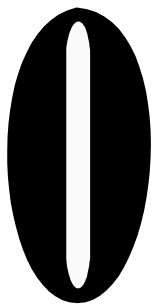

HOW TO FILE PETITIONS IN THE INTER-AMERICAN SYSTEM

PURPOSE OF THIS HANDBOOK



On occasion, victims of human rights violations have no one to whom they can turn or are unable to find any satisfaction within their own countries. They can find help, however, by filing a petition or complaint with the Inter-

American Commission on Human Rights. The Commission investigates human rights violations committed by governmental authorities and makes recommendations to the State responsible to restore the enjoyment of rights wherever possible, to prevent a recurrence of similar events, and to investigate the facts to make reparations for the harm caused to the victims.



The purpose of this handbook is to inform potential petitioners of the basic concepts that they should know before filing petitions with the Commission. It also sets forth, in clear and simple language, what the protected human rights are, how and when a petition may be filed, the requirements that must be met, information that a petition must include and, in general, the procedures that have to be followed.

THE COMMISSION AND ITS FUNCTIONS

The Inter-American Commission on Human Rights was created in 1959. Among the instruments governing the Commission's present structure is the American Convention on Human Rights. The Commission's Statute and Rules of Procedure, which establish its powers and procedures, were approved in 1979 and 2000, respectively.

The Commission is located in Washington, D.C. and is comprised of seven members, who are nominated by the States and elected in a personal capacity by the General Assembly of the Organization of American States (OAS). Commission members do not represent their countries. They and the Commission as a whole represent the 35 member States of the OAS.



One of the Commission's main functions is to address the complaints or petitions received from individuals, groups of individuals or organizations that allege human rights violations committed in OAS member countries. The protected rights are specified in the following international documents: the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969), the two Additional Protocols to the American Convention: one in the area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), and the other on the abolition of the Death Penalty. Other human rights treaties in the inter-American system are

the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”) and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

A

person who files a petition with the Commission must show that a violation of the American Convention on Human Rights, or one of the other instruments mentioned previously, was committed.











The petitioner or complainant who alleges a violation of the American Convention must make certain that the State that committed the violation has ratified the Convention and is therefore bound by it. The list of States that have ratified the Convention, as of June 2002, appears later in this handbook. If the State complained of has not ratified the Convention, the Commission will apply the American Declaration. The procedure is substantially the same, whether the violation is of the Convention or of the Declaration.

As a case is being processed, the Commission will endeavor to help the parties reach an agreement and arrive at a friendly settlement. If the parties do not arrive at an agreement and the Commission finds that there was a human rights violation, it can take the case against the State to the Inter-American Court of Human Rights. If the case is not one that can be taken to the Court, the Commission may publish its conclusions and recommendations in the annual report it

presents each year to the OAS General Assembly.

RIGHTS PROTECTED

The American Convention on Human Rights protects the following rights:

-  The right to recognition of juridical personality (the right to be recognized as a person before the law).
-  The right to life.
-  The right to personal integrity: the right to humane treatment, including the right not to be subjected to cruel, inhuman, or degrading treatment or punishment.
-  The right to freedom from slavery or involuntary servitude.
-  The right to personal liberty.
-  The right to a fair trial.
-  The right not to be convicted through the retroactive application of criminal laws. Freedom from *ex post facto* laws.
-  The right to compensation for having been sentenced by a final judgment through a miscarriage of justice.

-
- ▶ The right to have one's honor respected and dignity recognized.
 - ▶ Freedom of conscience and religion.
 - ▶ Freedom of thought and expression.
 - ▶ The right to have inaccurate or damaging information corrected or to reply thereto.
 - ▶ The right of assembly.
 - ▶ Freedom of association.
 - ▶ The right to protection of the family.
 - ▶ The right to a name.
 - ▶ The rights of the child.
 - ▶ The right to nationality
 - ▶ The right to property.
 - ▶ The right to freedom of movement and residence.
 - ▶ The right to participate in government.
 - ▶ The right to equal protection of the law.
 - ▶ The right to judicial protection against violations of fundamental rights.
-

The American Declaration, too, contains a complete list of the rights that the States must respect and protect. In addition to the rights listed above, the Declaration contains specific provisions recognizing the right to work and to receive a fair wage, the right to social security, the right to the benefits of culture, and so on. The Convention is different in this respect, as it provides only that the States undertake to recognize social and economic rights. However, it is more specific as regards the individual rights of the person.

There are rights that other conventions specifically protect, such as the right not to be subjected to cruel, inhuman or degrading treatment or punishment, the right not to be the victim of a forced disappearance, the right of women not to be subjected to physical, sexual or psychological violence, and the right of persons with disabilities not to be discriminated against.

WHO CAN FILE A COMPLAINT

Any person, either on his/her own or on someone else's behalf, may lodge a complaint or petition with the Commission to report a human rights violation. A group of persons or a nongovernmental organization (NGO) may also file petitions. One of the essential requirements that must be met before action can be taken on a complaint or petition is that one or several alleged victims be identified by name. The alleged violation must have been committed against one or several human beings.



The Commission's practice is to refer to the party filing the complaint as the petitioner. The persons against whom the human rights violations were alleged to have been committed are referred to as victims.

CONDITIONS FOR FILING A PETITION

Three conditions must be present before a complaint or petition can be lodged:

- ➡ **First**, it must concern an alleged violation, by a State, of rights set forth in the American Convention, the American Declaration or one of the other human rights instruments mentioned earlier;
- ➡ **Second**, the petitioner must have exhausted all the legal remedies available in the State where the alleged violation occurred, and the complaint or petition must be presented to the Commission within six months following the date of notification of the national court's final decision on the case ("exhaust internal remedies" means that, before the petitioner can come to the Commission, his/her case must have been heard by the courts or other competent authorities of the country in question without positive result), and
- ➡ **Third**, the complaint must not be pending before any other international proceeding, such as before the United Nations Human Rights Committee.



The Commission is not an appeals court. It cannot review the judgments or decisions of the national authorities unless there were irregularities in the proceedings that constitute human rights violations. A decision contrary to the interests of one or more persons is not, per se, a human rights violation.

There are exceptions to these rules. Exhaustion of local remedies will not be required if the victim has been denied access to those remedies or if he/she has been prevented from exhausting them; or if the local laws do not afford due process of law for the protection of his or her rights.

Nor will exhaustion of local remedies be required when the State has been slow to render a final decision on the case without just cause; in other words, exhaustion of local remedies will not be required when there has been an unwarranted delay.

Finally, the Commission in some circumstances does not require exhaustion of local remedies when a person does not have the financial means to pay for an attorney and the State does not provide one free of charge, or when the lawyers in the country in question are afraid to represent a person.

WHEN CAN A COMPLAINT BE FILED

The petition or complaint must be lodged within the six-months following the date of notification of the national courts' final decision on the case in question.

However, a victim who has been unable to exhaust domestic remedies for any of the reasons mentioned earlier should file his/her complaint or petition within a reasonable time period. In such cases, the complaint or petition should be presented as close to the time the events occurred as possible.



WHAT SHOULD A COMPLAINT INCLUDE

Every complaint or petition must be filed in writing and should contain all available information. If the petitioner is a person or group of persons, the name(s), nationality, occupation or profession, address and signature(s) should appear in the petition. If, on the other hand, the petitioner is a nongovernmental organization, the petition should include the institution's address and the names and signatures of its legal representatives.

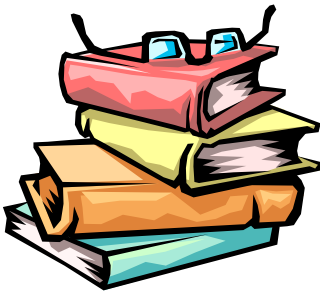
Every petition must describe the violation in as much detail as possible, indicate the date and place it occurred and the name of the State involved. The petition should also include the

victim's name and, if possible, the name of any public official who has taken cognizance of the act or acts alleged.

The petition must contain information showing that local remedies have been exhausted. Whenever possible, the petitioner should enclose copies of the court proceedings and other pertinent documents (an itemization of the important documents appears on the form at the end of this handbook). The date of the final decision and the final court judgment and a summary of the decision should be indicated.

In every case, the petitioner is to specify the measures that have been taken before the judicial authorities and the results obtained. If the remedies before the country's courts were not exhausted, the petition must make the case that local remedies could not be exhausted for one or several of the reasons cited earlier.

ADDITIONAL INFORMATION THAT THE COMPLAINT SHOULD CONTAIN



It is helpful to specify which particular right of those specified in the Convention, the American Declaration, or other instrument has been violated. The complaint or petition must contain all the details of the case and provide as much evidence as possible, such as statements by eyewitnesses and relevant documents that might be useful in determining whether human rights violations have occurred.

It is also important to explain what the

State's relationship to the facts in the case are and how the State, either by its action or inaction, may have violated the right in question. If the complaint or petition does not meet these basic requirements, the petitioner will be asked to supply the missing information.

PROCEDURE THAT A COMPLAINT FOLLOWS

The Commission receives a complaint or petition by way of its Executive Secretariat. The complaint or petition is then examined to determine whether the requirements essential to begin to process it have been met. If those requirements have been satisfied, the pertinent parts of the petition are sent to the State so that it might respond. Following a period during which information on the complaint is exchanged, the Commission decides whether or not it is admissible.

If the petition or complaint is found to be admissible, it becomes a case. At that point, the Commission invites the parties to arrive at some agreement with a view to seeking a friendly settlement. While the Commission offers this possibility at this point in the process, a friendly settlement can be reached at any stage in the processing of a petition or case.

If the parties do not reach a friendly settlement, the Commission will then deliberate on and decide the merits of the case, i.e., whether or not a human rights violation was committed. If the Commission establishes that one or several human rights violations occurred, it will make recommendations and forward them to the State. It will also set a deadline by which the State in question must comply with those recommendations.

If the State complies with the recommendations, the case is closed. If the State does not comply, the Commission can refer the case to the Court or decide to publish the case in its annual report.



While a petition or case is in process, the Commission may hold hearings during the various stages of the proceedings. At such hearings, the Commission asks questions, takes statements from witnesses and experts, receives documents and hears the parties' arguments.

The petitioner's participation is important at all stages of the proceedings before the Commission and the Court. For example, the petitioner can elaborate upon the facts, provide the names of witnesses, and so on. The petitioner will also have an opportunity to present comments to the State's reply and will be a party to any and all negotiations for a friendly settlement. The petitioner will also be able to present arguments and testify during any proceedings conducted before the Inter-American Court.

If so requested, the Commission will not divulge the petitioner's identity to the State.

LEGAL REPRESENTATION

The preparation, presentation and processing of a complaint or petition is a relatively simple matter, something the petitioner can do on his/her own, without the help of a professional. However, the assistance of an attorney or nongovernmental organization (NGO) is helpful.



Attorneys or members of an NGO have a better grasp of technical questions and can provide useful advice, make recommendations and suggestions, help interpret the violated rights, develop additional arguments, efficiently prepare the presentation, and make the case to the Commission that one or more rights have been violated.

SERIOUS AND URGENT SITUATIONS

A petition should indicate whether someone is in imminent danger of suffering irreparable harm. In such cases, regarded as serious and urgent situations, the Commission has the authority to act swiftly to request the State concerned to adopt urgent precautionary measures.

Although the petition sent to the Commission must contain the information required to initiate processing in order to forward it to the State, the request seeking precautionary measures may be brief and can be sent by any means, including telegram, fax, or e-mail.

MEMBERS OF THE OAS AND STATES THAT HAVE RATIFIED THE AMERICAN CONVENTION



The following States are members of the Organization of American States: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay and Venezuela.

Only States that have ratified the American Convention are legally bound to observe and respect the rights recognized therein. They 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, Trinidad and Tobago*, Uruguay, and Venezuela.

* On May 26, 1998, the Republic of Trinidad and Tobago advised the OAS Secretary General of its decision to denounce the American Convention. The denunciation took effect on May 26, 1999, one year after the date of notification, in keeping with Article 78(1) of the American Convention.

The States that have recognized the binding jurisdiction of the Inter-American Court, i.e., those against which the Commission can take cases to the Court, are: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.

WHERE SHOULD THE PETITION BE SENT

Petitions can be sent by:

- Mail, to the following address:

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES
1889 F STREET, N.W.
WASHINGTON, D.C. 20006, UNITED STATES



- Fax, to the following number: (202) 458-3992
- E-mail, to the following e-mail address: cidhoea@oas.org

FORM FOR FILING PETITIONS ALLEGING HUMAN RIGHTS VIOLATIONS

The following form, prepared by the Commission's Executive Secretariat, is intended to make it easier for victims of violations, their family members, organizations of civil society or other persons to file complaints alleging human rights violations by OAS member States.

The form is based on the information that the Commission's Rules of Procedure require in order to process petitions and to determine whether the State, against which the complaint is brought has violated any of the human rights protected by an international treaty to which it is a party. The required information is stipulated in Article 28 of the Commission's Rules of Procedure:

Article 28. Requirements for the consideration of petitions. Petitions addressed to the Commission shall contain the following information:

- a. the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, the name and signature of its legal representative(s);
- b. whether the petitioner wishes that his or her identity be withheld from the State;
- c. the address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;

-
- d. an account of the act or situation that is denounced, specifying the place and date of the alleged violations;
 - e. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;
 - f. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;
 - g. compliance with the time period provided for in Article 32 of these Rules of Procedure;
 - h. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure; and
 - i. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure.

Before completing the attached form, please read the following instructions carefully.

INSTRUCTIONS

The form should be filled in as completely as possible and include all available information regarding the particular act alleged to constitute one or more violations of human rights by an OAS member State. Responses to the questions should be simple and direct. If the requested information is not available to the person filing the complaint or does not exist, the response on the form should be "information not available" or "not pertinent," as appropriate.

If more space is needed to answer a question on the form, please attach a separate sheet.

The form can also be filled out at the Commission's web site: www.cidh.org

Once completed, the form should be sent to the Executive Secretary of the IACHR by:

- Mail, to the following postal address:

Inter-American Commission on Human Rights
1889 F Street, N. W.
Washington, D.C. 20006
USA

- Fax, to the following number: 1-202-458-3992.

- E-mail, to the following address: cidhoea@oas.org

Please bear in mind that if the form is sent by e-mail, the petitioner will then be asked to confirm the complaint by sending it again, this time by mail or fax, with his/her signature.

FORM

I. PERSON, GROUP OF PERSONS OR ORGANIZATION FILING THE PETITION

Name:

(if the party filing the petition is a nongovernmental entity, please include the name of its legal representative(s))

Postal address:.....

.....

.....

.....

(NOTE: The Commission will not be able to process your complaint if it does not include a postal address)

Telephone:

Fax:

E-mail:

Do you want the Commission to withhold the petitioner's identity during processing?

Yes.....No

II. NAME OF THE PERSON OR PERSONS AFFECTED BY THE HUMAN RIGHTS VIOLATIONS

Name:

Postal address:

.....

.....

Telephone:

Fax:

E-mail:

If the victim is deceased, please also identify his or her next of kin:

.....
.....
.....
.....

III. OAS MEMBER STATE AGAINST WHICH THE COMPLAINT IS BROUGHT

.....

IV. FACTS DENOUNCED

Give a full and detailed account of the events. Specify where and when the alleged violations occurred.

.....
.....
.....
.....
.....
.....

Available evidence

Indicate what documents can prove the violations being denounced (for example, court records, forensic reports, photographs, films, and so on). If you have the documents in your possession, please attach a copy. **DO NOT ATTACH ORIGINALS** (Copies need not be notarized or otherwise authenticated).

.....

.....

.....

.....

.....

Name the witnesses to the violations being denounced. If those persons have made sworn statements to the court authorities, if possible send a copy of that testimony or indicate whether it can be sent sometime in the future. Indicate whether the identity of the witnesses is to be kept confidential.

.....

.....

.....

.....

Identify the persons and/or authorities responsible for the facts denounced.

.....

.....

.....

.....

.....

V. HUMAN RIGHTS VIOLATED (If possible, indicate which provisions of the American Convention or of other applicable instruments you believe were violated)

.....
.....
.....

VI. LEGAL REMEDIES TO REDRESS THE CONSEQUENCES OF THE FACTS DENOUNCED

Detail the measures taken by the victim or the petitioner with judges, courts or other authorities. If the victim or petitioner was unable to institute or exhaust this type of measure, was it because (1) the domestic laws of the State do not provide for due process of law to protect the violated right; (2) the party alleging the violation was denied access to the remedies under domestic law or has been prevented from exhausting them; or (3) there has been an unwarranted delay in rendering a final judgment on the aforementioned remedies?

.....
.....
.....
.....
.....

Kindly indicate whether any judicial inquiry was conducted and if so when it began. If it has ended, please give the date the inquiry was closed and what the finding was. If it has not yet closed, explain why.

.....
.....
.....
.....

If the court proceedings have ended, please indicate the date on which the victim was notified of the final decision.

.....
.....
.....

VII. PLEASE INDICATE WHETHER THE VICTIM'S LIFE, INTEGRITY OR HEALTH IS IN JEOPARDY. WAS THE ASSISTANCE OF THE AUTHORITIES REQUESTED, AND IF SO, WHAT WAS THE RESPONSE?

.....
.....
.....
.....

VIII. PLEASE INDICATE WHETHER THE CLAIM CONTAINED IN THE PETITION HAS BEEN FILED WITH THE UNITED NATIONS HUMAN RIGHTS COMMITTEE OR ANY OTHER INTERNATIONAL ORGANIZATION

.....
.....
.....
.....

SIGNATURE

.....

DATE

.....