

Civil Society Access to International Oversight Bodies

Inter-American Commission on Human Rights

International Justice Resource Center

*Civil Society Access to International Oversight Bodies:
Inter-American Commission on Human Rights*



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EXECUTIVE SUMMARY

English

This report examines civil society engagement with the Inter-American Commission on Human Rights (IACHR), a principal autonomous organ of the Organization of American States (OAS) charged with addressing human rights conditions and human rights violations in the 35 OAS Member States. The focus is on factors that impact civil society participation in IACHR activities, including rules and practices, as well as the logistical and strategic considerations on the part of civil society. Further, the report analyzes whether these factors hinder or facilitate engagement with the IACHR. The discussion concentrates on the IACHR's sessions and on communication between civil society and the IACHR.

Over the years, the IACHR has proven effective in: addressing violence, corruption, censorship, unfair trials, the refugee crises, and many other human rights concerns in the Americas; ensuring the progressive development of human rights standards; leading efforts to promote victims' rights, and to protect democracy and the rule of law; and, importantly, providing a unique and neutral forum to hold governments accountable for their role in human rights violations. For many, it serves as a body of last resort to seek justice and accountability for human rights violations. Civil society's ability to participate in the IACHR's work benefits the IACHR's efforts in advancing its mandate, and also benefits victims of human rights abuses, human rights defenders, and the people living in the Americas. Civil society organizations provide information, insight, experience, and assistance that the IACHR and its Executive Secretariat could not otherwise access.

The IACHR provides a robust and dynamic forum for civil society to advance the protection of human rights in the region. Civil society members enjoy multiple opportunities for engagement with the IACHR, and the IACHR actively pursues efforts to strengthen its relationship with civil society. Unlike other regional human rights systems, organizations engaging with the IACHR are treated on an equal footing to States and are equal participants in the processes before the IACHR. Additionally, it is not uncommon for civil society, States, and the IACHR to engage in productive collaborations as a means of strengthening the Commission and its efficacy in promoting and protecting human rights in the region. However, the IACHR's resource constraints—due in part to limited resources as a result of insufficient State funding, funding cuts, and funding earmarked for specific activities—hinder the IACHR's capacity to maintain a dynamic relationship with civil and strengthen opportunities for civil society engagement.

Advocacy and engagement with the Commission—including through the IACHR's public sessions, consideration of individual complaints, creation of standards and guidance for OAS Member States, and monitoring of States' compliance with their human rights obligations—can be important tools for improving human rights protections in policy and practice. Accordingly, the means of civil society engagement with the IACHR, the limitations or restrictions on that engagement, and the barriers to participation, impact the IACHR's relevance and ability to protect and promote human rights in the Americas.

The IACtHR holds at least two regular periods of sessions and as many special periods of sessions as it deems necessary during the year. It holds sessions at its headquarters in Washington, D.C. (United States) or in other Member States when they agree or invite the IACtHR to do so. During its periods of sessions, the Commission generally holds (1) public hearings on thematic areas of concern, individual complaints (“petitions”), and precautionary measures; (2) hosts private meetings between parties negotiating a friendly settlement, or to follow-up on precautionary measures or cases that are at the compliance stage; (3) conducts internal deliberations on specific cases or petitions; (4) approves thematic initiatives and reports; (5) plans on-site and working visits; (6) engages in promotional events; and (7) meets with civil society organizations.

IACtHR sessions provide unique opportunities to human rights defenders and other members of civil society. When they satisfy the requirements, civil society members can participate in hearings, meetings, and events organized by the IACtHR, potentially conveying their message to various stakeholders and audiences throughout the region. Informally, periods of sessions present advocacy avenues, such as side events, interactions with government representatives, and media coverage. Importantly, gathering in person or coordinating to participate in IACtHR sessions provides an opportunity for civil society members from across the Americas to come together, share information, strengthen their collaboration, and advance their shared interests.

Good Practices

The IACtHR exemplifies some good practices that reinforce the role and value of civil society in the work of the Inter-American Human Rights System. For example, the IACtHR: allows any non-governmental organization (NGO), individual, advocate, or member of the press to attend sessions without prior registration; authorizes any organization or individual to request a hearing, on any human rights topic (subject to geographical limitations that may apply to specific periods of sessions); holds hearings that are public in nature; takes steps to address reprisals against human rights defenders who engage with the Commission through the Special Rapporteurship on Freedom of Expression; provides simultaneous interpretation in English and Spanish and, when a hearing concerns a non-Spanish or English-speaking State, in a third language; live streams all of the hearings on the IACtHR YouTube channel and makes recordings available after the hearing; sets aside time to meet with civil society collectively about access to the IACtHR and its activities; and, collaborates with civil society through participation in panels, consultations, and other events.

Overview of Barriers to Participation

Notwithstanding these good practices, civil society faces obstacles to engagement as a result of the policies and practices of the OAS, IACtHR, States, and—at times—civil society itself. To clearly identify and contextualize some of the obstacles to civil society participation before the IACtHR, IJRC interviewed civil society members from organizations based in Canada, Colombia, Cuba, Dominican Republic, Ecuador, Mexico, Peru, and the United States. While none of these organizations are based in Central America, the work of several of the participants’ organizations has a regional scope covering Central American countries. This report draws on these interviews, survey responses, desk research, and in-person observation carried out between March 2018 and December 2018, including at the IACtHR’s

167th, 168th, and 170th Periods of Sessions, which took place in Colombia, the Dominican Republic, and the United States, respectively.

While the IACtHR imposes few restrictions on participation, civil society members nonetheless encounter numerous formal and informal challenges to attending and participating in IACtHR sessions. For the purposes of this report, formal barriers are those prerequisites for attendance or engagement with the IACtHR that are established by law or in the Commission's rules or policies. Informal barriers are those unwritten policies and practices or external considerations that impact civil society's ability to engage with the IACtHR. Participants recognize that many of these barriers can be directly attributed the fact that the IACtHR works with limited resources,¹ but nevertheless see opportunities to improve practices that obstruct engagement.

Notable formal barriers to engagement include deadlines, official working languages, and the requirement that any NGO presenting a petition be legally registered in an OAS Member State. The IACtHR's organization of its hearing and meeting schedules—along with its decisions regarding which requests to grant—also formally constrain the number, location, and timing of such opportunities. Civil society members must generally participate in-person (rather than virtually) in many IACtHR activities, including hearings. States may also impose travel restrictions or specific requirements on visas that have a bearing on civil society participation.

The common informal barriers include a lack of transparency and access to information on processes and practices, including with regard to the timing and location of periods of sessions and concerning the IACtHR's decisions on hearing and meeting requests. Other informal barriers include safety and privacy concerns, particularly related to the public nature of sessions and the IACtHR's photography and video recording practices, and inadequate accommodations for persons with disabilities. More generally, the costs associated with attending and traveling to the sessions can be an obstacle to participation. States' behavior can foreclose or limit civil society engagement, including by attaching conditions to its funding for the IACtHR, and failing to attend or meaningfully respond in hearings.

Access to Information

A primary obstacle that civil society faces in engaging with the Inter-American Commission both at its sessions and outside its sessions is a lack of transparency and access to accurate and complete information. For instance, the IACtHR website does not consistently include some basic information, such as the structure of the Executive Secretariat or relevant staff contact details, and sometimes publishes inconsistent information regarding deadlines and other hearing details. Often, documents such as case decisions and press releases are initially available only in Spanish, and although they are often translated to English later, they are rarely made available in French and Portuguese. In terms of transparency, the IACtHR does not share its process or criteria for granting or denying hearing and meeting requests, does

¹ After it survived a potentially devastating financial crisis in 2016, the IACtHR noted that "severe structural issues of a deficient funding" would continue to plague the Commission. See IACtHR, Press Release, IACtHR Overcomes its Severe Financial Crisis of 2016 and Thanks Countries and Donors Who Made It Possible, Sept. 30, 2016, https://www.oas.org/en/iachr/media_center/PRleases/2016/145.asp.

not have a process in place for informing individuals or organizations whose hearing requests have been denied. It shares no information publicly on requesting bi-lateral meetings with IACMR members. Lack of transparency and complete information has an impact on civil society's ability to plan advocacy strategies, make decisions on what topics to raise before the Commission during a particular period of sessions, and make decisions regarding what IACMR processes should be pursued.

Costs of In-Person Attendance

Generally, civil society members must attend in person in order to participate in the IACMR's activities during a session. While the IACMR live streams its sessions and, at times, allows remote participation and video conferencing, there are no clear or established methods for requesting virtual participation. Moreover, it is necessary to be physically present at a session to fully engage with the Commission, for example to strike up conversations with the IACMR members or Executive Secretariat staff or to participate in civil society meetings. Coupled with related logistical costs, such as obtaining a visa, and the lack of sufficient notice between a hearing request approval and a hearing, the cost and distance of travel can significantly hinder attendance, particularly for smaller organizations.

In the past few years, the Commission has been holding sessions outside of its headquarters in Washington, D.C. on a more regular basis. Participants indicated that they consider whether or not a session is being held outside of headquarters when weighing the costs of attending. While sessions outside of headquarters provides an opportunity for new voices to be heard and for the IACMR to organize promotional activities with local civil society, participants in this study noted that holding sessions elsewhere can increase the costs related to visas and travel. Additionally, participants were mindful of the particular opportunities for advocacy and networking when sessions are held at headquarters, providing greater access to IACMR staff, State representatives (including at missions to the OAS), funders, and civil society partners. Importantly, when a period of sessions is held outside of Washington, D.C., public hearings usually exclude the situation in the host country, meaning there will be no hearings or working meetings related to that country. While the IACMR will organize an open meeting with civil society, including local civil society, the level of engagement with Commissioners and IACMR staff is limited during these meetings due, in part, to limited publicity and advanced notice, and time constraints. Thus, the default exclusion of the host-country situation has the effect of significantly reducing the opportunity for local civil society members to engage directly with the IACMR.

Civil society organizations that regularly engage with the IACMR have established methods of sharing information related to the Commission's activities. By attending the sessions, these groups can advance this cooperation, and have worked together to gain dedicated time for discussing related issues directly with the IACMR and to encourage the IACMR to adopt specific improvements. However, smaller and newer organizations' inability to afford to attend IACMR sessions widens the information and experience gap, increasing the obstacles they face in engaging with the Commission.

Reliance on Executive Secretariat Contacts

Some civil society members indicated that they rely on their personal contacts with IACMR personnel to obtain information and guidance on how, and with whom, to follow up on requests or advocacy before the IACMR. Additionally, civil society members who participated in this study indicated that participants

with connections at the Commission often know what the IACHR plans to prioritize during a period of sessions, based on their conversations with IACHR personnel with whom they have a personal relationship.

A handful of organizations have established close relationships with individual commissioners and IACHR staff members, presenting both opportunities and challenges. Collaboration with civil society groups helps the IACHR produce outputs that are more informed, representative of diverse perspectives, and useful to human rights accountability, and to more widely disseminate and raise awareness of human rights protections. However, these partnerships also highlight the ways in which the IACHR's resource constraints can result in comparatively less access and fewer opportunities for input among organizations that lack connections at the Executive Secretariat. This can be especially true for organizations whose work is more localized (as opposed to regional or international) and that do not have a presence in Washington, D.C.

The importance placed on personal relationships, even if it is merely perceived, perpetuates the relative exclusion of lesser known organizations and of organizations that are smaller, newer, community-based, or that do not have the capacity to frequently attend periods of sessions and form such relationships.

Hearings held *Ex Officio*

Ex officio hearings are hearings that the IACHR holds at its own initiative. Unlike regular public hearings, which are proposed by civil society or States, when a hearing is convened *ex officio*, the Commission determines the topic and scope of the hearing, and selects the civil society organizations that participate. *Ex officio* hearings allow the Commission to respond quickly to issues as they develop and hold public hearings on those issues, and to receive relevant information from civil society and other stakeholders. Additionally, they can allow both civil society and the IACHR to raise awareness and increase public pressure for accountability on topics that might otherwise not receive attention.

However, some participants in this study noted with concern that *ex officio* hearings allow the Commission to set the agenda, rather than civil society, which hinders their ability to participate and advocate before the Commission. Notably, participants were critical of the general scope of *ex officio* hearings, the lack of guidelines that the Commission uses to determine who it will invite to participate following its public invitation to civil society to submit expressions of interest to participate, the timing and notice given to civil society members that are invited to participate, and perceived elitism or preference in selecting organizations to participate.

In view of the lack of publicly-available guidelines on the IACHR's hearing selection process, *ex officio* hearings, especially, appear to privilege civil society organizations that regularly engage with the Commission or those that are most likely to both become aware of an *ex officio* hearing and to be able to participate in person on limited notice. As previously noted, these tend to be larger and well-funded organizations. Consequently, convening *ex officio* hearings at the expense of hearings requested by civil society may limit the space and opportunity for engagement among less well-known organizations, organizations that do not have the knowledge or resources to engage with the Commission, or organizations that do not engage with it frequently.

Recommendations

The final section of this report lists the good practices that facilitate civil society engagement with the IACMR and the practices that appear to obstruct engagement, and also makes recommendations for improvements by both the IACMR and civil society. This study highlights barriers to effective engagement with the goal of facilitating civil society's efforts to develop recommendations aimed at increasing engagement before the Commission. In this regard, the information in this report should be read in conjunction with the findings in IJRC's report on civil society access to the African Commission on Human and Peoples' Rights and subsequent reports published in this series.²

Based on the information contained in this report, the IACMR could improve civil society access by:

Protecting Stakeholders

- Taking steps to address in a timely and efficient manner reprisals against human rights defenders who engage with the Commission;
- Implementing a security protocol to address human rights defenders' privacy concerns related to session and event attendance;
- Establishing clear procedures for instances when other actors interrupt or interfere with hearings, meetings, dialogues, or other events organized by the Commission;
- Taking and using participants' photographs only when consent is expressly given, as could be demonstrated through a registration form or a designated color on participants' lanyards;
- Making the IACMR website secure, and providing an encrypted, confidential method for communication with the IACMR Executive Secretariat, such as via Signal;

Improving Transparency and Access to Information

- Adding organizational information to the IACMR website, including on the structure of the IACMR Executive Secretariat and the methods for communicating with the IACMR Executive Secretariat;
- Clarifying and making transparent the means for communicating with IACMR Commissioners and IACMR Special Rapporteurs;
- Providing advance online notice and an accessible sign-up procedure for the IACMR plenary meetings with civil society during sessions;
- Restoring the online availability of video recordings of IACMR hearings held prior to 2013;
- Making all website content, including press releases, announcements, reports, and documents, available in the official languages of the OAS;
- Establishing a process for notifying organizations or individuals whose hearing requests or meeting requests are not granted, and implementing it consistently;
- Providing a reason for why a hearing or meeting is denied or indicating whether a hearing request may be successful if submitted for a subsequent session;
- Establishing guidelines and clear methods for requesting virtual participation;

² IJRC, Civil Society Access to International Human Rights Spaces, <https://ijrcenter.org/civil-society-access-to-international-human-rights-spaces/>.

- Adopting and disseminating a protocol for when States fail to participate in hearings or other events where their participation is expected, particularly with regard to how civil society's time for participation will be allocated or rescheduled;
- Making available additional information about the IAHRS Forum so that civil society can better understand its role and how its participation will contribute to it;
- Publishing summaries of the outcomes of hearings that include any recommendations or follow-up indicated by the Commissioners;
- Publishing on its website the written submissions made by civil society and States in the context of hearings;
- Maintaining IACMR social media accounts (in English and Spanish, at minimum) and sharing session information and other news through those mediums;
- Developing a portfolio of media contacts and sharing information with outlets and reporters regarding hearings, reports, visits, and other activities;

Enhancing Timeliness of Communications

- Consistently communicating the dates of upcoming periods of sessions, hearings, consultations, country visits, and other activities well in advance;
- Providing timely and accessible public notice of each session's location;
- Announcing *ex officio* hearings when the window for hearing requests opens;
- Publishing the schedule of hearings and notice of *ex officio* hearings further in advance of session dates;
- Communicating decisions to grant or deny hearing and meeting requests further in advance of the session dates;

Improving Equal Access

- Inquiring about needed accommodations for persons with disabilities attending a session and preparing those accommodations ahead of sessions;
- Offering materials in large print, audio, and braille format;
- Making available video recordings of hearings in the four official languages of the OAS;
- Publishing a transcript of hearings in the four official languages of the OAS;
- Making gender neutral restrooms available;
- Guiding Executive Secretariat staff in ensuring that they are equally responsive to communications from lesser known or newcomer organizations as they are to more familiar organizations; and,
- Opening a dialogue with new or infrequent users of the Inter-American System, or taking other specific efforts to increase communication with the organizations most affected by barriers to participation before the IACMR.



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