



# **Practical Guide for Trade Union Action in the Inter-American Human Rights System**

**Carlos Ledesma**



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Trade Union Action  
in the Inter-American  
Human Rights System

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## Practical Guide for Trade Union Action in the Inter-American Human Rights System

PUBLIC SERVICES INTERNATIONAL – PSI

President: Dave Prentis

General Secretary: Rosa Pavanelli

45, Avenue Voltaire, BP 9, F-01211

Ferney-Voltaire Cedex, France

Telephone: + 33 (0) 4 50 40 64 64

<http://www.world-psi.org>

[psi@world-psi.org](mailto:psi@world-psi.org)

PSI Inter-America's Regional Secretary: Jocelio Drummond

Rua da Quitanda, 162 – 4th floor

CEP 01012-010 - São Paulo - SP – Brazil

[psi.interamerica@world-psi.org](mailto:psi.interamerica@world-psi.org)

Coordination: Elida Rodrigues da Cruz Szurkalo

Support: Euan Gibb / Tatiane de Cássia Jurcovich

Systematization and text: Carlos Felipe Ledesma Céspedes

Translation: Arthur Sabbag Fares

Revision: Robert Bruce de Figueiredo Stuart

Graphic design and layout: Baracase Design Gráfico Ltda - ME

This guide is part of project “Fighting setbacks and strengthening trade unions in favour of equal opportunities and combating discrimination”, nr 2017 2606 6/DGB 0014, 2018-2020, in cooperation with DGB Bildungswerk BUND. This production had the financial support of BMZ, the Federal Ministry of Economic Cooperation and Development of Germany. Its content is the sole responsibility of PSI and may be reproduced, in full or in part, provided PSI is acknowledged.

August 2019

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# Foreword

Paulo Vannuchi

Former member of the Inter-American  
Commission on Human Rights

**T**he trade union movement of the workers of the Americas can now rely on an excellent guide to orient stronger action within the system and in the inter-American debate on Human Rights. Indeed, this is a very important step that shall lead to a quantum leap.

Greatly honored by the invitation to write this foreword, as well as by having had my name remembered in the very introduction, I ask your permission to speak as if I were having a chat with my brothers and sisters of the trade union movement, where I have worked for nearly forty years.

I was a member of the Inter-American Commission on Human Rights (IACHR) from 2014 to 2017. As soon as I became a member of IACHR, I noticed that the presence of the working class and labor in its hearings, petitions, and other forms of action was much less significant than their outstanding role as economic, social, and political actors.

True, many sensitive struggles for the labor movement are an integral part of the agenda of the Commission's seven members and its sixty permanent staff members. I am referring to women's rights, racial equality, indigenous peoples, violations by mining companies, and many others. However, specific issues regarding work and employment, wages, job stability, health in the workplace, retirement, the right to strike and freedom of association are still quite rare.

Over four years, consensus was built that introduced breakthroughs in the IACHR structure, prompting these themes to gain salience. At first, only one colleague,

Paraguay's Rosa Ortiz, endorsed the suggestion. The other commissioners, though not against them, had doubts as to viability and resources, as well as to the interest of the trade union movement itself in becoming more present. Frank and democratic dialogue ultimately led to unanimity.

Commission members are elected by the OAS General Assembly every two years for a four-year term. Their names must be submitted by member states, yet they also seek support from civil society. Thus, it is all too natural that the members of this collegiate body should reflect political divergence along the right/left spectrum on account of the different governments in the continent.

To cite one example, although the United States has not fully adhered to the system nor abides by its decisions, it channels financial resources that are vital to the survival of its bodies – something that always boosts a party's capacity to influence and to pressure. An administration like Trump's, as we have today, generates an environment of risks and threats, for the Commission is headquartered in Washington, whereas the Court is based in Costa Rica.

Generally, Commission members are people who come from universities or the judiciary branch of each country. Some held offices in governments; others did outstanding work in NGOs. Court members, conversely, must be jurists. As a person coming from the trade union struggle, I had the duty to contribute to seek more space for the world of work and greater balance between the two branches of Human Rights.

The most evident imbalance was that, nearly two decades ago, an efficient Special Rapporteurship for Freedom of Expression was set up without there being an equivalent unit designed to approach the so-called Economic, Social, and Cultural Rights, abbreviated to DESCRA (from the Portuguese acronym), with the recent addition of the letter A, which stands for Environmental, also in Portuguese.

Let me explain this better. Over time, IACHR organized two kinds of ordinary rapporteurships: country and thematic rapporteurships. Each commissioner is the Rapporteur for some of the 35 countries and also for such themes as women, children, persons deprived of liberty, migrants, and LGBTI. On a tight budget, this kind of rapporteurship has a small staff and little money for trips, publications, seminars, and events. Still, with militant dedication, it carries out important tasks.

The creation of a Special Rapporteurship for Freedom of Expression meant prioritizing a theme that would thereafter rely on teams and financial resources disproportionately larger than those of other areas. Although everyone agrees that freedom of expression (and not only freedom of the so-called big press) is critical for Human Rights advocacy, the thematic areas mentioned in the paragraph above are not less important.

The appearance of DESCRA, the Special Rapporteurship for Economic, Social Cultural, and Environmental Rights, in 2017, represented a breakthrough toward overcoming such imbalance. It was not fortuitous or just a coincidence. It was in line with an old debate and an old tension between the so-called rights of freedom and rights of equality, in the terms used by Norberto Bobbio. These are the two broad branches of Human Rights, which some prefer to call first-generation rights (civil and political rights) and second-generation rights (economic, social, cultural, and now also environmental rights).

Since the first declarations of rights emanated from the two first English Revolutions, the French Revolution, and the American Revolution, in the seventeenth and eighteenth centuries, the historical building of Human Rights hinged on the individual in all of its formulations, underscoring the freedoms of belief, opinion, and manifestation; the right to vote (only extended to the working class at the cost

of blood, sweat, and tears); access to Justice and the due process of law; and rules for the separation of government branches. In short, this huge branch of civil and political rights was instrumental to the architecture of modern democracy and continues to be instrumental to the building of democratic life.

The problem is that the other branch of Human Rights – that concerning the ideals for equality – never received much attention from the States. The series of voluntary compacts, covenants, conventions, and treaties or protocols that have been set in place since the promulgation of the Universal Declaration of Human Rights, in 1948, addresses much more broadly these freedom rights than those regarding equality.

As everyone knows, it was only after the 1800s and the 1900s that capitalism finished structuring itself as the dominant system, projecting onto the scene of history a new character, gathered with thousands in large production units, a subject who proved capable of setting up trade unions, winning their first rights, and intervening in political life, often organizing political parties with socialist ideals.

All trade union and work-related rights, and even fundamental breakthroughs as the right to vote, were wrested from the elites by these movements. Upon arriving on the scene, this new working class could still hear the bourgeoisie calling for Liberty, Equality, Fraternity in their struggle with the old feudal nobility. And it simply walked onto the stage demanding the same for those who came from below.

The struggle has kept on going till our days.

This guide, an important PSI initiative, with the support of DGB, is a new step in a march that has come a long way. It is a valuable tool for workers of the Americas, from all trades and branches, to occupy the space they are eligible to and to face all the more resolutely the grave situation of repression, bigotry, and hatred that has been spreading across many countries.

It is worth repeating here a sentence that is always present in debates regarding the subject: Human Rights were not born all at once, nor once and for all. They represent a continuous construction, just as democracy is said to be the permanent recreation of politics.

Paulo Vannuchi is a journalist and political scientist. He is the current president of TVT (Workers' TV) and Radio Brasil Atual. Paulo was the Minister of Human Rights in the Lula government from 2006 to 2010 and a member of the Inter-American Commission on Human Rights between 2014 and 2017.

# Introduction

**T**he present situation of our region, with its ultraconservative and neoliberal governments questioning basic human rights, calls for the use of all available tools at the international level for the purpose of strengthening national resistances and struggles.

The Inter-American Human Rights System (IAHRS) is an important political and legal tool for the defense, promotion, and protection of labor- and union-related human rights and, more broadly, of all human rights of workers and their organizations.

The Inter-American Commission and the Inter-American Court have the mandate, the inter-American standards, and the mechanisms to act and to put political and legal pressure on the States in the region to ensure they comply with their international human rights obligations.

The effectiveness of the Inter-American System has been tested and adjusted in contexts of military coups, dictatorships, and internal armed conflicts where State terrorism predominated and systematic violation of human rights was rampant. The 1979 on-site visit of the Inter-American Commission to Argentina during Videla's dictatorship and the publication of the Country Report that denounced the massive forced disappearances and clandestine detention centers previously denied by the Military Junta constitute an example of the political effectiveness of the Inter-American System to destabilize dictatorships. In a post-dictatorship context, the Inter-American System has demonstrated its political and legal effectiveness and its important role in demanding respect for the right to the truth and in ordering the elimination of amnesty laws that made it impossible to investigate, prosecute, and punish those responsible for serious human rights violations and state terrorism.

Finally, the Inter-American System has been fundamental to the ongoing efforts to consolidate human rights in democratic contexts by going beyond formal freedom and equality and recognizing the specificity of different people under the law, their socioeconomic specificity, their specific identities and their belonging to certain historically discriminated, excluded and/or marginalized groups (women, indigenous peoples, afro-descendants, LGBTI people, people with disabilities, etc.). The effectiveness of the Inter-American System in the current regional context will depend to a large extent on the appropriation of its resources by civil society and, as regards labor and trade union rights, on the actions of trade unions.

Trade union organizations can use all the political and legal tools of action afforded by Inter-American System bodies in a coordinated manner to defend rights previously achieved, promote the legitimate demands of workers, and protect victims of human rights violations. The use of the Inter-American System can be carried out in parallel and in sync with other systems of international protection of human rights including the International Labour Organization (ILO) supervisory system.

This Guide provides practical information on the different institutional, conceptual, and operational elements of the Inter-American System.

Section 1 offers an introduction to the Inter-American System. Section 2 explains how its oversight bodies function, what the inter-American standards are, and the relationship between this system and other international protection systems. Section 3 provides practical information on the various resources of the Inter-American Commission and the Inter-American Court. Finally, Section 4 highlights the provisions of the inter-American normative instruments for the protection of the human rights of workers.

# 1.

## What is the significance of the Inter-American Human Rights System for Trade Unions?

The **Inter-American Human Rights System (IAHRS)** is one of the international human rights protection systems (together with the United Nations system, the ILO supervisory system, and the European and African regional systems) that can be used by trade unions to defend and promote labor- and union-related human rights.

The **normative basis of the IAHRS's** work are the inter-American human rights treaties adopted within the framework of the OAS, which enshrine human rights including labor and union rights, and the duties of OAS Member States to respect, promote, and protect human rights in their territories.

As regards human rights at work and trade union rights, the IAHRS is guided by the ILO fundamental, governance, and technical Conventions and the expert opinions of that body's Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations.

The IAHRs and the ILO supervisory system can be used by trade unions in a coordinated and complementary manner to strengthen their mechanisms to more effectively promote, monitor, and protect human rights at work and trade union rights in the Americas.

For a long time, trade unions did not actively use the IAHRs, or at least not as much as they used the ILO supervisory system. The first freedom of association cases under the IAHRs's jurisdiction were linked to extrajudicial executions and forced disappearances of union leaders in the context of dictatorships.

In recent decades the IAHRs has developed inter-American standards highlighting the interdependence between civil and political rights and labor and union rights, thus reinforcing the protection of individual and collective union activity. But the number of inter-American decisions and standards in labor and union matters remains low.

However, unions in the region have taken a greater role in recent years with the objective of centralizing the importance of labor and union human rights in the IAHRs's programmatic agenda and work plan.

Unions have been increasingly active in thematic hearings to denounce the general situation of labor and union rights in the region, have contributed to country-level consultation meetings, delivering inputs for the preparation of thematic or country reports, and have joined in direct dialogue with members of the Inter-American Commission, requested the preparation of a specific thematic report on labor and union rights in the Americas, and highlighted emblematic cases to be submitted to the IAHRs's jurisdiction in order to obtain protection against specific violations and to develop binding inter-American jurisprudence in the area of labor and union matters.

One important milestone has been the creation of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights, promoted by former commissioner Paulo Vannuchi, which has created an important space for labor and trade union issues. As a result of this process and the greater protagonism of trade unions in the IAHRs, this Rapporteurship has incorporated labor and union issues into its Strategic Plan, recognizing in its First Annual Report (December 31, 2017) that the Rapporteurship *will be the space from which the IACHR will seek to advance, develop and strengthen inter-American standards concerning: the right to dignified and equitable working conditions and the right to freedom of association and the protection of trade union freedoms.*

# 2.

## How does the Inter-American Human Rights System work?

The IAHRS comprises two oversight bodies and a diverse and broad set of mechanisms through which it monitors and promotes compliance with the international human rights obligations of national states, in addition to guaranteeing the protection of individuals in the event of a violation of their internationally recognized human rights.

### IAHRS Oversight Bodies

- Inter-American Commission on Human Rights
- Inter-American Court of Human Rights

### 2.1. Inter-American Commission on Human Rights

The structure and means of action of the Inter-American Commission that enable it to fulfill its function of promoting, monitoring, and protecting human rights are as follows.

Structure of the Inter-American Commission on Human Rights (IACHR)	
Commissioners	<ul style="list-style-type: none"> <li>• The IACHR is composed of 7 commissioners elected by the OAS General Assembly for four-year terms, with the possibility of re-election.</li> <li>• Commissioners are independent experts.</li> <li>• They do not represent the States of which they are nationals.</li> <li>• No more than one national of the same State may be a member.</li> <li>• It receives professional, technical, and administrative support from a permanent Executive Secretariat.</li> <li>• Information on the current composition of the IACHR can be found at this link <a href="http://www.oas.org/en/iachr/mandate/composition.asp">http://www.oas.org/en/iachr/mandate/composition.asp</a></li> </ul>
Sessions of the IACHR	<ul style="list-style-type: none"> <li>• The IACHR traditionally has three ordinary sessions per year in March, July, and October.</li> <li>• On certain occasions, it holds ordinary and extraordinary sessions away from its headquarters at the invitation of Member States.</li> </ul>
Thematic Rapporteurships	<ul style="list-style-type: none"> <li>• The purpose of the Rapporteurships is to “devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their state of vulnerability and the discrimination they have faced historically”.</li> <li>• It currently has 10 thematic Rapporteurships: <ul style="list-style-type: none"> <li>• Rights of Indigenous Peoples</li> <li>• Rights of Women</li> <li>• Rights of Migrants</li> <li>• Freedom of Expression</li> <li>• Rights of the Child</li> <li>• Human Rights Defenders</li> <li>• Rights of Persons Deprived of Liberty</li> <li>• Rights of Afro-Descendants and against Racial Discrimination</li> <li>• Rights of Lesbian, Gay, Transsexual, Bisexual, and Intersex Persons</li> <li>• Economic, Social, Cultural, and Environmental Rights</li> </ul> </li> </ul>
Thematic units	<ul style="list-style-type: none"> <li>• Thematic units: Persons with disabilities; Memory, truth, and justice; Older Persons.</li> </ul>

<sup>1</sup> <http://www.oas.org/en/iachr/mandate/rapporteurships.asp>

## Means of action of the Inter-American Commission on Human Rights

Pillars of action	Means of action
Protection	<ul style="list-style-type: none"> <li>• Petition and case system</li> <li>• Precautionary measures</li> <li>• Provisional measures (upon request to the Inter-American Court)</li> </ul>
Monitoring	<ul style="list-style-type: none"> <li>• Monitoring of the human rights situation in the different countries of the hemisphere</li> <li>• Carrying out country visits</li> <li>• Preparation of country reports</li> <li>• Elaboration of thematic reports</li> <li>• Preparation of the Annual Report to be presented to the OAS General Assembly</li> <li>• Elaboration of press releases</li> <li>• Conducting of thematic hearings</li> <li>• Request for information from States on measures taken in the field of human rights</li> </ul>
Promotion	<ul style="list-style-type: none"> <li>• Technical advice to the authorities and specialized bodies of States in the field of human rights.</li> <li>• Courses, seminars, training programs</li> </ul>

The monitoring and protection work carried out by the Inter-American Commission on Human Rights is an important tool for trade union organizations insofar as it allows the situation of human rights in the workplace and trade unions in the OAS Member States to be submitted to the scrutiny and control of the wider community and international public opinion. With this tool it is possible to generate international political pressure on State authorities to adopt the necessary measures to overcome the problems denounced, comply with their international human rights obligations, adequately compensate possible victims, and ensure that violations are not repeated.

### **Links to information on the means of action of the Inter-American Commission on Human Rights**

- **Guide with information on how to file a petition for individual cases and precautionary measures with the IACHR**  
<https://www.oas.org/en/iachr/docs/pdf/howto.pdf>
- **IACHR Reports**
  - Annual Reports:  
<http://www.oas.org/en/iachr/reports/annual.asp>
  - Country Reports:  
<http://www.oas.org/en/iachr/reports/country.asp>
  - Thematic Reports:  
<http://www.oas.org/en/iachr/reports/thematic.asp>
- **IACHR Sessions**
  - IACHR Sessions:  
<http://www.oas.org/en/iachr/activities/sessions.asp>
  - Videos of Sessions:  
<http://www.oas.org/en/iachr/multimedia/sessions/default.asp>
  - Workers' and Union Rights Sessions:  
<http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=26>
- **IACHR Calendar**
  - [http://www.oas.org/en/iachr/media\\_center/calendar.asp](http://www.oas.org/en/iachr/media_center/calendar.asp)

## 2.1.1. Rapporteurship on Economic, Social, Cultural, and Environmental Rights

The **Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights** was recently established to support the IACHR in fulfilling its mandate to promote and protect economic, social, cultural, and environmental rights in the Americas. This Rapporteurship is specifically in charge of the human rights of workers and trade unions.

Its functions and 6 pillars of action are as follows:

<b>Rapporteurship on Economic, Social, Cultural, and Environmental Rights (ES CER)</b>	
Functions <sup>2</sup>	<p><b>Protection</b></p> <ul style="list-style-type: none"><li>• <b>Individual cases and petitions:</b> To work with individual ESCER rights cases in support of IACHR decision-making, as well as to represent, by delegation, the Commission in litigations before the Inter-American Court of Human Rights, in ESCER cases.</li><li>• <b>Precautionary and provisional measures:</b> To make recommendations to the IACHR on urgent situations that may require the adoption of precautionary measures or a request for the adoption of provisional measures before the Inter-American Court of Human Rights, among other mechanisms.</li></ul> <p><b>Monitoring</b></p> <ul style="list-style-type: none"><li>• <b>Monitor ESCER rights</b> in the region and provide advice and assistance to OAS Member States in the adoption of legislative, judicial, administrative, or other measures necessary to make the exercise of economic, social, and cultural rights effective.</li><li>• <b>Prepare ESCER rights reports</b> for consideration by the IACHR and for publication, including thematic reports, general human rights situation of Member States, and sections of the Commission’s annual report.</li></ul> <p><b>Promotion</b></p> <ul style="list-style-type: none"><li>• Assist the IACHR in the promotion of international instruments related to economic, social, and cultural rights, including the organization of and participation in promotional activities for authorities, professionals, and students focusing on the work of the IACHR in this area.</li></ul>

<sup>2</sup><http://www.oas.org/en/iachr/desc/creation.asp>



Six pillars  
of  
action<sup>3</sup>

- 1)** Compiling information provided by civil society, experts, social movements, academics, and the states of the hemisphere to determine priorities with respect to the situation of economic, social, and cultural rights in the Americas.
- 2)** Providing opinions and inputs with respect to the processing and consideration of requests for precautionary measures, petitions, and cases on alleged violations of human rights in connection with economic, social, and cultural rights.
- 3)** Conducting general monitoring activities on the situation of economic, social, and cultural rights in the region.
- 4)** Promoting the work of the ESC Rights Unit to promote ESC rights visibility.
- 5)** Engaging in a permanent and strategic dialogue with other IAHRs and OAS actors, such as the Inter-American Court of Human Rights, among others.
- 6)** Close and constant cooperation with the Working Group of the Protocol of San Salvador.

<sup>3</sup><http://www.oas.org/en/iachr/desc/mandate.asp>

Next, the Work Plan prepared by the Special Rapporteurship to fulfill the mandate of promoting and protecting economic, social, cultural, and environmental rights in the Americas.

### **Action Plan of the Rapporteurship on Economic, Social, Cultural, and Environmental Rights (ESCER)**

- To institutionalize the issue of ESC rights in the IACHR by **establishing the Office of the Special Rapporteur for ESC Rights**.
- To continue **monitoring, promoting, and protecting ESC rights** in the Americas.
- To **develop international standards** for interpreting Inter-American human rights instruments in relation to ESC rights; and to expand the Inter-American system case-law on these rights.
- To attain **specialization of the Executive Secretariat** by building capacity on specific issues in the area of ESC rights.
- To increase **knowledge and analysis of emerging issues** in the area.
- To ensure **that ESC rights are considered in all of the work** of the IACHR/OAS.
- To continue promoting **the visibility of ESC rights** in the Americas and the work of the IACHR and its ESC Rights Unit.
- To continue **exploring and generating avenues of collaboration with the various United Nations agencies**, in particular with the Committee on Economic, Social, and Cultural Rights; the United Nations Educational, Scientific, and Cultural Organization (UNESCO); the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), and the International Labour Organization (ILO), among others.
- To continue exploring and generating avenues of **collaboration with other regional agencies** such as the Economic Commission for Latin America and the Caribbean (ECLAC) and the Inter-American Development Bank (IDB), among others.

The first Annual Report prepared by the ESCER Special Rapporteur's Office (published on December 31, 2017)<sup>4</sup> expressly mentions that its Strategic Plan aims to develop and strengthen inter-American standards regarding the human rights of workers and trade unions.

### First Annual Report of the Rapporteurship on Economic, Social, Cultural, and Environmental Rights

In addition, by mandate of the Strategic Plan, the Special Rapporteurship is the space from which the IACHR seeks to move forward to **develop and strengthen inter-American standards related to the right to decent and equitable conditions of work and the right to union association and protection of trade union freedoms.**

### Links with more information on the work of this Special Rapporteurship (ESCER)

- Reports on ESCER Cases  
- [http://www.oas.org/en/iachr/decisions/cases\\_reports.asp](http://www.oas.org/en/iachr/decisions/cases_reports.asp)
- Precautionary Measures  
- <http://www.oas.org/en/iachr/decisions/precautionary.asp>
- Country Reports  
- <http://www.oas.org/en/iachr/reports/country.asp>
- Thematic Reports  
- <http://www.oas.org/en/iachr/reports/thematic.asp>
- Reports and other Documents on Country-Specific Situations or Topics  
- <http://www.oas.org/en/iachr/reports/other.asp>

## 2.2. Inter-American Court of Human Rights

The Inter-American Court of Human Rights is an international judicial tribunal whose main objective is to apply and interpret the American Convention on Human Rights and the other inter-American human rights treaties.

The Inter-American Court exercises three types of functions:

- a contentious function, including the resolution of contentious cases and the mechanism for monitoring of judgments
- an advisory function
- and the function of issuing interim measures

<sup>4</sup><http://www.oas.org/es/cidh/docs/anual/2017/docs/IA2017Anexo-REDESCA-es.pdf>

The structure and means of action of the Inter-American Court of Human Rights are as follows:

<b>Inter-American Court of Human Rights (IACHR)</b>	
<b>Judges</b>	<ul style="list-style-type: none"> <li>• 7 national judges from OAS Member States</li> <li>• Elected in a personal capacity by the States Parties to the American Convention, from among jurists of recognized competence in the field of human rights</li> <li>• There cannot be two judges of the same nationality</li> <li>• Period of 6 years, with the possibility of re-election</li> <li>• Receives professional, technical, and administrative support from a permanent Secretariat</li> <li>• Information on the current composition of the IACHR can be found at the following institutional link <a href="http://www.corteidh.or.cr/index.php/es/acerca-de/composicion">http://www.corteidh.or.cr/index.php/es/acerca-de/composicion</a></li> </ul>
<b>Court Sessions</b>	<ul style="list-style-type: none"> <li>• The IACHR holds several sessions a year where it deliberates on pending matters and holds public and private hearings</li> <li>• Current practice: 4 ordinary sessions at its headquarters in San José and 2 extraordinary sessions away from headquarters</li> </ul>

<b>Means of action of the Inter-American Court of Human Rights</b>	
<b>Sentences</b>	<ul style="list-style-type: none"> <li>• Judgments are binding on all States that have ratified the American Convention on Human Rights and have accepted the contentious jurisdiction of the Inter-American Court.</li> <li>• Through a judgment, the Court determines whether the State incurred international responsibility for having violated rights enshrined in the American Convention.</li> <li>• Judgments of the Inter-American Court are binding on the parties in the specific case that is the subject of the judgement (inter partes binding effect). They also produce binding effects with respect to the Court's interpretation of conventional norms (erga omnes binding effect).</li> </ul>





Consultative opinions	<ul style="list-style-type: none"><li>• Member states and OAS bodies have the power to consult the Inter-American Court on the interpretation of the American Convention and other inter-American human rights treaties.</li><li>• States may also request the opinion of the Inter-American Court on the alignment of their laws with inter-American treaties.</li></ul>
Provisional measures	<ul style="list-style-type: none"><li>• In cases of extreme gravity, urgency, and possible irreparable harm, the Inter-American Court may grant provisional measures in favor of persons whose contentious cases have been filed with the Court as well as in matters not submitted to its knowledge.</li></ul>






### 2.3. Inter-American Standards adopted within the framework of the OAS

The normative basis of the Court’s work are the inter-American human rights treaties adopted within the framework of the OAS, which enshrine human rights, including the human rights of workers and unions, and the duties of OAS Member States to respect, promote, and protect human rights in their territories.

The following is a list of inter-American standards adopted within the framework of the OAS.

#### Inter-American Standards adopted within the framework of the OAS

- Charter of the Organization of American States (1948)
- American Declaration of the Rights and Duties of Man (1948)
- American Convention on Human Rights (1969)
- Inter-American Convention to Prevent and Punish Torture (1985)
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador” (1988)
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990)
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women “Convention of Belem do Pará” (1994)
- Inter-American Convention on Forced Disappearance of Persons (1994)
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)
- Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance (2013)
- Inter-American Convention against All Forms of Discrimination and Intolerance (2013)
- Inter-American Convention on Protecting the Human Rights of Older Persons (2015)

**Practical information on the inter-American standards adopted within the framework of the OAS**

<p>Charter of the Organization of American States</p>	<ul style="list-style-type: none"> <li>• The OAS Charter was adopted within the framework of the Ninth International Conference of American States, held in Bogotá on March 30, 1948, in a post-war international context, with the objective of strengthening coordination among States to ensure peace and security in the hemisphere and to affirm the obligation of States to respect, promote, and protect human rights.</li> <li>• It is a constitutive treaty that established a multilateral organization of states, the OAS, which also includes a minimum catalogue of human rights, which comprises labor and union rights.</li> </ul>
<p>American Declaration of the Rights and Duties of Man</p>	<ul style="list-style-type: none"> <li>• The American Declaration of the Rights and Duties of Man was adopted jointly with the OAS Charter within the framework of the Ninth International Conference of American States, held in Bogotá on March 30, 1948, with the objective of affirming the existence of human rights and the obligation of States to respect, promote, and protect them.</li> <li>• It is a general international declaration of human rights, adopted months before the Universal Declaration of Human Rights, which also enshrines labor and trade union rights.</li> <li>• The Inter-American Court of Human Rights, by applying a dynamic and evolutionary interpretation, has established that, although the American Declaration was not conceived or drafted to take the form of a treaty, its status should not be analyzed in the light of the time of its drafting (1948). It is necessary to analyze it under present conditions, in the light of what the Inter-American System is today, and considering the evolution experienced since the adoption of the Declaration.</li> <li>• Currently, the Inter-American Commission and the Inter-American Court consider that, although it is not an international instrument subject to ratification by States, this Declaration is a source of obligations for OAS Member States in the area of human rights.</li> <li>• The Rules of Procedure of the Inter-American Commission (Article 51) establish that the Commission shall receive and examine a petition containing a complaint about alleged violations of the human rights enshrined in the American Declaration in OAS Member States that are not parties to the American Convention.</li> </ul>





American  
Convention  
on Human  
Rights

- The American Convention on Human Rights is an international human rights treaty adopted at the Inter-American Specialized Conference on Human Rights in the city of San José, Costa Rica, in November 1969. It entered into force on July 18, 1978.
  - It has two parts, a first part recognizing general human rights and a second part establishing the oversight bodies of the Inter-American Human Rights System, i.e. the Inter-American Commission and the Inter-American Court, responsible for monitoring, promoting, and protecting human rights on the continent.
  - In particular, it comprises civil and political rights and regulates (Article 16) freedom of association for labor purposes. However, besides an important provision prohibiting forced labor, slavery, and servitude (Article 6), the Convention does not explicitly regulate other specific labor rights.
  - Article 26 refers to the obligation of States to take steps to progressively achieve the full realization of rights derived from economic, social, educational, scientific, and cultural standards, to the extent of the available resources, through legislation or other appropriate means.
  - The Inter-American Commission is responsible for receiving complaints of alleged violations of the human rights enshrined in the American Convention.
  - The Inter-American Court shall be competent to receive contentious cases of violations of the American Convention provided that the denounced State has accepted the contentious jurisdiction of the Court.
  - There is a principle called “Conventionality Control,” under which national judges are considered to have the task, when resolving a case, of examining the compatibility of laws or practices with the Convention.
  - The states that ratified the American Convention are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.
  - Trinidad and Tobago denounced the American Convention on May 26, 1998, and the denunciation became effective on May 28, 1999. On September 10, 2012, Venezuela denounced the American Convention, while the denunciation took effect on September 10, 2013.
- 



Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)

- The Additional Protocol to the American Convention on Economic, Social, and Cultural Rights (also known as the “Protocol of San Salvador”) was adopted on 17 November 1988 and came into effect on 16 November 1999, in a regional context of political transition from authoritarian to democratic regimes and consolidation of human rights.
  - Considering that the American Convention includes civil and political rights and that its Article 26 concerning the progressive realization of economic, social, and cultural rights is insufficient to promote and protect them, it is affirmed that the Protocol of San Salvador reaffirms, develops, improves, and protects economic, social, and cultural rights with greater scope.
  - The Protocol of San Salvador is the inter-American instrument that most broadly recognizes the human rights of workers and trade unions.
  - It also recognizes the right of the State to implement and strengthen programs that contribute to adequate family care, so that women may have an effective possibility of exercising the right to work (Article 6.2) and the right to paid maternity leave before and after childbirth (Article 9.2).
  - Article 19 of the Protocol of San Salvador establishes the possibility of directly using the individual petitions and cases system before the IAHRs supervisory bodies in the event of violation of the human rights of trade unions set forth in Article 8(a).
  - The States that ratified the Protocol of San Salvador are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.
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Inter-American  
Conventions on  
the Prevention  
of Torture, on  
the Abolition  
of the Death  
Penalty, and  
on the Forced  
Disappearance  
of Persons

- During the last decades of the 20th century, Latin America went through two political phases: a phase of military coups and dictatorships and internal armed conflicts in which State terrorism predominated and under which there was systematic repression of social, trade union, and political organizations, persecution of their members, denial of democratic freedoms, assassinations, torture, forced disappearances, and so on.
  - The actions of the IAHRs over this period served to render visible and to denounce massive, widespread, and systemic violations of human rights before the international community (for example, with the visit by the full Inter-American Commission to Argentina in 1979 and the subsequent publication of the Country Report, which helped the international public to become aware of the phenomenon of massive forced disappearances and the existence of dozens of clandestine detention centers, until then denied by the Military Junta, which exercised de facto power in Argentina).
  - The second phase comprises the end of military dictatorships, the post-dictatorial transitions of the 80s-90s, and the measures to address the consequences of this authoritarian past. In this phase, the IAHRs accompanies the transition processes towards democracy, addresses the problem of the rights to justice, truth, and reparation, orders states to repeal amnesty laws, respect freedom of expression, and prohibit prior censorship, in addition to supporting the separation of powers and the abolition of the death penalty, among other issues.
  - In this context of post-dictatorship political transition, these important inter-American instruments are adopted.
    - **Inter-American Convention to Prevent and Punish Torture (1985)**
    - **Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990)**
    - **Inter-American Convention on Forced Disappearance of Persons (1994)**
- 



Conventions on the rights of persons belonging to certain historically discriminated, excluded, or marginalized groups

- The inter-American human rights treaties adopted within the framework of the OAS firstly addressed those human rights generally attributed to all persons solely on the grounds of their human condition.
- As the constant struggle for the effectiveness of human rights kept developing, progress was made towards recognizing the need to go beyond formal freedom and equality and to recognize the specificity of subjects of rights, both their socioeconomic specificity and their specific identities including their belonging to certain historically excluded and marginalized groups (women, indigenous people, people of African descent, LGBTI people, people with disabilities, etc.). To the general starting point (freedom and formal equality) was added the objective of achieving substantive equality for those people who, for socioeconomic reasons and/or because they belong to historically excluded and marginalized groups, require their rights to be particularly protected with proactive state measures.
- This is the framework in which these inter-American instruments were adopted:
  - **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) (1994)**
  - **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)**
  - **Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance (2013)**
  - **Inter-American Convention Against All Forms of Discrimination and Intolerance (2013)**
  - **Inter-American Convention on the Protection of the Human Rights of Older Persons (2015)**

List of States that ratified the OAS Charter, the American Convention on Human Rights, the Protocol of San Salvador, in addition to having accepted the contentious jurisdiction of the Inter-American Court.

Signatory Countries	OAS Charter	American Convention on Human Rights	San Salvador Protocol	Acceptance of jurisdiction of the Inter-American Court
Antigua and Barbuda	03/12/81			
Argentina	19/01/56	14/08/84	30/03/03	05/09/84
Bahamas	01/03/82			
Barbados	14/11/67	05/11/81		04/06/00
Belize	08/01/91			
Bolivia	25/09/50	20/06/79	12/07/06	27/07/93
Brazil	11/02/50	09/07/92	08/08/96	10/12/98
Canada	20/12/89			
Chile	05/05/53	10/08/90		21/08/90
Colombia	07/12/51	28/05/73	22/10/97	21/06/85
Costa Rica	30/10/48	02/03/70	29/09/99	02/07/80
Cuba	08/07/52			
Dominica	22/05/79	03/06/93		
Ecuador	21/12/50	08/12/77	10/02/93	27/07/84
El Salvador	15/08/50	20/06/78	04/05/95	06/06/95
United States	15/06/51			
Grenada	13/05/75	14/07/78		
Guatemala	18/03/51	27/04/78	30/05/00	09/03/87
Guyana	08/01/91			
Haiti	21/08/50	14/09/77		20/03/98
Honduras	13/01/50	05/09/77	14/09/11	09/09/81
Jamaica	07/08/69	19/07/78		
Mexico	23/11/48	02/03/81	08/03/96	16/12/98
Nicaragua	21/06/50	25/09/79	15/12/09	12/02/91
Panama	16/03/51	08/05/78	28/10/92	09/05/90
Paraguay	30/03/50	18/08/89	28/05/97	26/03/93
Peru	15/05/52	12/07/78	17/05/95	21/01/81
Dominican Republic	11/04/49	11/01/78		25/03/99
Saint Kitts and Nevis	12/03/84			
Saint Lucía	03/12/81			
St. Vicent & Grenadines	22/05/79			
Suriname	01/06/77	12/11/87	28/02/90	12/11/87
Trinidad & Tobago	14/03/67	03/04/91*		28/05/91*
Uruguay	17/08/55	26/03/85	21/11/95	19/04/85
Venezuela	21/12/51	23/06/77**		09/08/77**

Source: Official information published on the Inter-American Commission's website

\*Trinidad & Tobago and \*\*Venezuela denounced the American Convention, in 1998 and 2012, respectively, and are no longer subject to the contentious jurisdiction of the Court (they remain subject to that jurisdiction for events that occurred before the entry into force of the denunciation).

List of States that have ratified the Inter-American Convention to Prevent and Punish Torture (1985), the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990), and the Inter-American Convention on Forced Disappearance of Persons (1994).

Signatory Countries	Inter-American Convention to Prevent and Punish Torture	Protocol to the American Convention on Human Rights to Abolish the Death Penalty	Inter-American Convention on Forced Disappearance of Persons
Antigua and Barbuda			
Argentina	18/11/88	18/06/08	31/10/95
Bahamas			
Barbados			
Belize			
Bolivia	26/08/96		19/09/96
Brazil	09/06/89	31/07/96	26/07/13
Canada			
Chile	15/09/88	04/08/08	13/01/10
Colombia	02/12/98		01/04/10
Costa Rica	25/11/99	30/03/98	20/03/96
Dominica			
Ecuador	30/09/99	05/02/98	
El Salvador	17/10/94		07/07/96
United States			
Grenada			
Guatemala	10/12/86		
Guyana			27/07/99
Haiti			
Honduras		14/09/11	
Jamaica			28/04/05
Mexico	11/02/87	28/06/07	
Nicaragua	23/09/09	24/03/99	28/02/92
Panama	27/06/91	27/06/91	
Paraguay	12/02/90	31/10/00	31/07/95
Peru	27/02/90		26/08/96
Dominican Republic	12/12/86	19/12/11	08/02/92
Saint Kitts and Nevis			
Saint Lucia			
St. Vincent & Grenadines			
Suriname	12/11/87		
Trinidad & Tobago			
Uruguay	23/09/92	08/02/94	
Venezuela	25/06/91	06/04/94	06/02/96

Source: Official information published on the Inter-American Commission's website.

### Ratification Status

Signatory Countries	Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belém do Pará")	Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	Inter-American Convention Against All Forms of Discrimination and Intolerance	Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance	Inter-American Convention on the Protection of the Human Rights of Older Persons
Antigua and Barbuda	12/08/98			23/05/18	
Argentina	09/04/96	28/09/00			23/10/17
Bahamas	03/05/95				
Barbados	08/02/95				
Belize	25/11/96				
Bolivia	26/10/94	27/02/03			17/05/17
Brazil	16/11/95	17/07/01			
Canada	12/08/98				
Chile	24/10/96	04/12/01			15/08/17
Colombia	03/10/96	04/12/03			
Costa Rica	05/07/95	08/12/99		12/12/16	12/12/16
Cuba					
Dominica	30/06/95				
Ecuador	30/06/95	01/03/04			
El Salvador	13/11/95	15/01/02			13/03/18
United States					
Grenada	29/11/00				
Guatemala	04/01/95	08/08/02			
Guyana	08/01/96				
Haiti	07/04/97	29/05/09			
Honduras	04/07/95	14/09/11			
Jamaica	11/11/05				
Mexico	19/06/98	06/12/00			
Nicaragua	06/10/95	15/07/02			
Panama	26/04/95	24/01/01			
Paraguay	29/09/95	28/06/02			
Peru	02/04/96	10/07/01			
Dominican Republic	10/01/96	28/12/06			
Saint Kitts and Nevis	17/03/95				
Saint Lucía	08/03/95				
St. Vincent & Grenadines	23/05/96				
Suriname	19/02/02				
Trinidad & Tobago	04/01/96				
Uruguay	04/01/96	24/05/01	03/19/18	12/10/17	18/11/16
Venezuela	16/01/95	06/06/06			

Source: Official information published on the Inter-American Commission's website.

## Labor and trade union human rights provisions of inter-American standards

OAS Charter	<p><b>Article 45</b>  b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working;  c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable law;</p>
American Declaration of the Rights and Duties of Man	<p><b>Article XIV.</b>  Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.</p> <p><b>Article XV.</b>  Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural, and physical benefit.</p> <p><b>Article XVI.</b>  Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.</p> <p><b>Article XXXVII.</b>  It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.</p> <p><b>Article XXII.</b>  Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.</p>



### **Article 6. Freedom from Slavery**

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labor:
  - a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
  - b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
  - c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
  - d. work or service that forms part of normal civic obligations.

### **Article 16. Freedom of Association**

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
  2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
  3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.
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### **Article 6. Right to Work**

1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.
2. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

### **Article 7. Just, Equitable, and Satisfactory Conditions of Work**

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

- a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;
- b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;
- c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity, and seniority;
- d. Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;
- e. Safety and hygiene at work;

- f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;
- g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;
- h. Rest, leisure, and paid vacations as well as remuneration for national holidays.

**Article 8. Trade Union Rights**

1. The States Parties shall ensure:
  - a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations, and confederations to function freely;
  - b. The right to strike.
2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.
3. No one may be compelled to belong to a trade union.

## 2.4. Relationship between the Inter-American System and other international protection systems

The IAHRs is one of the international human rights protection systems that trade unions can use to defend and promote human rights at work and trade union rights. There are 2 universal systems (the UN universal protection system and the ILO supervisory system) and 3 regional systems (inter-American, European, and African) for the protection of human rights. Each of these systems has different political and legal mechanisms with which they carry out their work of promoting, supervising, and protecting human rights.

There is a relationship of coexistence and complementarity between universal and regional systems for the protection of human rights. By interacting with each other and with the national protection systems which are mutually reinforcing, they provide the most effective possible protection and promotion of human rights for the benefit of protected individuals or groups.

Within the framework of this relationship of coexistence and complementarity, when interpreting and applying inter-American instruments and adopting decisions on the protection and promotion of human rights, including the human rights of workers and unions, the IAHRs refers to the current international legal system as a whole and the jurisprudential developments adopted by the bodies of the other international protection systems. When the IAHRs deals with cases relating to the human rights of workers and unions, it takes the ILO Conventions and the pronouncements of the ILO supervisory bodies as a reference, in particular the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations. It also considers developments arising from the organs of the United Nations universal system and other regional systems, particularly the jurisprudence of the European Court of Human Rights.

The following is a brief reference to these systems:

<b>International systems for the protection of human rights</b>	
United Nations Universal System	A system composed of conventional and non-conventional mechanisms whereby compliance with international human rights obligations, as recognized in international treaties adopted within the framework of the United Nations, are monitored.
ILO Control System	A system composed of regular and special mechanisms through which compliance with international obligations concerning the human rights of workers and unions, as recognized in the Conventions, Recommendations, and Protocols adopted through tripartite mechanisms within the framework of the ILO, are monitored.
European regional system for the protection of human rights	A system consisting of the European Court of Human Rights, responsible for receiving complaints and issuing judgments on violations of human rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950.
African regional system for the protection of human rights	A system composed of two organs, a Commission and the African Court on Human and Peoples' Rights, responsible for supervising and protecting the rights enshrined in the African Charter on Human and Peoples' Rights, adopted within the framework of the Organization of African Unity (now known as the African Union) in 1981.

The following tables make reference to the mechanisms and normative instruments of each system, all of which are taken into account by the IAHR bodies when interpreting and applying inter-American instruments and adopting their decisions, including with reference to the human rights of workers and trade unions:

International Systems for the Protection of Human Rights		
Universal System of protection of human rights of the United Nations	System composed of conventional and extraconventional mechanisms through which the compliance with international obligations on human rights recognized in the instruments adopted within the framework of the United Nations is monitored.	
	<p><b>Conventional mechanisms</b> There are 9 human rights treaty bodies:</p> <ul style="list-style-type: none"> <li>• Human Rights Committee</li> <li>• Committee on Economic, Social and, Cultural Rights</li> <li>• Committee against Torture</li> <li>• Subcommittee on Prevention of Torture</li> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• Committee on the Elimination of Discrimination against Women (CEDAW)</li> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families</li> <li>• Committee on Enforced Disappearances</li> </ul> <p><b>Non-conventional mechanisms</b></p> <ul style="list-style-type: none"> <li>• Human Rights Council (Universal Periodic Review and Complaint Procedure)</li> <li>• Special Procedures (country and thematic mandates)</li> </ul>	<p><b>Normative instruments</b></p> <ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights (1948)</li> <li>• International Covenant on Civil and Political Rights (1966)</li> <li>• International Covenant on Economic, Social, and Cultural Rights (1966)</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination (1965)</li> <li>• Convention on the Elimination of All Forms of Discrimination against Women (1979) and Optional Protocol (1999)</li> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002)</li> <li>• Convention on the Rights of the Child (1989) and Optional Protocols (2000)</li> <li>• International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</li> <li>• International Convention on the Rights of Persons with Disabilities (2006)</li> <li>• International Convention for the Protection of All Persons from Enforced Disappearance (2006)</li> </ul>





ILO control system	<p>System composed of regular and special mechanisms through which the compliance with international obligations on labor and union human rights recognized in the instruments adopted in the framework of the ILO is supervised.</p>	
	<p><b>Conventional mechanisms</b></p> <ul style="list-style-type: none"><li>• Committee of Experts on the Application of Conventions and Recommendations</li><li>• Committee on the Application of Standards</li></ul> <p><b>Special Mechanisms</b></p> <ul style="list-style-type: none"><li>• Committee on Freedom of Association</li><li>• Commissions of Inquiry established under Article 26 of the ILO Constitution (which ultimately authorizes referral of the case to the International Court of Justice)</li><li>• Special Commissions established in response to complaints under Article 24 of the ILO Constitution</li></ul>	<p><b>Normative instruments</b></p> <ul style="list-style-type: none"><li>• International Labour Conventions (Fundamental, Governance, and Technical)</li><li>• International Labour Recommendations</li><li>• International Labor Protocols</li><li>• ILO Constitution (1919)</li><li>• Declaration of Philadelphia (1944)</li><li>• Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977)</li><li>• Declaration on Fundamental Principles and Rights at Work (1998)</li><li>• Declaration on Social Justice for a Fair Globalization (2008)</li></ul>

## International Systems for the Protection of Human Rights

European regional system for the protection of human rights	System composed of a European Court of Human Rights in charge of receiving complaints and issuing sentences for violations of human rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted within the Council of Europe in 1950.	
	<b>Mechanisms</b> <ul style="list-style-type: none"><li>• European Court of Human Rights</li><li>• The monitoring of compliance with the judgments of the European Court is the responsibility of a political body, the Committee of Foreign Ministers of the Member States of the Council of Europe, which meets regularly for this purpose. The cases remain on the agenda until the Committee considers the measures taken by the convicted State to be sufficient.</li></ul>	<b>Normative instruments</b> <ul style="list-style-type: none"><li>• European Convention on Human Rights (1950) and Additional Protocols to the Convention (extending the catalogue of rights)</li><li>• European Social Charter (1961)</li><li>• Conventions and Protocols adopted by the Council of Europe</li></ul>





African regional system for the protection of human rights	System composed of two bodies (one Commission and one Court) charged with supervising and protecting the rights enshrined in the African Charter on Human and Peoples' Rights, adopted within the framework of the African Union in 1981.	
	<b>Mechanisms</b> <ul style="list-style-type: none"><li>• African Commission on Human and Peoples' Rights</li><li>• African Court on Human and Peoples' Rights</li><li>• In the event of non-compliance with African Court judgements, the Executive Council of Ministers of the African Union, on behalf of the Assembly of Heads of State and Government, is mandated to ensure that judgements are enforced. When a State is found not to be complying with the judgements, the Executive Council can recommend sanctions which may include blocking trade and foreign routes.</li></ul>	<b>Normative instruments</b> <ul style="list-style-type: none"><li>• African Charter on Human and Peoples' Rights (1981)</li></ul>
Inter-American regional system for the protection of human rights	System composed of two control bodies through which it supervises and promotes compliance with the international obligations enshrined in the inter-American instruments adopted within the framework of the OAS.	
	<b>Mechanisms</b> <ul style="list-style-type: none"><li>• Inter-American Commission on Human Rights</li><li>• Inter-American Court of Human Rights</li><li>• The Inter-American Court may bring cases in which a State has not complied with its judgments to the attention of the General Assembly of the Organization of American States.</li></ul>	<b>Normative instruments</b> <ul style="list-style-type: none"><li>• Charter of the Organization of American States (1948)</li><li>• American Declaration of the Rights and Duties of Man (1948)</li><li>• American Convention on Human Rights (1969)</li><li>• Additional Protocol to the American Convention on Economic, Social, and Cultural Rights ("Protocol of San Salvador") (1988)</li><li>• Thematic Conventions and Protocols</li></ul>

# 3.

## What resources of the Inter-American Human Rights System can unions use?

### 3.1. The Inter-American Commission on Human Rights

#### 3.1.1. Press Releases

## Practical information on Inter-American commission press releases

What are Inter-American Commission press releases?

- Inter-American Commission press releases are one of the mechanisms through which the Inter-American Human Rights System (IAHRS) carries out its work of monitoring human rights in the region.
- Through its press releases, the Inter-American Commission publicly expresses to all States and to the entire international community its institutional position on specific human rights issues or cases, for example:
  - Its repudiation of a serious human rights violation with respect to a specific case that occurred, which could reflect a widespread situation.
  - Its recognition of progress in the respect for human rights.
  - Its recognition of an international Human Rights Day.
  - Its alarm at the increased number of murders of human rights defenders.
  - Its request and exhortation to States to make progress in overcoming general human rights problems or situations considered a priority by the Commission.
  - Its concern at a failure to comply with the decisions of the IAHRS.
  - A report on a case being reviewed by the Court that may represent a landmark human rights case.
- Two examples of press releases from the Inter-American Commission:
  - Press release issued to express the Commission's repudiation of the assassination of Brazilian city councilor and human rights defender Marielle Franco in March 2018.  
[http://www.oas.org/en/iachr/media\\_center/PReleases/2018/052.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/052.asp)
  - Press release issued to state that the Commission considers that precautionary measures in favor of Argentine indigenous leader Milagro Sala in Argentina as well as a request for provisional measures to be informed to the Inter-American Court have not been complied with.  
[http://www.oas.org/en/iachr/media\\_center/PReleases/2017/173.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/173.asp)





How can trade unions use this mechanism?	<ul style="list-style-type: none"><li>• The Commission’s press releases are a tool that unions can use as the first level of intervention before the IAHRs.</li><li>• In order to activate this mechanism, unions must be able to provide timely and truthful information to the Inter-American Commission or to the thematic or country rapporteur on situations or serious cases of violations of workers’ human rights so that the Commission has knowledge and the necessary elements to consider the publication of a press release.</li><li>• The contact person for the Commission’s press office can be found at the following link: <a href="http://www.oas.org/en/iachr/media_center/contact.asp">http://www.oas.org/en/iachr/media_center/contact.asp</a></li><li>• Contact details for each Special Rapporteur are available on the institutional website of the Inter-American Commission at the following link: <a href="http://www.oas.org/en/iachr/mandate/rapporteurships.asp">http://www.oas.org/en/iachr/mandate/rapporteurships.asp</a></li></ul>
Further information	<ul style="list-style-type: none"><li>• The 2018 press releases are available here: <a href="http://www.oas.org/en/iachr/media_center/press_releases.asp">http://www.oas.org/en/iachr/media_center/press_releases.asp</a></li></ul>

### 3.1.2. Thematic hearings

#### Practical information on hearings of the Inter-American Commission

What are hearings of the Inter-American Commission?

- Hearings are one of the mechanisms through which the Inter-American Commission carries out its work of monitoring human rights in the region.
- Through the hearings, the Commission:
  - receives information on the human rights situation in countries (country hearings) and in the region (regional hearings).
  - gives the parties (the petitioning party requesting the hearing and the representatives of the State concerned) the opportunity to comment on their observations before the Commission and to open a channel of dialogue.
  - issues comments, observations, or recommendations to States aimed at seeking solutions to the problem reported at the hearing.
- This process is regulated by the Commission's Rules of Procedure (Articles 61 to 69). The Commission may hold hearings on its own initiative or at the request of an interested party.
- Hearings may be used to provide the Commission with information on:
  - any petition or case pending in the petitions system before the Commission.
  - follow-up of recommendations issued by the Commission itself in substantive reports or precautionary measures.
  - information of a general or specific nature relating to human rights in one or more OAS Member States.
- The hearings are public and are broadcast live on the Commission's website. The videos of the hearings are recorded and are available here:  
<http://www.oas.org/en/iachr/multimedia/sessions/default.asp>



<p>How can unions use this mechanism?</p>	<ul style="list-style-type: none"> <li>• The hearings are an important political space to make the human rights situation of workers in the region and in every country visible at the international level, to activate the monitoring system of the Inter-American Commission, and to put political pressure on the State concerned.</li> <li>• The political and legal pressure of the Commission can be instrumental to opening channels of dialogue in the search for solutions to complaints and strengthening resistance and struggles being carried out at the national level.</li> <li>• The political impact of the hearings can be further strengthened by the development of a communication strategy hinged on the fact that the Commission will receive the complaint through the hearing and the State will be obliged to respond to the Commission.</li> <li>• The effectiveness of this mechanism depends, to a large extent, on the performance of a petitioning party in its preparation prior to the hearing, in its own participation in the hearing, and subsequently in following up the results of the hearing.</li> </ul>
<p>When are hearings held?</p>	<ul style="list-style-type: none"> <li>• Hearings are held during the regular or special sessions of the Inter-American Commission.</li> <li>• The Commission traditionally has three regular sessions per year: March, July, and October. On certain occasions, it holds regular and special sessions away from headquarters at the invitation of the States. In recent years it has held an average of 4 to 5 sessions.</li> <li>• The calendar of sessions can be found at the following link:  <a href="http://www.oas.org/en/iachr/media_center/calendar.asp">http://www.oas.org/en/iachr/media_center/calendar.asp</a> </li> </ul>



<p>How to request hearings before the Inter-American Commission</p>	<ul style="list-style-type: none"> <li>• The Commission publicly informs the deadlines before which it is possible to send requests for hearings, usually 2 to 3 months before a hearing. Within this period, trade unions can send a letter requesting a hearing, indicating the reasons for the request and the issues to be communicated to the Commission.</li> <li>• The letter of request is addressed to the Executive Secretariat of the Commission and can be sent by e-mail (the e-mail is available in the public call for Commission hearings).</li> <li>• Those requesting a hearing must express the purpose of the hearing and provide a summary of the matters to be presented.</li> <li>• The hearing request letter may contain the following structure:             <ul style="list-style-type: none"> <li>- An introduction addressed to the Executive Secretary of the IACHR</li> <li>- A presentation of the petitioners (names and representatives)</li> <li>- Brief account of the main facts and unfulfilled inter-American norms</li> <li>- An answer to the question: Why should the Commission accept the request?</li> <li>- The signatures of the petitioners</li> </ul> </li> </ul>
<p>When is a hearing accepted?</p>	<ul style="list-style-type: none"> <li>• Once the hearing is accepted, the Executive Secretariat of the Inter-American Commission informs the parties of the date, place, and time of the hearing, generally at least one month in advance.</li> <li>• Simultaneously, the Executive Secretariat of the Commission requests the petitioning party to send the Commission a file containing a summary of the main facts and all the documentation deemed necessary for the purpose of the hearing, within 20 days.</li> </ul>

What should be considered in preparing for a hearing?

- As part of the preparation prior to the thematic hearing, the requesting party may consider the following elements:

### **1. Define what you want to report to the Inter-American Commission**

- Considering the object of the complaint, define the selection of themes or sub-themes that will be presented and highlighted for the Commission.
- Define whether the selected themes will be shown as a general situation of the country, as a situation of one or more specific sectors, by specific emblematic cases, or a combination thereof.
- Prepare speeches that will be transmitted orally to the Commission, taking into account:
  - Relevant facts of the general situation or particular case
  - Human rights violated
  - Non-compliant with inter-American instruments, norms (OAS Charter, American Declaration, American Convention, Pact of San Salvador, or thematic Conventions), decisions of the Commission, or rulings or advisory opinions of the Court.
  - If the subject-matter of the complaint deals with labor and union rights, the legal basis may be supplemented by ILO Conventions and decisions by ILO supervisory bodies, as well as by decisions of other relevant international bodies, for example, possible rulings of the European Court of Human Rights.
  - Prepare the file requested by the Commission, with a summary of the main facts and all the documentation deemed necessary.

### **2. Define who will be the persons or organizations that will orally transmit the information and denunciations to the Inter-American Commission**

- Define if only trade union organizations will be parties to the petition or if non-union organizations will also be parties to the petition being reviewed at the hearing.





What should be considered in preparing for a hearing?

### 3. Define what you want to request from the Inter-American Commission

- What do we need from the Commission? For example:
  - What should the Commission recommend in order for the State to comply with its international obligations?
  - Activate the Commission's oversight mechanisms so that it can monitor the situation or cases denounced at the hearing.
  - Are discussions reflected in Commission reports (thematic, country, or annual reports)?
  - Organize country visits or include the topic in an already scheduled visit.
  - Sensitize the Commission on the need to issue a press release calling on States to comply with their inter-American obligations concerning the human rights of workers and trade unions.
  - Coordination with the ILO so that organization may reinforce their observations and recommendations to the States.

What should be considered when participating in a hearing?

- Upon establishing the subjects and the possible contents of the speeches, it is important to consider that time in the hearing is limited; hence it is not possible to report everything a party would like to to the Commission. The speeches to be transmitted orally should contain the essential and central elements of the complaint and of the request made to the Commission.
- It is important to previously select the persons who will orally transmit the information, complaints, and requests in the hearing, as well as the length of time afforded to them.
- It is also possible to present images, graphs, or statistics during the hearing, further boosting the impact on and further sensitizing the Commission as to the seriousness of the problem reported.
- In a country hearing, the petitioning party has approximately 20 minutes in the opening part of the hearing and, once a State's representative has presented the State's arguments, some more time to answer questions from the Commission, counter the State's arguments, or introduce any additional elements deemed necessary to reinforce the initial presentation.



What should be considered in the post-hearing phase?

- After the hearing, the Commission, having been previously informed and made aware of the problem or the complaint made at the hearing, can activate its monitoring and follow-up mechanisms
- For the subsequent follow-up phase, it is important to:
  - maintain permanent contact with the Commission and with the Rapporteurs for the matter.
  - regularly inform the Commission of any new facts that may aggravate the situation.
  - request a visit, or request that the complaint be included in the agenda of an already scheduled visit, so that the Commission can personally witness the gravity of the situation or specific case.
  - request that the situation or case denounced be included in the country, thematic, and annual reports drawn up by the Commission
  - request the supervision and follow-up of the Commission and the issuance of recommendations to the State concerned.

The following table includes hearings that have taken place in recent years focused on the human rights of workers and trade unions.

### Thematic hearings on labor and trade union rights

- Guarantees for Freedom of Expression, Association, and Peaceful Assembly for Trade Unions in the Americas (October 2, 2018)  
[https://www.youtube.com/watch?v=JQEAR3MybvA&index=23&list=PL5QlapyOGhXtxcMOpg35GCa2M7dJo\\_QVh&t=0s](https://www.youtube.com/watch?v=JQEAR3MybvA&index=23&list=PL5QlapyOGhXtxcMOpg35GCa2M7dJo_QVh&t=0s)
- Labor rights in the automotive industry in the United States (February 26, 2018)  
<https://www.youtube.com/watch?v=FfDxULMBchU&index=2&t=0s&list=PL5QlapyOGhXt0BSFvgydHBu6yz2atqEN2>
- Situation of Labor and Labor Union Rights in Argentina (October 24, 2017)  
<https://www.youtube.com/watch?v=5KpaEAOHVSs&t=0s&index=1&list=PL5QlapyOGhXvdhUdWzbRmDhNQU-Fs3U-2>
- Labor Reform and Outsourcing in Brazil (October 23, 2017)  
<https://www.youtube.com/watch?v=dyvkch5vT0c&index=37&list=PL5QlapyOGhXvdhUdWzbRmDhNQU-Fs3U-2>

- 
- Reports of Repression of Protest and of Unionization in Jujuy Province, Argentina (March 20 2017)  
<https://www.youtube.com/watch?v=suzx6i7lgec>
  - Situation of Extra-Urban Transport Workers in Guatemala (March 20, 2017)  
<https://www.youtube.com/watch?v=vLQ6h4oQw0g>
  - Human Rights Situation of Female Sex Workers in the Americas (March 18, 2017)  
[https://www.youtube.com/watch?v=\\_4MPghRZ2wA](https://www.youtube.com/watch?v=_4MPghRZ2wA)
  - Situation of Trade Union Rights in Mexico (December 5, 2016)  
[https://www.youtube.com/watch?v=6jRk-\\_bXR6s](https://www.youtube.com/watch?v=6jRk-_bXR6s)
  - Right to Freedom of Association in Paraguay (April 4,2016)  
<https://www.youtube.com/watch?v=INjO8Y9yJ9I&t=23s>
  - Human rights situation of trade unionists in Peru (April 8,2016)  
<https://www.youtube.com/watch?v=y4ygTnRPRRg>
  - Labor Association Rights in the Americas (March 16, 2015)  
[https://www.youtube.com/watch?time\\_continue=1&v=gZMpqTf0ts4](https://www.youtube.com/watch?time_continue=1&v=gZMpqTf0ts4)
  - Human Rights, the Equal Opportunity Act and the Equal Opportunity Commission in Trinidad and Tobago (March 20, 2015)  
<https://www.youtube.com/watch?v=fybngG2xwTs>
  - Argentina: Right to work of persons with disabilities (March 19, 2015)  
<https://www.youtube.com/watch?v=G5-V1evoVzw>
  - Situation of Labor Rights in Nicaragua (March 19, 2015)  
[https://www.youtube.com/watch?v=dceJgG\\_4Eeg](https://www.youtube.com/watch?v=dceJgG_4Eeg)
  - Right to Freedom of Association in Chile (October 29, 2013)  
<https://www.youtube.com/watch?v=Te16sFuCCkE>
  - Human rights situation of poultry and meat workers in the United States (March 25, 2014)  
<https://www.youtube.com/watch?v=YJm6JNAzOM4>

### 3.1.3. Country visits

Practical information on country visits by the Inter-American Commission	
What are country visits of the Inter-American Commission?	<ul style="list-style-type: none"><li>• Commission monitors, promotes, and protects human rights in the region. This activity is recognized in Article 18(g) of the Statutes and Article 53 of the Rules of Procedure.</li><li>• A country visit allows members of the Inter-American Commission to identify, elucidate, and conduct in-depth investigations in the field into the facts or allegations (a general situation or specific situations) of which it has become aware through its other monitoring and protection mechanisms, including thematic hearings, cases, petitions, and precautionary measures, or through official reports or reports from civil society organizations, or even through public information widely disseminated in the media.</li><li>• A country visit allows the Commission to obtain information and substantive documentation for the preparation of a country report to be presented to the political bodies of the OAS (the Permanent Council and the General Assembly) and to the international community in order to inform them of the human rights situation in the country visited.</li><li>• The country report resulting from the visit will contain a description and analysis of the situation observed by the Commission and the conclusions and recommendations of the Commission to the State visited.</li></ul>





When does the Inter-American Commission make country visits?

- One of the powers of the Inter-American Commission is to conduct country visits to observe and investigate complaints in the field that have been received through its various monitoring mechanisms.
- The Commission's Rules of Procedure (Article 39) establish that, if it considers it necessary and convenient, the Commission may carry out a country visit investigation for the effective fulfillment of which it will request the support deemed necessary that shall be provided by the State concerned. In this sense, a country visit is an option of the Commission decided on the basis of the information it receives through its monitoring and protection mechanisms that has convinced the Commission of the seriousness of the situation and, therefore, of the need and convenience of a country visit. A country visit shall only take place with the consent or by invitation of the State concerned.
- In serious and urgent cases, the Commission may conduct a country visit investigation, with the prior consent of the State in whose territory the violation is alleged to have been committed, only with the submission of a petition or communication that meets all the formal requirements for admissibility.
- In certain cases, given the seriousness and level of conflict of a particular situation in a given country, OAS political bodies such as the Meeting of Consultation of Ministers of Foreign Affairs or the Permanent Council have occasionally requested the Inter-American Commission to report on the human rights situation of that given country. Examples of this include visits to El Salvador and Honduras in 1969 during the outbreak of the war between the two countries, a visit to Panama in 1989 in the days of General Noriega, and a visit to Haiti in 1994.<sup>5</sup>

<sup>5</sup>SANTOSCOY, Bertha. *Las visitas in loco de la Comisión Interamericana de Derechos Humanos*. Online article published by the Virtual Juridical Library. Institute of Juridical Investigations. National Autonomous University of Mexico (UNAM). <https://archivos.juridicas.unam.mx/www/bjv/libros/5/2454/40.pdf>





How do  
country visits  
work?

- Once the country visit has been accepted by the government of the State concerned, the Inter-American Commission determines a Special Commission to carry out the visit that will be comprised of members of the Inter-American Commission itself.
  - A member of the Commission who is a national or a resident of the territory of a State where a country visit is to be held shall be prevented from participating.
  - The Special Commission organizes its own work, assigning to its members the activities planned for the visit, and to officials of the Executive Secretariat of the Inter-American Commission or other necessary personnel.
  - The State that accepts or invites a visit shall grant the Special Commission access to all the means necessary to carry out its mission and, in particular, shall undertake not to retaliate in any way against the persons or entities that have cooperated with it by means of information or testimony.
  - During the country visit, the Special Commission or any of its members may interview, freely and privately, persons, groups, entities, or institutions. The State must set in place the necessary guarantees for those who provide the Special Commission with information, testimonies, or evidence of any kind.
  - The members of the Special Commission may travel freely throughout the territory of the country, for which the State must provide any assistance necessary. The State must ensure the availability of means of transport.
  - The members of the Special Commission shall have access to prisons and all other places of detention and interrogation and may privately interview detained persons.
  - The State must provide the Special Commission with any documents related to the observance of human rights that it considers necessary for the preparation of its report.
  - The Special Commission is free to use any appropriate means to film, photograph, collect, document, record, or reproduce any information it deems appropriate.
  - The State must take appropriate security measures to protect the Special Commission.
- 



Country visits and Chapter IV.B of the Annual Report of the Inter-American Commission

- Chapter IV.B of the Inter-American Commission's Annual Report is a special section listing those countries for which the Commission considers special oversight indispensable given the seriousness of the complaints of human rights violations.
- The Commission's Rules of Procedure establish that, when a State included in Chapter IV.B of the Annual Report has been the object of a country visit, the Annual Report corresponding to the year of the visit will not be included in that chapter. The monitoring of the human rights situation that year in that State will be done on the basis of the country report prepared in connection with the country visit.
- Once the country report has been published, the Commission will monitor compliance with the respective recommendations through Chapter V of its Annual Report.
- Subsequently, the Commission will decide whether the monitoring of the human rights situation in the respective country should be included in any of the chapters mentioned in the Annual Report.

How can trade unions use this mechanism?

- Country visits are a mechanism of the Inter-American Commission that allows for the fulfillment of its work of promoting, monitoring, and protecting human rights, including labor and union rights.
- This mechanism also has an important political effect on the State visited, which has to respond officially to the Commission on complaints of human rights violations in its territory, on civil society, which has the possibility to file complaints on the actual human rights situation in the country and to take advantage of the channels or open spaces afforded by the Commission's visit, and on the international community, which will take cognizance of the human rights situation in a country through an international institution of high political relevance and legal legitimacy.
- Trade unions can – within the framework of a public hearing or by participating in the Commission's other oversight and protection mechanisms – make a very important contribution to the Commission's decision as to the need for and convenience of making a country visit.



<p>How can trade unions use this mechanism?</p>	<ul style="list-style-type: none"><li>• Trade unions can request space in the agenda of a previously scheduled country visit.</li><li>• A country visit allows the Commission to:<ul style="list-style-type: none"><li>- gather detailed information on human rights violations reported by trade unions.</li><li>- receive suggestions of possible recommendations that the Commission should make to the State regarding complaints filed by trade union organizations.</li><li>- accept petitions submitted by trade union organizations to the Commission concerning potential actions it may pursue within the framework of its mandate to supervise and protect human rights, among them including situations reported in thematic reports and in annual reports submitted to the OAS, paying special attention to particularly serious and urgent cases that should be the subject of a request for precautionary measures, and issuing press releases to, inter alia, call upon States to comply with their inter-American obligations in labor- and union-related rights matters.</li><li>- ensure that the situation described by the trade union organizations is included in the country report that the Commission will prepare and submit to the political bodies of the OAS and to the international community.</li></ul></li><li>• It is very important to maintain permanent contact with the persons responsible for thematic or country reports, as well as with members participating in country visits, in order to follow up on the complaints or requests made by the trade union organizations.</li></ul>
<p>Further information</p>	<ul style="list-style-type: none"><li>• The procedures for country visits are contained in the Commission Regulation, from Article 53 to Article 57.</li><li>• The Commission's country visits are listed here: <a href="http://www.oas.org/en/iachr/activities/countries.asp">http://www.oas.org/en/iachr/activities/countries.asp</a></li></ul>

### 3.1.4. Annual, country, and thematic reports

Practical information on the reports of the Inter-American Commission	
What are the reports of the Inter-American Commission?	<ul style="list-style-type: none"> <li>• In fulfillment of its function of promoting, monitoring, and protecting human rights in the region, the Inter-American Commission has the power to prepare studies or reports as deemed appropriate.</li> <li>• Among the reports prepared by the Commission are:               <ul style="list-style-type: none"> <li>- Annual Reports</li> <li>- Thematic Reports</li> <li>- Country Reports</li> </ul> </li> </ul>
What is an Annual Report of the Inter-American Commission?	<ul style="list-style-type: none"> <li>• The Commission submits its Annual Report to the OAS General Assembly every year, as set forth in Article 59 of the Commission's Rules of Procedure.</li> <li>• The Annual Report has two volumes.</li> <li>• The <b>first volume</b> includes the following:               <ol style="list-style-type: none"> <li>a. An <b>introduction</b> demonstrating progress achieved in reaching the objectives set forth in the American Declaration, the American Convention, and the other inter-American human rights instruments, as well as the status of their ratification.</li> <li>b. <b>Chapter I</b> includes a list of the sessions held and a summary of the activities carried out by the Commission during the year.</li> <li>c. <b>Chapter II</b> includes details on petitions and cases in their different phases, including admissibility reports, substantive reports, precautionary measures granted, and the status of compliance with recommendations in individual cases.</li> <li>d. <b>Chapter III</b> includes the activities of the Rapporteurships and Thematic Units, including references to reports produced by them and their promotional activities.</li> <li>e. <b>Chapter IV</b> has two sections:                   <ol style="list-style-type: none"> <li>i. Section A contains an annual overview of the human rights situation in the hemisphere, as derived from the Commission's monitoring work, highlighting the main trends, problems, challenges, breakthroughs, and good practices.</li> <li>ii. Section B contains special reports that the Commission may find necessary regarding the human rights situations in Member States that require priority.</li> </ol> </li> </ol> </li> </ul>



<p>What is an Annual Report of the Inter-American Commission?</p>	<p>f. <b>Chapter V</b> contains follow-up reports that highlight progress made and difficulties encountered in the effective observance of human rights. The Commission uses this chapter to follow up on the measures adopted to meet the recommendations made in country or thematic reports, or in reports published in Chapter IV.B.</p> <p>g. <b>Chapter VI</b> contains an overview of institutional development activities, including information on financial resources and the execution of the Commission's budget.</p> <ul style="list-style-type: none"> <li>• The second volume contains the country, thematic, or regional reports produced or published during the year, including those of Rapporteurs, Special Rapporteurs and Thematic Units.</li> <li>• For the preparation of Chapters IV and V, the Commission applies the rules established in paragraphs 5 to 9 of Rule 59 of its Rules of Procedure. The criteria for the inclusion of a Member State in Chapter IV.B of the Annual Report are contained in paragraph 6 of that same article (59).</li> </ul>
<p>Country visits and Chapter IV.B of the Annual Report of the Inter-American Commission</p>	<ul style="list-style-type: none"> <li>• Chapter IV.B of the Inter-American Commission's Annual Report is a special report listing those countries which the Commission has decided require special oversight given the seriousness of the complaints filed for human rights violations.</li> <li>• The Commission's Rules of Procedure establish that, when a State included in Chapter IV.B of the Annual Report has been the object of a country visit, it will not be included in the Annual Report chapter corresponding to the year of the visit. The monitoring of the human rights situation that year in that particular State will be carried out through the country report prepared in connection with the on-site visit.</li> <li>• Once the country report has been published, the Commission will monitor compliance with the respective recommendations through Chapter V of its Annual Report.</li> <li>• Subsequently, the Commission will decide whether the monitoring of the human rights situation in the respective country should be included in any of the other chapters mentioned in the Annual Report.</li> </ul>



What is the  
Inter-American  
Commission  
Country Report?

- A Country Report is one of the mechanisms through which the Commission carries out the tasks of promoting, monitoring, and protecting human rights in the region and in each country.
  - Through this report, the Commission outlines and analyzes the human rights situation in a given country on the basis of the information it has received through its various monitoring and protection mechanisms (country visits, thematic hearings, petition and case system, precautionary measures, working meetings, requests for information from States) and issues conclusions and recommendations to States aimed at addressing the problems identified as these are incompatible with inter-American instruments.
  - The Commission's Rules of Procedure establish that the preparation of a general or special report on the human rights situation in a given State shall conform to the following standards:
    - Once the draft report has been adopted by the Commission, it shall be transmitted to the Government of the State concerned for comments.
    - The Commission shall inform the State concerned of the time frame within which it must submit its observations.
    - Once the Commission has received the State's arguments, it will study them and, in light thereof, maintain or alter its report, in addition to deciding how to disclose it.
    - If, at the expiration of the time limit set, the State has not submitted any observations, the Commission shall publish the report in such manner as it deems appropriate.
    - Upon approval of their disclosure, the Commission will transmit them through the General Secretariat to the member States and to the OAS General Assembly.
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What does a country report include?

- The **general structure** of a Country Report is as follows:
  - **Executive Summary**
  - **Introduction**
  - **Description and analysis of the situation observed in the monitoring and protection work**
    - The report can highlight the situation by theme (life, integrity and personal freedom, freedom of expression, security, Economic, Social, Cultural, and Environmental rights), by sector (administration of justice), or by vulnerable groups (human rights defenders, LGBTI people, people of African descent, women, children, internally displaced persons, migrants, people in State custody).
  - **Conclusions and Recommendations**
    - Similarly, recommendations can also be divided according to issues, sectors, and groups suffering violations as highlighted in the description of the human rights situation in the country.
    - Often there are a number of recommendations in country reports. These may be:
      - Strengthen and provide sufficient resources to public bodies involved in the defense of human rights.
      - Ratify OAS Conventions.
      - Adopt public policies, laws, or protocols.
      - Investigate, prosecute, and punish those responsible for the violation of human rights and adopt measures of non-repetition.
      - Promote equal opportunities for women, people of African descent, people with disabilities, LGBTI people, etc.
      - Carry out prior consultations with indigenous peoples.
      - Urge against the use of the punitive power of the State to criminalize human rights defenders.

<p>How are the conclusions and recommendations of a country report followed up?</p>	<ul style="list-style-type: none"> <li>• The Commission follows up on the implementation of its recommendations made in the country report through its various monitoring and oversight mechanisms.</li> <li>• The Commission monitors compliance with its recommendations through Chapter V of its Annual Report, which is submitted to the OAS political bodies.</li> </ul>
<p>Examples of Country Reports</p>	<ul style="list-style-type: none"> <li>• <b>Nicaragua 2018:</b> Gross Human Rights Violations in the Context of Social Protests in Nicaragua (June 21, 2018): <a href="http://www.oas.org/en/iachr/reports/pdfs/Nicaragua2018-en.pdf">http://www.oas.org/en/iachr/reports/pdfs/Nicaragua2018-en.pdf</a></li> <li>• <b>Guatemala 2017:</b> Situation of Human Rights in Guatemala (December 31, 2017) <a href="http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf">http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf</a></li> <li>• <b>Mexico:</b> Situation of Human Rights in Mexico (December 31, 2015) <a href="http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf">http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf</a></li> <li>• Honduras 2016: Situation of Human Rights in Honduras (December 31, 2015) <a href="http://www.oas.org/es/cidh/informes/pdfs/Honduras-es-2015.pdf">http://www.oas.org/es/cidh/informes/pdfs/Honduras-es-2015.pdf</a></li> <li>• Dominican Republic 2016: Situation of Human Rights in the Dominican Republic (December 31, 2015) <a href="http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf">http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf</a></li> <li>• Colombia 2014: Truth, Justice and Reparation - Report on the Situation of Human Rights in Colombia (December 31, 2013) <a href="http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf">http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf</a></li> </ul>



What is a thematic report?

- Through its various monitoring mechanisms, the Commission receives information on the problems affecting each of the countries in the region that may represent impediments to the enjoyment and exercise of human rights. These problems include general situations affecting a large part of the region's population.
- On the basis of this information, the Commission considers the adequacy and necessity of drawing up thematic reports to:
  - describe, update, and analyze the regional setting on the given topic
  - develop inter-American human rights standards in relation to the issue
  - make recommendations so that the States may remedy any problems detected.
- As regards a particular theme of the thematic report, the Commission usually presents the general theme and disaggregates the problems identified into specific sub-themes, sectors, or groups of people as they may merit differentiated levels of intervention.

Examples of Thematic Reports

**Thematic reports on economic, social, cultural, and environmental rights**

- Poverty and Human Rights (2017)  
<http://www.oas.org/en/iachr/reports/pdfs/Poverty-HumanRights2017.pdf>
- Integral Protection Policies for Human Rights Defenders (2017)  
<http://www.oas.org/en/iachr/reports/pdfs/Defensores-eng-2017.pdf>
- Criminalization of Human Rights Defenders (2016)  
<http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>
- The Right to Truth in the Americas (2014)  
<http://www.oas.org/en/iachr/reports/pdfs/Right-to-Truth-en.pdf>

**Thematic reports on the rights of persons of African descent and against racial discrimination**

- Indigenous Peoples, Communities of African Descent, Extractive Industries (2015)  
<http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>
  - The Situation of People of African Descent in the Americas (2011)  
[http://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS\\_2011\\_ENG.pdf](http://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS_2011_ENG.pdf)
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Examples of Thematic Reports	<p><b>Thematic reports on women’s rights</b></p> <ul style="list-style-type: none"><li>• Indigenous Women (2017) <a href="http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf">http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf</a></li><li>• Access to Information, Violence against Women, and the Administration of Justice (2015) <a href="http://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf">http://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf</a></li><li>• Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application (2011) <a href="http://www.oas.org/en/iachr/women/docs/pdf/REGIONALst.pdf">http://www.oas.org/en/iachr/women/docs/pdf/REGIONALst.pdf</a></li><li>• Access to Justice for Women Victims of Violence in the Americas (2007) <a href="http://www.cidh.org/women/Access07/tocaccess.htm">http://www.cidh.org/women/Access07/tocaccess.htm</a></li><li>• Violence and Discrimination Against Women in the Armed Conflict in Colombia (2006) <a href="http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm">http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm</a></li></ul> <p><b>Thematic report on the rights of LGBTI people</b></p> <ul style="list-style-type: none"><li>• Violence against LGBTI Persons (2015) <a href="http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf">http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf</a></li></ul>
Further information	<ul style="list-style-type: none"><li>• Thematic reports are available at this link: <a href="http://www.oas.org/en/iachr/reports/thematic.asp">http://www.oas.org/en/iachr/reports/thematic.asp</a></li><li>• Country reports are available at this link: <a href="http://www.oas.org/en/iachr/reports/country.asp">http://www.oas.org/en/iachr/reports/country.asp</a></li></ul>

### 3.1.5. Precautionary measures

Practical information on the Inter-American Commission's precautionary measures	
What are the Inter-American Commission's precautionary measures?	<ul style="list-style-type: none"><li>• Precautionary measures are protection mechanisms that are provided for in Article 25 of the Rules of Procedure of the Inter-American Commission. They are adopted in grave and/or urgent cases to prevent irreparable harm to persons under the jurisdiction of a State party to the OAS.</li><li>• This is an independent mechanism of the petition and case system; therefore, it need not be linked to a petition. It can be adopted in the context of a petition or autonomously.</li><li>• The Commission activates this mechanism in exceptional situations.</li></ul>
What should a request for precautionary measures look like?	<ul style="list-style-type: none"><li>• An application letter must detail the seriousness, urgency, and irreparability of the situation.</li><li>• It should also indicate whether the facts alleged were reported to the national authorities, whether protection has been sought from the State, and what the response has been.</li><li>• Protection measures or other required measures must be described.</li><li>• The request may be in any of the official languages of the IACHR: Spanish, English, Portuguese, or French. It is worth noting that, if a decision is reached that information should be transmitted to the State concerned, it must be in the official language of that State.</li><li>• The Commission does not require the representation of a lawyer in the presentation and processing of the request for precautionary measures.</li><li>• Any request or communication submitted must be addressed to the Inter-American Commission on Human Rights.</li></ul>





What information should the application for interim measures contain?

- According to the Commission's Institutional Information Brochure, the important information to be included in the request for precautionary measures is the following:
    - 1. Personal information:**
      - The details of the applicant: full name, telephone, postal address, fax, and e-mail.
      - An indication of whether the applicant wishes to protect their identity.
      - Identification of the person – or group of persons – who will be the beneficiary, as well as contact details, if possible.
      - Should identification of all persons not be possible, sufficient data must be provided for the State to provide protection.
      - If the person is deprived of liberty, the place of detention should be indicated.
    - 2. Alleged facts:**
      - A detailed and chronological description of the facts demonstrating the existence of a situation of gravity, urgency, and irreparability.
      - The current situation of the potential beneficiaries of protection and their degree of risk.
      - If possible, simple and legible copies of documents needed for understanding the situation of the person or group of persons proposed as beneficiaries should be sent. These documents may include copies of complaints to authorities, medical certificates in health-related situations, and other relevant legal complaints, if any. Should it not be possible to submit these documents, reasons must be provided.
    - 3. Complaints to State authorities**
      - An explanation of whether the alleged facts have been reported to the authorities and whether protection has been requested from the State, and a description of what response, if any, has been obtained; or an explanation of the reasons why it would not have been possible to do so.
      - An indication of whether the person – or group of persons – that is proposed as a beneficiary already has internal protective measures. If so, an explanation of how effective these measures have been.
    - 4. Measures requested**
      - Description of the protective measures, or other measures, required.
    - 5. Connection with a petition or case already being reviewed by the Commission**
      - An indication of whether the person has already filed a petition or has a case pending before the Commission, and if so, the date of filing of the petition and the reference number assigned to the petition or case.
- 

<p>How can trade unions use this mechanism?</p>	<ul style="list-style-type: none"> <li>• Any person or group of persons may file an application for interim measures. The person or group of persons on whose behalf precautionary measures are sought are called beneficiaries and those representing them are called applicants.</li> <li>• Trade unions may apply for injunctive relief in cases that meet the requirements of seriousness, urgency, and possible irreparable harm. A clear example of a request for a precautionary measure from the Inter-American Commission is when a trade unionist is threatened with death and/or suffers attacks on his/her life and that of his/her family.</li> </ul>
<p>Where is the request for an interim measure sent to?</p>	<ul style="list-style-type: none"> <li>• The application may be made in person or sent by one of the following means: <ul style="list-style-type: none"> <li>- E-mail: <a href="mailto:cidhdenuncias@oas.org">cidhdenuncias@oas.org</a></li> <li>- Fax: +1 (202) 458-3992 ó 6215.</li> <li>- Address: Inter-American Commission on Human Rights 1889 F Street, N.W. Washington, D.C. 20006 United States</li> </ul> </li> <li>• Documents may be sent electronically.</li> </ul>
<p>What does the Inter-American Commission ask when it adopts precautionary measures?</p>	<ul style="list-style-type: none"> <li>• If the measure is granted, the Commission shall request that the State concerned take certain preventive or protective measures. State authorities must agree with the beneficiaries the most appropriate mechanisms for the implementation of the measures.</li> <li>• Measures may include: <ul style="list-style-type: none"> <li>- Providing police protection</li> <li>- Investigating threats</li> </ul> </li> <li>• Precautionary measures granted by the Commission may be: <ul style="list-style-type: none"> <li>- Individual: when protecting one or more persons individually</li> <li>- Collective: when granted in favor of a community (indigenous communities)</li> </ul> </li> </ul>
<p>Examples of precautionary measures</p>	<p><b>Precautionary measures granted relating to economic, social, cultural, and environmental rights</b></p> <ul style="list-style-type: none"> <li>• Resolution 84/18. PM 1133/18 - Amaya Eva Coppens Zamora and others (Deprived of their Liberty at the Penitentiary Center "La Esperanza"), Nicaragua: <a href="http://www.oas.org/es/cidh/decisiones/pdf/2018/84-2018MC-1133-18-NI.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2018/84-2018MC-1133-18-NI.pdf</a></li> </ul>



Examples of precautionary measures	<ul style="list-style-type: none"><li>• Resolution 82/18. PM 1165/18 - Sergio López Cantera, Mexico: <a href="http://www.oas.org/es/cidh/decisiones/pdf/2018/82-18MC1165-18-MX.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2018/82-18MC1165-18-MX.pdf</a></li><li>• Resolution 68/18. MC 454/18—Marbeli Vivani González López and family members of Yaneth González López, Mexico: <a href="http://www.oas.org/es/cidh/decisiones/pdf/2018/68-18MC454-18-MX.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2018/68-18MC454-18-MX.pdf</a></li><li>• Resolution 67/18. MC 807/18—Yaku Pérez Guartambel, Ecuador: <a href="http://www.oas.org/es/cidh/decisiones/pdf/2018/67-18MC807-18-EC.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2018/67-18MC807-18-EC.pdf</a></li></ul> <p><b>Precautionary measures granted to persons defending the rights of persons of African descent and against racial discrimination</b></p> <ul style="list-style-type: none"><li>• Dominican Republic - PM 195-08 Emildo Bueno et al</li><li>• Colombia - Leaders of the COPDICONC 17 - 2007</li><li>• On behalf of African-Colombian communities in 49 hamlets in the Naya river basin in Buenaventura 21 - 2002</li><li>• Precautionary measures granted by the Commission to persons defending the rights of persons of African descent and against racial discrimination <a href="http://www.oas.org/en/iachr/afro-descendants/protection/precautionary.asp">http://www.oas.org/en/iachr/afro-descendants/protection/precautionary.asp</a></li></ul> <p><b>Precautionary measures granted in favor of persons defending the rights of LGBTI persons (Lesbians, Gays, Bisexuals, Transsexuals, and Intersex).</b></p> <ul style="list-style-type: none"><li>• PM 236/16 – Juana Mora Cedeño et al., (Cuba) <a href="http://www.oas.org/es/cidh/decisiones/pdf/2016/MC236-16-ES.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2016/MC236-16-ES.pdf</a></li><li>• PM 457/13 on behalf of Members of the Association for a Better Life in Honduras (APUVIMEH) <a href="http://www.oas.org/es/cidh/decisiones/pdf/2014/MC457-13-ES.pdf">http://www.oas.org/es/cidh/decisiones/pdf/2014/MC457-13-ES.pdf</a></li><li>• Precautionary measures granted by the Commission to persons defending the rights of LGBTI persons (Lesbians, Gays, Bisexuals, Transsexuals, and Intersex) <a href="http://www.oas.org/es/cidh/lgtbi/proteccion/cautelares.asp">http://www.oas.org/es/cidh/lgtbi/proteccion/cautelares.asp</a></li></ul>
Further information	<ul style="list-style-type: none"><li>• More institutional information on the procedure for requesting precautionary measures can be found at the following link: <a href="http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf">http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf</a></li><li>• Precautionary measures granted by the Inter-American Commission <a href="http://www.oas.org/en/iachr/decisions/precautionary.asp">http://www.oas.org/en/iachr/decisions/precautionary.asp</a></li></ul>

### 3.1.6. Petition and case system<sup>6</sup>

Practical information on the Inter-American Commission's petition and case system	
What is the petition and case system?	<ul style="list-style-type: none"> <li>• The petition and case system is the mechanism by which the Inter-American Commission exercises its mandate to protect persons who have suffered violations of their human rights.</li> <li>• The Commission investigates the situation reported through individual petitions and cases, establishes the international responsibility of the State concerned, and formulates recommendations addressed to the State concerned for the purpose of restoring the enjoyment of rights, investigating and redressing a violation, and ensuring that similar facts are not repeated.</li> </ul>
What is the procedure for filing individual petitions and cases?	<ul style="list-style-type: none"> <li>• The procedure is written, free of charge, and does not necessarily require legal assistance, although this is recommended during the final stages of proceedings before the Inter-American Commission.</li> <li>• The petition must contain a complete and detailed description of the facts alleged and indicate the reason why the State is internationally responsible for the violation of rights recognized in the American Declaration, the American Convention, or other inter-American instruments.</li> <li>• The petition is not required to make express mention of the right in the Declaration or Convention that is alleged to have been violated. The Inter-American Commission, based on the facts presented, has the power to establish which rights have been violated.</li> </ul>



<sup>6</sup>For more, see IACHR. *Informational brochure on the PETITION AND CASE SYSTEM* (<http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>); BANFI VIQUE, Analía and MICHELINI DELE PIANE, Felipe Raúl. *Introducción al Derecho Internacional de los Derechos Humanos*. Montevideo: Fundación de Cultura Universitaria, 3rd edition, 2017; CANESSA MONTEJO, Miguel F. *El Sistema Interamericano de Derechos Humanos y la protección de los derechos humanos laborales*. Lima: Palestra Editores, 2014.



What if the State has not ratified the American Convention?

- With respect to States that have not ratified the American Convention, the Inter-American Commission is competent to receive complaints alleging violations of the American Declaration against any and all OAS States. This competence arises from Article 1(2)(b) of the OAS Charter, Article 20 of its Statute, and Article 51 of its Rules of Procedure.

What are the requirements for filing a petition?

- The petition must comply with the requirements set forth in Article 28 of the Rules of Procedure of the Inter-American Commission.
  - Article 28 of the Rules of Procedure. The petitions addressed to the Commission shall contain the following information:
    1. The name(s) of the person(s) filing the petition, or, if the petitioner is a non-governmental entity, its legal representative(s), and the Member State in which it is legally recognized;
    2. If the petitioner wishes his or her identity to be protected vis-à-vis the State, and the reasons thereto;
    3. The e-mail address for receiving correspondence from the Commission and, where appropriate, telephone number, facsimile, and postal address;
    4. A statement of the facts or situation that prompted the complaint, specifying the place and date of the alleged violations;
    5. If possible, the name of the victim, as well as any public authority that has taken cognizance of complaint;
    6. An indication of the State the petitioner considers responsible, by action or omission, for the violation of any of the human rights enshrined in the American Convention on Human Rights and in other applicable instruments, even if no specific reference is made to the article(s) allegedly violated;
    7. Compliance with the time limit expressed in Article 32 of this Regulation;
    8. The steps taken to exhaust domestic remedies or the impossibility of doing so in accordance with Article 31 of this Regulation;
    9. An indication of whether the complaint has been submitted to another international settlement body in accordance with Article 33 of these Regulations.
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<p>What is the exhaustion of local remedies requirement?</p>	<ul style="list-style-type: none"> <li>• To file a petition with the IAHRs, as a general rule, it is necessary to have exhausted the judicial remedies available in the domestic legal system.</li> <li>• Domestic remedies are considered exhausted when the judiciary issues a final decision.</li> <li>• Three situations are recognized in which it is not necessary to exhaust domestic remedies:             <ol style="list-style-type: none"> <li>(a) When domestic legislation does not provide for due process of law to protect the rights allegedly violated;</li> <li>(b) When the alleged victim has not been allowed access to domestic remedies or has been prevented from exhausting them;</li> <li>(c) When there is an unjustified delay for a decision on domestic remedies; in order to determine the reasonableness of the time limit, each case is reviewed on the basis of the complexity of the matter, the procedural activity of the person concerned, and the conduct of the judicial authorities.</li> </ol> </li> <li>• The petition must be submitted within six months of notification of the final judicial decision exhausting domestic remedies (Article 46.1(b) of the Convention). When applying one of the exceptions to exhaustion of domestic remedies, the petition must be submitted within a reasonable time (Article 32.2 Commission Regulation). As regards the latter case, the Commission considers the date on which the alleged violation of rights occurred and the circumstances of each case.</li> </ul>
<p>Can a union file a complaint in the Inter-American Commission's petition and case system?</p>	<ul style="list-style-type: none"> <li>• Yes, any person, group of persons, or non-governmental organization may file a complaint with the Inter-American Commission against a member state of the OAS for alleged violations of the rights enshrined in the American Declaration or Convention, or other inter-American treaties. The person affected by the alleged violation may file the petition directly or through the representation of another person or organization, called the petitioning party.</li> <li>• Unions may file a complaint with the petition and case system either as a petitioning party on behalf of associates entitled to rights violated as set forth in the inter-American instruments, or both as victim and petitioning party when the unions themselves had their rights violated, as established in Article 8.1(a) of the Protocol of San Salvador</li> </ul>



What are the stages of the petitions system?

• The individual petition system has four stages:<sup>6</sup>

**1) Preliminary evaluation** (confidential, between the petitioning party and the Inter-American Commission):

- The complaint is filed with a petition number which is provided to the petitioning party.
- The Executive Secretariat of the Commission conducts a preliminary study of the petition to establish whether or not it meets the requirements of Article 28 of the Regulations.
- Upon completion of the preliminary stage, the Executive Secretariat of the Commission shall take one of the following actions:
  - a. If additional information is required, it shall send a communication to the petitioning party requesting such information;
  - b. If the petition does not comply with the requirements established in the Regulations, the petitioning party shall be notified that the complaint may not be pursued;
  - c. If the petition complies with the requirements, a case is started and a complaint forwarded to the State, thus initiating the adversarial process.

**2) Admissibility stage:** Adversarial proceedings begin, with both parties (the petitioning party and the State where the alleged violation has occurred) presenting their arguments.

- This stage begins with the sharing of the petition with the State concerned, after which the Commission makes itself available to initiate a friendly settlement procedure by express consent of both parties.
  - The State has 3 months to submit observations regarding the petition's compliance with the admissibility requirements. In well-founded cases, the Commission may grant an extension of up to one month.
  - The State's response is forwarded to the petitioning party, who can submit additional observations. These observations are forwarded to the State to give it the opportunity to respond.
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<sup>6</sup>The information shared by Analía BANFI VIQUE, coordinator of the petitions section of the Inter-American Commission and author of the publication referred to in the previous footnote, has been particularly useful. Much of the information shared in this procedure is a schematic transcription of the information contained therein.



What are the stages of the petitions system?

- After this exchange of information and if the parties do not decide to initiate a friendly settlement process, the Commission decides if the petition is admissible, in which case it will adopt an admissibility report, or if it is inadmissible, in which case it will adopt an inadmissibility report, which concludes the procedure before the Commission.
  - Upon notifying the parties of in/admissibility, the report is published on the Commission's website. In these reports of admissibility or inadmissibility:
    - The Commission will analyze whether it has competence to hear the case.
    - If the Commission concludes that it does have jurisdiction, it will proceed to analyze whether local remedies have been exhausted, or that failing, whether one of the exceptions applies and whether the request was submitted within 6 months of notification of the final decision, or within a reasonable time in case an exception applies.
    - Finally, the Commission will carry out a prima facie analysis to determine whether the complaint supports a possible violation of a right guaranteed by the Declaration or the Convention, which constitutes a summary examination that does not imply in prejudice or opinion on the merits.
  - 3) Substantive stage:** This stage begins with the notification of the admissibility report to the parties, together with which the Commission again places itself at the disposal of the parties for an amicable settlement process.
    - At this stage the Commission will analyze the substance of the matter, whether or not there was a violation of human rights, and will:
      - establish a factual framework
      - analyze the allegations and evidence provided by each party
      - establish its conclusions
      - and, if there is international responsibility of the State, recommend to the State a range of actions to remedy the situation.
    - An adversarial process takes place at this stage: Once the admissibility report has been shared, the petitioning party will have 4 months to submit additional observations on the merits, with the possibility of requesting an extension of up to two months. The observations of the petitioning party are transferred to the State, which will have the same period to respond.
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What are the stages of the petitions system?

- If necessary, the Commission shall request additional information from the parties and, in exceptional cases, shall convene a public hearing at its headquarters.
  - During the procedure before the Commission, third parties or organizations may submit amicus curiae, or written information that may be useful to the Commission in making a decision. These briefs are forwarded to both parties for their knowledge.
  - If the parties decide to reach an amicable settlement, the Commission, after verifying the alignment of the settlement agreement with respect to human rights, will adopt an amicable settlement report, thereby terminating the procedure before the Commission.
  - If, on the other hand, the attempts at a friendly settlement are not successful, the Commission will continue with the adversarial process. At the end of this process, it will issue a report on the merits establishing whether or not the State is responsible for the alleged human rights violations.
  - If it concludes that there is no violation, the process before the Commission ends with the publication of that report. If, instead, it establishes that the State is responsible for the violation of one or more human rights, it will prepare a confidential preliminary report in which it will include a series of recommendations addressed to the State.
  - Recommendations can include (but are not limited to):
    - Conducting an investigation
    - Redressing damages
    - Implementing legislative reforms
  - The preliminary report with the recommendations is forwarded to the State concerned, which has three months to inform the Commission of the measures taken to comply.
  - If the matter has not been resolved within that period, the Commission then has two options:
    - Refer the case to the Inter-American Court, or
    - Adopt a final report with conclusions and final recommendations.
  - In the latter case, the State will have a new period to comply with the final recommendations and, if it fails to do so, the Commission will publish the report and include it in the Commission's Annual Report to the OAS General Assembly.
  - When deciding to send a case to the Court, the Commission takes into account the level of compliance of the State with its recommendations, the position of the petitioning party, the nature and gravity of the violation, the need to develop or clarify the jurisprudence of the system, and the possible effect of the decision on the legal systems of Member States.
- 



<p>What is the content of a Substantive Report of the Inter-American Commission?</p>	<ul style="list-style-type: none"><li>• In the Report on the merits, the Inter-American Commission establishes whether or not a State is responsible for alleged human rights violations caused by action (when the violation is due to State action), acquiescence (tacit consent), or omission (lack of action when it was called for).</li><li>• The recommendations set out in the Commission's substantive report can include (but are not limited to) conducting an investigation, redressing the damage, carrying out legislative reforms.</li></ul>
<p>What happens if the State concerned does not comply with the Commission's recommendations?</p>	<ul style="list-style-type: none"><li>• If the Commission considers that the State in question did not comply with the recommendations or requests indicated in its Report, it will automatically submit the case to the Inter-American Court, unless an absolute majority of the members of the Commission decides otherwise.</li></ul>
<p>How does the follow-up stage of the Commission's recommendations included in the Background Report work?</p>	<ul style="list-style-type: none"><li>• When the case is not sent to the Court, the Commission publishes the background report and includes it in the Annual Report to the OAS General Assembly.</li><li>• In such cases, the Commission follows up annually on the state of compliance with its recommendations, a summary of which is published in chapter III of its Annual Report. This summary describes the main advances and setbacks in relation to the Commission's recommendations and indicates whether there was any type of compliance, either total or partial, or whether the recommendations remain unfulfilled.</li><li>• If the Commission finds that there has been full compliance, the case is closed and the parties notified. The Commission may hold working meetings and, in exceptional cases, public hearings to follow up on the implementation of its recommendations.</li></ul>
<p>Further information</p>	<ul style="list-style-type: none"><li>• Further institutional information on the Inter-American Commission's procedure for submitting petitions and individual cases can be found at the following link: <a href="http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf">http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf</a></li></ul>

## 3.2. Remedies of the Inter-American Court of Human Rights

### 3.2.1. Provisional measures

Practical information on the provisional measures of the Inter-American Court	
What are the provisional measures of the Inter-American Court?	<ul style="list-style-type: none"> <li>• The provisional measure is a mechanism of protection adopted by the Court in certain cases of gravity and urgency to prevent irreparable harm to persons under the jurisdiction of a State party to the OAS.</li> <li>• The power of the Inter-American Court to adopt provisional measures is regulated in Article 27 of its Rules of Procedure.</li> <li>• Provisional measures have a precautionary character, in that they seek to preserve a legal situation, and a tutelary character, in that they seek to protect human rights and avoid irreparable harm to persons.</li> <li>• Among the objectives that provisional measures may have are:               <ul style="list-style-type: none"> <li>- to order a State to immediately take the necessary measures to protect the lives and personal integrity of persons and their families who are threatened or who have been victims of attacks</li> <li>- to order a State not to execute a person while his/her case before the Court is pending</li> <li>- to order a State to dismiss constitutional charges against judges or justices initiated in parliament</li> </ul> </li> </ul>
What are the requirements for applying for provisional measures?	<ul style="list-style-type: none"> <li>• Three conditions must be met: Extreme seriousness, urgency, and averting irreparable damage to persons.</li> <li>• If considered indispensable, before deciding on a provisional measure, the Court may request the State, the Inter-American Commission, or the representatives of the beneficiaries to provide information on the petition.</li> </ul>
In whose favor can provisional measures be established?	<ul style="list-style-type: none"> <li>• Provisional measures may be granted in favor of persons whose contentious cases are before the Inter-American Court, and in matters that have not been previously submitted to the court.</li> </ul>



<p>Who can apply for provisional measures?</p>	<ul style="list-style-type: none"> <li>• When a case is under review by the Court, the application may be submitted directly to the Court by the victims or their representatives, which must relate to the subject matter of the case pending before the Court.</li> <li>• Measures may also be ordered ex officio by the Court.</li> <li>• In cases where the matter has not been referred to the Court, only the Inter-American Commission may request provisional measures.</li> <li>• The power of the Inter-American Commission to request provisional measures from the Court is regulated by Article 19(c) of its Statute and Article 76 of its Rules of Procedure.</li> <li>• In interim measures proceedings, third party briefs may be filed as amicus curiae (Article 44 of the Rules of Court).</li> </ul>
<p>When does the Inter-American Commission request provisional measures from the Inter-American Court?</p>	<ul style="list-style-type: none"> <li>• The criteria taken into account by the Commission in submitting a request for interim measures to the Court are set out in Rule 76 of its Rules of Procedure as follows: <ul style="list-style-type: none"> <li>- When the State has not implemented the precautionary measures granted by the Commission.</li> <li>- When the precautionary measures have not been effective.</li> <li>- When there is a precautionary measure connected to a case that is subject to the jurisdiction of the Court.</li> <li>- When the Commission deems interim measures necessary to support the measures originally requested, in which case the Commission will present the reasons for such procedure.</li> </ul> </li> <li>• In general, the Commission requests provisional measures from the Inter-American Court when the precautionary measures issued by the Commission itself are not complied with by the State from which such measures were requested.</li> <li>• In a situation of gravity and urgency and in order to avoid irreparable harm, the Commission may grant, at the request of a party or ex officio, precautionary measures in favor of persons who are under the jurisdiction of a State party to the OAS. If the State does not accept or fails to comply with the precautionary measures, and the situation of imminent risk remains or worsens, the Commission may request provisional measures from the Inter-American Court.</li> </ul>



How are interim measures monitored?	<ul style="list-style-type: none"><li>• The monitoring of these measures is carried out through the submission of State reports and comments submitted by the parties. The Commission must comment on the State's report and on the comments of the beneficiaries of the measures or their representatives.</li><li>• In processing provisional measures, the Court has the power to request relevant data from other sources that may allow it to assess the gravity and urgency of the situation and the effectiveness of the measures, as well as to request expert opinions and reports that it deems appropriate, and to convene a public or private hearing with the Commission, the beneficiaries of the measures, and the State involved.</li><li>• The Court includes the list of provisional measures ordered during the reporting period in its annual report to the OAS General Assembly and, when the measures have not been duly executed, makes the recommendations it deems appropriate.</li></ul>
Examples of provisional measures	<ul style="list-style-type: none"><li>• Interim measures in favor of the Miskito indigenous people of the Northern Caribbean Coast region (August 23, 2018) Resolution: <a href="http://www.corteidh.or.cr/docs/medidas/miskitu_se_05.pdf">http://www.corteidh.or.cr/docs/medidas/miskitu_se_05.pdf</a></li><li>• Provisional measures in the case of Durand and Ugarte v. Peru, through which the Court ordered the Peruvian State to dismiss the constitutional accusation procedure filed by the Congress of the Republic against the Magistrates of the Constitutional Court Manuel Miranda, Marianella Ledesma, Carlos Ramos and Eloy Espinosa-Saldaña, in order to guarantee judicial independence. Resolution: <a href="http://www.corteidh.or.cr/docs/medidas/durand_se_02.pdf">http://www.corteidh.or.cr/docs/medidas/durand_se_02.pdf</a></li></ul>
Further information	<ul style="list-style-type: none"><li>• The Court's provisional measures can be found at: <a href="http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_medidas_provisionales.cfm?lang=en">http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_medidas_provisionales.cfm?lang=en</a></li></ul>

### 3.2.2. Consultative Opinions

<b>Practical information on the advisory opinions of the Inter-American Court</b>	
<p>What are the advisory opinions of the Inter-American Court?</p>	<ul style="list-style-type: none"> <li>• Article 64 of the American Convention on Human Rights establishes that the Inter-American Court may be consulted on the interpretation of the American Convention or other treaties concerning the protection of human rights in the American States.</li> </ul>
<p>Who can request advisory opinions?</p>	<ul style="list-style-type: none"> <li>• Member states and OAS bodies are entitled to request advisory opinions.</li> <li>• States may also request the opinion of the Inter-American Court on the compatibility of their laws with inter-American treaties.</li> </ul>
<p>How do I request an advisory opinion?</p>	<ul style="list-style-type: none"> <li>• Requests for an advisory opinion on the American Convention or on other inter-American treaties should:               <ul style="list-style-type: none"> <li>- formulate precisely the specific questions on which the Court's opinion is sought</li> <li>- They should also indicate the provisions whose interpretation is being requested and the considerations that gave rise to the consultation</li> </ul> </li> <li>• If the initiative for the advisory opinion is taken by an OAS body other than the Commission, the request should also specify how the consultation relates to its sphere of competence</li> </ul>
<p>What is the procedure for an advisory opinion?</p>	<ul style="list-style-type: none"> <li>• Upon receipt of a request for an advisory opinion, the Court shall transmit a copy to all Member States, the Commission, the Permanent Council, the Secretary General, and the organs of the OAS to whose sphere of competence the subject of the consultation refers, if applicable</li> <li>• The Court shall set a time limit for the interested parties to submit their written observations</li> <li>• The Court may also invite or authorize any interested parties to submit a written opinion on the points submitted for consultation. If the request is about the compatibility of national laws with inter-American instruments, it may do so after consultation with the applicant</li> </ul>





What inter-American standards can be the subject of advisory opinions?

### **Consultative function with respect to the American Convention on Human Rights:**

- The advisory function allows the Inter-American Court to interpret any norm of the American Convention, without any part or aspect of that instrument being excluded from the scope of interpretation.
- By virtue of being the “ultimate interpreter of the American Convention,” the Court is competent to issue, with full authority, interpretations of all the provisions of the Convention, including those of a procedural nature.

### **Consultative function with respect to the Protocol of San Salvador and other human rights treaties:**

- By virtue of Article 64(1) of the American Convention, the Court is empowered to issue an opinion on other treaties concerning the protection of human rights in the American States.
- If the request refers to the interpretation of other treaties concerning the protection of human rights in the American States, the treaty and the parties to it, the specific questions on which the Court’s opinion is sought, and the considerations giving rise to the consultation must be identified. If the request emanates from one of the organs of the OAS, the reason why the consultation refers to its sphere of competence should be indicated.

### **Advisory role on the compatibility of national laws with the Convention and other treaties**

- Under Article 64(2) of the American Convention, States may also request the opinion of the Inter-American Court on the compatibility of their laws with such treaties.
  - This mechanism allows the advisory function to have the effect of a control of preventive conventionality.
  - The request should state:
    - the provisions of domestic law, as well as those of the American Convention or other treaties concerning the protection of human rights, which are the subject of the consultation;
    - the specific questions on which the Court’s opinion is sought;
    - the name and address of the applicant’s agent.
  - The request must be accompanied by a copy of the internal provisions to which the consultation relates.
- 



<p>What is the content of an advisory opinion?</p>	<ul style="list-style-type: none"><li>• The advisory opinion shall contain:<ul style="list-style-type: none"><li>- the name of the person presiding over the Court and of the other Judges who issued it, the Secretary and the Assistant Secretary;</li><li>- questions submitted to the Court;</li><li>- a report of the minutes of the proceeding;</li><li>- the legal foundations;</li><li>- the opinion of the Court;</li><li>- an indication of the authentic version of the opinion.</li></ul></li><li>• Any Judge who has participated in the issuance of an advisory opinion has the right to join the Court's concurring or dissenting opinion, which must be reasoned.</li></ul>
<p>What are the effects of advisory opinions?</p>	<ul style="list-style-type: none"><li>• The effects of the Court's advisory opinion reach not only States Parties to the American Convention, but all OAS Member States that have agreed to the American Declaration, regardless of whether or not they have ratified the American Convention, as well as the OAS bodies with jurisdiction over the subject matter.</li></ul>





How can trade unions participate in this mechanism?

- Considering that the Inter-American Commission is one of the entities empowered to request an advisory opinion from the Inter-American Court, trade unions can contribute to convince the Commission as to the need to clarify, define, or determine the scope of one of the provisions of the American Convention or other inter-American treaties. This can be done through participation in the Commission's oversight mechanisms such as thematic hearings, on-site visits, and the preparation of Commission reports.
  - It is also possible to participate in the advisory opinion process as a third party or an amicus curiae organization. An example of this participation was the advisory opinion for the government of Panama on the scope of Article 1 of the American Convention seeking to determine whether legal persons are holders of human rights. In the process of this advisory opinion, the Trade Union Confederation of the Americas and the International Trade Union Confederation sent a document prepared jointly with the organizations of the region arguing for the collective rights of trade union organizations. The Court's advisory opinion expressly recognized that the organizations are holders of the collective rights entrenched in Article 8(a) of the Protocol of San Salvador and, therefore, are entitled to participate directly in the Commission's petition and case system as victims of violations of their rights.
  - The observations of this advisory opinion can be found at: [http://www.corteidh.or.cr/docs/opiniones/resumen\\_observaciones\\_seriea\\_22\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/resumen_observaciones_seriea_22_esp.pdf)
  - The Commission has recently reported on a forthcoming request for an advisory opinion on the effects of non-regression in human rights. This can also be an important space for submitting union arguments as amicus curiae and influence the Court's reasoning and opinion.
- 



Examples of advisory opinions	<ul style="list-style-type: none"><li>• Advisory opinion on the institution of asylum and its recognition as a human right in the inter-American protection system (May 30, 2018) Summary: <a href="http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_25_esp.pdf">http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_25_esp.pdf</a></li><li>• Advisory opinion on gender identity, equality, and non-discrimination for same-sex couples. State obligations in relation to name change, gender identity, and rights arising from a same-sex partnership (November 24 2017) Summary: <a href="http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_24_esp.pdf">http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_24_esp.pdf</a></li><li>• Advisory Opinion on Environment and Human Rights (November 15, 2017) Summary: <a href="http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf">http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_esp.pdf</a></li><li>• Advisory Opinion on Ownership of Rights of Legal Persons in the Inter-American Human Rights System (February 26, 2016) Summary: <a href="http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_22_esp.pdf">http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_22_esp.pdf</a></li></ul>
Further Information	<ul style="list-style-type: none"><li>• The Court’s advisory opinions can be found at: <a href="http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en">http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en</a></li></ul>

### 3.2.3. Contentious jurisdiction and mandatory sentences

Practical information on the contentious jurisdiction of the Inter-American Court	
Who can file a contentious case before the Inter-American Court?	<ul style="list-style-type: none"> <li>• The Inter-American Commission has the power to refer to the Inter-American Court those cases in which States have not complied with the recommendations established by the Commission.</li> <li>• A State Party may also sue another State Party, although to date this has not yet happened.</li> <li>• Victims or their representatives do not have standing to submit a case directly to the jurisdiction of the Court.</li> </ul>
Who can be sued in a contentious case before the IACHR?	<ul style="list-style-type: none"> <li>• Only States that have recognized the jurisdiction of the Inter-American Court can be the object of a lawsuit.</li> <li>• The States that recognized such jurisdiction are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.</li> <li>• Trinidad and Tobago and Venezuela denounced the American Convention in 1999 and 2012, respectively, so they are no longer subject to the contentious jurisdiction of the Court (they are still subject to this jurisdiction for events that occurred before the entry into force of the denunciation).</li> </ul>
Who can participate during a contentious case before the Inter-American Court?	<ul style="list-style-type: none"> <li>• Victims or their representatives are entitled to direct participation in all stages of Court proceedings.</li> <li>• Upon notification of the complaint, victims, their families, or duly accredited representatives may submit requests, arguments, and evidence autonomously to the Inter-American Commission throughout the process.</li> <li>• It is also possible for third parties to participate as Amicus Curiae.</li> </ul>





How can  
a party  
participate  
as Amicus  
Curiae?

- Participation as a third party 'amicus curiae' is set forth in Article 44 of the Rules of Procedure of the Inter-American Court.
  - "Amicus curiae" means the person or institution unconnected with the litigation and the process that submits to the Court reasoning on the facts contained in the submission of the case or formulates legal considerations on the subject matter of the process, through a document or a pleading at a hearing.
  - The brief of anyone wishing to act as amicus curiae may be submitted to the Court, together with its annexes (personally, via courier, facsimile, postal, or electronic mail), in the working language of the case, and with the name of the author or authors and the signature/s of all of them.
  - If the amicus curiae brief is submitted by electronic means that do not contain the signature of the undersigned, or in the case of briefs whose annexes were not accompanied, the originals and the respective documentation must be received by the Court within 7 days of such submission. If the document is submitted after this period or without the required documentation, it will be rejected without further processing.
  - In contentious cases, an amicus curiae brief may be filed at any time during the process, but no later than 15 days after the public hearing. In cases where a public hearing is not held, they must be referred within 15 days of the corresponding decision granting a time limit for the submission of closing arguments.
  - The amicus curiae brief, together with its annexes, shall be immediately communicated to the parties for their knowledge.
  - Amicus curiae briefs may be filed in proceedings for the supervision of the enforcement of judgments and provisional measures.
- 



What is the result of the contentious jurisdiction of the Inter-American Court?

- Through contentious jurisdiction, the Inter-American Court produces a sentence that is binding on all States that have ratified the American Convention on Human Rights and have accepted the contentious jurisdiction of the Inter-American Court. The Court will determine whether the State has incurred international responsibility for having violated any of the rights enshrined in the American Convention.
- The judgments of the Court are binding on the parties in the specific case that is the subject matter of the judgement (*inter partes* binding effect). They also produce binding effects with respect to the Court's interpretation of conventional norms (*erga omnes* binding effect).

How can trade unions participate?

- The submission of a contentious case to the jurisdiction of the Court implies that the case has already gone through the petition and case system of the Inter-American Commission.
  - If the case before the Court has been filed by unions as representatives of victims (e.g., workers or workers associated with the union), then such unions are part of the litigation and, therefore, entitled to direct participation in all stages of the proceedings before the Court as representatives of the victims.
  - If the case submitted to the Court has not been presented by the unions, then the unions are third parties outside the litigation and, therefore, not entitled to participate in the procedural stages before the Court.
  - Even as third parties not involved in the litigation, if the case and the possible sentence are of interest to the union because, for example, they deal with labor or union rights, the union may participate as a third *amicus curiae* and, in that capacity, submit to the Court considerations or reasoning regarding the facts contained in the case submitted to the Court, through a document or a pleading at a hearing.
- 



How can  
trade unions  
participate?

• Through a recent press release, the Inter-American Commission informed the Inter-American Court of the presentation of case 12,428, "*Employees of the Fireworks Factory at Santo Antonio de Jesus and their families, with respect to Brazil*," a case that may be emblematic in labor matters and with which the Court will be able to develop jurisprudence regarding the international obligations of States with respect to:

- High risk work activities.
- Businesses and human rights.
- The duties of prevention, sanction, and reparation of the worst forms of child labor.
- Violations of life and integrity resulting from dangerous activities in the workplace,
- The scope of the right to work and its intersection with the principle of equality and non-discrimination in situations of poverty.
- [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/218.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/218.asp)

Given the relevance of the case and the possible jurisprudential developments emanating from the Court on labor rights related to corporate responsibility for human rights violations, this is an opportunity for unions to participate as *amicus curiae* and, in that capacity, to present to the Court, through a document or a presentation in a hearing, arguments on the subject and facts of the case.

# 4.

## Which human rights of workers are recognized in the inter-American standards?

### 4.1.4.1. Human rights of workers

Faced with the barbarity experienced with the world wars in the twentieth century and with the aim of preventing the atrocities and horrors of that barbarity from happening again, a political consensus was generated on the need to enshrine and recognize in international instruments (declarations, treaties, covenants) the inalienable and inherent rights of all human beings, regardless of race, color, sex, religion, language, political opinions, national or social origin, ethnicity, or any other condition, and the obligation of nation-states to respect, promote, and protect such rights.

It is recognized that human rights are: a) universal inasmuch as the human condition is the only requirement for an individual to be the holder of human rights (human dignity being the foundation), b) indivisible in the sense that all human rights, reflecting both values of freedom (civil and political rights) and values of equality (economic, social, and cultural rights), are interrelated, and c) interdependent to the extent that the effectiveness of the full exercise of a human right depends on the effectiveness of the exercise of other human rights. Thus, without the effectiveness of economic, social, and cultural rights, civil and political rights are mere formal categories, and vice versa.

The starting point is the general attribution of human rights to all people because they are human beings. All persons are free and equal before the law. In the evolution of the constant struggle for the effectiveness of human rights, progress

has been made towards the recognition of the need to go beyond formal freedom and equality and to recognize the specificity of subjects of rights, both their socioeconomic specificity and their identity-based specificity and their belonging to certain historically excluded and marginalized groups (women, indigenous people, people of African descent, LGBTI people, people with disabilities, etc.). In this sense, to the general starting point (freedom and formal equality) should be added the goal of achieving substantive or real equality for those people who, for socioeconomic reasons and/or because of their belonging to historically excluded and marginalized groups, require positive measures from States and that their rights be particularly protected.

Workers are the holders of all the human rights recognized internationally, and in particular in the inter-American instruments, both of the specific rights of a labor and trade union nature and of the rights generally attributed to all persons and those specifically attributed to persons belonging to certain historically excluded and marginalized groups. Thus, in addition to labor and union rights, workers must be able to exercise their rights to personal integrity, religious freedom, protection of personal privacy, honor and reputation, freedom of expression and assembly, equality and freedom from discrimination on the basis of race, color, sex, language, religion, sexual orientation, gender identity, political opinions, national or social origin, birth, or any other type.

Umberto Romagnoli, a renowned Italian scholar in the field of labor studies, summarized this principle with the following image: *On entering the factory, the worker does not hang his human rights on the rack next to his cap, nor does he keep them in his locker with his coat, to take them back at the end of the day. On the contrary, he remains the holder of the essential rights of all people, such as the right to dignity, honor, privacy, freedom of thought and worship, free expression of thought, etc.*

## 4.2. Relationship of interdependence between trade union rights and other human rights

As has been highlighted, one of the central characteristics of human rights is their interdependence. The effectiveness of the exercise of one human right will depend on the effectiveness of the exercise of other human rights. Without effective economic, social, and cultural rights, civil and political rights are mere formal categories, and vice versa.

Trade union rights and other human rights are interdependent. It is clear that it is not possible to fully exercise trade union freedom if the life or physical integrity of trade unionists is violated, if they are arbitrarily arrested and convicted, if they are hindered or denied the right to freedom of expression and assembly, or if job stability is nullified. In this sense, it is affirmed that *the development of freedom of association is not possible without the actual pre-existence of other human rights, nor is the full exercise of these rights possible without freedom of association. In other*

words, freedom of association is not possible without the exercise of other human rights, and vice versa.<sup>7</sup>

The ILO recognized the interdependent relationship between public freedoms and trade union rights in the Declaration of Philadelphia (1944), which proclaims that freedoms of expression and association are essential for steady progress (Article I(b)). This relationship of reciprocal dependence was reaffirmed in the Resolution on Trade Union Rights and their Relationship to Civil Liberties (1970), which states that, “the rights conferred on workers’ and employers’ organizations are based on respect for the civil liberties enumerated, in particular, in the Declaration of Human Rights and the International Covenant on Civil and Political Rights, and that the concept of trade union rights is totally meaningless in the absence of such civil liberties”<sup>8</sup>.

International instrument	Relationship of interdependence between trade union human rights and other human rights
<p>“Resolution on trade union rights and their relation to civil liberties” (1970)</p>	<p>This ILO Resolution lists some of the rights essential to the normal exercise of trade union rights:</p> <ul style="list-style-type: none"> <li>a) the right to freedom and security of person and freedom from arbitrary arrest and detention;</li> <li>b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers;</li> <li>c) freedom of assembly;</li> <li>d) the right to a fair trial by an independent and impartial tribunal;</li> <li>e) the right to protection of the property of trade union organizations.</li> </ul>

<sup>7</sup>ERMIDA URIARTE, Oscar y VILLAVICENCIO RÍOS, Alfredo. *Sindicatos en libertad sindical*. Lima: ADEC / ATC, p. 26.

<sup>8</sup>OIT. *Resolución sobre los Derechos Sindicales y su relación con las libertades civiles*. 1970.

In 1992, the then ILO Director-General Michel Hansenne pointed out that “the ILO has a deep interest in civil and political liberties, because without them there can be neither the normal exercise of trade union rights nor the protection of workers”<sup>9</sup>

The ILO Committee on Freedom of Association has repeatedly highlighted this interdependent relationship between trade union rights and other human rights.

International control body	Relationship of interdependence between trade union human rights and other human rights: Compilation of decisions of the Committee on Freedom of Association
ILO Committee on Freedom of Association	<p>The Committee has considered it appropriate to emphasize the importance to be attached to the basic principles set out in the Universal Declaration of Human Rights, considering that their infringement can adversely affect the free exercise of trade union rights. 2018, paragraph 67.</p> <p>A genuinely free and independent trade union movement can only develop where fundamental human rights are respected. 2018, paragraph 71.</p> <p>A free trade union movement can develop only under a regime which guarantees fundamental rights, including the right of unionized workers to hold meetings in trade union premises, the right to freedom of verbal and written expression, and the right of detained trade unionists to enjoy the guarantees of normal judicial procedure at the earliest possible moment. 2018, paragraph 76.</p> <p>The International Labour Conference has pointed out that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers, constitute civil liberties which are essential for the normal exercise of trade union rights. 2018, paragraph 77.</p>



<sup>9</sup>International Labour Conference, 79th session. *Democratization and the ILO*. Report of the Director-General, 1992, p. 24.



ILO  
Committee  
on  
Freedom of  
Association

Freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. 2018, paragraph 82.

The detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular. 2018, paragraph 123.

It is one of the fundamental rights of the individual that a detainee be brought without delay before the appropriate judge and, in the case of trade unionists, protection from arbitrary arrest and detention and the right to a fair and rapid trial are among the civil liberties which should be ensured by the authorities in order to guarantee the normal exercise of trade union rights. 2018, paragraph 163.

The right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights. 2018, paragraph 239.

The Committee recalls that the inviolability of trade union premises and property, including its mail, is a civil liberty which is essential to the exercise of trade union rights. 2018, paragraph 276.

Given the importance of reaffirming the effectiveness of citizenship as a human right in the context of an employment relationship and the importance of highlighting the interdependent relationship between trade union rights and other human rights, from now on reference will be made to the human rights of citizenship, labor, social security, trade unions, and specific rights of persons in certain groups, which are to be recognized in the inter-American instruments and applicable to the employment relationship.

### 4.3. Table of human rights of workers

Human Rights	Provisions of inter-American standards
Human rights of citizenship	<p><b>Right to life and personal integrity</b></p> <ul style="list-style-type: none"> <li>- Article 1 American Declaration of the Rights and Duties of Man</li> <li>- Articles 4 and 5 American Convention on Human Rights</li> </ul> <p><b>Right to personal liberty and protection against arbitrary conviction and detention</b></p> <ul style="list-style-type: none"> <li>- Article XXV American Declaration of the Rights and Duties of Man</li> <li>- Articles 7 and 9 American Convention on Human Rights</li> </ul> <p><b>Right to equality and non-discrimination</b></p> <ul style="list-style-type: none"> <li>- Article 45 OAS Charter</li> <li>- Article 2 American Declaration of the Rights and Duties of Man</li> <li>- Article 3 Protocol of San Salvador</li> </ul> <p><b>Right to honor and reputation</b></p> <ul style="list-style-type: none"> <li>- Article V American Declaration of the Rights and Duties of Man</li> <li>- Article XI American Convention on Human Rights</li> </ul> <p><b>Right to personal privacy or private life</b></p> <ul style="list-style-type: none"> <li>- Article V American Declaration of the Rights and Duties of Man</li> <li>- Article 11 American Convention on Human Rights</li> </ul> <p><b>Right to freedom of information, opinion, expression and dissemination</b></p> <ul style="list-style-type: none"> <li>- Article IV American Declaration of the Rights and Duties of Man</li> <li>- Article 13 American Convention on Human Rights</li> </ul> <p><b>Right to religious freedom</b></p> <ul style="list-style-type: none"> <li>- Article III American Declaration of the Rights and Duties of Man</li> <li>- Article 12 American Convention on Human Rights</li> </ul> <p><b>Right of assembly</b></p> <ul style="list-style-type: none"> <li>- Article XXI American Declaration of the Rights and Duties of Man</li> <li>- Article 15 American Convention on Human Rights</li> </ul> <p><b>Right to effective judicial protection</b></p> <ul style="list-style-type: none"> <li>- Article XVIII American Declaration of the Rights and Duties of Man</li> <li>- Article 8 American Convention on Human Rights</li> </ul>



**Prohibition of forced labor, slavery, and servitude**

- Article 6 American Convention on Human Rights

**The right to work in decent conditions** (may include the right to have access to employment and the right to preference for an indefinite-length-of-time labor contract)

- Articles 34 and 45 OAS Charter
- Article XIV American Declaration of the Rights and Duties of Man
- Article 6 Protocol of San Salvador

**Right to work: right not to be fired without just cause**

- Article 7 Protocol of San Salvador

**Right to fair wages**

- Articles 34 and 35 OAS Charter
- Article XIV American Declaration of the Rights and Duties of Man
- Article 7(a) Protocol of San Salvador

**Right to fair wages and equal pay for equal work**

- Article 7(a) Protocol of San Salvador

**The right of every worker to follow his or her vocation**

- Article XIV American Declaration of the Rights and Duties of Man
- Article 7 (b) Protocol of San Salvador

**Right to promotion and advancement**

- Article 7(c) Protocol of San Salvador

**Right to health and safety at work**

- Article 7(e) Protocol of San Salvador

**Prohibition and limitation of child labor**

- Article 7(f) Protocol of San Salvador

**Maximum working day**

- Article 7(g) Protocol of San Salvador

**Right to rest, leisure, and holidays**

- Article XV American Declaration of the Rights and Duties of Man
- Article 7(h) Protocol of San Salvador

**Right to education, training, and capacity building for work**

- Article 50 OAS Charter
- Article XII American Declaration of the Rights and Duties of Man
- Article 6.2 Protocol of San Salvador

**Duty of OAS States to harmonize labor legislation so that workers' rights are equally protected**

- Article 46 OAS Charter





The  
human  
right to  
social  
security

**The human right to social security**

- Article 45 (b) and (h) and Article 46 OAS Charter
- Articles XVI and XXXV American Declaration of the Rights and Duties of Man
- Article 9 Protocol of San Salvador

Trade  
union  
human  
rights

**Duty of States to recognize the importance of the contribution of trade unions to life in society and to the development process**

- Article 45(g) Charter of the Organization of American States

**Right to organize** (which may include the right to protection against anti-union discrimination, the right to effective protection of workers' representatives, and the right to trade union-related specific conditions for workers' representatives)

- Article 45(c) Charter of the Organization of American States
- Article XXII American Declaration of the Rights and Duties of Man
- Article 16 American Convention on Human Rights
- Article 8 Protocol of San Salvador

**Right to form federations and confederations and right to operate freely** (which may include the right of trade union organizations to administer their organization, the right to regulation, representation, and dissolution, the right of trade union organizations to adequate protection against any act of interference, and the right of trade union organizations to freely organize their activities and draft their program of action).

- Article 8.1 Protocol of San Salvador

**Right to collective bargaining**

- Article 45(c) OAS Charter

**Right to strike**

- Article 45(c) OAS Charter
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<p>Specific human rights of women workers</p>	<p><b>Right of mothers and children to protection.</b> - Article VII American Declaration of the Rights and Duties of Man</p> <p><b>Women’s right to an effective possibility of exercising the right to work</b> - Article 6.2 Protocol of San Salvador</p> <p><b>Right of working women to paid maternity leave</b> - Article 9.2 Protocol of San Salvador</p> <p><b>Sexual harassment in the workplace</b> Article 2(b) Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”)</p>
<p>Specific human rights of workers of African descent</p>	<p><b>Obligation of States to adopt legislation defining and prohibiting racism, racial discrimination, and related intolerance in the areas of employment and social protection</b> - Article 7 Inter-American Convention against Racism, Racial Discrimination and Related Intolerance</p>
<p>Specific human rights of indigenous workers</p>	<p><b>Labor rights</b> - Article XXVII American Declaration on the Rights of Indigenous Peoples</p>
<p>Specific human rights of workers with disabilities</p>	<p><b>Right to work and technical-professional training for the disabled</b> - Article 6.2 Protocol of San Salvador</p> <p><b>Protection of the Handicapped</b> - Article 18 Protocol of San Salvador</p> <p><b>Employment measures necessary to eliminate discrimination against persons with disabilities and to promote their full integration into society</b> - Article III. 1 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities</p>

# Conclusion

**T**rade unions can use all the political and legal resources made available by the Inter-American Human Rights System to defend the human rights of workers and trade unions, not only protection tools (petitions and individual cases, precautionary measures, contentious cases, and provisional measures) but also promotion and monitoring tools (country visits, reports, press releases, thematic hearings, reports, courses).

For that, it is worth considering the preparation of a specific strategy and plan of action that may include coordinated participation in **thematic hearings**, a request for the inclusion of labor and union rights in **annual, thematic, and country reports**, participation in **country visits**, a request for **press releases**, participation as amicus curiae in contentious cases submitted to the Inter-American Court or in **advisory opinions**, a request for precautionary measures in urgent cases of extreme gravity. All this in order to activate the mechanisms of the Inter-American System and thus **increase political and legal pressure on States** to comply with their inter-American obligations and to denounce them before the international community, highlighting the real situation regarding labor and union rights in the countries of the region.

In those cases that meet the requirements of exhaustion of domestic remedies, there is the **petition and case system** of the Inter-American Commission and the **contentious jurisdiction** of the Inter-American Court, where resolutions of mandatory compliance can be obtained. Although the procedure is slow, the submission of a petition activates a legal mechanism that, politically speaking, can force open spaces for dialogue and the search for solutions along the way, right up to the forcefulness of the Commission's substantive report or the Court's decision declaring a State internationally responsible and ordering it to adopt specific measures.

Coordination within the Inter-American System makes sense if it contributes to and reinforces the resistance, mobilization, and struggle of trade unions at the national level and if it is coordinated in the context of their priority objectives.



