

Institutional Framework for Human Rights Protection in Americas: The Inter-American Commission on Human Rights

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ABSTRACT

The Inter-American Commission on Human Rights (IACmHR, Commission) was established by the Organization of American States (OAS) in 1959. Together with the Inter-American Court of Human Rights (IACtHR), formed by the American Convention on Human Rights (ACHR)¹ in 1969, it provides the institutional framework for States' Parties obligations with the ACHR. The Commission is a crucial element of the Convention and the only possibility to bring a case before the IACtHR leads through IACmHR. However, the Commission is not a typical regional human rights system responsible only for processing individual applications and forwarding it to the Court. It is a multipurpose organ, which has wide competence, focused especially on 'observance and promotion of human rights'.² The IACmHR is not established by the ACHR. It was created 10 years earlier, as an OAS organ.³ This enables the Commission to have a greater influence on human rights protection within the OAS framework. This chapter focuses solely on the Commission. It examines the Commission's history and legal basis, scope of competence and procedure of individual petitions to the IACmHR.

KEYWORDS

Inter-American Commission on Human rights, IACmHR, ACHR, procedure, Inter-American human rights protection system

1 American Convention on Human Rights (Pact of San José), San José, 22 November 1969.

2 Charter of the Organization of American States, Bogotá, 30 April 1948, amended by the Protocol of Buenos Aires (27 February 1967), Protocol of Cartagena de Indias (5 December 1985), Protocol of Washington (14 December 1992) and Protocol of Managua (10 June 1993), Art. 106.

3 This change was introduced by the Protocol of Buenos Aires. See: Protocol of Amendment to the Charter of the Organisation of American States (Protocol of Buenos Aires), 27 February 1967, Art. XII, Art. XV.

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1. Introduction

The Inter-American Commission on Human Rights (IACmHR, Commission) was established by the Organization of American States (OAS) in 1959. Together with the Inter-American Court of Human Rights (IACtHR), established by the American Convention on Human Rights (ACHR)⁴ in 1969, it provides the institutional framework for States' Parties obligations with the ACHR. The Commission is a crucial element of the Convention and the only way to bring a case before the IACtHR.

The IACmHR is often perceived as an entity similar to the former European Commission of Human Rights (ECmHR). However, this is not the case. The Commission was not established by the Convention in 1969. It is an organ of OAS, which created it 10 years earlier.⁵ According to OAS Charter, the ACHR's principal function is to 'promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters'.⁶ The structure, competence and procedure of the Commission were determined by the ACHR. Furthermore, the competences of the IACmHR are different from the former ECmHR. IACmHR, apart from examining individual communications, develops an awareness of human rights among the peoples of America, makes recommendations to the Member States, prepares studies or reports, may request information from states and responds to inquiries.⁷

The Commission is an important element of the Inter-American system for human rights protection. The IACmHR handles the majority of individual communications, only some of which are transmitted to the IACtHR. For instance, in 2023, IACmHR received 2692 petitions and only 34 cases were sent to the Court.⁸ Hence, the main purpose of this chapter is to examine the overall functioning of the Commission through an examination of its legal background, competence and the procedure of individual petitions to the IACmHR.

2. IACmHR: History and Legal Basis

The Commission was established in 1959, before the adoption of the ACHR in 1969. The IACmHR was created under Resolution VIII of the fifth Meeting of Consultation

4 American Convention on Human Rights (Pact of San José), San José, 22 November 1969.

5 This change was introduced by the Protocol of Buenos Aires See: Protocol of Amendment to the Charter of the Organisation of American States (Protocol of Buenos Aires), 27 February 1967, Art. XII, Art. XV; Dąbrowska, 2021, p. 39.

6 Charter of the Organization of American States, Bogotá, 30 April 1948, amended by the Protocol of Buenos Aires (27 February 1967), Protocol of Cartagena de Indias (5 December 1985), Protocol of Washington (14 December 1992) and Protocol of Managua (10 June 1993), Art. 106.

7 American Convention on Human Rights, Art. 41.

8 IACmHR, Statistics [Online]. Available at: <https://www.oas.org/en/iachr/multimedia/statistics/statistics.html> (Accessed: 9 August 2024).

of Ministers of Foreign Affairs in 1959.⁹ This document explicitly mentions the draft preparation of the ‘Convention on Human Rights’ and the establishing of the ‘Inter-American Court for the Protection of Human Rights’.¹⁰ L. Hennebel stresses that the establishment of the IACmHR by the Meeting of Consultation posed a problem. The Commission could not be a new organ of the OAS, because it was not created by the Inter-American Conference, which has the sole competence to establish a new organ. Neither was it created as a specialised organisation nor an organ of the Council. The Statute of the Commission was a source of certain problems. Hence, the establishment of an organ with such potential importance with a single resolution could affect its work and its credibility.¹¹

The Council of the Organization approved the statute of the Commission in 1960. Under the provisions of the Statute, the Commission was established as an autonomous entity of the OAS. Human rights were those set out in the American Declaration of the Rights and Duties of Man (ADRDM).¹² The first session of the IACmHR was held in Washington, D.C., between 3 and 28 October 1960. Later, in the 1960s, the Statute was subjected to certain changes. In 1965, the Second Special Inter-American Conference (Rio de Janeiro) improved the Commission’s effectiveness and strengthened it. *Inter alia*, it authorised the Commission to examine communications sent to it and any other information available, address the government of any Member State for information deemed pertinent and make recommendations to it to bring about more effective observance of fundamental human rights.¹³ During the Third Special Inter-American Conference (Buenos Aires, 1967), the Protocol of Amendment to the Charter of the OAS was signed. After the adoption of the Protocol, the Commission became one of the OAS’s organs¹⁴ and was instructed to continue to monitor the observance of human rights until the ACHR entered into force.¹⁵

On 22 November 1969, the Inter-American Specialized Conference on Human Rights approved the ACHR. The Conference stressed that the IACmHR shall represent all the member countries of the Organization and entrusted the Commission the task of preparing its Statute.¹⁶ The Convention entered into force in 1978. In 1979, in La

9 Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, 11–18 August 1959, p. 11.

10 *Ibid.*

11 Hennebel, 2007, p. 54.

12 *Ibid.*; See also: Annual Report of the Inter-American Commission on Human Rights 1997, 13 April 1998, OEA/Ser.L/V/II.98, Statute of the Inter-American Commission on Human Rights, 8 June 1960, Arts. 1 and 2.

13 *More*: Annual Report of the Inter-American Commission on Human Rights 1997; Hennebel, 2007, p. 55.

14 Protocol of Buenos Aires, Art. 51.

15 *Ibid.*, Art. 150.

16 Inter-American Specialized Conference on Human Rights: Resolution and Recommendation Concerning American Convention on Human Rights, 22 November 1969, International Legal Materials, 9(1), Jan. 1970, p. 125.

Paz, Bolivia, the OAS General Assembly approved the Commission's new Statute. After these amendments, Article 1 stated:

'The Inter American Commission on Human Rights is an organ of the Organization of the American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.'¹⁷

Hence, human rights were defined as set forth in the ACHR, and the ADRDM for states that did not access the ACHR.¹⁸ Similar to the previous Statute, the Commission consisted of seven members who represented all the OAS Member States.¹⁹

Currently the functioning of the IACmHR is based on the ACHR, Statute of the Commission and its Rules of Procedure.²⁰ The Commission consists of seven members, who must have citizenship of one the OAS Member States. However, states can nominate people who are not their nationals. No more than one national of the same country can be a member of the Commission or the Court in the same period.²¹ Notably, no state has established, at the local level, a formal, transparent mechanism for proposing candidates to the IACmHR or IACtHR.²²

Members should be 'persons of high moral character and recognised competence in the field of human rights'.²³ The experts of the Commission do not need to have a law degree; however, the judges of the Court must have legal training and possess the qualifications required for the exercise of the highest judicial functions under the law of the country of which they are nationals or which nominates them as candidates.²⁴ The requirement of 'high moral character and recognised competence in the field of human rights' means that the persons selected by the states must be suitable for the position, that is, have competence in the areas of work and be independent.²⁵

17 Statute of the Inter-American Commission on Human Rights, adopted by the OAS General Assembly during its ninth period of sessions, La Paz, Bolivia, October 1979, Art. 1.

18 Ibid.

19 Ibid, Art. 2; See also: Annual Report of the Inter-American Commission on Human Rights 1997.

20 Rules of Procedure of the Inter-American Commission on Human Rights, approved by the IACmHR at its 137th regular period of sessions, from 28 October to 13 November 2009, modified on 2 September 2011 during the 147th Regular Period of Sessions, from 8 to 22 March 2013, for entry into force on 1 August 2013.

21 Statute of the IACmHR, Arts. 3 and 7; ACHR, Arts. 36 and 37, para. 2.

22 CEJIL (2023) *Guía para defensores y defensoras de derechos humanos. 3ra. Edición actualizada. La protección de los derechos humanos en el sistema Interamericano* [Online]. Available at: <https://cejil.org/wp-content/uploads/2023/05/Guia-para-defensores-y-defensoras-de-derechos-humanos.pdf> (Accessed: 9 August 2024), p. 44.

23 Statute of the IACmHR, Art. 2, para 1; ACHR, Art. 34.

24 Statute of the IACmHR, Art. 2, para 1; Statute of the Inter-American Court of Human Rights Adopted by the GA of the OAS at its Ninth Regular Session, La Paz Bolivia, October 1979, Art. 4, para. 1; ACHR, Arts. 34 and 52; CEJIL, 2023, p. 44.

25 CEJIL, 2023, p. 44.

The members are elected by the OAS General Assembly in their personal capacity and retain independence of judgement from the governments that nominate them.²⁶ The OAS does not formally scrutinise candidates' credentials or interview them. However, in 2019 and 2020, the OAS Committee on Juridical and Political Affairs (CAJP) held a special session to 'share good practices in the nomination and selection of candidates'.²⁷ The CAJP is one of the various committees of the OAS and does not form a structural part of the organisation. Thus, its practices are not binding.

The elections take place in the framework of the OAS General Assembly. In most cases, a vote exchange takes place at the highest level in the foreign ministries of the states. Few states carry out individual scrutiny of the candidates. Hence, the outcome of the election may reflect the skills of the nominators and considerations of geographical and political balance; rather than the individual competence of the selected candidates.²⁸ However, in recent years, there has been an advocacy for a more transparent system of candidate nomination and selection.²⁹ Furthermore, the nominating states should consider gender balance among the candidates.³⁰

The members of the Commission are elected for a four-year term, which may be renewed once.³¹ The IACmHR works during sessions, which means that the commissioners do not work on a full-time basis. In consequence to the above and following the economic restrictions faced by the Inter-American system, the role of the staff becomes crucial. It is the personnel that effectively filter the cases on admissibility basis. The members cannot engage in other functions that might affect their independence or impartiality or the dignity or prestige of their post in the IACmHR.³² They may not participate in the discussion, investigation, deliberation or decision of a matter submitted to the IACmHR, if they are nationals of the state, which is the subject of the review, if they have previously participated, in any capacity, in a decision concerning the facts on which the matter is based or have acted as an adviser to or representative of any of the parties interested in the decision.³³ The membership guarantees immunity. From the time of election and throughout the term of office, the members enjoy immunities and diplomatic privileges similar to those granted to diplomatic agents under international law.³⁴ Concerning the OAS Member States that are not parties to the ACHR, the members of the Commission enjoy the privileges and immunities pertaining to their posts that are required for them to perform their duties with independence.³⁵

26 Statute of the IACmHR, Art. 3, para 1; ACHR, Art. 36, para 1.

27 More: CEJIL, 2023, p. 45.

28 *Ibid.*, p. 45. See also: Hennebel, 2007, p. 57.

29 *Ibid.*, p. 46.

30 Statute of the IACmHR, Art. 4

31 Statute of the IACmHR, Art. 6.

32 *Ibid.*, Art. 8, para. 1; ACHR, Art. 71; more: Hennebel, 2007, p. 58.

33 Rules of Procedure of the IACmHR, Art. 14, para. 2.

34 Statute of the IACmHR, Art. 12, para. 1.

35 *Ibid.*, para. 2.

The IACmHR is headquartered in Washington, D.C.,³⁶ while the Court is located in San José, Costa Rica.³⁷ This difference in location is attributed to the difference in the status of both institutions. The IACmHR is an OAS organ, whereas the IACTHR was established by the ACHR. Both IACmHR and IACTHR work during their sessions. The Commission initially had two to three regular sessions during the year and occasionally held extraordinary sessions.³⁸ In recent years, the number of IACmHR sessions increased up to four per year.³⁹ Both bodies faced problems while conducting sessions during the COVID-19 pandemic; however, these were solved by online communication solutions.⁴⁰

3. Scope of Competence of the Commission

The ACHR distinguishes between the IACmHR's functions and competence,⁴¹ whereas Statute of the IACmHR mentions its 'functions and powers'.⁴² This terminological inconsistency seems to be minor, yet 'functions' in the Statute appear only in the title of section IV.⁴³ The scope of 'functions and powers', both under the ACHR and the Statute, remains more general than of 'competence', which under the ACHR focuses mostly on communications and petitions.⁴⁴ According to the Rules of Procedure and the ACHR, principal 'functions' of the Commission are 'to promote the observance and defence of human rights and to serve as an advisory body to the OAS'.⁴⁵

The Commission's 'functions and powers' entail developing an awareness of human rights, making recommendations to the governments of the Member States, preparing studies or reports it considers advisable, requesting the Member States' governments to supply it with information on the measures adopted in matters of human rights, responding to inquiries made by the Member States on matters related to human rights, taking actions on petitions and other communications pursuant to its authority and submitting annual report to the OAS General Assembly.⁴⁶ The States Parties to the ACHR have an obligation to supply the IACmHR with necessary information concerning the manner in which their domestic law ensures the effective application of the ACHR's provisions.⁴⁷

36 *Ibid.*, Art. 16.

37 *Ibid.*, Art. 3.

38 Rules of Procedure of the IACmHR, Art. 14, para. 1.

39 IACmHR, Sessions [Online]. Available at: <https://www.oas.org/en/iachr/sessions/default.asp> (Accessed: 9 August 2024).

40 More: CEJIL, 2023, p. 47.

41 ACHR, Art. 41–47.

42 Statute of the IACmHR, Arts. 18–20.

43 *Ibid.*

44 ACHR, Arts. 44–47.

45 Rules of Procedure of the IACmHR, Art. 1, para. 1; ACHR, Art. 41.

46 ACHR, Art. 41; Statute of the IACmHR, Art. 18.

47 *Ibid.*, Art. 43.

The Commission's scope of competence is wide, which is due to its nature. The great majority of its competence is of diplomatic and political nature. Regarding the examination of individual communications and petitions, the IACmHR acts as a quasi-judicial organ. The particular nature of the Commission has been discussed by the doctrine.⁴⁸ It is unique due to its anchoring in the OAS system and not the Convention. The numerous 'functions and powers' of the Commission require certain classification. Hennebel divides them into three categories: those exercised regarding OAS Member States, those exercised exclusively regarding States Parties to the ACHR and those exercised regarding the states that did not access the Convention.⁴⁹ Some authors attempt to undertake more functional division of the IACmHR's competence, including promotion, monitoring, conciliation, investigation and consultation,⁵⁰ or focus on three fundamental imperatives: promote human rights, protect human rights and respond to consultations regarding the observance of human rights.⁵¹ This research focuses on the third proposal.

The notion of promotion of human rights focuses on effective implementation of these rights. This requires information and education to prepare public opinion and governments for accepting more effective standards and control systems. The promotion plays a preventive role in the process of human rights protection.⁵² The IACmHR realised a human rights promotion mission from its outset.⁵³ Currently, it performs this function under Article 18(a) of its Statute and Article 41(a) of the ACHR, which defines it as developing 'an awareness of human rights among the peoples of the Americas'.⁵⁴ These activities include regularly organising symposia, conferences and trainings and preparing periodic studies and thematic reports.⁵⁵ Santiago and Lange describe the thematic reports as the most important promotional activity of the IACmHR.⁵⁶ However, the actual impact and influence of the thematic reports is difficult to assess. The crucial research, which examines the effectiveness of Inter-American human rights system, does not clarify whether thematic reports could be considered effective.⁵⁷

At the request of civil society organisations or by order of the Commission itself, the IACmHR may convoke audiences to deal with particular situations or topics.⁵⁸ The examined issues may vary from general ones, such as freedom of religion or women deprived of liberty in Americas, to specific ones, concerning particular states or crises (e.g., persons deprived of liberty in Nicaragua during the 2018 human rights

48 Hennebel, 2007, p. 64.

49 *Ibid.*, pp. 62–64.

50 Santoscoy, 1995.

51 Santiago and Lange, 2021, p. 87.

52 Santoscoy, 1995, § 61.

53 More: *Ibid.*, § 62.

54 ACHR, Art. 18 (a).

55 Santiago and Lange, 2021, p. 87.

56 *Ibid.*

57 Basch *et al.*, 2010, pp. 9–36.

58 Santiago and Lange, 2021, p. 87.

crisis).⁵⁹ The thematic reports are of a promotional character and do not have legal power. They may reveal how the IACmHR perceives certain topics and its priorities. Hence, the Commission and civil society organisations may use it in order to apply political pressure regarding certain human rights violations.⁶⁰

Recently, financing thematic reports by certain states and NGOs started a discussion about their impartiality. The Global Center for Human Rights Report showed that the formulation of certain reports, following the contribution of funds by the states and NGOs advocating for certain solutions, may raise questions concerning independence and impartiality. The report stresses that these actors contribute funds to the Inter-American human rights system for the implementation of projects with specific objectives. Although the link is not explicit, the influence of the economic participation of these actors in the creation of standards should motivate a demand for greater transparency and better accountability.⁶¹

The scope of competence regarding the protection of human rights entails issuing reports concerning the human rights situation in particular States Parties. In the past decades, countries faced numerous political turmoil, including revolutions, dictatorships and military governments. From the IACmHR's perspective, issuing a country report, unravelling the human rights violations in the State Party, was an effective method. On one hand, it gave the possibility of protection of individuals from violations, and, on the other hand, it put necessary political pressure against the regimes by denouncing their abuses. Politically, country reports were used to analyse and expose human rights situations in non-compliant Member States to incite the outrage in the international community and pressurise those governments to cease human rights violations.⁶²

The IACmHR country reports may focus on general situations of human rights⁶³ in a State Party or relate to more concrete issues regarding human rights protection, such as issues within the country in the context of social protests⁶⁴ or challenges with consolidating democracy.⁶⁵ Country reports contain recommendations from the

59 More: IACmHR, Thematic reports [Online]. Available at: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/reports/thematic.asp> (Accessed: 9 August 2024).

60 Santiago and Lange, 2021, p. 87.

61 Global Center for Human Rights Report. *Balance del financiamiento de la CIDH y la Corte Interamericana 2009-2024. Opacidades e influencias en una financiación condicionada*, p. 38.

62 *Ibid.*, p. 88.

63 E.g., OAS, IACmHR Report, Situation of Human Rights in Honduras, 24. March 2024, OEA/Ser.L/V/II, Doc.9/24, [Online]. Available at: <https://www.oas.org/es/cidh/informes/pdfs/2024/informe-honduras.pdf> (Accessed: 9 August 2024).

64 OAS, IACmHR Report, Situación de Derechos Humanos en Perú en el contexto de las protestas sociales, 23 April 2023, OEA/Ser.L/V/II, Doc. 57/23 [Online]. Available at: <https://www.oas.org/es/cidh/informes/pdfs/2023/Informe-SituacionDDHH-Peru.pdf> (Accessed: 9 August 2024).

65 OAS, IACmHR Report, Cohesión social: el desafío para la consolidación de la Democracia en Bolivia, 20 January 2024, OEA/Ser.L/V/II, Doc.1/24 [Online]. Available at: https://www.oas.org/es/cidh/informes/pdfs/2024/CohesionSocial_Bolivia_SPA.pdf (Accessed: 9 August 2024); More: OAS, ICHCR, Country Reports [Online]. Available at: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/reports/country.asp> (Accessed: 9 August 2024).

IACmHR. These may include proposals for addressing certain human rights issues in the country, concerning reforms in the domestic legal system or establishment of remedies to reported violations. Non-compliance with the IACmHR recommendations may result in the case being referred to the Court. According to the Rules of Procedure of the IACmHR if ‘the Commission considers that the State has not complied with the recommendations of the report (...), it shall refer the case to the Court’.⁶⁶ However, this concerns only States Parties, which accepted the jurisdiction of the IACtHR.

The IACmHR may issue precautionary measures, similar to the interim measures provided by the European Court of Human Rights (ECtHR). Precautionary measures constitute protection mechanism, upon which State Parties are requested to protect individuals in ‘serious and urgent situations presenting a risk of irreparable harm’.⁶⁷ Precautionary measures may protect persons or groups⁶⁸ and any person or organisation may submit a request for precautionary measures in favour of an identified or identifiable person. These measures are established under the Commission’s Rules of Procedure⁶⁹ and constitute an autonomous competence, which does not stem from the Convention. Consequently, they do not carry the same legal weight or binding force as the functions expressly granted by the Convention.

The process of issuing a precautionary measure may be initiated when the Commission is informed about grave situations, in which the fundamental rights of individuals or groups are endangered. The request may be made by a third party, such as an NGO. The IACmHR must respond swiftly to the situation and if it decides that the claims are well founded, it should contact the respective government to demand that the rights of the persons at risk be protected.⁷⁰ However, its enforceability raises certain controversies. Some argue that the precautionary measures are binding and the states, having ratified the ACHR, are obliged to comply with them. Others stress that, if the IACmHR may issue mandatory decisions, the role of the Court is rendered superfluous.⁷¹

The Commission undertakes on-site visits, whose role and long-term effects should not be underestimated. The impact of visiting bodies on improvement of human rights situation is visible in the example of torture prevention bodies, such as the UN Subcommittee on Prevention of Torture (SPT) and Council of Europe (CoE) Committee for the Prevention of Torture (CPT). On-site observations should be undertaken with the consent or at the invitation of the government⁷² and the Commission may undertake such visit, if there is a reason to suspect that certain rights or freedoms may be endangered. The purpose is to engage in in-depth analysis of the general situation and investigate a specific situation. These visits result in the preparation of a

66 Rules of Procedure of the IACmHR, Art. 45.

67 Ibid., Art. 21, para. 1.

68 Ibid., para. 3.

69 Ibid., Art. 25.

70 Santiago and Lange, 2021, p. 89.

71 Ibid.

72 Statute of the IACmHR, Art. 18(g).

report regarding the human rights situation observed, which is published and sent to the General Assembly.⁷³ The IACmHR's competence focused on protection of human rights entails country reports, precautionary measures and on-site visits. Hence, it has certain opportunities to monitor and improve the overall situation of human rights protection in the region. However, its key competence concerns examining communications and forwarding complaints to the IACtHR. Furthermore, it fulfils a consultative role. It may provide clarification to the OAS Member States or the OAS regarding obligations or responsibilities of human rights within the American human rights system.⁷⁴ When its opinion is requested, the IACmHR responds to inquiries made by any Member State on matters related to human rights and, within its possibilities, provides them with requested advisory services.⁷⁵

The emergence of the ACHR created a distinction between OAS Member States that did and did not ratify the Convention. It resulted in two types of IACmHR competence regarding particular states. The main difference stems from the recognition of the IACtHR's jurisdiction. Regarding all OAS Member States (both that have and have not ratified the Convention), the Commission increases awareness of human rights, makes recommendations that governments adopt progressive measures in favour of those rights, requests that governments provide the Commission with reports on the measures adopted in the field of human rights, responds to inquiries made by any Member State on issues related to human rights and provides expertise and guidance within its capacity, renders an annual report to the OAS General Assembly and carries out on-site visits in the Member States.⁷⁶ Concerning states Parties to the ACHR, the Commission processes petitions and other communications,⁷⁷ appears before the IACtHR in cases provided for in the Convention,⁷⁸ requests the Court to take necessary provisional measures to prevent irreparable injury to persons⁷⁹ and consults the Court on the interpretation of the ACHR and other treaties concerning human rights protection in the American states.⁸⁰

Petitions containing denunciations or complaints of the ACHR's violation by a State Party may be brought by 'any person or group of persons, or any nongovernmental entity legally recognised in one, or more Member States of the OAS'.⁸¹ Examining individual communications is the most important competence of the IACmHR. Therefore, some OAS Member States did not ratify the ACHR. The right to individual petition is guaranteed by the ACHR without any special recognition by the state. An

73 OAS, IACmHR, Annual Report of the IACmHR, 13 April 1999, OEA/Ser.L/V/II.106, Doc. 6 rev., Chapter II, § 8.3. [Online]. Available at: <https://www.iachr.org/annualrep/99eng/chapter2.htm> (Accessed: 9 August 2024).

74 Santiago and Lange, 2021, p. 90.

75 Statute of the IACmHR, Art. 18(e).

76 Ibid., Art. 18. See also: Santiago and Lange, 2021, p. 90.

77 ACHR, Arts. 44 and 51.

78 Statute of the IACmHR, Art. 19(b).

79 Ibid., 19(c).

80 Ibid., 19(d), (e), (f).

81 ACHR, Art. 44.

individual who believes that his or her fundamental rights have been violated has the right to initiate an international protection mechanism, provided that the national protection system does not effectively remedy the situation.⁸² Therefore, the Convention gives individuals legal capacity at the international level, enabling them to invoke the responsibility of a State Party, whether a foreign state or the country of which they are a national.⁸³

4. The Procedure of Individual Petitions to the IACmHR

Apart from its prerogative to examine petitions under Articles 44 and 46 of the ACHR, the Commission retains its pre-ACHR quasi-judicial responsibilities concerning OAS Member States that have not ratified the ACHR. Hence, the IACmHR and IACtHR may evaluate their human rights obligations under the ADRDM.⁸⁴

The Commission may be described as ‘the gatekeeper to the Court’ in contentious cases (cases brought by individuals against a State Party and inter-state cases). A contentious case may be brought before the Court only after being processed by the Commission.⁸⁵ The IACtHR stressed this principle in *Gallardo v. Costa Rica*. The case concerned death in custody. The Government of Costa Rica declared that, for this case, it ‘formally waives the requirement of the prior exhaustion of the domestic legal remedies and the prior exhaustion of the procedures set forth in Articles 48 to 50 of the Convention’, that is, the procedures before the IACmHR.⁸⁶

However, the IACtHR stressed that Article 61(2) of the Convention clearly indicates that the Court may not deal with any matter unless the procedures before the Commission have been exhausted.⁸⁷ It stated that the IACtHR and the IACmHR have an obligation to preserve all of the remedies that the Convention affords victims of violations of human rights, so that they are accorded the protection to which they are entitled under the Convention.⁸⁸ The judges noted that the Commission is the channel through which the ACHR gives individuals the possibility to activate the international system for the protection of human rights. Hence, strictly procedurally, it should be remembered that just as individuals cannot submit cases to the Court, states can submit them to the Commission only if the conditions of Article 45 have been met.⁸⁹ Therefore, as stressed in *Gallardo v. Costa Rica*, the case may be brought before the Court only after being examined by the Commission.

Currently, the Commission has adopted a practice of presumptively referring cases in which it has found at least one violation of the ACHR to the Court; however,

82 Ibid., Arts. 44 and 46.

83 Santoscoy, 1995, § 70.

84 IACtHR, Advisory Opinion OC-10/89, Series A No. 10 (1989).

85 Neuman, 2008, p.103.

86 IACtHR judgement, *Gallardo v. Costa Rica*, 13.11.1981, No. G 101/81, § 1-2.

87 Ibid., § 14.

88 Ibid., § 15.

89 Ibid., § 23.

it retains the option of refusing. The Commission's rules do not contemplate referral of cases in which it has found no violation.⁹⁰ The communication must satisfy the admissibility criteria, enshrined in Article 46 of the ACHR. This requires that the remedies under domestic law have been pursued and exhausted following the generally recognised principles of international law, the petition or communication is lodged within a period of six months from the date on which the party alleging violation of rights was notified of the final judgment, the subject of the petition or communication is not pending in another international proceeding for settlement and the petition contains the name, nationality, profession, domicile and signature of the person(s) or of the legal representative of the entity lodging the petition.⁹¹

The requirements of exhausting domestic remedies and the 6-month period do not have to be met, if the domestic legislation does not provide due process of law for the protection of particular right; the applicant is denied access to the remedies under domestic law, is prevented from exhausting them or there has been unwarranted delay in rendering a final judgment.⁹² The petition or communication is considered inadmissible, if the admissibility criteria is not met, it does not refer to a violation of the rights enshrined in the ACHR, it is manifestly groundless or out of order or it was already examined by the Commission or another international organisation.⁹³

The Commission examines petitions in a contradictory process between the state and the applicants. The procedure before the IACmHR consists of presentation of a petition, evaluation of its admissibility and evaluation of the merits of the case. At the end, in the merits report, the Commission decides whether State Party was responsible for violation of the rights enshrined in Inter-American instruments. The IACmHR may recommend the state to adopt certain measures.⁹⁴ The procedure is initiated by lodging a petition with the Commission, in accordance with Article 44 of the ACHR. The Executive Secretariat of the IACmHR registers the petition, assigns its number and sends the acknowledgement of receipt to the petitioner.⁹⁵ The IACmHR has an Individual Petitions System Portal as well, which notifies the receipt of the petition.⁹⁶ Its Rules of Procedure provide certain formal requirements for the petition. Under Article 28, all petitions should contain information concerning the name of the person(s) making the denunciation, whether the petitioner wishes that his or her identity be withheld from the state, the e-mail address for receiving correspondence from the Commission, an account of the fact or situation that is denounced, specifying the place and date of the alleged violations, the name of the victim and of any public authority who has taken cognisance of the fact or situation alleged (if possible), the state the petitioner considers responsible, by act or omission, compliance with the

90 Neuman, 2008, p. 103.

91 ACHR, Art. 46, para. 1.

92 *Ibid.*, para. 2.

93 *Ibid.*, Art. 47.

94 CEJIL, 2023, p. 63.

95 Rules of Procedure of the IACmHR, Art. 29, para. 1.

96 See more: CEJIL, 2023, p. 65.

six month period, any steps taken to exhaust domestic remedies and an indication of whether the complaint has been submitted to another international procedure.⁹⁷ However, the Commission can declare a petition inadmissible when a preliminary examination reveals that it is manifestly groundless or out of order under Article 47 of the ACHR.⁹⁸

In recent years, given the delay in processing initial petitions, the IACmHR has adopted the practice of consulting the petitioner via e-mail as to whether the grounds for the petition still exist and/or whether there is interest in continuing with the processing of the petition. Similarly, it communicates the decision to the petitioner, indicating the date on which the state was notified. This brings the processing stage to a close and opens the way for the admissibility stage.⁹⁹ At the admissibility stage, once the state has been notified, it has three months to present its observations on admissibility. The state may request an extension to submit these observations; however, it should not exceed four months from the date of transmission of the first request for information sent to the state.¹⁰⁰ After the state submits its observations, these are forwarded to the petitioner. At this point, the IACmHR examines the petition's compliance with the admissibility criteria.¹⁰¹

The result of this analysis is recorded in the admissibility report, which closes this stage and initiates the merits stage. The admissibility/inadmissibility reports are prepared by the Executive Secretariat of the IACmHR and submitted for consideration by its plenary.¹⁰² The decision requires absolute majority vote of the members of the Commission.¹⁰³ The report may decide that the petition is inadmissible, which results in case closing the case, or declare it admissible. In exceptional circumstances, the IACmHR may open a case, but defer its treatment of admissibility until the debate and decision on the merits. The decision is adopted by a reasoned resolution of the Commission.¹⁰⁴

The merits stage begins with the notification of the admissibility report. This stage was designed to establish the facts of the case and its legal basis. At this point, the IACmHR enables friendly settlement by the parties. This may be achieved at any stage of the proceedings before the Commission.¹⁰⁵ However, if the parties decide to proceed on the merits, it gives the petitioners four months to submit additional observations on the merits. It is possible to request an extension of this deadline for up to two additional months.¹⁰⁶ In serious and urgent cases, once the case has been opened, the IACmHR may request that the parties forward their additional observations on

97 Rules of Procedure of the IACmHR, Art. 28.

98 ACHR, Art. 47.

99 CEJIL, 2023, pp. 89–90.

100 Rules of Procedure of the IACmHR, Art. 30, para. 3.

101 CEJIL, 2023, p. 91; See also: Rules of Procedure of the IACmHR, Arts. 28, 29, 31, 32, 33 and 34.

102 CEJIL, 2023, p. 91.

103 Statute of the IACmHR, Art. 17, para. 2.

104 Rules of Procedure of the IACmHR, Art. 36, para. 3.

105 CEJIL, 2023, p. 93.

106 Rules of Procedure of the IACmHR, Art. 37 paras. 1–2.

the merits within a reasonable time period.¹⁰⁷ Furthermore, the Court stresses that the alleged victims of the violation should be identified in the Report on the Merits of the Commission, issued pursuant to Article 50 of the ACHR. The IACtHR states that legal certainty requires, as a general rule, that all the alleged victims be duly identified in the merits report and it is not possible to add new alleged victims at a later date, except in the exceptional circumstance contemplated in Article 35(2) of the Rules of Procedure of the Court.¹⁰⁸

At this stage, according to Article 37(5) of the Rules of Procedure, the Commission may convene the parties for a hearing to analyse the legal arguments and alleged facts.¹⁰⁹ If necessary, it may conduct an on-site investigation.¹¹⁰ Once the parties have presented their respective arguments and it considers that it has sufficient information, the processing of the case is complete. At that point, the Commission prepares a report, which includes its conclusions and, in the case of finding violations of alleged international instrument, recommendations to the state in question.¹¹¹ The report is issued in accordance with Article 50 of the ACHR, under which the IACmHR sets forth the facts and states its conclusions. If the report does not represent the unanimous agreement of the members of the Commission, any member may attach a separate opinion.¹¹²

As mentioned, the parties may reach a friendly settlement at any stage of the proceedings. It is a crucial opportunity that allows the state and the petitioners to advance in the reparation measures necessary to mitigate the violation of the rights, without the need to reach a decision on the merits.¹¹³ The friendly settlement procedure may be initiated and continued with the consent of the parties.¹¹⁴ This procedure consists of three stages.

During the ‘negotiation stage’, the parties open the dialogue with or without the IACmHR. This is concluded by signing a Friendly Settlement Agreement. In the ‘friendly settlement follow-up stage’, the State must undertake measures complying with the Agreement. In the ‘homologation of the friendly settlement’ stage, the settlement is approved by the IACmHR, which must be recorded in a published report. During the process, the Commission must verify whether agreement of the parties is in conformity with human rights.¹¹⁵ The Commission may terminate its intervention in the settlement procedure if the matter is not susceptible to such resolution or any of the parties does not consent to its application.¹¹⁶

After transmitting the report by the Commission, the state has three months to settle the case or submit it to the Court. If neither happens, the IACmHR may, by

107 *Ibid.*, para. 3.

108 IACtHR, judgment *V.R.P., V.P.C. and Others v. Nicaragua*, 8.03.2018, Excepciones Preliminares, Fondo, Reparaciones y Costas, C No. 350, § 47.

109 Rules of Procedure of the IACmHR, Art. 36, para. 5.

110 *Ibid.*, Art. 39, para. 1.

111 CEJIL, 2023, p. 95.

112 ACHR, Art. 50.

113 CEJIL, 2023, p. 96.

114 Rules of Procedure of the IACmHR, Art. 40, para. 2.

115 More: CEJIL, 2023, pp. 96–97.

116 Rules of Procedure of the IACmHR, Art. 40, para. 4.

the vote of an absolute majority, set forth its opinion and conclusions concerning the question submitted for its consideration.¹¹⁷ It may make recommendations and set a time limit, in which the state must take measures to remedy the situation. If this period expires, the IACmHR may decide whether the state has taken adequate measures and whether the report should be published.¹¹⁸ If the state does not comply with the IACmHR's recommendations, the case may be sent to the Court, following Article 61 of the ACHR.

5. Summary

The Commission is often perceived as similar to the former European Commission on Human Rights (ECmHR), before its liquidation due to a wider reform of the ECtHR, following Protocol No. 11 to the European Convention on Human Rights (ECHR).¹¹⁹ However, this is far from being accurate. Both organs had similar competence in examining individual applications and transmitting them to the respective Courts. However, apart from that, there are no other similarities, possibly due to the IACmHR's character.

The Commission is a multipurpose body. Apart from its competence to examine applications and transmit them to the Court, it may undertake on-site visits, issue thematic reports and reports concerning the human rights situation in particular States Parties. Furthermore, it is responsible for promotion of human rights. Hence, it focuses on preventive aspects of human rights protection, such as information and education. Such activities are important and aim to improve the knowledge of general public, enhancing domestic legal standards concerning human rights protection and governmental practice.

The IACmHR is not a traditional body established by the human rights protection treaty. It is an OAS organ, which gives it a special position and empowers it with wider avenues than if it was an ACHR body. Hence, its principal function, apart from promoting the observance and protection of human rights, is to serve as a consultative organ of the OAS.¹²⁰ However, it operates within ACHR provisions and concerning States Parties to the Convention. It may further evaluate human rights obligations of the states that did not ratify the ACHR per the ADRDM.

Its scope of competence is very particular, especially in comparison with the ECmHR. However, every regional human rights system should be perceived in the context of various particularities characteristic to the region, such as legal standards, culture and challenges. Hence, the IACmHR should be perceived as a valuable asset and crucial element of the system. Nonetheless, the compliance of the States Parties with the Commission's remedies remains a challenge concerning the entire Inter-American human rights system.¹²¹

117 ACHR, Art. 51, para. 1.

118 *Ibid.*, paras. 2–3.

119 Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 11 May 2005, ETS, No 155.

120 Charter of the OAS, Art. 106.

121 Basch *et al.*, 2010, p. 17 *et seq.*

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