

International Religious Freedom Advocacy
A Guide to Organizations, Law, and NGOs

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ORGANIZATION OF AMERICAN STATES

The Organization of American States (OAS) is a regional organization for the countries of North, Central, and South America and the Caribbean. All thirty-five countries in the Western Hemisphere are members, but only thirty-four are allowed to participate—Cuba is excluded. Headquartered in Washington, D.C. (just one block from the White House), the OAS claims to be the oldest regional organization in the world, tracing its origins to the 1889 First International Conference of American States. However, the founding document for the modern organization, the Charter of the Organization of American States, was signed in 1948 and entered into force in 1951 at the Ninth International Conference.

Organization of American States members

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, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela

The Organization of American States is also commonly referred to as the Inter-American System. The relevant institutions for advancing religious freedom are the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the Inter-American Institute of Human Rights.

Nongovernmental Involvement

The OAS welcomes the participation of nongovernmental organizations, and registered groups may attend OAS conferences and meetings, make presentations, and provide information and advice. NGOs are referred to as “civil society organizations,” which are defined as any national or international institutions or organizations of a nongovernmental nature. Interested groups

must send a complete application to the Secretary General, who will refer it to the Permanent Council's Committee on Civil Society Participation in OAS Activities for consideration. The Committee will make a recommendation to the Permanent Council, which will make the final decision.

Application to participate

- a. The name(s) of its directors and legal representative(s).
- b. Its primary areas of activity and their relationship to the activities of the OAS organs, agencies, and entities in which it wishes to participate.
- c. Reasons why it believes its proposed contributions to OAS activities would be of interest to the OAS.
- d. Identification of the OAS work areas in which it proposes to support ongoing activities or to make recommendations on the best way to achieve OAS objectives.
- e. The application shall be accompanied by the following documents:
 - Charter or constitution • Statutes • Most recent annual report
 - Institutional mission statement • Financial statements for the previous fiscal year, including reference to public and private sources of financing

RELIGIOUS FREEDOM COMMITMENTS

The OAS Charter declares the organization's core principles to be the promotion of hemispheric peace, security, and representative democracy. While silent to the specific issue of religious freedom, it does affirm the fundamental rights of the individual. (It also supports the vague principle of the "spiritual unity of the continent . . . based on respect for the cultural values of the American countries.") In similar fashion to the UN Charter, which also only touches upon human rights, the OAS Charter relies on a separate declaration to provide a catalogue of fundamental rights.

American Declaration of the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man provides this enumeration and was approved in 1948 by the same conference that established the OAS. The American Declaration predates the UN Universal Declaration by six months and was therefore the first human rights document on the international scene. The American Declaration covers a range of civil and political rights, as well as economic and social rights. In addition to declaring fundamental freedoms, it sets forth corresponding duties for individuals to achieve and

establishes the Inter-American Commission on Human Rights. The Article III language on religious freedom is minimal, offering fewer protections than the Universal Declaration and other international human rights treaties. Article XXII also provides protection from religiously based discrimination.

Article III – Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

Article XXII – Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

American Declaration of the Rights and Duties of Man

Importantly, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (both discussed below) have ruled that the American Declaration is legally binding on all OAS countries. Member states may disagree with this assessment, as the American Declaration was originally adopted as a nonbinding agreement (like the Universal Declaration). These rulings are significant for advocates, as it binds all OAS members to an enforceable standard of human rights—even those countries that have not ratified the more comprehensive American Convention on Human Rights (such as Canada and the United States). However, countries will object to any procedures brought under this ruling, making compliance with any judgments all the more difficult to obtain.

American Convention on Human Rights

The American Convention on Human Rights followed the Declaration but is a legally binding document for all countries that have ratified the agreement. (Approximately one-fourth of OAS member states have yet to ratify.) For those contracting states, the American Convention is the primary document concerning human rights and religious freedom. Adopted in 1969 and entering into force in 1978, it built upon the American Declaration by enumerating a more detailed set of human rights. It also strengthened the Inter-American Commission on Human Rights and created the Inter-American Court of Human Rights.

The very first article of the American Convention prohibits religiously based discrimination. The religious freedom provisions are found later, in Article 12, and are quite strong. Unlike the UN International Covenant on Civil and Political

Rights, the American Convention expressly states in two separate subclauses that individuals have the right to change their religious beliefs and no governmental restrictions should impair this right. Article 12 follows international custom when discussing the right to meet together in public or private.

Article 12 – Freedom of conscience and religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

American Convention on Human Rights

The Article 12(3) limitation clause does not affect personal beliefs, but rather only external displays of religion. As with the ICCPR, religious freedom is not viewed as absolute, but the reasons for limiting are very narrowly construed and only for exceptional circumstances. Article 27 addresses "Suspension of Guarantees," and religious freedom and ten other rights are specifically protected from derogations during a time of war or other public emergency.

Article 12 also guarantees the right of individuals to "profess or disseminate" their religious beliefs. This is further supported in the following article that addresses "Freedom of Thought and Expression." The Article 13 language on the "freedom to seek, receive, and impart information and ideas of all kinds" protects religiously motivated speech.

GENERAL ASSEMBLY AND SUPPORTING ORGANS

Policymakers

The main body of the OAS is the General Assembly, which convenes all the hemisphere's foreign affairs ministers in an annual session to decide the priorities and direction of the Organization. The implementing body for these decisions is the Permanent Council, which is composed of ambassadors accredited to the OAS. The Permanent Council holds regular public meetings on the first and third Wednesdays of each month, reports to the General Assembly, and is directed by the office of the Chairman, which rotates to a different country every three months.

The Permanent Council is divided into several committees, with the Committee on Judicial and Political Affairs tasked with human rights issues. Both the Committee and the Permanent Council can consider the reports of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Committee can forward recommendations to the Permanent Council, and the Permanent Council can forward recommendations to the General Assembly.

The OAS is also led by a full-time international public servant, the Secretary General, who oversees the work of the OAS General Secretariat. The General Assembly elects the Secretary General for a five-year term. The former Chilean Interior and Foreign Minister José Miguel Insulza was elected to the post in 2005.

Advocacy Actions

Because the General Assembly is composed of heads of state, it can be challenging for advocates to access. Instead, they should provide information on infringements of religious freedom to sympathetic delegations at the Permanent Council, the Committee on Judicial and Political Affairs, and the Secretary General. Advocates should provide recommendations for General Assembly actions to counter violations of religious freedom.

CONTACT INFORMATION

Permanent Council

<http://www.oas.org/consejo/>
17th Street & Constitution Ave., N.W.
Washington, D.C. 20006
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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Complaint Recourse Mechanism and Monitoring Body

The Inter-American Commission on Human Rights (IACHR) is an autonomous unit of the OAS, originally established by the Charter and later strengthened by the American Convention. Its purpose is to investigate complaints of specific instances of human rights abuse, monitor the overall human rights situation in member states, and assist member states in strengthening their laws and policies to protect human rights. The IACHR is composed of a body of seven independent human rights experts, elected to four-year terms by the OAS General Assembly. The IACHR is led by one of the seven experts who serves as President and is supported by an Executive Secretariat. Headquartered in Washington, D.C., it convenes six weeks a year and all member states are subject to its jurisdiction.

The two most valuable IACHR mechanisms to religious freedom advocates are the petition process concerning human rights abuses and the on-site visit procedure. Individuals and NGOs can actively participate in both proceedings. In addition, the Commission annually submits a report to the General Assembly reviewing human rights throughout the Americas, as well as giving recommendations for specific state action.

Complaint Admissibility

Through the Commission's quasi-judicial petition process, it can receive complaints from any individual, group of individuals, or nongovernmental organization from any member state alleging a violation of rights found under the American Declaration or American Convention. The petition can concern a situation involving the complainant or a third party. Importantly, the following guidelines apply to petitions:

- the petition must allege either abuse by a member state or failure to prevent an abuse by a private actor
- the petition must establish the exhaustion of all domestic remedies
- the petition must be filed within six months of exhaustion
- the petition must be in one of the four OAS languages (Spanish, Portuguese, French, or English).

In urgent situations where "irreparable harm to persons" is possible, as a safeguard the Commission can request that the member state involved adopt precautionary measures to prevent such an outcome.

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 [petitions lodged within a period of six months following the date on which the alleged victim has been notified of the exhaustion of domestic remedies];
- 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.

Rules of Procedure for the Inter-American Commission on Human Rights*Complaint Procedure*

The first evaluation of whether petitions meet the requirements for consideration is conducted by the Executive Secretariat. If a petition is lacking, the Executive Secretariat will contact the petitioner and ask for additional information. The IACHR will review all applications deemed not meeting the requirements for consideration before rejection. If more than one petition alleges similar facts, the Commission may join them into one complaint.

Once a case is determined to meet these basic requirements, the Commission will open the case and request a response from the offending government

within two months, unless urgent circumstances necessitate an immediate reply. The identity of the petitioner will not be disclosed. After evaluating their response, the petition, and observations received from third parties, the IACHR can issue a public report on admissibility or accept the case and address admissibility in the final judgment.

If deemed admissible, the Commission will initiate proceedings on the merits and give the petitioner two months to submit additional information and the offending government(s) two months to respond. Each party will have the opportunity to answer the other's assertions. The Commission may also conduct on-site visits to evaluate further the situation, request specific information, and hold hearings in which each side can present its facts and legal arguments. In urgent cases where the "life or personal integrity of a person is in imminent danger,"¹ the offending government will be requested to respond as soon as possible. Before rendering its decision, the Commission will provide an opportunity for a friendly settlement between parties.

Remedies

If the IACHR finds a violation by an offending government, it will prepare a private report for the government with proposals and recommendations of remedial actions and a deadline for their adoption. The Commission has no enforcement arm and cannot require specific actions or the awarding of damages. However, if there is no compliance, the Commission has two options. One is to issue a second private report again requesting action by a certain deadline. If the state again fails to comply, the Commission may make the second report public. The other option, if the offending government has submitted itself to the jurisdiction of the Inter-American Court of Human Rights, is for the Commission to forward the case to the court for review (if the petitioner agrees).

Monitoring Process

Commission hearings are not limited to the petition process but may be convened regarding follow-up to its recommendations, as well as to review precautionary measures or to initiate an independent effort to receive information about human rights abuses in a member state. It may also conduct on-site visits not in conjunction with a review proceeding. For a site visit to occur, a Special Commission will be formed and an invitation will be requested. Visits can be in response to new human rights concerns or, for some countries, can occur annually or biannually. After the visit is completed, the Special

Commission will issue a report. These visits can shine a light on abuses, and NGOs and concerned groups can participate as well. Advocates can call the Commission to learn about the dates of scheduled country visits.

The Commission may also establish permanent rapporteurs on topics relating to rights under the American Declaration or American Convention. While no position exists for religious freedom, in 1997 the Commission established the Special Rapporteur for Freedom of Expression. Catalina Botero Marino of Venezuela was elected in 2007, and she may issue reports and respond directly to individual petitions alleging violations by a member state. While the Special Rapporteur mainly focuses on media freedoms, journalistic independence, and political speech, the right to religious expression, including proselytizing, would fall under its mandate.

Advocacy Actions

The Inter-American Commission on Human Rights provides a useful avenue for advocates to pursue remedies for religious freedom violations. Advocates must be willing to meet the various requirements of the complaint mechanism and have the resources to stay engaged throughout the process. Advocates should request IACHR country visits and meet with the Special Commission during any such trip. Advocates should also directly petition the Special Rapporteur for Freedom of Expression regarding situations in which religious speech is limited.

CONTACT INFORMATION

Inter-American Commission on Human Rights

<http://www.cidh.org/>
1889 F Street, N.W.
Washington, D.C., 20006
Fax: (202) 458-3992

INTER-AMERICAN COURT OF HUMAN RIGHTS

Complaint Recourse Mechanism

The Inter-American Court of Human Rights was established by the American Convention and is based in San José, Costa Rica. It is an independent judicial system overseeing the application and interpretation of the American Convention. Similar to the European Court of Human Rights before its 1998 reforms, the Court is part of a two-tiered system. It only takes referrals

from the Inter-American Commission, and the Commission appears in all contentious cases before the Court. Because individuals do not enjoy direct recourse, the Court's caseload is much smaller than the European Court of Human Rights: in 2006 the Court convened seven times and issued twenty-three decisions.

Nations under the jurisdiction of the Court

Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay, Venezuela

The Court consists of seven judges, who are nominated by member states. The judges can be from any country in the Americas, even if their country did not sign the American Convention, but no two may be from the same country. One judge is elected President by the Court for a renewable two-year term. The Court holds public hearings in Costa Rica but can also conduct field hearings and site visits. Currently, the Court has jurisdiction over twenty-five countries that have ratified or adopted the American Convention on Human Rights.

Complaint Procedure

There are two different kinds of jurisdiction over cases: advisory and contentious. Advisory opinions do not concern specific cases but rather are interpretations of any human rights treaties in force in the hemisphere or the compatibility of domestic law with OAS commitments. Any OAS member, regardless of whether they have adopted the OAS Charter, may make submissions.

Contentious cases are between a contracting state and the Commission over an active dispute of a specific issue that was not successfully resolved through the Commission's procedures. When an application is accepted in a contentious case, the procedures are similar to domestic courts, with both sides submitting written briefs containing pleadings, motions, and evidence. While not permitted directly to approach the Court, the alleged victims and their representatives are permitted directly to participate and submit evidence throughout. When there are similar fact patterns in common between cases, the Court can combine these into one complaint.

Remedies

If the Court finds a violation of the rights or freedoms under the American Convention, its decree will require the taking of appropriate remedies and

the paying of compensation to the aggrieved party. Decisions are rendered publicly. In “cases of extreme gravity and urgency,”² the Court has the ability to enact provisional measures to prevent “irreparable damage to persons” at its own initiative, or at the request of the Commission, alleged victims, or their representatives.

While not having an enforcement mechanism, member states generally show high regard for the Court’s decisions. Its rulings serve as a guide throughout the Americas, with domestic courts sometimes referencing court decisions. The Court will also provide an annual report of its activities and judgments to the General Assembly, as well as highlight countries not complying with its judgments and provide recommendations for follow-up action.

Advocacy Actions

While advocates cannot directly access the Court, they can work with the Commission to ensure that unresolved cases are considered. If a case is referred to the Court, advocates can provide additional documents and legal arguments on behalf of the victims they represent. Advocates can also work with the Court, the Commission, and offending governments to ensure that rulings are fully implemented and compensation awarded.

CONTACT INFORMATION

Inter-American Court of Human Rights

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INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

Monitoring Body

Created in 1980, the Inter-American Institute of Human Rights was established as an independent research facility dedicated to the promotion of human rights and the strengthening of the principles of the American Convention. Based in San José, Costa Rica, it supports more than fifty projects with nongovernmental organizations to educate the public about human

rights. It does not investigate individual cases, monitor government actions, or present cases to the Commission or the Court, but rather works to facilitate dialogue between governments and civil society.

The Institute currently focuses on four themes: justice and security; political participation; education in human rights; and the effective exercise of economic, social, and cultural rights. In addition, the Institute has initiated a focus on freedom of expression. As with the Special Rapporteur, this is more focused on journalistic freedoms, but it too would intersect with limitations on religious speech.

Advocacy Actions

Advocates should provide information to the Inter-American Institute of Human Rights about cases of religious freedom violations. Advocates can also request Institute assistance in facilitating dialogue between problematic governments and victimized groups, as well as provide information to the freedom of expression focus group regarding limitations of religious speech.

CONTACT INFORMATION

Inter-American Institute of Human Rights

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