

# INTERNATIONAL HUMAN RIGHTS LAW

---

Francisco J. Rivera Juaristi and  
Claudia Josi

Santa Clara Law – Geneva Summer Program  
June 13-16, 2017

# OUTLINE

- **TUESDAY**

- Intro. to IHRL (*Background; Subjects; General Obligations*)
- Intro. to UN Human Rights System (*Treaties*)

- **WEDNESDAY**

- Intro. to UN Human Rights System (*Monitoring Mechanisms*)
- UN Exercise
- 1:30-4pm: Site visit to United Nations, *Palais des Nations*

- **THURSDAY**

- Inter-American Human Rights System (*Treaties, Commission, and Court*)
- Mock hearing before Inter-American Court of Human Rights

- **FRIDAY**

- Transitional Justice (Prof. Claudia Josi)

# GOALS:

1. **Become familiar with UN and OAS HR norms**
2. **Understand litigation and advocacy options before UN and OAS**

# UN

## Litigation and Advocacy Options

```
graph TD; UN[UN Litigation and Advocacy Options] --> TB[TREATY BODIES]; UN --> CB[CHARTER-BASED BODIES]; TB --> IP((Individual Petitions)); TB --> SR((Shadow Reports)); CB --> SR2((Stakeholder Reports (HR Council – UPR))); CB --> SP((Special Procedures (independent experts))); IP --- Lit[Litigation]; SR --- Adv1[Advocacy]; SR2 --- Adv2[Advocacy]; SP --- Adv3[Advocacy];
```

The diagram is a hierarchical flowchart. At the top is a yellow box with a red border containing the text 'UN Litigation and Advocacy Options'. Two arrows point down from this box to two separate boxes: a light red box on the left labeled 'TREATY BODIES' and a light green box on the right labeled 'CHARTER-BASED BODIES'. From the 'TREATY BODIES' box, two arrows point down to two orange circles: 'Individual Petitions' and 'Shadow Reports'. From the 'CHARTER-BASED BODIES' box, two arrows point down to two yellow circles: 'Stakeholder Reports (HR Council – UPR)' and 'Special Procedures (independent experts)'. Below each circle is a text label: 'Litigation' under 'Individual Petitions', and 'Advocacy' under 'Shadow Reports', 'Stakeholder Reports (HR Council – UPR)', and 'Special Procedures (independent experts)'.

**TREATY  
BODIES**

**CHARTER-  
BASED BODIES**

**Individual  
Petitions**

**Shadow  
Reports**

**Stakeholder  
Reports  
(HR Council  
– UPR)**

**Special  
Procedures  
(independent  
experts)**

Litigation

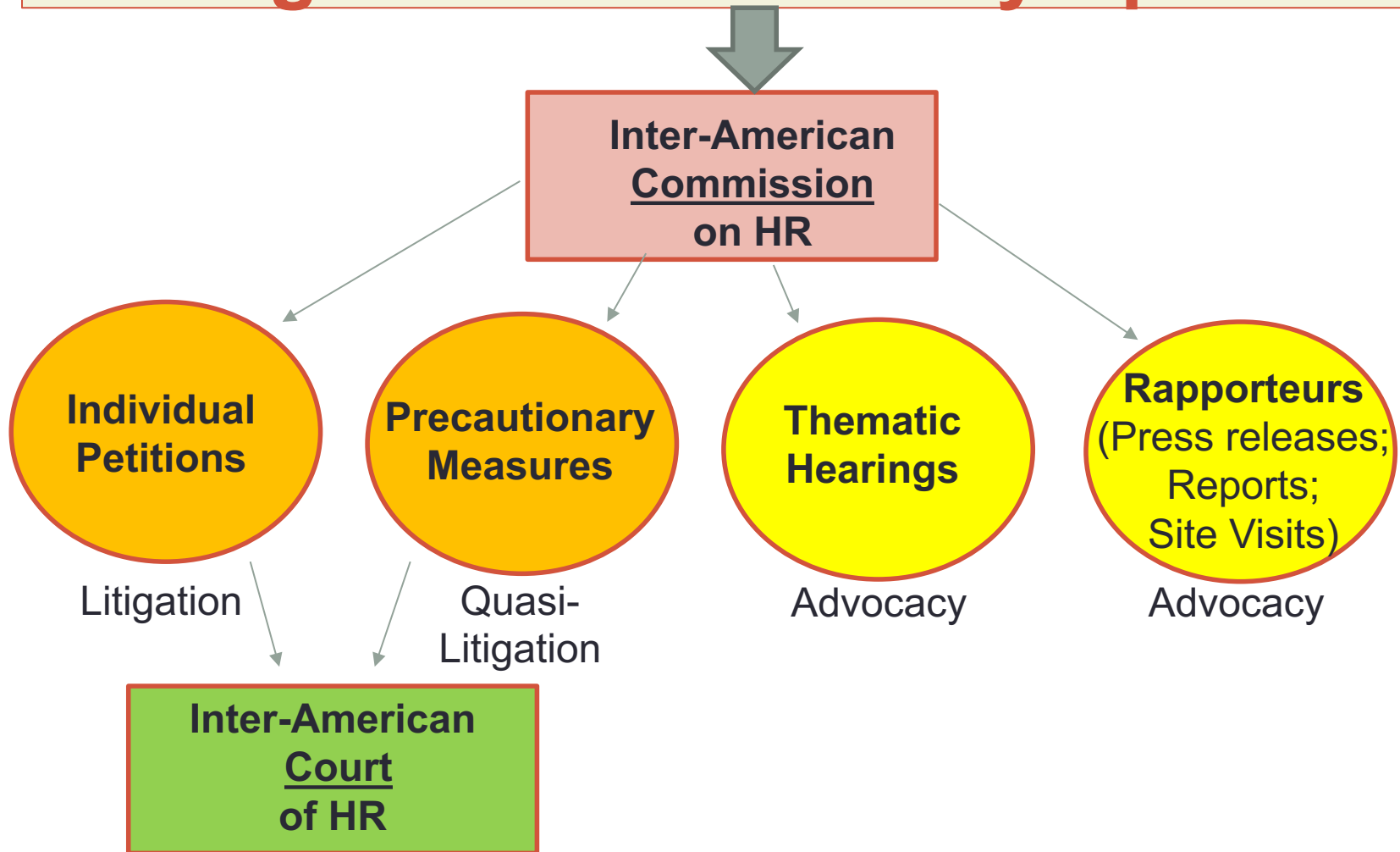
Advocacy

Advocacy

Advocacy

# OAS

## Litigation and Advocacy Options



# TUESDAY readings

## 1. Introduction to International Human Rights Law

- [Office of the UN High Commissioner for Human Rights: What are Human Rights?](#)
- *Ralph G. Steinhardt, Paul L. Hoffman, Christopher N. Camponovo*, International Human Rights Law, Ch. 1.A. “The Idea of International Human Rights Law”, pp. 1-22. (in online portal and sent by email)
- *Moeckli et al.*, International Human Rights Law, “Implementation of Human Rights Obligations”, pp. 130-132. (in online portal sent by email)

## 2. U.N. Human Rights Treaties

- [The Universal Declaration of Human Rights](#) (skim)
- [International Covenant on Civil and Political Rights](#) (skim)
  - [Special Procedures: Thematic Mandates; Country Mandates; Working Groups](#)
  - [Universal Periodic Review](#)

# TUESDAY Timetable

- 9:00 Intro. and course outline
- 9:10 Intro IHRL and 3 main obligations;
- 10:30 **BREAK**
- 10:40 UN Human Rights System: Treaties
- 12:00 Walk to lake for lunch!

# Intro to IHRL - Background

- IHRL is a branch of PIL (5 main branches)



# Intro to IHRL - Background

- 12<sup>th</sup> and 13<sup>th</sup> century:
  - Laws start to limit the power of the king.
  - **What famous document proclaimed in 1214 that the King's will could not be exercised arbitrarily?**
    - E.g., procedural human rights: can't punish without due process
  - King's (govt.) power was not absolute or infallible.
  - Everyone, even the King, must abide by the Law

# Intro to IHRL - Background

- The notion of rights continued to develop and really took hold in the 18<sup>th</sup> century
  - **What famous 18<sup>th</sup> century document states the following?**
    - “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed”
    - **What is the purpose of government?**
- 18th and 19th centuries: Bills of Rights (England, France, USA) (all national)

# Intro to IHRL - Background

- 20th century: **What important event led the world to say “never again”?**
  - Importance?
  - (Legal vacuum)
- **What international body was created in 1945?**
  - Importance?
    - State sovereignty is no longer absolute (other states can interfere) and State power is no longer absolute (must respect HR).
    - The UN Charter → States must cooperate amongst themselves to respect HR (arts. 1.3 and 55c)
    - Individuals (not just States) gain prominence PIL.

# Intro to IHRL - Background

- **Which international HR instrument was adopted in 1948?**
  - **Importance?**
    - It internationalizes the concept of inalienable rights.
      - Rights are no longer the sole competence of natl. law
    - Certain rights are inherent in every human being because of our inherent dignity,
      - regardless of our race, color, sex, language, religion, political opinion, national or social origin, economic position, birth or any other condition.
      - principle of non-discrimination: basis of all human rights norms.
- (Read Preamble of UDHR out loud)
- A new branch of PIL was born: IHRL

# **General/Basic things you NEED TO KNOW about IHRL:**

- 1. Sources of IHRL**
- 2. Subjects of IHRL**
- 3. Three main obligations under IHRL**

# Sources of IHRL

- **Where does international law come from?**
  - **Treaties**
  - **Custom**
  - **Jurisprudence (foreign and international)**
  - **Soft law**
  - *jus cogens*

# Subjects of IHRL

- **Who can be held legally responsible for committing IHRL violations?**
- As a general rule, in PIL it is States who have the legal capacity to commit human rights violations.
- IHRL limits the exercise of public authority.
  - Difference with criminal law, which (mostly) applies to private conduct
- Who is “the State” under IHRL?

# Subjects of IHRL

**Who can be held responsible and in which court?**

	<b>Domestic court (civil and criminal)</b>	<b>IHRL Court</b>	<b>ICL Court</b>
<b><u>Type of Person</u></b>	<ul style="list-style-type: none"><li>• <i>Legal</i> (States, govt. entities, corporations, etc.)</li><li>• <i>Natural</i></li></ul>	<i>States (legal)</i>	<i>Natural</i>
<b><u>Source of Law</u></b>	<ul style="list-style-type: none"><li>• <i>Domestic</i></li><li>• <i>International</i> (sometimes)</li></ul>	<i>International</i>	<i>International</i>



# The three general obligations that IHRL imposes on states

- IHRL requires states to

1. **Respect**

2. **Protect**

3. **Guarantee/ensure/fulfill** human rights

# The three general obligations that IHRL imposes on states

- **What does the obligation to *respect* human rights entail?**
  - States must refrain from interfering with or limiting the enjoyment of HR. (negative obligation)
- **What does the obligation to *protect* human rights entail?**
  - States must take all measures necessary to prevent human rights violations against individuals or groups. (positive)
- **What does the obligation to *guarantee* human rights entail?**
  - States must adopt positive measures to facilitate the enjoyment of basic human rights. (positive)

# HYPOTHETICAL

Richard Tator, also known as Mr. Dick Tator, is the President of State X. President Tator orders Army General to find, torture and execute all members of the opposition party. Army General orders his soldiers to do so. The soldiers find, torture, and execute all members of the opposition party. Private security guards, moved by their patriotic duty, participated in such acts, with knowledge of the army, but without any express agreement or coordination with army. President Dick Tator even participates directly in some of the acts of torture.

Immunity issues aside and assuming that the acts described above are violations of both domestic and international law, **before which court(s) could each of the following actors be brought?**

- President Dick Tator
  - State X
  - Army General
  - Army soldiers
  - Private guards
- 
- **What source of law (domestic – civil or criminal - or international) would you use to establish each of the actor's responsibility?**

# The UN Human Rights System

---

- What is it?
- UN HR Norms (treaties, jurispr. and soft law)
- UN HR Enforcement Mechanisms

# U.N. TREATY NORMS

---

# First UN Human Rights Norms

---

1945

UN Charter creates the UN and gives it authority to develop international human rights norms.

1948

UDHR paves the way for the adoption of every other human rights treaty that exists.

EXERCISE:

- name a human right without looking at UDHR

**BREAK**

# U.N. Human Rights TREATIES

---

- To complement the *general* terms of the UN Charter and of the UDHR, the UN has created a number of *specific* and independent treaties on a number of human rights.
- Treaties enumerate more rights than those in the UDHR and they are more detailed about the content of those rights and of the states obligations



# What are the 9 main UN HR treaties?

---

# 9 Main UN HR Treaties

---

1. CERD (1969)
2. ICCPR (1976) (1st OP 1976; 2nd OP 1991)
3. ICESCR (1976) (OP 2013)
4. CEDAW (1981) (OP 2000)
5. CAT (1987) (OP 2006)
6. CRC (1990) (OPs armed conflict; sale, prost. and pornography 2002)
7. CMW (2003)
8. CRPD (2008) (OP 2008)
9. CED (2010)

# ICCPR

---

- Adopted in 1966, 18 years after the UDHR was adopted
- Has the U.S. ratified the ICCPR?
- Name two or three rights recognized in the ICCPR
- According to Art. 2.1 of ICCPR, to whom must a State Party guarantee the rights recognized in that treaty?
- Does the ICCPR prohibit the death penalty?

# ICESCR

---

- Has the US ratified it?
- What are some of the rights recognized?
- Are the rights to health(care), education, work, and food universal human rights?
- How do the obligations under the ICCPR differ from those under the ICESCR?
- What does the 'subject to available resources' test mean for ESCR?

# CEDAW

---

- Is the US a Party?
  - 16.e and 10.h
- How and where does it define DAW?
- What obligations do State Parties have?

# CERD

---

- Is the US a Party to this treaty?
- Where and how does it define racial discrimination?
- What are the main general obligation States Parties have pursuant to this treaty?
- Can a State Party be liable for discrimination between private individuals?
- Are reservations allowed?

# CAT

---

- How is torture defined?
- What general obligations do State Parties have?
- Is torture justified in times of war?
- Is the US a Party?
- Is waterboarding prohibited under CAT?
- Is the US obligated to prosecute torturers?

# Other UN Hum. Rts. Treaties

---

- CRC
  - Almost universal ratification.
  - 2 Optional Protocols
    1. Child soldiers
    2. Sale of children (prostitution and human trafficking)
  - Is the U.S. a State Party?
- CRPD
  - Signed in 2009
- CMW
  - Few States have ratified it
- CED
  - Entered into force on Dec. 2010. US = not a Party



# How many States have ratified UN HR Treaties?

---

- See [here](#).

Which 5 UN HR treaties has the US  
ratified?

---

# UN Hum. Rts. Treaties Ratified by US

---

1. ICCPR

2. CERD

3. CAT

...

1. Protocol to CRC on Child Soldiers

2. Protocol to CRC on Sale of Children, Child Prostitution,  
and Child Pornography

# Break

---

# WEDNESDAY Timetable

- 9:00                      Review
- 9:10                      UN Treaty-based mechanisms
- **10:30**                    **BREAK**
- 10:40                      UN Charter-based mechanisms

## **Site visit to UN – Palais des Nations (14, avenue de la Paix)**

- 1:15    Meet at the Pregny Gate of the Palais des Nations
- How to get there:
  - Bus V (towards Geneve/Cornavin) leaves at 12:45. Stop at "Appia" (this is the closest)
  - Bus lines 5 and 11 stop at "Nations"
  - Tramways: lines 13 and 15 stop at "Nations"

If you arrive at "Nations" you will see the headquarter of UN with the flags in front, you then have to walk left up the hill (Av. de la Paix) for aprox. 5 min. until you come to the Pregny Gate on the right.

# REVIEW – Intro to IHRL

---

- IHRL (purpose is to limit the arbitrary exercise of state power over the individual)
- Distinction between purpose of criminal law and purpose of IHRL
- **Sources** of Int'l Law (treaties, custom, jurisprudence, and soft law)
  - Treaties are binding only on State Parties. (“ratify” v. “sign”)
  - Jurisprudence (binding vs. persuasive)
  - “Soft Laws” are non-binding norms. Why are they still important?
- **Subjects** of PIL: States (and, more recently, individuals)
  - What type of “person” can be brought before a domestic court, IHRL court, and ICL court?
- **Three general obligations** imposed on states by IHRL: respect, protect, and guarantee

# REVIEW – UN Treaties

---

- **What are the 9 core UN human rights treaties?**
- **What is a State Party?**
- **Do these international HR instruments provide for a minimum (a “floor”) or a maximum (a “ceiling”) standard of protection?**
- **Which UN human right treaties has the U.S. ratified?**

# Exercise: Issue Spot HR Violations

---

- 5 groups of 3
- Read fact pattern and identify relevant rights (Articles) in UN Human Rights Treaties:



# UN Treaty-Based Human Rights Enforcement Mechanisms

---

# WEDNESDAY readings

## 1. U.N. Treaty-based Human Rights Bodies

- [Protecting Your Rights – The UN Human Rights Treaty Bodies.](#)

## 2. U.N. Charter-based Human Rights Bodies

- Explore this page on [UN Human Rights Bodies](#); focus on Charter-based bodies.
- *Risa Kaufman*, Human Rights at Home Blog, [The U.S. on Review](#), May 11, 2015.
- (Suggested Reading) Aljazeera America, [US cited for police violence, racism in scathing UN review on human rights](#), May 11, 2015.

# Treaty-Based Enforcement Mechanisms

## **Human rights (r)evolution**

- first step was to get the norms into writing.
- second step is enforcement.

## **Do we have one international human rights court to enforce all of these treaties?**

- No. Never say “the international court of human rights.”
- There are regional courts of human rights, but not one world court that has oversight over all of the treaties.

## **How is compliance with UN human rights treaties supervised or monitored?**

- Compliance with the UN human rights treaties is overseen by **treaty bodies** – one for each treaty.

# Treaty-Based Enforcement Mechanisms

## What are UN Treaty Bodies?

- **Committees** made up of independent experts that supervise UN treaty compliance by State Parties.
- They do not represent any government.
- They are not judges, but are usually lawyers.
- Usually, the name of the Committee is the same as the treaty

# Treaty-Based Enforcement Mechanisms

There are 10 human rights treaty bodies that monitor implementation of the 9 core UN human rights treaties:

1. Human Rights Committee (CCPR)
2. Committee on Economic, Social and Cultural Rights (CESCR)
3. Committee on the Elimination of Racial Discrimination (CERD)
4. Committee on the Elimination of Discrimination against Women (CEDAW)
5. Committee against Torture (CAT)
6. Subcommittee on Prevention of Torture (SPT)
7. Committee on the Rights of the Child (CRC)
8. Committee on Migrant Workers (CMW)
9. Committee on the Rights of Persons with Disabilities (CRPD)
10. Committee on Enforced Disappearances (CED)

# Treaty-Based Enforcement Mechanisms

- **What can treaty bodies do?**
  - **1. Examine reports submitted by State Parties**
  - ~~**2. Adopt “General Comments” regarding the treaty**~~
  - ~~**3. Examine inter-State communications**~~
  - **4. Examine individual communications/petitions**
- The text of each treaty determines which of these basic monitoring functions will be carried out by the Committee.

# Treaty-Based Enforcement Mechanisms

How is ICCPR enforcement monitored?

- “Human Rights Committee”
  - 18 independent experts
  - meets either in Geneva or NY
  - holds 3 sessions per year, up to 10 weeks.
- We will visit the UN HR Committee on Mon. July 3.
  - Switzerland will be reviewed

# Human Rights Committee

## **The HRC may:**

1. Examine **reports** submitted by State Parties
2. Adopt “General Comments” regarding the treaty
3. Examine inter-State communications
4. Examine **individual communications/petitions**

**But can it carry out all four monitoring functions with regards to all ICCPR State Parties?**

**NO (States may choose not to allow the HRC to hear individual communications/petitions against it)**



# 1. REPORTS

## 1. Examine **reports** submitted by States Parties

- All States parties have a duty to submit regular reports to the Committee on how the rights are being implemented.
- States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years).

# 1. REPORTS

- **List of issues** to discuss with the State (**Switzerland's LOI**)
  - Collects information from
    - State Party
    - Other sources: other UN agencies, civil society **"shadow reports"**.
  - Forwarded to State Party 3 or 4 months before public hearing (US **Immigrant Detention**, **Death Penalty**, **VAW**)
  - State has to "show up" and respond to issues.
- **"Concluding Observations"** regarding that state
  - Sent to the State Party and published in an annual report.
  - Art. 45: Report to UNGA (through ECOSOC)

# 1. REPORTS

- Strengths and weaknesses of this report mechanism?

- **Sarah Cleveland (U.S. member of UN HR Com.):**

*Public hearings force govts. (at least the executive branch) to be self-critical and determine areas where improvement is need.*

## 2. GENERAL COMMENTS

### 2. Adoption of **General Comments** on treaty norms

- Similar to advisory opinions
- Help State parties understand their specific obligations
- It is “soft law” that gives meaning to “hard law”
- HR Committee has published more than 30
  - For example: [General Comment #34](#) issued by the HRC is about Art. 19 ICCPR = Freedom of Expression
  - See SCU IHRC [written contribution](#) for Gen Com 36 on right to a *vida digna* (“dignified life”) [here](#).

## 3. Inter-State Complaints

### 3. Examine **Inter-State complaints**

- Filed by states, *not* by individual persons.
- Is usually optional, i.e, requires the State to do something extra to give its consent to the recognition of the Committee's power to receive and examine inter-state complaints.
- No State has ever filed an inter-state complaint before the HR Committee.

**What is the fourth (and some  
say most important)  
monitoring function of SOME  
(not all) UN Treaty bodies?**

## 4. Individual Complaints

### 4. Ability to examine **complaints by individuals**

- What source of law allows individuals to submit individual complaints before the HR Committee?
  - [First Optional Protocol to the ICCPR](#)
    - read Preamble and Arts. 1 and 2
- The States that ratify this protocol / treaty are giving their consent allowing individuals to file complaints against them with the Human Rights Committee



## 4. Individual Complaints

- Which states may be brought before the HR Committee through this process of individual complaints?
  - Only those States that have ratified the following two treaties: both the ICCPR and the First Optional Protocol.
- Has the US ratified the OP that allows the HR Committee to hear individual complaints?
  - No
- What does this mean in terms of the availability of mechanisms that supervise US compliance with the ICCPR?
  - Only “function 1” is available: evaluation of state reports and the consequent issuing of “Concluding Observations”.
  - Thus, there is no litigation option against the US before the HRC. The only advocacy option is the submission of shadow reports.

## 4. Individual Complaints

- Conditions for the admissibility of individual petitions?
- Art. 2
  - Exhaustion of domestic remedies
  - No forum shopping
- Procedure
  - Written. Six months for State to respond. Closed meeting.
  - Issues “Views” on merits. Published in annual report to GA.
  - **Rapporteur monitors compliance and informs GA**
- Can research UN Treaty Body Jurisprudence [here](#)
- Strengths and weaknesses?

# Which Treaty Bodies may hear individual complaints?

**8 Committees may consider individual communications with regards to the following UN Treaties:**

1. **ICCPR** – HRC (must ratify the First Protocol)
2. **ICESCR** – (must ratify Optional Protocol - since May '13)
3. **CERD** (declaration in accordance with Art. 14)
4. **CEDAW** – (must ratify the Optional Protocol)
5. **CAT** – (declaration in accordance with Art. 22)
6. **CRPD**– (must ratify the Optional Protocol)
7. **CED**– (declaration pursuant to Art. 31)
8. **CRC** (must ratify Third Opt. Protocol – since April '14)

# Which Treaty Bodies may hear individual complaints?

## **What about #9 - the CMW (migrant workers)?**

- Need 10 State Parties to make the [art 77 declaration](#),
- Only 3 have done so:
  1. Mexico (1999)
  2. El Salvador (2007)
  3. Uruguay (2012)
- (as of June 13, 2017)

# UN CHARTER-BASED ENFORCEMENT MECHANISMS

---

Security Council

Secretary General

General Assembly

Human Rights Council

Special Procedures

Universal Periodic Review (UPR)



# The United Nations System

## UN Principal Organs

General Assembly

Security Council

Economic and Social Council

Secretariat

International Court of Justice

Trusteeship Council<sup>6</sup>

### Subsidiary Bodies

Main and other sessional committees  
Disarmament Commission  
Human Rights Council  
International Law Commission  
Standing committees and ad hoc bodies

### Subsidiary Bodies

Counter-terrorism committees  
International Criminal Tribunal for Rwanda (ICTR)  
International Criminal Tribunal for the former Yugoslavia (ICTY)

### Funds and Programmes<sup>1</sup>

**UNCTAD** United Nations Conference on Trade and Development

- **ITC** International Trade Centre (UNCTAD/WTO)

**UNDP** United Nations Development Programme

- **UNCDF** United Nations Capital Development Fund
- **UNV** United Nations Volunteers

**UNEP** United Nations Environment Programme

**UNFPA** United Nations Population Fund

**UN-HABITAT** United Nations Human Settlements Programme

**UNHCR** Office of the United Nations High Commissioner for Refugees

**UNICEF** United Nations Children's Fund

**UNODC** United Nations Office on Drugs and Crime

**UNRWA<sup>2</sup>** United Nations Relief and Works Agency for Palestine Refugees in the Near East

**UN-Women** United Nations Entity for Gender Equality and the Empowerment of Women

**WFP** World Food Programme

### Research and Training Institutes

**UNICRI** United Nations Interregional Crime and Justice Research Institute

**UNIDIR<sup>2</sup>** United Nations Institute for Disarmament Research

**UNITAR** United Nations Institute for Training and Research

**UNRISD** United Nations Research Institute for Social Development

**UNSSC** United Nations System Staff College

**UNU** United Nations University

### Other Entities

**UNAIDS** Joint United Nations Programme on HIV/AIDS

**UNISDR** United Nations International Strategy for Disaster Reduction

**UNOPS** United Nations Office for Project Services

### Related Organizations

**CTBTO Preparatory Commission** Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

**IAEA<sup>1,3</sup>** International Atomic Energy Agency

**OPCW** Organisation for the Prohibition of Chemical Weapons

**WTO<sup>1,4</sup>** World Trade Organization

### Advisory Subsidiary Body

Peacebuilding Commission

### Specialized Agencies<sup>1,5</sup>

**FAO** Food and Agriculture Organization of the United Nations

**ICAO** International Civil Aviation Organization

**IFAD** International Fund for Agricultural Development

**ILO** International Labour Organization

**IMF** International Monetary Fund

**IMO** International Maritime Organization

**ITU** International Telecommunication Union

**UNESCO** United Nations Educational, Scientific and Cultural Organization

**UNIDO** United Nations Industrial Development Organization

**UNWTO** World Tourism Organization

**UPU** Universal Postal Union

**WHO** World Health Organization

**WIPO** World Intellectual Property Organization

**WMO** World Meteorological Organization

### World Bank Group

- **IBRD** International Bank for Reconstruction and Development

- **ICSID** International Centre for Settlement of Investment Disputes

- **IDA** International Development Association

- **IFC** International Finance Corporation

- **MIGA** Multilateral Investment Guarantee Agency

### Functional Commissions

Crime Prevention and Criminal Justice  
Narcotic Drugs  
Population and Development  
Science and Technology for Development  
Social Development  
Statistics  
Status of Women  
Sustainable Development  
United Nations Forum on Forests

### Regional Commissions

**ECA** Economic Commission for Africa  
**ECE** Economic Commission for Europe  
**ECLAC** Economic Commission for Latin America and the Caribbean  
**ESCAP** Economic and Social Commission for Asia and the Pacific  
**ESCWA** Economic and Social Commission for Western Asia

### Other Bodies

Committee for Development Policy  
Committee of Experts on Public Administration  
Committee on Non-Governmental Organizations  
Permanent Forum on Indigenous Issues  
United Nations Group of Experts on Geographical Names  
Other sessional and standing committees and expert, ad hoc and related bodies

### Departments and Offices

**EOSG** Executive Office of the Secretary-General  
**DESA** Department of Economic and Social Affairs  
**DFS** Department of Field Support  
**DGACM** Department for General Assembly and Conference Management  
**DM** Department of Management

**DPA** Department of Political Affairs  
**DPI** Department of Public Information  
**DPKO** Department of Peacekeeping Operations  
**DSS** Department of Safety and Security  
**OCHA** Office for the Coordination of Humanitarian Affairs  
**OHCHR** Office of the United Nations High Commissioner for Human Rights

**OIOS** Office of Internal Oversight Services  
**OLA** Office of Legal Affairs  
**OSAA** Office of the Special Adviser on Africa  
**SRSG/CAAC** Office of the Special Representative of the Secretary-General for Children and Armed Conflict  
**SRSG/SVC** Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict

**UNODA** Office for Disarmament Affairs  
**UNOG** United Nations Office at Geneva  
**UN-OHRLS** Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States  
**UNON** United Nations Office at Nairobi  
**UNOV** United Nations Office at Vienna

## Notes:

<sup>1</sup> The United Nations, its Funds and Programmes, the Specialized Agencies, IAEA and WTO are all members of the United Nations System Chief Executives Board for Coordination (CEB).

<sup>2</sup> UNRWA and UNIDIR report only to the General Assembly (GA).

<sup>3</sup> IAEA reports to the Security Council and the GA.

<sup>4</sup> WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.

<sup>5</sup> Specialized Agencies are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and CEB (inter-secretariat level).

<sup>6</sup> The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.

This is not an official document of the United Nations, nor is it intended to be all inclusive.

# SECURITY COUNCIL

- How many members?
  - 15 members
- How many are permanent? Name them.
  - 5 are permanent. (The other 10 are elected and serve for 5 years)
  - **US; China; France; Russia, and the UK**
- What power do these 5 states have that the other 10 do not?
  - **Veto power**
- The UN Charter charges the SC with the maintenance of international **peace and security**. (art 24.1 and 24.2 (in Chapter V))

# SECURITY COUNCIL

- How is this related to the promotion and protection of HR?
  - **Art. 55.c (in Chapter IX)**
  - **Arts. 39, 41 and 42 (in Chapter VII)**
  - SC can:
    - **investigate** violations of human rights,
    - impose **sanctions**
    - authorize **peacekeeping operations** and the **use of armed force** in situations where such human rights violations pose a threat to peace and global security (ie, usually when they are systematic violations of human rights)
- Can the UN Sec Council receive individual complaints?
  - No.



# GENERAL ASSEMBLY

- **Who makes up the General Assembly?**
  - All UN member states
  - **Why is this important?**
    - It gives legitimacy to its pronouncements.
- **What is its role in promoting and protecting human rights?**
  - **Art. 13 (in Chapter IV)**
  - It develops IHRL:
    - by adopting human rights treaties
    - by adopting resolutions, declaration and other soft law
  - The AG also receives the annual reports of UN human rights organs, whether "treaty-based" or "charter-based"

# HUMAN RIGHTS COUNCIL

- What is the Human Rights Council?
  - Inter-governmental body within the UN system
  - Made up of 47 UN Member States elected by the GA.
  - Responsible for strengthening the promotion and protection of human rights.
  - Meets at the UN Office at Geneva.
  - Carries out the Universal Periodic Review (since 2008).

# HR Council - Universal Periodic Review

## What is the Universal Periodic Review?

- **Peer review evaluation mechanism. (not independent experts)**
- Examines the human rights situation in **all member States**.
- Allows for an open exchange of ideas and positions between civil society, States examined, observers and UN agencies.

# HR Council - Universal Periodic Review

## What information is taken into consideration?

- Three reports:
  - A 20 page report submitted by the State
  - Two 10-page reports prepared by the UNHCHR
    - One summarizes information submitted by other UN bodies
    - The other summarizes credible and reliable information submitted by NGOs and civil society (“[stakeholder reports](#)”)

- Watch portions of this [video](#) of the May 2015 UPR review of US.

# HR Council - Special Procedures

- What are “special procedures”?
  - They are UN independent experts authorized to investigate and make recommendations to all UN Member States on specific human rights issues or to evaluate human rights violations in specific countries.
- They go by different names:
  - special rapporteurs
  - independent experts
  - working groups
  - special representatives of the SG
- Currently there are 55 special procedures
  - 43 [thematic](#) mandates and
  - 13 [country](#) mandates or territories

# HR Council - Special Procedures

## What do they do?

- Visit States to investigate human rights situations
- Report their findings and recommendations to the Human Rights Council, the Secretary General, and/or the General Assembly
- Issue public statements or hold press conferences
- Send “urgent appeals” in cases where immediate action is required to prevent the loss of life or other grave human rights violations

# HR Council - Special Procedures

- **Can individual victims of human rights violations communicate directly with these special procedures?**
  - Yes!
- **Must individual exhaust domestic remedies before sending their communication to a special procedure?**
  - No!



# Secretary General

- (Chapter XV, Arts. 97 ff.)
- In 1994, the Secretary General created the **Office of the UN High Commissioner for Human Rights**
  - It holds primary responsibility for carrying out the mandate concerning human rights assigned by the SG.
  - Acts as technical adviser to UN Member States in the prevention of violations of human rights and in the implementation of UN Human Rights norms.
  - Has offices in over 20 countries.
  - Coordinates and supports the special procedures of the Human Rights Council.

# International Court of Justice

- The ICJ has ruled on the IHRL issues in contentious cases.
- It has analyzed aspects of the ICCPR, the Convention against Genocide, and the Convention against Racial Discrimination, among others.
- Individual complaints are not allowed.

## CLASS EXERCISE

- SEE HYPO
- 3 groups
- **What litigation and advocacy options are potentially available before U.N. Treaty Bodies and U.N. Charter-based mechanisms?**

# UN

## Litigation and Advocacy Options

**TREATY  
BODIES**

**CHARTER-  
BASED BODIES**

**Individual  
Petitions**

**Shadow  
Reports**

**Stakeholder  
Reports  
(HR Council  
– UPR)**

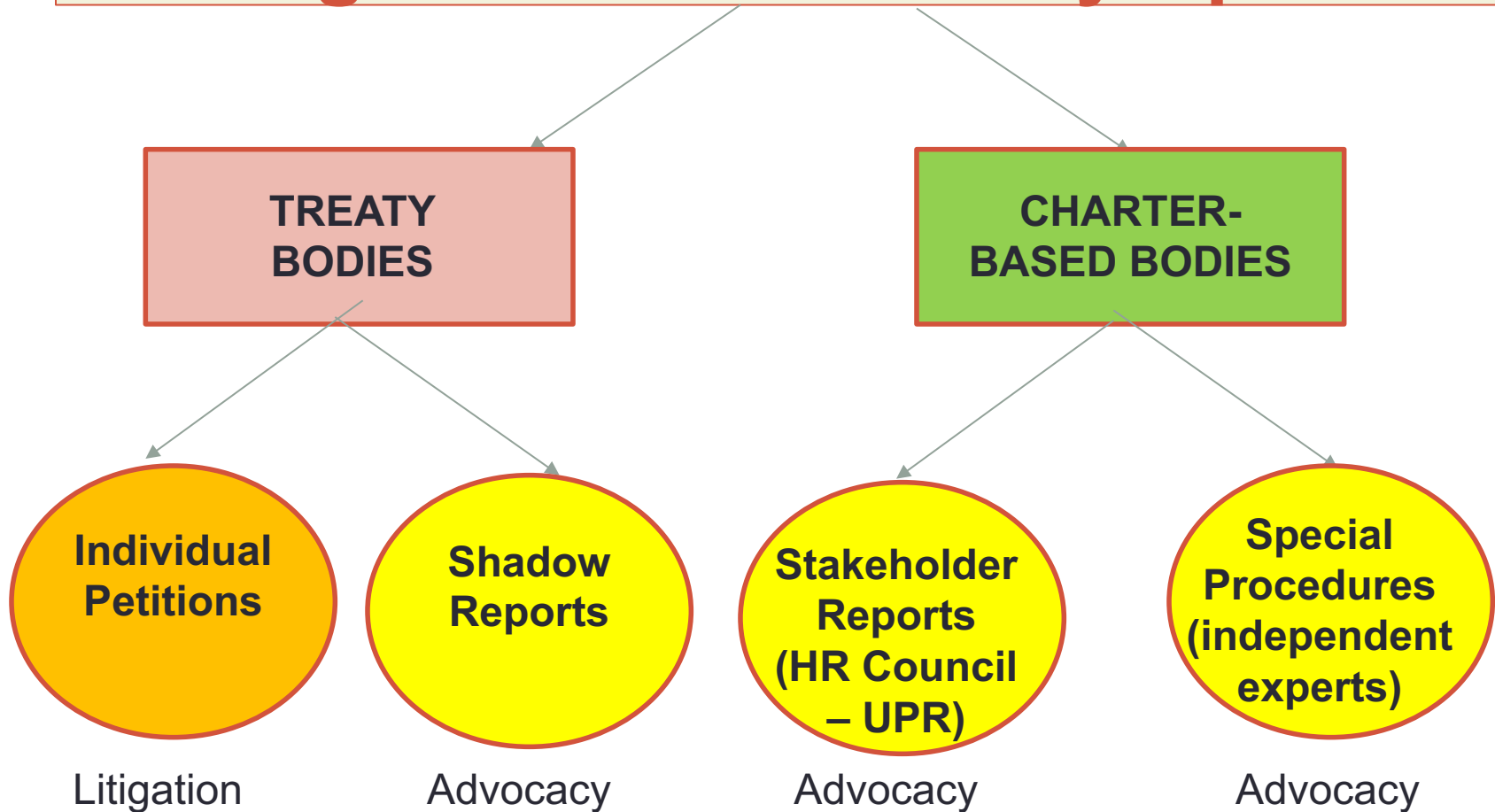
**Special  
Procedures  
(independent  
experts)**

Litigation

Advocacy

Advocacy

Advocacy



END OF U.N. SESSION

# THURSDAY Timetable

- 9:00            **Review of UN enforcement mechanisms**
- 9:10            **Inter-American Human Rights Norms**
- 9:45            **Inter-American Commission on Human Rights**
- 10:15           **BREAK**
- 10:20           **Inter-American Court of Human Rights**
- 11:00           **IA Court Exercise**

# REVIEW – UN Treaty Bodies

1. How is compliance with the UN human rights treaties supervised or monitored?
2. What is the name for the Committee that monitors compliance with the ICCPR?
3. Name two basic monitoring functions of UN treaty bodies?
4. What source of law (treaty/protocol) allows individuals to submit individual complaints before the HR Committee?
5. What are “shadow reports”?

# REVIEW – UN Charter-Based Bodies

1. Can the UN Security Council receive individual complaints?
2. Can the International Court of Justice (ICJ) issue judgments regarding violations of UN human rights treaties?
3. What is the Universal Periodic Review (UPR)?
4. What are “stakeholder reports”?
5. Can the UN Human Rights Council receive individual complaints?
6. What are UN “Special Procedures”?
7. What are some of the Thematic Mandates of “Special Procedures”?
8. Can individual victims communicate directly with “Special Procedures”? Must individuals first exhaust domestic remedies before doing so?



# INTER-AMERICAN HUMAN RIGHTS SYSTEM

---

# THURSDAY'S readings

---

## Inter-American Human Rights System (Commission and Court)

- *Bettinger-López* – [\*The Inter-American Human Rights System – A Primer\*](#): 581-595 (14 pages)
- Inter-American Commission on Human Rights, [\*Petition and Case System Informational Brochure\*](#) (2010), pp. 5-16 (11 pages).
- [American Declaration on the Rights and Duties of Man](#) (skim)
- [American Convention on Human Rights](#) (skim)

# What is the IAHRS?



- REGIONAL NORMS
- REGIONAL ENFORCEMENT
  - IA COMMISSION on HR
  - IA COURT of HR



## □ REGIONAL NORMS



Organization of  
American States

## 9 (+2+1) Main Regional HR Instruments

1. [American Declaration](#) of the Rights and Duties of Man (1948) (applies to all OAS Member States, incl. US and Can.)
2. [American Convention](#) on Human Rights (1978)
  - “Pact of San José, Costa Rica” (Skim)
3. Protocol to the American Convention on Human Rights to Abolish the [Death Penalty](#) (1990)
4. Additional Protocol to the American Convention on Human Rights in the Area of **Economic, Social and Cultural Rights** “[Protocol of San Salvador](#)” (1999)



Organization of  
American States

5. Inter-American Convention to Prevent and Punish Torture (1987)
6. Inter-American Convention on Forced Disappearance of Persons (1996)
7. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém do Pará” (1995)
8. Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (2001)



Organization of  
American States

9. Inter-American Convention on Protecting the  
[Human Rights of Older Persons](#) (June 15, 2015)

- **Entry into Force:** January 11, 2017
- 3 ratifications (Bolivia on 5/17/17)



Organization of  
American States

- 10. [American Declaration on the Rights of Indigenous Peoples](#) (June 15, 2016)
  - (no official text available yet)
  - [Press release](#)
  - 17 years of negotiation (critique of regression, compared to UN Declaration)





Organization of  
American States

## 11. Inter-American Convention Against All Forms of Discrimination and Intolerance

(adopted June 2013)

- **Entry into Force:** 30 days after 2 states ratify
- 10 Signatories – No ratifications (as of June 14, 2017)

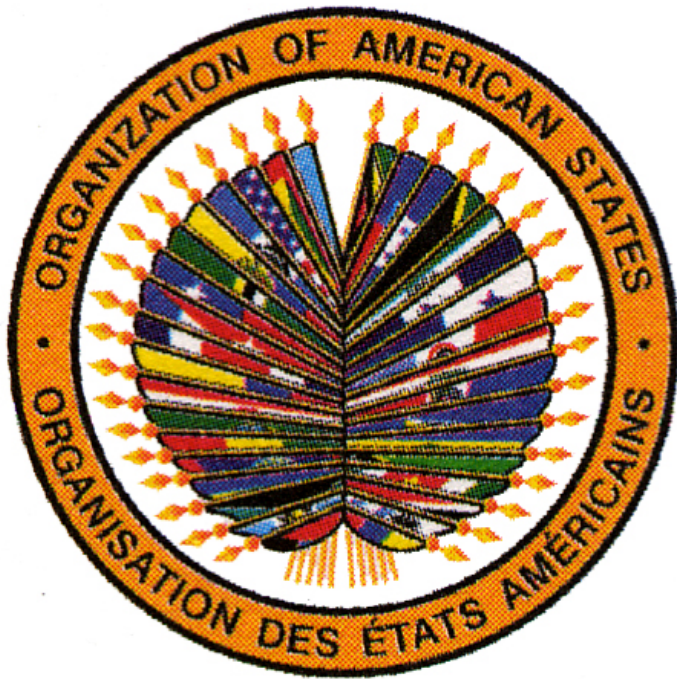
## 12. Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance

(adopted June 2013)

- **Entry into Force:** 30 days after 2 states ratify
- 12 Signatories – 1 ratification (CR) (as of June 14, 2017)

# Current OAS norms

1. American Declaration (ADRDM)
2. American Convention (ACHR)
3. Death Penalty Protocol
4. ESCR (San Salvador Protocol)
5. Torture
6. Forced Disappearance
7. VAW
8. Persons w/Disabilities
9. Older Persons
10. Indigenous Peoples Declaration



- REGIONAL ENFORCEMENT
  - COMMISSION



- Established in 1959
- 7 Commissioners (independent experts)
- Commission is NOT a court of justice; it is a quasi-judicial institution

## **WHAT DOES THE IACHR DO?**

- **Cases / Petitions**
- **Precautionary Measures**
- **Thematic Hearings**
- **Site Visits and Reports**
  - **Country Reports**
  - **Thematic Reports**
- **Rapporteurships**

# 1. Cases / Petitions

- **Admissibility**

- 1. JX over parties, subject matter, date, and territory
- 2. exhaustion of domestic remedies
  - Exception: undue delay
- 3. six-month rule

- **Friendly Settlements**

- **Merits**

- Hearing (Kevin Cooper).
- Article 50 Report.
  - Violations and Recommended Reparations.

- **Submission to Court** (approx. 15 per year)

## **2. Precautionary Measures**

- Requests for protection in:
  - serious and urgent situations
  - presenting a risk of irreparable harm to
    - persons or
    - to the subject matter of a pending petition
- 2015: 675 requested. 45 granted.

### 3. Thematic Hearings

- 2-3 public sessions per year
  - March and October
  - On any issue
    - Research tool (U.S. hearings)
- IHRC Examples:
  - Human Rights in PR (March 2015)
  - Right to Water in CR (March 2015) (Photos)
  - Right to Water in the US (April 2016)
  - Public Debt and Poverty in PR (April 2016)



## **4. Site Visits and Reports**

- **2014 U.S Site Visit**
- **Country Reports (any 1 country)**
  - Dominican Republic (2016)
    - Multimedia website
- **Thematic Reports (any 1 issue)**
  - Death Penalty (see Section III)
  - Sexual Violence
  - Immigration
  - Juvenile Justice

## **5. Rapporteurships (10)**

1. Indigenous Peoples (1990)
2. Women (1994)
3. Migrants (1996)
4. Freedom of Expression (1997)
5. Children (1998)
6. Human Rights Defenders (2001)
7. Persons Deprived of Liberty (2004)
8. Afro-Descendants and Racial Discrimination (2005)
9. LGBT unit (2011)
10. Economic, Social, and Cultural Rights (2012)

## **5. Rapporteurships (10)**

Just announced (May 24, 2017) the creation of 3 new units:

1. Memory, Truth and Justice
2. Older Persons
3. Persons with Disabilities

## What US HR issues have been brought before the IACHR?

- **criminal justice** (death penalty reports, cases and PM, solitary confinement, juvenile life sentences w/o parole, and children deprived of liberty with adults)
- **domestic violence**/gender
- **Guantánamo prisoners** (PM and admissibility)
- **immigrant**/migrant rights (farm workers, due process, detentions at US-Mexico border)
- **health/environment** - adequate standard of living
- **indigenous land**
- **Human trafficking**
- **the right to vote**



- REGIONAL ENFORCEMENT
  - COURT

# INTER-AMERICAN COURT OF HUMAN RIGHTS





## Corte Interamericana de Derechos Humanos

Inter-American Court of Human Rights

- ❑ Established in 1978 by the ACHR
- ❑ It is an autonomous JUDICIAL institution of OAS
- ❑ Objective: application and interpretation of ACHR and other regional HR treaties





Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Judges



- ❑ **7 Judges**
- ❑ They are citizens of OAS Member States
- ❑ Elected by General Assembly of OAS
- ❑ Serve 6 year terms
  - ❑ Renewable once





Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Sessions of the Court





- Judge Cecilia Medina Quiroga, Chile, President
- Judge Diego García Sayán, Perú, Vice-President
- Judge Sergio García Ramírez, México

• Judge Manuel E. Ventura Robles, Costa Rica

• Judge Leonardo Franco, Argentina

• Judge Margarette May Macaulay, Jamaica

• Judge Rhadys Abreu Blondet, República Dominicana

• Registrar/Secretary: Pablo Saavedra Alessandri (Chile)

• Adjunct Registrar/Secretary: Emila Segares (Costa Rica)

• Senior Attorney: Francisco Rivera (Puerto Rico)





Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Sessions of the Court

- Seat is in San Jose, Costa Rica
- Not a permanent Court
  - The Secretariat is permanent. (approx. 20 attorneys)
- Holds approx. 4 sessions each year
- Each session lasts 2-3 weeks
  - [Artavia](#)
- Can also hold sessions in any OAS Member State
  - ([Mexico](#) – Benito Tide) (Colombia – [Pacheco Tineo](#))
- On-site visits
  - [Sarayaku](#)



Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Court's Competence

- ❑ **CONTENTIOUS CASES**
- ❑ **ADVISORY OPINIONS**
- ❑ **PROVISIONAL MEASURES**
- ❑ **SUPERVISION OF COMPLIANCE OF ITS JUDGMENTS**



Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Contentious Jurisdiction

- Purpose:
  - Establish the (factual) truth
  - Decide whether the facts constitute a violation of ACHR or other regional HR treaties
  - Apply and interpret the ACHR or other regional HR treaties
  - Determine damages and other forms of reparations



Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Contentious Jurisdiction

## Court **is** competent

- to establish the international responsibility of a State for violations of ACHR or other regional HR treaties

## Court **is not** competent

- to investigate and sanction the conduct of individual state agents or private parties.
  - (It is an IHR court, not an ICL court)



# Map of States that have ratified the American Convention

## Member states of the OAS (34):

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Canada, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, United States, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, St. Kitts y Nevis, Santa Lucia, San Vicente and the Grenadines, Suriname, Trinidad and Tobago(\*), Uruguay, and Venezuela.

## States that have ratified the Convention (25):

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

## States that have accepted the Court's Jurisdiction (21):

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

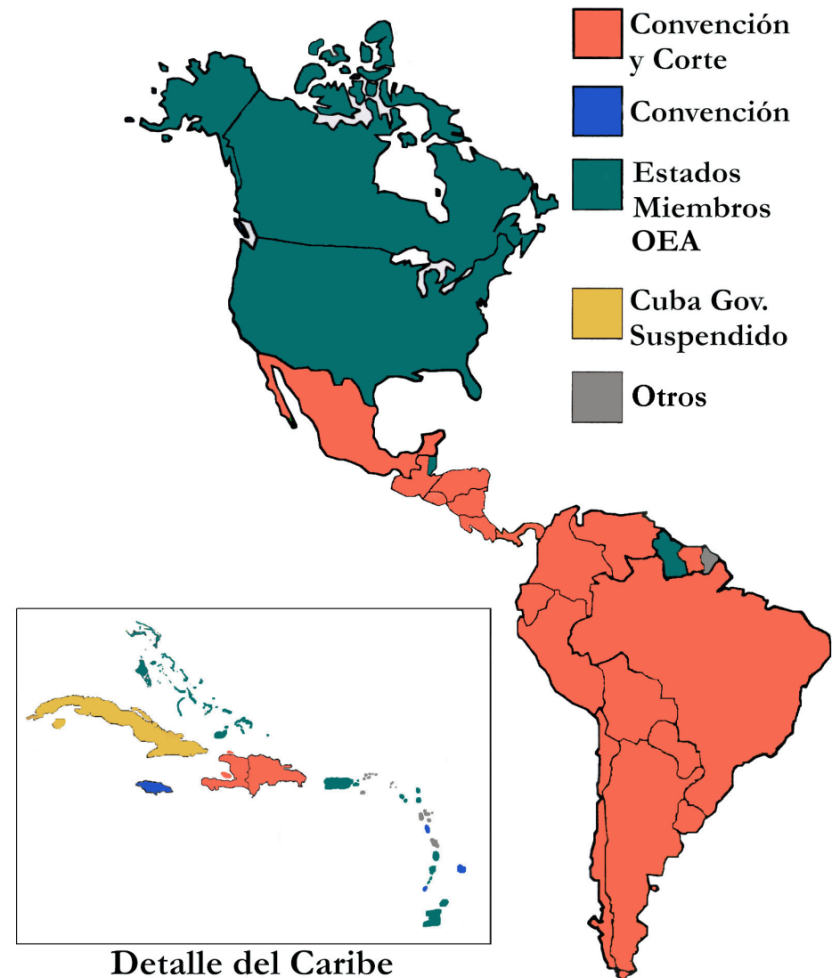
## Suspended:

Cuba

(\*) Trinidad and Tobago renounced the Convention May 26, 1998.

As a consequence this State was a member of the Convention and accepted the Court's jurisdiction from May 28, 1991 until May 26, 1999.

**Note: Cuba's suspension from the OAS was lifted in 2009. Venezuela denounced ACHR (Sept 2013)**



Source: Secretariat of the Inter-American Court of Human Rights

# *Level of State Participation in IAHRs*

OAS Member States	Have Ratified ACHR	Have also recognized Court's jurisdiction
20 states	Yes	Yes
8 states	No	No
6 states	Yes	No





Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Parties

## Who may bring a case before the Court?

1. **Inter-American Commission on Human Rights**
2. States Parties to ACHR that have also recognized the Court's jurisdiction

May individuals submit petitions directly to the IA Court?



## What is the role of victims?

- **After** case is submitted to Court, they can:
  - ▣ Submit briefs autonomously
  - ▣ Allege different violations of law (but not based on different facts)
  - ▣ Offer witnesses and expert witnesses (and interrogate them)
- The Commission's role has been reduced. (to minimize “two vs. one” scenarios)



# Judgments

- Are final, binding, and may not be appealed
- By ratifying the treaty, State Parties to ACHR make a legally binding commitment to comply
- A party may request an interpretation of the judgment (only to clarify)
  - Have 90 days to do so (from notification)



Corte Interamericana  
de Derechos Humanos  
Inter-American Court of Human Rights

# Reparations



**Court may order  
different types of  
reparations**



# Reparations

- Monetary awards
- Domestic investigation and sanction of those responsible
- Modification of domestic law (even Constitution)
- Publication of the IACtHR's judgment
- 5. Public act recognizing State's responsibility
- 6. Creation of a monument, or naming of a street or public place in honor of the victims
- 7. Scholarships
- 8. Medical treatments (including psych.)

# COURT SIMULATION EXERCISE

## *BÓNCHOFPÍPOL V. COSTA RICA*

### PUBLIC HEARING BEFORE INTER-AMERICAN COURT OF HUMAN RIGHTS

#### 1. Commission (4 attorneys) (15 mins. + 3)

- Am. Conv. – Arts. 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8+25 (Judicial Protection)
- Belém do Pará - Art. 7

#### 2. Victims (4 attorneys) (15 mins. + 3)

- Am. Conv. - Arts. 19 (Children), 15 (Assembly), 22 (Movement), 24 (= Protect)
- San Salvador Protocol – Art. 10 (Health), Art. 11 (Healthy Env.)
- Belém do Pará - Art. 9

#### 3. State (5 attorneys) (20 mins + 5)

- Admissibility Preliminary Objection: no exhaustion of domestic remedies
- Defend the State (maybe focus on ACHR 5, 7, 15,; SSP 10, 11, and BDP 9), but also partially recognize intl. responsibility (maybe ACHR 4, 19, 22, 24; BDP 7)

#### 4. Court (2 judges plus Fran)

- Ask questions (interrupt anytime) and decide the case

# OAS

## Litigation and Advocacy Options

