or by mail, email or fax. A request for precautionary measures must explain the risks faced, indicate whether the state is informed of those risks, and explain whether the government has undertaken any protective action or investigation. If the situation was not reported to domestic authorities, the request must explain why this was the case.

When the applicant for precautionary measures is different from the beneficiary, the request must include the express consent of the beneficiary unless this omission is explained. Requests for precautionary measures are processed differently from petitions.

The timing of the Commission’s decision on a request for precautionary measures will depend on the circumstances and whether the Commission must request additional information from the applicant or from the state. In particularly urgent situations – such as imposition of the death penalty – the Commission may respond within one week. Otherwise, a decision more typically takes several months, depending on whether the initial request provides sufficient information and whether the state is also given an opportunity to present its views.

In cases of extreme seriousness and urgency, the Inter-American Court can order provisional measures. Provisional measures may be requested by the Commission when a state will not comply with the Commission’s order of precautionary measures or by the parties in relation to a case pending before the Court.¹⁷⁹ The state will be required to update the Court or Commission on the steps taken to implement precautionary or provisional measures. The applicant or beneficiary should also provide relevant updates, and may request an amplification of the measures when necessary.

¹⁷⁸ Rules of Procedure of the Inter-American Commission on Human Rights, art. 25.

¹⁷⁹ Rules of Procedure of the Inter-American Court of Human Rights, arts. 27, 76.

Rapporteurships and Other Thematic Monitoring

In keeping with the Inter-American Commission's mandate to monitor and promote human rights protection throughout the Americas, it engages in a variety of fact-finding and reporting activities and engages with civil society in the OAS Member States. Each Commissioner is assigned to be the rapporteur for a specific list of countries and one thematic priority area. These thematic rapporteurships are:

- Rapporteur on the Rights of Indigenous Peoples
- Rapporteur on the Rights of Migrant Workers and their Families
- 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

Additionally, one independent expert who is not a Commissioner serves as the Special Rapporteur for Freedom of Expression.

The rapporteurs identify issues of concern and oversee the production of thematic or country-specific reports. They may also undertake on-site visits, hold meetings with civil society, and participate in seminars and other activities. Within the Inter-American Commission, the rapporteurs provide guidance and input on cases that raise issues within their mandate.

The Commission will only conduct an on-site visit if it is invited by the state. Due to limited resources, generally not all seven Commissioners will participate. Such visits, however, include engagement with civil society representatives and are an excellent opportunity to highlight issues of concern.

In addition, the Inter-American Commission dedicates a significant percentage of its public hearings to thematic issues not tied to a specific case. These hearings are held in response to requests made in advance by civil society and states. These thematic hearings may focus on a particular country or sub-region or on the Americas as a whole, and are an opportunity to raise awareness among the public and the Commissioners of structural or systemic human rights violations or the multi-dimensional threats faced by certain communities.

Sources of International Human Rights Obligations

As in other areas of the law, research and analysis of international human rights law involves identifying the primary and secondary sources of law and interpretation relevant to a specific issue.

Primary Sources

Primary sources of public international law include: treaties and other legal instruments in force with the relevant state, customary law, and general principles of law.¹⁸⁰

Primary Sources of Law

- Treaties and other legal instruments
- Customary law
- General principles

Protection of a specific right or freedom may become customary law when an established practice develops among states, based on their belief that they are obligated to respect that right.¹⁸¹ The United Nations Human Rights Committee has identified a number of human rights as the subjects of customary international obligations.¹⁸² The existence of a customary norm can be shown through treaties, domestic and supranational court decisions, national legislation, and the practices of international organizations, among other sources.¹⁸³

In addition, some human rights violations – including torture, slavery and mass violations that rise to the level of genocide – are prohibited by *jus cogens*, non-derogable peremptory norms binding on all states. Thus, even where the relevant state is not party to a human rights treaty, advocates can draw on a range of sources in order to demonstrate that a particular practice is nonetheless prohibited by customary law or *jus cogens*.

General principles of law are the theories and principles applied by most major legal systems, particularly with regard to judicial process and the rights of parties to litigation.

Secondary Sources

Judicial decisions and analysis by reputable experts are subsidiary sources of interpretation that courts may use to identify states' human rights obligations. These secondary sources include non-judicial statements, such as those of UN special rapporteurs,

Secondary Sources of Interpretation

- Judicial decisions
- Expert analysis

¹⁸⁰ See, e.g., Statute of the International Court of Justice, art. 38(1).

¹⁸¹ See, e.g., Public International Law in a Nutshell, pp. 22-23.

¹⁸² United Nations Human Rights Committee, General Comment 24 (1994).

¹⁸³ International Law Commission, Report of the International Law Commission to the General Assembly (Part II): Ways and Means of Making the Evidence of Customary International Law More Readily Available, [1950] 2 U.B. Int'l L. Comm'n 367, ILC Doc. A/1316, available at

http://untreaty.un.org/ilc/texts/instruments/english/reports/1_4_1950.pdf.

the Inter-American Commission on Human Rights, and the UN treaty bodies' general comments and concluding observations. In addition, domestic courts' judgments and the statements of respected non-governmental organizations may be used as persuasive authority.

Comparative analysis and reference to other system's interpretations are more common in the field of international human rights law than in other fields, partly because of the way in which public international law is made (including through state acceptance and custom). For example, the Inter-American Court of Human Rights considers the judgments of the European Court of Human Rights, in addition to the practices of states within the Americas.¹⁸⁴ This cross-fertilization in the jurisprudence of regional and international human rights tribunals appears increasingly common, and benefits litigants and petitioners by broadening the body of caselaw on which they can draw.

Outside the courtroom, advocates enjoy greater latitude with respect to what decisions or other materials can be used as evidence of a state's obligation to respect a specific human right. Examples of domestic or international laws that are more protective than those in force in the relevant country can provide powerful counterpoints and provide impetus for change. And, non-legal arguments based on culture or morals may help build public support. However, an advocacy position may be more persuasive and better suited to monitoring and enforcement when it is founded on identified principles of international human rights law.

Researching International Law

Researching international human rights law can be complicated and time-consuming, mostly because the kinds of comprehensive, searchable databases lawyers use to identify other, domestic norms and jurisprudence do not exist in this area of the law. However, a number of free, publicly-accessible online databases allow users to search human rights bodies' judgments, reports and recommendations. The resources listed below include databases containing regional and international treaties, the decisions of many or all supranational human rights bodies, the decisions of individual bodies, and country-specific information. The relevant treaties and decisions can also be found on each regional or international body's website.

TREATIES AND LEGISLATION

The [United Nations Treaty Collection](#)¹⁸⁵ contains the texts of all major multilateral treaties entered into by UN Member States and deposited with the Secretary General of the United Nations, as well as the relevant ratifications and declarations. The database is [searchable](#)¹⁸⁶ by treaty title, popular name, keyword, Member State, and action (such as signature, entry into force or withdrawal of declaration).

¹⁸⁴ Bayarri v. Argentina, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 187 (Oct. 30, 2008).

¹⁸⁵ <http://treaties.un.org/Pages/Home.aspx?lang=en>

¹⁸⁶ <http://treaties.un.org/Pages/UNTSONline.aspx?id=1>

The UN High Commissioner for Human Rights provides a [list of the all major international human rights treaties](#), with links.¹⁸⁷

The International Committee of the Red Cross maintains a searchable database of treaties on [international humanitarian law](#).¹⁸⁸

In addition, the instruments relevant to each **regional human rights system** can be found on the websites of the following bodies:

- [Inter-American Commission on Human Rights](#)¹⁸⁹ and the [Inter-American Court of Human Rights](#)¹⁹⁰
- [European Court of Human Rights](#)¹⁹¹ and [European Committee of Social Rights](#)¹⁹²
- [Organization for Security and Co-operation in Europe](#)¹⁹³
- [African Commission on Human and Peoples' Rights](#)¹⁹⁴ and the [African Court on Human and Peoples' Rights](#)¹⁹⁵
- see also, the [Arab Charter on Human Rights](#)¹⁹⁶

CASELAW DATABASES

- [World Courts](#)¹⁹⁷ is a searchable database of international judicial and quasi-judicial bodies' decisions in individual cases, including the regional human rights commissions and courts, the United Nations treaty bodies, and international (and internationalized) criminal tribunals.
- The [Netherlands Institute of Human Rights](#)¹⁹⁸ (SIM) manages a searchable database of decisions of the **UN treaty bodies, European Court of Human Rights, ICTR and ICTY**, as well as of UN treaty body comments and general comments.

¹⁸⁷ <http://www2.ohchr.org/english/law/index.htm>

¹⁸⁸ <http://www.icrc.org/ihl>

¹⁸⁹ <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm>

¹⁹⁰ <http://www.corteidh.or.cr/sistemas.cfm?id=2>

¹⁹¹ <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>

¹⁹² http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp

¹⁹³ <http://www.osce.org/library/>

¹⁹⁴ <http://www.achpr.org/instruments/>

¹⁹⁵ <http://www.african-court.org/en/index.php/documents-legal-instruments>

¹⁹⁶ <http://www1.umn.edu/humanrts/instree/loas2005.html>

¹⁹⁷ <http://worldcourts.com/>

¹⁹⁸ <http://sim.law.uu.nl/SIM/Dochome.nsf>

- The **University of Minnesota's Human Rights Library**¹⁹⁹ houses a wealth of domestic and international materials on human rights, including legislation, secondary sources, and country condition research tools. **See the principal search page.**²⁰⁰ It is perhaps most useful for searching the **decisions of the regional human rights tribunals**²⁰¹ and **international criminal tribunals**, but also contains decisions from the **UN treaty bodies**. Users can search within the UM Human Rights Library and 14 **external sites**²⁰² at the same time, for any document, by keyword. The database seems to be updated through 2010.
- **WorldLII**,²⁰³ the **World Legal Information Institute**, is a collection of smaller databases containing case law, legislation, treaties, reports and articles from **international courts and the domestic courts of more than 20 countries**. Search the **international law library**²⁰⁴ for international (and not domestic) documents, or the **international courts and tribunals library**²⁰⁵ for international jurisprudence. The focus of WorldLII and the subsidiary country and regional LII bases is weighted toward current and former **Commonwealth** countries and the Pacific region, presumably due to the Australian origins of the facility. The list of information available (e.g. jurisprudence of the Constitutional Court of Indonesia from 2006 onward is listed on the site.²⁰⁶
- Use the **region- and country-specific LII databases** if looking only for documents pertaining to a particular country or region because the search results are sometimes more accurate when the relevant LII database is used. These databases cover: **Asia, Australia, Canada, the Commonwealth countries, Hong Kong, Ireland, New Zealand, the Pacific Islands, the Philippines, Southern Africa, Uganda, United Kingdom and Ireland, and the United States.**
- **INTERIGHTS' Commonwealth and International Human Rights Law Databases**²⁰⁷ provide summaries of significant judicial decisions from Commonwealth jurisdictions and international human rights tribunals, searchable by keyword.

¹⁹⁹ <http://hrlibrary.ngo.ru/index.html>

²⁰⁰ <http://humanrights.law.monash.edu.au/google/localsearch.html>

²⁰¹ <http://www.google.com/cse?cx=010639091889682836221:6ucikbmpyo0&ie=UTF-8&q=#gsc.tab=0>

²⁰² <http://humanrights.law.monash.edu.au/searchgoogle.htm>

²⁰³ <http://www.worldlii.org/>

²⁰⁴ <http://www.worldlii.org/int/special/ihl/>

²⁰⁵ <http://www.worldlii.org/int/cases/>

²⁰⁶ <http://www.worldlii.org/databases.html>

²⁰⁷ <http://www.interights.org/commonwealth-and-international-law-database/index.html>

- [ESCR-Net](#) is a searchable database of domestic and international jurisprudence relevant to **economic, social and cultural rights**.
- [Bayefsky.com](#) contains a limited database of **UN treaty body** decision excerpts and comment summaries, arranged by state, category or subject matter.
- The [Universal Human Rights Index of United Nations Documents](#) provides a database of UN treaty body and rapporteurs' observations and recommendations, searchable by country, right or body.
- The UN High Commissioner on Human Rights website lists all the UN treaty bodies' [General Comments](#), providing non-case specific interpretation of treaty provisions.
- [UNHCR's Refworld](#) contains an online database of international and domestic judicial decisions and other documents relevant to **refugee and asylum law**.
- The [University of Michigan Law School's Refugee Caselaw Site](#) provides a searchable database of asylum-related decisions from the highest courts of 33 countries.
- The [Global Legal Information Network \(GLIN\)](#) site is most useful for finding **domestic legislation**, through its searchable database of domestic and international jurisprudence and law made available by the following states and organizations: the Arab League, Brazil, Cameroon, Canada, Cape Verde, Democratic Republic of the Congo, Costa Rica, El Salvador, Gabon, Guatemala, Honduras, Indonesia, Justice Studies Center of the Americas, South Korea, Kuwait, Mali, Mauritania, Mexico, Nicaragua, Organization of American States, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Spain, Taiwan, Tunisia, United Kingdom, United States, and the United States Institute of Peace/ International Network to Promote Rule of Law (USIP/INPROL).

The following list of suggested books, articles, and other publications is organized by category, and is not meant to be comprehensive. For additional resources, visit the Research Aids section of the International Justice Resource Center's website.²⁰⁸

International Human Rights Law and Framework

Thomas Buergenthal et al., *International Human Rights in a Nutshell* (4th ed. 2009).

Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (2010).

Louis Henkin et al., *Human Rights* (2009).

Walter Kälin & Jörg Künzli, *The Law of International Human Rights Protection* (2010).

Rhonda Smith, *Textbook on International Human Rights Law* (5th ed. 2012).

Dinah L. Shelton, *Regional Protection of Human Rights* (2010).

Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, and Morals* (3d ed. 2007).

Davis S. Weissbrodt & Connie De La Vega, *International Human Rights Law: An Introduction* (2010).

Human Rights Advocacy

1-3 *Bringing Human Rights Home* (Cynthia Soohoo et. al. eds., 2007).

Deena R. Hurwitz et al., *Human Rights Advocacy Stories* (2008).

Aryeh Neier, *The International Human Rights Movement: A History* (2012).

Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (2009).

The Advocates for Human Rights & US Human Rights Network, *A Practitioner's Guide to Human Rights Monitoring, Documentation, and Advocacy* (2011).²⁰⁹

²⁰⁸ <http://ihrlaw.org/ihr-reading-room/research-aids/>

²⁰⁹ available at

http://www.theadvocatesforhumanrights.org/a_practitioner_s_guide_to_human_rights_monitoring_documentation_and_advocacy.html.

Human Rights Conditions and NGO Statements

See the various reports produced through the Universal Periodic Review for an overview of the issues raised by UN bodies, other states, and civil society with respect to individual countries' human rights practices.²¹⁰

Amnesty International,²¹¹ Human Rights Watch,²¹² and the United States Department of State²¹³ produce annual reports on human rights conditions in many countries.

The UN Office of the High Commissioner for Human Rights provides a list of human rights issues, which link to descriptive information and to the websites of the UN entities involved in each issue.²¹⁴

[Refworld](#) collects reports and press releases relating to human rights conditions around the world.²¹⁵

[HuriSearch](#) allows users to search over 5,000 human rights web sites (principally non-governmental organizations, national human rights institutions, and intergovernmental organizations) simultaneously for press releases, policy statements, state reports and commentary.²¹⁶

The United Nations System

Suzanne Egan, *The UN Human Rights Treaty System: Law and Procedure* (2011).

United Nations Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008).²¹⁷

Human Rights Project, Urban Justice Center, *A Practical Guide to the United Nations' Universal Periodic Review (UPR)* (2010).²¹⁸

International Service for Human Rights, *Simple Guide to the UN Treaty Bodies* (2010).²¹⁹

²¹⁰ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

²¹¹ <http://www.amnesty.org/en/annual-report/2011>

²¹² <http://www.hrw.org/world-report-2011>

²¹³ <http://www.state.gov/j/drl/rls/hrrpt/>

²¹⁴ <http://www.ohchr.org/EN/Issues/Pages/ListofIssues.aspx>

²¹⁵ <http://www.unhcr.org/refworld/category,COI,,,,,0.html>

²¹⁶ <http://www.hurisearch.org/>

²¹⁷ available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

²¹⁸ available at <http://www.hrpujc.org/documents/UPRtoolkit.pdf>.

²¹⁹ available at <http://www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies>.

The Inter-American System

Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2003). [Note: a second edition is forthcoming in fall 2012.]

The Inter-American Commission on Human Rights also produces publications on individual countries and specific topics of concern.²²⁰

The Center for Justice and International Law has published many publications on the Inter-American System and its doctrine, which are generally available only in Spanish.²²¹

Other Regional Systems

Michael D. Goldhaber, *A People's History of the European Court of Human Rights* (2009).

Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2007).

Institute for Human Rights and Development in Africa & International Service for Human Rights, *A Human Rights Defender's Guide to the African Commission on Human and Peoples' Rights*.²²²

The European Court of Human Rights produces factsheets on certain thematic areas of its caselaw.²²³

INTERIGHTS has published a number of manuals on various provisions of the European Convention on Human Rights, available for download.²²⁴

Topical Articles and Research Guides

Human Rights Education Associates provides [Study Guides](#)²²⁵ on a select number of rights.

The Social Science Research Network ([SSRN](#))²²⁶ contains thousands of articles and papers on human rights, and a number of individual law journals provide free access to all or some of their content.²²⁷

²²⁰ <http://www.oas.org/en/iachr/reports/thematic.asp>

²²¹ See Center for Justice and International Law, Publications, <http://cejil.org/en/publicaciones/>.

²²² http://www.ishr.ch/document-stuff/browse-documents/doc_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights

²²³ <http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/>

²²⁴ <http://www.interights.org/lawyers-manuals/index.html>

²²⁵ http://www.hrea.org/index.php?doc_id=145

²²⁶ <http://www.ssrn.com>

²²⁷ See International Justice Resource Center, Analysis: Books, Articles, Etc., <http://ihrlaw.org/ihr-reading-room/research-aids/legal-analysis-books-articles-etc/>.