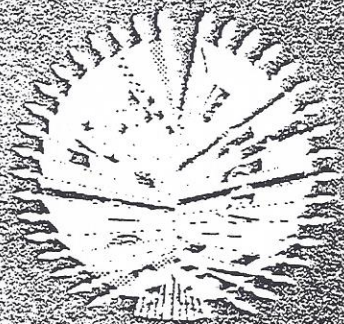


HUMAN RIGHTS

**HOW TO PRESENT A PETITION
IN THE INTER-AMERICAN SYSTEM**



**Organization of American States
Inter-American Commission on Human Rights**

**Inter-American Institute of Human Rights
Lawyers Committee on Human Rights**

This document is published by the Inter-American Commission on Human Rights of the Organization of American States. Its purpose is to tell people or groups of people how they can denounce alleged violations of human rights within the inter-American system. This material is free. It is also available in Spanish, Portuguese and French. It may be reproduced so long as no changes are made to its content and provided that the Inter-American Commission on Human Rights is mentioned as the source.

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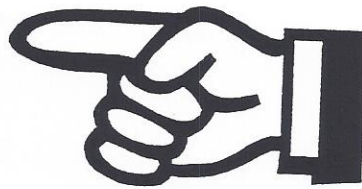
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HOW TO PRESENT A PETITION IN THE INTER-AMERICAN SYSTEM

THE PURPOSE OF THIS MANUAL

People who suffer human rights violations sometimes do not know who to turn to in their own countries. By presenting a petition to the Inter-American Commission on Human Rights, they may obtain help. The Commission investigates complaints of human rights abuses committed by government authorities. Where the Commission finds human rights abuses have occurred, it makes recommendations to the responsible government to ensure that the occurrences are investigated, the victims are compensated, and that measures are taken to prevent the recurrence of the violations.

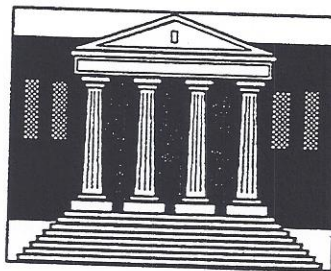
This manual aims to inform people who might want to present a petition about some basic concepts they should be familiar with before bringing their case before the Commission. It tries to explain in clear and simple language which human rights are protected, how and when to present a denunciation, the usual pre-requisites, what additional information should be included, and, in general, which procedures produce the best results.



THE COMMISSION AND ITS FUNCTIONS

The Inter-American Commission on Human Rights was created in 1959. It is governed by the American Convention on Human Rights which was signed in 1969 and came into force in 1978. The Statute and the Regulations (as modified) of the Commission, detailing its faculties and procedures, were approved in 1979 and 1987, respectively.

The Commission is based in Washington, D.C. It has seven members, who are proposed by member states and elected, in their own right, by the General Assembly of the Organization of American States. The IACHR represents the 35 member states of the OAS.



One of the Commission's main functions is to attend to petitions filed by people or groups alleging violations of human rights in OAS member countries. The rights protected are specified in two international documents: the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969).

The person alleging a violation of the American Convention should first ascertain whether the State committing it ratified the Convention and is therefore bound by it. The list of States which have ratified the Convention is included in this manual. The procedures followed by the Commission vary slightly, depending on whether the State in question has ratified the Convention or not. In the case of States which have not ratified the Convention, the Commission applies the Declaration.



The Commission can make recommendations to States, publish its conclusions regarding specific cases of human rights violations, and in certain cases initiate legal action against a State on behalf of the victim before the Inter-American Court of Human Rights. The Commission's strength lies in its powers of persuasion and its freedom to publicize human rights abuses, since it cannot force member states to take any course of action.

With the passage of time, new instruments have emerged, designed to complement the principles and rights enshrined in the Declaration and in the Convention. Particularly notable are: the Inter-American Convention to Prevent and Punish Torture; the Additional Protocol in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

PROTECTED RIGHTS

The American Convention on Human Rights protects the following civil and political rights and freedoms:

- ✓ The right to juridical personality (to be recognized as a person before the law).
- ✓ The right to life.
- ✓ The right to humane treatment, including the right not to be subjected to cruel, inhuman, or degrading punishment or treatment.
- ✓ Freedom from slavery.
- ✓ The right to personal liberty.
- ✓ The right to a fair trial by a competent tribunal.
- ✓ Freedom from ex post facto laws.
- ✓ The right to compensation in the case of sentencing by a final judgment through a miscarriage of justice.
- ✓ The right to privacy.

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- ✓ Freedom of conscience and religion.
 - ✓ Freedom of thought and expression.
 - ✓ The right to reply or to make a correction to inaccurate or offensive statements.
 - ✓ The right of assembly.
 - ✓ Freedom of association.
 - ✓ Rights of the family.
 - ✓ The right to a name.
 - ✓ Rights of the child.
 - ✓ The right to nationality.
 - ✓ The right to property.
 - ✓ 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 acts that violate fundamental rights.

The American Declaration also contains a complete list of the rights that States should observe and protect. Apart from most of those contemplated in the Convention, the American Declaration includes various social and economic rights, such as the right to work and to receive a fair salary, the right to social security, the right to receive the benefits of culture, and so on. The Convention is different in this respect because it just provides that States are committed to adopting measures to achieve the recognition of social and economic rights. Nevertheless, the Convention establishes individual human rights in greater detail.

WHO CAN PRESENT A PETITION



Anybody, either on their own behalf or on behalf of someone else, can present a petition to the Commission denouncing a violation of human rights. Non-governmental organizations (NGOs) can also put in claims. Petitioning on behalf of someone else is necessary, for instance, in the case of a prisoner who is prevented from presenting a petition himself or who does not want the authorities who arrested him to know that he is petitioning.

CONDITIONS FOR PRESENTING A PETITION

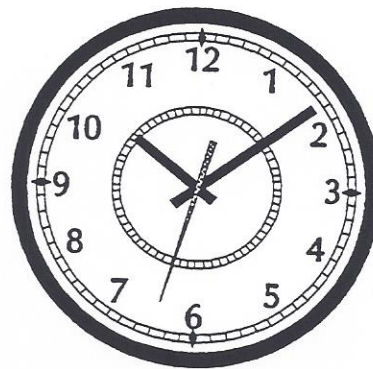
Before filing a claim, three conditions must be met. **First**, the accused State must have violated one of the rights established in either the American Convention or the American Declaration. **Second**, the claimant must have exhausted the possibilities of legal redress in the State in which the violation occurred and his or her petition to the IACHR must be presented within six months of the final judgment by the tribunal concerned ("exhausting the possibilities of legal redress" means that, before the IACHR is contacted, the petitioner must have attempted, without success, to obtain a remedy through the courts or authorities of the country concerned.) And, **third**, the claim should not be the subject of some other international procedure.

These conditions are not rigid. It will not be necessary to have exhausted domestic possibilities of redress if the victim has been denied access to them, if he or she has been otherwise prevented from obtaining redress, or if local laws do not ensure due access to legal procedures for the protection of rights. For example, if local laws allow someone to be detained without having been accused of committing a crime, it would be useless to initiate legal action within the local judicial system because such a detention would be authorized by law.

Nor is it necessary to have exhausted all local legal possibilities when the State concerned, without justification, puts off making a final decision on a case, in other words in cases of unjustified delay. Finally, the Inter-American Court of Human Rights has ruled, in response to a consultation, that the conditions mentioned above need not be met if the person involved cannot turn to the judiciary in his country due to lack of funds or because of generalized fear in the community in which he lives.

WHEN A PETITION CAN BE PRESENTED

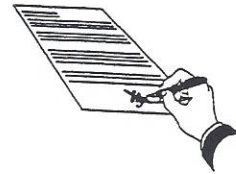
A petition should be presented within six months of failure to obtain legal redress from local authorities. However, a victim of human rights abuse who has not been able to exhaust local legal channels, for one or another of the reasons outlined above, should present his petition within a reasonable time limit. It is best to present a petition as soon as possible after the occurrence of the events in question.



WHAT A PETITION SHOULD INCLUDE IN ORDER TO BE VALID

All petitions must be in writing. There is no form or special format that must be followed, but a petition should contain all the available information. If the claim is filed by a person or group of people, the petition should include the name of the claimant or claimants, their nationality, occupation or profession, address(es) and signature(s). If the claimant is a non-governmental organization, the petition should include the address of the institution and the names and signatures of its legal representatives.

Each petition should describe the violation of human rights that took place, indicate the date and place where it occurred, and identify the government involved. The petition should include the victim's name, and, if possible, the names of any official familiar with the facts of the case.



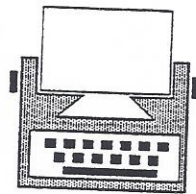
The petition should provide information indicating that all domestic legal recourse has been exhausted. Where relevant, the claimant should enclose a copy of his or her request for Habeas Corpus, if presented, together with information about when and where it was presented and with what results.

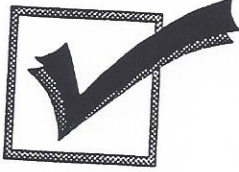
In any case, even if no Habeas Corpus request was presented, the claimant should state what he or she has done to obtain redress from the judicial authorities and the results achieved. If all domestic remedies were not exhausted, the petition should indicate the reasons it was not possible to do so. Any claimant failing to meet these requirements will be notified and asked to provide further information.

ADDITIONAL INFORMATION THAT SHOULD BE INCLUDED IN THE PETITION

It is worth specifying exactly which human right mentioned in the Convention or in the American Declaration has been violated. This will help the Commission to focus its investigations on a particular aspect of the situation and will save the victim time.

The petition should include full details of the case and provide all possible proofs, such as any declarations by witnesses and pertinent documents that might speed up the investigation and increase the chances of a successful outcome.





It is also important to demonstrate how the government is involved and in what way its conduct constitutes a violation of the right in question. If the allegations and the proofs are sufficiently convincing, the Commission may start enquiries, even if certain parts of the petition are not in order or technically imperfect.

HOW MANY VIOLATIONS PER PETITION

The petition should normally refer to a single violation of human rights. The Commission may accept a petition which alleges numerous violations if they all occurred in the same place at the same time, or if they affected a certain group of people. If this is not the case, however, the Commission will handle the accusations separately.

If the petition alleges the existence of a general disregard for human rights by the State, the Commission may investigate the allegation as a single case, without bearing in mind whether or not the petition meets all the requirements.

In such a case, the claimant might not have to prove that all local judicial possibilities of redress have been exhausted. In those cases, the Commission's powers derive from its overall authority to monitor the way a State respects and ensures human rights and to make recommendations designed to improve the situation. A "general" petition of this type may also include specific instances of human rights abuse. The Commission will treat them as individual cases within the context of the enquiry into the government's conduct.

THE PROCEDURES FOLLOWED WITH EACH PETITION

The IACHR receives a petition, examines the denunciation and where appropriate, begins its enquiries. First of all it contacts the government concerned, informs it that a claim has been received against it, and invites it to reply to the accusations. The IACHR can take various steps to investigate what happened and discover the truth. It can conduct **hearings** and **on-site investigations**.

In the case of **hearings**, the Commission meets and listens to declarations, written evidence and refutations. In the case of **on-site investigations**, some members of the Commission travel to the country concerned in order to investigate events on the spot.

What is the ultimate goal of processing a denunciation? If the Commission decides that the government committed a violation of human rights, it will recommend that the government repair the breach, investigate what happened, compensate the victims, and, in general, desist from further violations of fundamental rights. The Commission cannot force this outcome, but it will try to achieve it in various ways.

Above all, the Commission will, at some point, try and get the parties (the petitioner and the government) to come to an "amicable understanding". Very often, in appropriate cases, discussion may lead to a friendly settlement. If that fails, the Commission will issue its conclusions on the case and forward them to the government that was accused along with the Commission's recommendations on how to repair the damage.



If the government concerned does not comply with those recommendations, the Commission may publish its conclusions in its annual report to the General Assembly of the Organization of American States, or in any other form. The threat of publication and public censure can exert considerable political pressure on a government to correct the situation, since the Commission's reports reach not only governments but the general public as well.

Finally, the Commission has the option of referring the case to the Inter-American Court of Human Rights, if the State in question has accepted its jurisdiction. The Court is based in San José (Costa Rica) and its function is to try violations of human rights once the Commission's work is over. The claimant is not empowered to take his case to the Court; only States and the Commission may do so.

The claimant participates at various stages of the Commission's work. For instance, by providing additional information about what happened, the names of witnesses, etc. The claimant also has the chance to refute the reply received from the government involved and to take part in any negotiated settlement. He or she will also be able to appear and speak before the Inter-American Court, if need be.

LEGAL REPRESENTATION

Since the preparation, presentation and processing of a claim is a relatively straightforward procedure, the claimant may act on his own, without the need for professional assistance. However, it is always best to have help from a lawyer.



A lawyer understands the technical aspects better and can therefore advise, recommend, help interpret the rights that have been violated, draw up additional arguments, set out the case in an efficient manner and demonstrate to the Commission that one or more rights have been violated.

EMERGENCY SITUATIONS

Every petition should indicate if a person's life, personal integrity or health is in imminent danger. In such emergency cases, the Commission has the power to take action quickly. It is possible that, given such exceptional circumstances, the Commission might decide to make an on-site visit or adopt other urgent measures, as it sees fit.

Provided the document sent to the Commission contains at least a minimum amount of information to be passed on to the government, the request for emergency (precautionary) steps to be taken may be short, and it can be transmitted by any means, including telegram or fax.

CONFIDENTIALITY

The Commission does not reveal the identity of the person making the petition to the State concerned, unless he or she requests so in writing. Because the Commission does not reveal the names of petitioners, there should be no fear of reprisals by the government against them. The petitioners may also ask for the identities of the witnesses to be kept secret, if need be.

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



The following 35 countries are members of the Organization of American States: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, 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, United States, Uruguay and Venezuela.

Only the 25 States that have ratified the American Convention are legally committed to observing and protecting the rights mentioned in it. Those States are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

The States that have recognized the jurisdiction of the Inter-American Court, in other words countries whose cases may be brought before the Court by the Commission, are: Argentina, Bolivia, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

WHERE TO SEND THE PETITION

Petitions should be sent to:

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

They can also be faxed to (202) 458 - 3992.

APPENDIX

COMPLAINT FORM

Complaints should be drafted in a simple and straightforward manner, free of political rhetoric.

Petitions addressed to the Commission shall include:

- ➔ the name, nationality, profession or occupation, postal address, or domicile and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, its legal domicile or postal address, and the name and signature of its legal representative or representatives;
- ➔ an account of the act or situation that is denounced, specifying the place and date of the alleged violations and, if possible, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced;
- ➔ an indication of the state in question which the petitioner considers responsible, by commission or omission, for the violation of a human right recognized in the American Convention on Human Rights in the case of States Parties thereto, even if no specific reference is made to the article alleged to have been violated;
- ➔ information on whether the remedies under domestic law have been exhausted or whether it has been impossible to do so.

VICTIM

Name:
Age:
Nationality:
I.D N°:
Marital status
Occupation:
Address:
City, Province, State:
Country:
Telephone:
Number of children:

GOVERNMENT ACCUSED OF VIOLATION

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.....

ALLEGED HUMAN RIGHTS VIOLATION. (Explain what happened in as great a factual detail as possible, specifying place and date of the violation)

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.....
.....

**THE ARTICLE(S) OF THE DECLARATION OR CONVENTION
THAT HAVE BEEN VIOLATED**

.....

**NAMES AND TITLES OF PERSONS (AUTHORITIES) WHO
COMMITTED THE VIOLATION**

.....

.....

WITNESSES TO THE VIOLATION (Include addresses and
telephone numbers of witnesses)

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DOCUMENTS/PROOFS (for example, letters, legal documents,
photos, autopsies, tape recordings, etc.)

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DOMESTIC LEGAL REMEDIES PURSUED (e.g. copies of writs
of Habeas Corpus or Amparo)

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