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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N°9 : THE INTERAMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

➤ *Background*

The regional American system for the protection of human rights was formally initiated on 30 April **1948** in Bogotá (Colombia) with the adoption of *the Charter of the Organization of American States*¹, the preamble of which stresses that « *the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man* ».

On this same date, *the American Declaration of the Rights and Duties of Man*. The Declaration lists civil and political rights, as well as economic, social and cultural rights. All members of the OAS must comply with the principles and rules indicated in the Declaration.

In creating the *Inter-American Commission on Human Rights*, the 5th Meeting of Consultation of Ministers of Foreign Affairs (Santiago de Chile, **1959**) provided a solution to the problem facing American nations at the time : the absence of bodies with specific responsibility for overseeing the observation of these rights. The Council of the OAS adopted the Statute of the Commission on 25 May **1960**.

The task of the Commission consisted in promoting the respect of human rights, as well as providing recommendations to Member States. In 1965, the responsibilities and powers were broadened : it was authorised to examine communications sent to it. The Statute of the Commission was further amended in April

¹ The 21 founding countries are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay and Venezuela. Another 14 States became member countries at a later date : Trinidad and Tobago (1967), Barbados (1967), Jamaica (1969), Surinam (1977), Grenada (1975), Saint Lucia (1979), Dominica (1979), Antigua and Barbuda (1981), Saint Vincent and the Grenadines (1981), the Federation of Saint Kitts and Nevis (1984), the Bahamas (1982), Canada (1989), Belize (1991) and Guiana (1991). All 34 countries of the Americas have ratified the Charter of the OAS.

The Charter of the OAS was amended by the “Buenos Aires Protocol in 1967, the “Cartagena de Indias Protocol“ in 1985. Further amendments were made by the Washington Protocol (1992) and the Managua Protocol (1993).



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1966, giving it the option to examine individual applications and put forward specific recommendations to Member States.

On 21 November **1969** the Inter-American Specialized Conference on Human Rights (San José, Costa Rica) adopted *the American Convention on Human Rights*.

The Convention became effective on 18 July **1978**. It offers signatories the option, by virtue of an additional protocol, of accepting the jurisdiction of the Inter-American Court of Human Rights.²

The American system for the protection of human rights includes *the Inter-American Conventions* and *additional protocols* relating to human rights :

- Inter-American Convention to Prevent and Punish Torture, 1985,
- Inter-American Convention on Enforced Disappearance of Persons, 1994,
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994,
- Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, 1999,
- Additional Protocol to the Convention, on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), 1988,
- Additional Protocol to the American Convention on Human Rights to Abolish the death penalty, 1990.

Additional Protocols to the American Convention on Human Rights and the Conventions have to be respected by ratifying States.

➤ ***Principal bodies***

- **Inter-American Commission on Human Rights**

The Commission represents all Member States of the OAS. It is composed of 7 members, elected for a term of four years by the OAS General Assembly (art. 34-38 of the Convention on Human Rights). The Commission sits in Washington, D.C. (United States).

Functions (art. 41 of the Convention) :

- To promote respect for and defence of human rights,
- To make recommendations to governments for the adoption of progressive measures in favour of human rights within the framework of their domestic law and constitutional provisions,
- To prepare special studies and reports,
- To request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- To submit an annual report to the General Assembly of the Organization of American States.

The Commission is competent to examine applications (petitions) containing accusation or complaint relating to the violation of a right. These can be :

- a) A petition submitted by any person (art.44 of the Convention): possible for the mere fact that a State ratified the Convention. It can be submitted by any person, group of persons, or any NGO legally established in one, or more, member State of the OAS. The Convention does not requires the petitioner to be the victim.
- b) A communication submitted by a member State (art.45 of the Convention): The petitioning State and the respondent State must have accepted this possibility beforehand. This procedure has been used only once (Nicaragua v/Costa Rica).

² States which have ratified the American Convention on Human Rights are : Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Grenada, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad and Tobago, Uruguay and Venezuela. These countries have all accepted the competence of the Court, with the exception of Dominica, Grenada and Jamaica.

In addition, it may carry out on-site investigations. Whenever the national law of a member country is at risk of breaking the obligations resulting from ratification of the Convention, it may recommend the amendment or annulment of the law in question³. In serious and urgent cases, the Commission also has the right to request the State concerned to adopt protective measures to prevent irreparable damage being inflicted on persons (art. 25 of the Rules of procedure of the Commission).

- **Inter-American Court of Human Rights**

The Court sits in San José in Costa Rica. It is composed of seven judges, who are nationals of OAS Member States, elected by secret ballot and by an absolute majority of votes of States parties to the Convention and the General Assembly of the Organisation. The judges of the Court are elected for 6 years and may only be re-elected on one occasion (art. 52-54 of the Convention on Human Rights).

Functions:

1) *Consultative*

Under article 64, at the request of any other OAS Member State⁴, the Court may deliver an opinion on the interpretation of the Convention or any other treaty relating to human rights in the American States, as well as any opinion «on the compatibility of a domestic law of a Member State with aforementioned international instruments ».

2) *Litigious or jurisdictional*

The Commission and States party to the Convention and which have recognised the competence of the Court may also refer a case to it relating to the interpretation or application of the Convention, whenever remedy has been exhausted before the Inter-American Commission on Human Rights (art. 62).

The Court may order protective measures «in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons » (Article 63 § 2 of the Inter-American Convention on Human Rights).

The official languages of the Commission and the Court are French, English, Spanish and Portuguese.

➤ **Procedure**

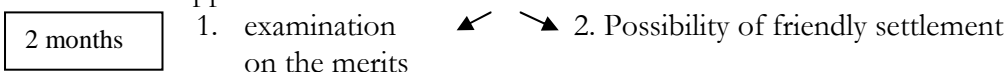
- **The procedure before the Inter-American Commission on Human Rights** (Title II of the Rules of procedure of the Commission)

- Receipt of a petition which is *prima facie* admissible → Information from the State
Examination of admissibility → adoption of a report on admissibility

Criteria for admissibility:

- Exhaustion of domestic remedies (with some exceptions mentioned in art. 46 §2 of the Convention)
- Deadline: within 6 months of the final decision before the highest national court
- Non – duplication of procedures : the subject of the petition must not be in the process of being examined before another international court.
- Identification of the petitioner.

- If the application is declared as admissible



- The Commission makes a decision on the merits of the case:

³ SHAW, Malcolm N., International Law, Cambridge university press, 5th edition, 2003, P. 357

⁴ The bodies listed in Chapter X of the Charter of the Organization of American States, may also consult the Court (art. 64 of the Convention).

1. It does not establish any violation
(report on the merits)

2. It establishes a violation.

- Preliminary report and recommendations.
- The Commission verifies whether the State has responded adequately to the recommendations :

YES :

No referral to the Court.

NO :

The Commission should in principle refer the case to the Court of the State has accepted its jurisdiction, unless otherwise decided by a majority of the members of the Commission.

If the Commission or a State has not referred the case to the Court within 3 months, the Commission may then adopt a final report. This report is sent to the parties, who, within the deadline set by the Commission, must submit information on compliance with the recommendations.

- **The procedure before the Inter-American Court of Human Rights** (Title II of the Rules of procedure of the Court)
- Referral to the Court : Commission or State party to the Convention and having accepted its jurisdiction.
- *Written procedure*:
 - Preliminary examination of the application
 - Notification of the application, appointment by respondent States of their Agent , as well as the appointment by the Commission of its Representative, within 30 days.

The alleged victim
or his / her representatives
submit their claims
to the Court (2 months);

The respondent party replies
in writing (4 months).

- *Oral procedure* : Public hearings
Judgement on the merits
(specific decision on reparations)

Possibility of friendly settlement

Compensation (Art. 63 § 1 of the Convention) : Restoration to original condition o *Restitutio in integrum* / Compensation (reparations by equivalent)/ other reparation measures ordered by the Court.
The judgement delivered by the Court is final and non appealable.

Application form relating to the allegation of human rights violations:
https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=S

Sources:

- American Convention on Human Rights.
- Website of the OAS : <http://www.oas.org/es/default.asp>
- Website of the Inter-American Commission on Human Rights : <http://www.cidh.org/Default.htm>, and Regulations of the Commission.
- Website of the Inter-American Court of Human Rights : <http://www.corteidh.or.cr/index.cfm>, and Regulations of the Court.

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