

Foreword

to 'Indigenous women's rights and the Inter-American system: a toolkit on mechanisms'

By Kerry Kennedy

Dear friends,

The Robert F. Kennedy Center for Justice and Human Rights is proud to join the Forest Peoples Programme in publishing this guide to working through the Inter-American System to strengthen the rights of indigenous women.

In 1966, my father, Robert Kennedy, said that "those with the courage to enter the moral conflict will find themselves with companions in every corner of the globe." The RFK Center's Partners for Human Rights program looks to fulfill that pledge by standing alongside the brave women and men who work on the front line of the struggle for justice – women and men like you.

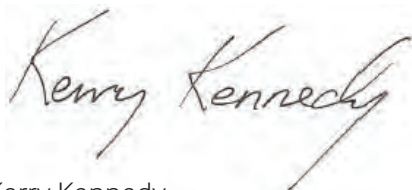
Advocacy before regional human rights mechanisms is a crucial part of that struggle. This guide is designed to help you make the most forceful and effective case possible before such bodies, explaining everything from how to submit a petition to what to expect during a hearing.

The RFK Center is deeply committed to the rights of indigenous women around the world. With our partners at the Tlachinollan Center for Human Rights in Mexico, we have advocated at the local and regional levels on behalf of indigenous Mexican women who have been raped and tortured by members of the military. In just the past year, we joined with Tlachinollan to build schools for Mexico's indigenous children, who are too often denied their right to a basic education. And through our Training Institute in Florence, we convene activists and defenders like you to share experiences and learn new approaches to defending human rights.

By now, we know that empowering women is one of the keys to improving the health, prosperity, and well-being of communities from the American Gulf Coast to West Africa. Indigenous women face particularly strong opposition in their quest for equality. The RFK Center and the Forest Peoples Programme hope that this guide will help both indigenous activists and their partners as they work to realize a more just and peaceful future.

Thank you for your commitment to justice and human rights.

Warmly,

A handwritten signature in black ink that reads "Kerry Kennedy". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Kerry Kennedy

President

Robert F. Kennedy Center for Justice and Human Rights

Introduction to the Toolkit on the Inter-American Human Rights System for Indigenous Women

Author: Ellen-Rose Kambel / Editors: Valerie Couillard and Andrea Galindo

Indigenous women in the Americas

There are an estimated 40–50 million indigenous persons living in the member states of the Organization of American States (OAS), which unites all 35 independent states of North, Central and South America.¹ Indigenous women live in vastly different circumstances, ranging from the dry mountain ranges of the Andes, to the humid rainforests of the Amazon and the tropical islands of the Caribbean. They speak hundreds of different languages. Many indigenous women live in rural areas, taking care of their children, participating in subsistence activities such as shifting cultivation, hunting and gathering, and making handicrafts. Whilst most of these tasks are done by women, men and older girls and boys also share roles, in different ways. An International Labour Organization (ILO) study has shown that indigenous women's roles are rapidly changing. They are increasingly working in self-employment or as wage earners in both rural and urban areas. Rural–urban migration is growing fast, posing new challenges for indigenous women:

Urban migration has offered greater personal autonomy to some indigenous women, who are able to earn their own money and free themselves from the sometimes strict control of their families and communities, as well as from gender discrimination experienced in the access to and control over land and property. However many indigenous women enter the urban labour force with little or no formal education and find themselves confronted with many new challenges, including adjusting to the urban lifestyle and balancing a heavy workload with the responsibilities for their families as (often single) mothers. In addition they are often confronted with racist prejudice from members



Communications Programme organised by the Fundación Yanama, Colombia.

Photo: Jakeline Romero Epiayu

of the dominant, non-indigenous groups, including co-workers and employers. For example, indigenous women wearing their native dress are ridiculed and subject to verbal and sometimes physical harassment in public and in the workplace.²

The gendered impact of natural resource exploitation

Over the past 30 years, there has been significant progress in the legal recognition of indigenous rights in Latin America. However, massive and ongoing deprivation, and destruction of indigenous lands by large-scale extractive industries, continue to be a common experience among indigenous peoples. Because of the importance of their lands (including for those who have been forced to migrate to urban areas), protection of collective territorial rights remains the central issue for both indigenous women and men:

For Indigenous Peoples and Indigenous women, exercising our rights – both as Indigenous Peoples and as women – depends on securing legal recognition of our collective ancestral territories. Our territories are the basis of our identities, our cultures, our economies and our traditions. Indigenous rights include the right to full recognition as Peoples with our own worldview and traditions, our own territories, and our own modes of organization within nation-states; the right to self-determination through our own systems of autonomy or self-government based on a communal property framework; and the right to control, develop and utilize our own natural resources. Indigenous Peoples are entitled to these rights in addition to the rights guaranteed

*to all individuals by the full body of internationally agreed-upon human rights laws and standards.*³

Because indigenous women have a range of different roles and responsibilities, the impacts of loss of their territories and the effects of resource extraction on their lands are different to those of men:

- Indigenous women generally bear the main responsibility for collecting water and firewood for cooking in rural areas. When water sources become polluted or disrupted, or when access to forests is cut off, women are forced to walk greater distances. This increases their workload, limits their ability to meet their families' daily subsistence requirements and increases their need for cash to buy water or fuel.⁴
- While (young) men may be able to gain income through (temporary) employment, women generally have few opportunities in the 'male' logging and mining industries. As men are away for prolonged periods of time and are no longer able or willing to clear women's forest gardens, and to go out hunting or fishing, indigenous women become increasingly economically dependent on their husbands for cash income.⁵
- The loss of indigenous women's traditional subsistence activities combined with the influx of large numbers of transient male workers who seek paid sex work may force indigenous women to become sex workers themselves.⁶ This increases women's risk of contracting STDs (sexually transmitted diseases) and jeopardises their reproductive health, as well as the health of their newborn babies.
- The introduction of extractive industries is often accompanied by a rise in various forms of violence against indigenous women. Women who protest against mining companies may face physical as well as sexual harassment from company or State security guards. A rise in violence resulting from domestic disputes and increased alcohol and drug abuse is also commonly associated with the introduction of extractive industries in indigenous communities.⁷ Indigenous women who are victims of violence face particular barriers when seeking access to justice, including police unwillingness to carry out investigations and protect them, due to racial and ethnic discrimination, lack of economic resources to hire legal representation, and language barriers within the state judicial system.⁸

- Finally, indigenous women and their specific concerns and priorities are frequently excluded from consultation and consent procedures about resource extraction. This may be due to traditional gender roles, but may also be caused by a misguided presumption among government and business representatives that decisions are made exclusively by male chiefs or male heads of households. Indigenous women also have a distinct educational and linguistic disadvantage compared to men: women are more likely than men to be illiterate and to be monolingual (speaking only their indigenous language).⁹ They are thus excluded from key information about the impacts of resource exploitation, hampering their effective participation in decision making.

Addressing indigenous women's human rights

A major challenge when addressing indigenous women's issues from a human rights viewpoint is that the legal concepts that form the basis of conventional human rights standards, including equality and non-discrimination, do not reflect the experience and aspirations of indigenous women.

*Indigenous women suffer discrimination for a number of reasons that overlap in their lives; they are discriminated against because of their gender, their ethnicity and their position in society as women in poverty (their social class). These overlapping factors deepen the discrimination they suffer which means that they experience discrimination in a different way to women from other sectors of society.*¹⁰

The Inter-American human rights system was never designed to address the human rights of indigenous peoples, much less of indigenous women. In fact, the system's primary legal instruments, the American Declaration on the Rights and Duties of Man ('American Declaration') and the American Convention on Human Rights ('American Convention') do not mention 'indigenous peoples' at all. Yet, achieving equality on the basis of race and sex is among the principles of the OAS Charter (Article 3). During the past 20 years, the two main organs of the Inter-American human rights system – the Inter-American Commission on Human Rights ('IACHR' or 'Inter-American Commission') and the Inter-American Court of Human rights ('Inter-American Court') – have shown themselves to be increasingly open to and creative in addressing indigenous peoples' human rights concerns.



2008 – Interview held on Radio Qawinaqel in the programme of the Poqomam Linguistic Community of Academia de lenguas Mayas de Guatemala (ALMG).

Photo: ALMG.

For example, the right to individual property, protected under Article 21 of the American Convention on Human Rights, has been interpreted to encompass the close relationship – including intangible elements – between indigenous peoples and their lands.¹¹ The Inter-American Court has stated that failing to recognise the different ways indigenous peoples use and enjoy their property, including communal ways, 'would make the protection granted by Article 21 of the Convention meaningless for millions of individuals'.¹²

In addition, in recent years, the Inter-American Court has judged several cases of violence against indigenous women.¹³ Furthermore, the Inter-American Commission has organised a number of thematic hearings on the human rights of indigenous women¹⁴ and published several reports on discrimination against women – including indigenous women – with regard to maternal health care, access to justice for victims of violence and the right to education, among other issues.¹⁵

About this Toolkit

In order for the Inter-American human rights system to adequately recognise, protect and fulfil the human rights of indigenous women, it is necessary for

indigenous women to engage with the system, to make their voices heard and to tell their stories with all their complexities. This Toolkit, which contains a series of Information Notes explaining different aspects of the Inter-American system, is designed to help indigenous women and their advocates to use the system effectively. It is the result of a collective effort by indigenous women from, among other countries, Argentina, Costa Rica, Chile, Canada, Colombia, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama and Paraguay. They have worked together for many years to raise awareness about the opportunities offered by the Inter-American human rights system with regard to the rights of indigenous women. Between 2011 and 2014, Forest Peoples Programme, with the financial support of Oxfam Novib, worked with indigenous women from the above-mentioned countries to create this training resource, which can in the future be updated and further developed by indigenous women and indigenous peoples organisations.

Contents of the Toolkit

Information Note #1 provides background information on the OAS, its structure and the main human rights

bodies of the Inter-American human rights system: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Inter-American human rights system comprises several treaties and declarations which can be used to support advocacy activities. Information Note #2 describes the key legal instruments: the American Declaration, the American Convention, the Protocol of San Salvador, the Convention of Belém do Pará and the Draft Declaration on the Rights of Indigenous Peoples. It also includes documents and resolutions by the political bodies of the OAS which may be relevant to indigenous women.

Supervision of member states' compliance with human rights norms takes place mainly through a system of reporting, on-site visits and court decisions in response to complaints submitted by individuals and groups. Information Notes #3–6 explain how the supervisory procedures operate, including details on submitting individual complaints.

Filing a legal complaint is not the only avenue open to indigenous women. Information Notes #4a and 4b discuss the different Rapporteurships that focus on specific areas of human rights law, including a Rapporteurship on the Rights of Indigenous Peoples and one on the Rights of Women.

Information Note #7 analyses decisions and recommendations of the various bodies of the Inter-American human rights system, in particular the Inter-American Commission and the Court.

The Inter-American Commission of Women is the principal forum within the OAS for creating policy on the advancement of women's rights and gender equality. Information Note #8 describes other forums that can be used to advocate for indigenous women's rights. The

mechanisms to monitor compliance with the Protocol of San Salvador, which addresses economic, social and cultural rights, and the Inter-American Commission on Women are explained in this document, which also gives a brief overview of the mechanisms available at the United Nations level.

Other actions to ensure that the rights of indigenous women are respected

In addition to the actions made possible through the Inter-American human rights system, it is equally important that indigenous women, NGOs and other civil society organisations become involved at the domestic level. Actions undertaken simultaneously at the national level (within the country) and at the regional level (the Inter-American Commission in particular, and the Inter-American system in general) will make an impact and are more likely to bring about the desired changes. As part of this strategy, it is important to note that interventions by the Commission and other organs of the system can help to further the State's actions in achieving their previously set objectives.

Being heard at the government level

One approach should be to include actions undertaken with different State bodies, including each of its powers: Executive, Legislative, and Judicial; the bodies specifically involved with women's rights, indigenous peoples' and human rights in general, such as Presidential Commissions, Secretariats, Boards, etc.; Ombudsmen, and other institutions that may be relevant. Also included should be organisations across the spectrum of civil society, such as those directly related to indigenous peoples, women's rights and human rights in general, as well as media, press, academics and other private entities whose input may be conducive to achieving the objectives.

Below are additional suggestions of activities which could lead to real changes.

STAY INFORMED

In order to be effective in defending the rights of indigenous women, it is essential to have knowledge of:

- The regional and international framework in place to guarantee the protection of the rights of indigenous women and peoples;
- Public policies, initiatives, laws and regulations that are in violation of the rights of indigenous women;
- The actions, omissions, practices and customs that violate indigenous women's rights, despite legislation that can protect them.

TO RECEIVE UPDATES FROM THE COMMISSION AND THE COURT:

- Subscribe to receive email updates from the Inter-American Commission about relevant activities such as press releases, events, hearings, and new reports: www.oas.org/en/media_center/subscription.asp;
- Follow the Inter-American Commission on Facebook and Twitter;
- Subscribe to receive email updates from the Inter-American Court about press releases, hearings and new decisions: www.corteidh.or.cr/index.php/en/court-today/servicios-de-informacion.

GET TRAINING AND TRAIN OTHERS

- Organise training seminars for indigenous women so that they can learn about their rights and available remedies;
- Organise training and awareness-raising seminars for civil society organisations and for lawyers, judges, and other members of the country's legal and judicial community, as well as the press;
- Develop training materials to disseminate information on the rights of indigenous women and on available remedies;
- Ensure that all training and seminars include indigenous women's voices, opinions and experiences as training inputs.

PARTICIPATE

- Be visible. Take part in activities organised by other civil society organisations and use the opportunity to raise awareness among the other participants about the situation of indigenous women within the country;
- Attend courses, workshops and conferences on human rights, indigenous rights and women's rights. Ask to give a presentation on the rights of indigenous women. Ask questions of the speakers regarding the rights of indigenous women. Make an effort to include different individuals to speak and participate in activities;
- Encourage indigenous women to speak at events and meetings so that it does not appear that others are speaking on their behalf.

FUNDS:

- Legal Assistance Fund of the Inter-American Commission for petitioners: www.oas.org/en/iachr/mandate/Basics/fund.asp
- Victim's Legal Assistance Fund of the Inter-American Court: www.corteidh.or.cr/docs/regla_victimas/victimas_eng.pdf
- Funds for indigenous peoples to participate in UN-related meetings: <http://undesadspd.org/IndigenousPeoples/TrustFund/OtheropportunitiesforfundingwithinUNSystem.aspx>

UNITE

- Form a working group or network of organisations with similar aims in order to discuss strategies and to coordinate promotional and advocacy activities for the rights of indigenous women – as a proverb says, ‘if you wish to go quickly, go by yourself, but if you wish to go far, go together’;
- Consider partnering with other credible organisations to denounce violations of indigenous women’s rights by producing, among other things, reports on their human rights situation;
- Involve the media so that they can convey the message too.

PLAY THE ADVOCATE

- Seize every opportunity to advocate for the rights of indigenous women;
- Use the available forums to remind the government of its obligations under regional and international law;
- Share reports and awareness-raising material with the government to provide information on the human rights situation of indigenous women in the country;
- Remind the government of the recommendations made by the Inter-American Commission on Human Rights and the monitoring mechanisms of the United Nations.

INVOLVE NATIONAL HUMAN RIGHTS INSTITUTIONS

National human rights institutions, such as the Office of the Ombudsman and the Office of the High Commissioner for Human Rights, exist in most countries. Making contact with these institutions and sending them information and reports can be a good strategy. It is also good to invite them to come and observe the situation ‘on the ground’. Many of these institutions work closely with civil society organisations, thereby making it possible to develop joint strategies to achieve a greater impact in protecting the rights of indigenous women. These institutions can also potentially serve as spokespersons at the national level.



Assembly of the Force of Wayuu Women. Colombia. Photo: Miguel Iván Ramírez Boscán

¹ IWGIA, *The Indigenous World, Latin-America, Canada and the USA 2012*. See also: Forest Peoples Programme, *Forest Peoples Numbers Across the World*, 2012.

² *ILO Working Paper 1/2012, Indigenous Women Workers. With case studies from Bangladesh, Nepal and the Americas*, by Diane Vinding and Ellen-Rose Kambel, International Labour Organization, Geneva, 2012, p. 2 (footnotes omitted).

³ International Indigenous Women's Forum, *Mairin Iwanka Raya Indigenous Women Stand Against Violence, A Companion Report to the United Nations Secretary-General's Study on Violence Against Women*, 2006, p. 7.

⁴ 'Gender Issues in Consultation Processes', In: Cultural Survival Quarterly, Issue 25.1, 2001; Cæcilie Mikkelsen, *Indigenous Peoples, Gender, and Natural Resource Management, DIIS Working Paper no 2005/5*.

⁵ This process was noted, among others, in Suriname by indigenous women's organisation Sanomaro Esa (Ellen-Rose Kambel (ed), *Indigenous Rights, Gender and Empowerment*, Stichting Sanomaro Esa/Global Law Association, Tilburg/Paramaribo, 1999).

⁶ See for example the World Rainforest Movement report on 'Mining and indigenous women in the Philippines': <http://wrm.org.uy/articles,from,the,wrm,bulletin/section1/mining,and,indigenous,women,in,the,philippines/>

⁷ International Indigenous Women's Forum, *Mairin Iwanka Raya Indigenous Women Stand Against Violence, A Companion Report to the United Nations Secretary-General's Study on Violence Against Women*, 2006, pp. 18–19.

⁸ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II, Doc. 65, 28 December 2011.

⁹ See *ILO Working Paper 1/2012, Indigenous Women Workers. With case studies from Bangladesh, Nepal and the Americas*, by Diane Vinding and Ellen-Rose Kambel, International Labour Organization, Geneva, 2012, p. 10 (noting that, for example in Bolivia, 43 per cent of indigenous women are unable to speak a language other than their native language, compared to 28 per cent of men).

¹⁰ Carmen Herrera et al., *Indigenous Women of the Americas, Methodological and conceptual guidelines to confront situations of multiple discrimination*, 2014, p. 12.

¹¹ Among others, Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 12, para. 137.

¹² Inter-American Court of Human Rights, *Case of the Sawhoyamaya Indigenous Community v. Paraguay, Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 120.

¹³ See among others, Inter-American Court of Human Rights, *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*, Judgment of August 30, 2010. Series C No. 215; Inter-American Court of Human Rights, *Case of Rosendo Cantú and other v. Mexico, Preliminary Objection, Merits, Reparations, and Costs*, Judgment of August 31, 2010 Series C No. 216.

¹⁴ Thematic hearings were organised by the Commission in March 2013 ('Situation of the Right to Life of Indigenous Women and Girls in Canada'), March 2012 ('Complaints regarding Missing and Murdered Indigenous Women and Girls in British Columbia, Canada') and 'Discrimination against Indigenous Women in the Americas'), October 2011 ('Violence against Indigenous Women in the United States') and 'Access to Education for Indigenous, Peasant, Afro-descendant and Rural Women'), October 2006 ('General Situation of the Rights of Indigenous Women in the Americas – Argentina, Colombia, Canada, and Mexico'). The video and audio of the hearings can be accessed here: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=17>. Information Note #7 provides further analysis of the work of the IACHR with regard to indigenous women's human rights.

¹⁵ See among others: Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II, Doc. 65, 28 December 2011; and Inter-American Commission on Human Rights *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Social, Economic and Cultural Rights*, OEA/Ser.L/V/II.143, Doc. 59, 3 November 2011.

Information Note #1

The Organization of American States and the Inter-American Human Rights system

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



Photo: Johan Wildenhagen, Peru.

The Organization of American States (OAS) is the world's first regional organisation. It brings together all 35 independent states of the Americas. Its principal objectives are to achieve peace and justice, to promote the independent states' solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. The States Parties to the OAS have adopted several declarations and treaties to protect human rights, including the rights of indigenous peoples and women. The organs that are charged with supervising states' compliance with their obligations are the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights.

This Information Note introduces the different political and supervisory bodies of the OAS that are important in the field of human rights.

The Organization of American States: history and foundation

The origins of the Organization of American States can be traced back to 1889 when the First International Conference of American States resolved to create the International Union of American Republics. The OAS was formally created in 1948, at the Ninth International Conference of American States in Colombia, through the adoption of the Charter of the Organization of American States ('OAS Charter') (available at: www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm). The OAS is the world's oldest regional organisation.

In addition to adopting the OAS Charter, in 1948 the Member States adopted the American Declaration of the Rights and Duties of Man ('American Declaration'), which is the world's first general international human rights instrument, predating the Universal Declaration of Human Rights. The American Declaration sets forth a vast array of civil and political rights as well as social, economic and cultural rights to be enjoyed by every person in addition to a series of corresponding duties. The American Declaration is examined in further detail in Information Note #2.

The OAS was established for Member States 'to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence' (Article 1, OAS Charter). Among its principles are 'the fundamental rights of the individual without distinction as to race, nationality, creed, or sex' (Article 3(l), OAS Charter).

The OAS currently has 35 Member States: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Colombia, Costa Rica, Chile, 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 Vicente and the Grenadines, Suriname, Trinidad & Tobago, United States of America, Uruguay, and Venezuela. In July 2009, Honduras was suspended from the OAS as a result of the coup which ousted President José Manuel Zelaya.

The OAS's headquarters are in Washington, DC, and it has offices in several countries throughout the western hemisphere. A Permanent Secretariat works from the main headquarters, providing administrative support.

Structure of the OAS

According to the OAS Charter, the organisation has two political bodies which play an important role in the field of human rights: the General Assembly and the Permanent Council. In addition, over the last two decades, a series of Summits, gathering together a large number of State authorities, has taken on major importance for the organisation.

Summits of the Americas

The Summits of the Americas are the meetings of the Heads of State of the Member States to discuss and take action on political, economic and social aspects of particular interest to the region. Since 1994 there have been six Summits: Miami, USA in 1994; Santiago de Chile, Chile in 1998; Quebec City, Canada in 2001; Mar del Plata, Argentina in 2005; Port of Spain, Trinidad & Tobago in 2009; and Cartagena, Colombia in 2012. In addition, two Special Summits on Sustainable Development were held in Bolivia in 1996 and in Mexico in 2004 respectively. The

next summit will take place in Panama.

During each Summit, the Heads of State assume certain commitments. These can be found in a document called Declarations, in which they highlight the main issues of concern. Each Summit has a theme that frames all the decisions taken that year. A Plan of Action is also produced to tackle those issues. These actions are translated into a variety of mandates. The Summit Secretariat has created a follow-up system for each mandate (www.summit-americas.org/sisca.html). The Summit mandates provide a powerful means of understanding the Inter-American agenda: these are the issues of most importance to the States of the western hemisphere.

In the course of the Summits, several Declarations on Indigenous Peoples have been issued and Plans of Action have addressed issues of importance for indigenous peoples. These are reviewed in Information Note #2.

Indigenous peoples' participation

The Summits of the Americas provide an opportunity for indigenous peoples' and other civil society organisations to participate in the work of the OAS. At each of the Summits held so far, the Heads of State and Government have recognised the importance of including civil society in order to strengthen democracy. They have encouraged governments to cooperate with civil society organisations in the formulation and implementation of development policies and programmes and have acknowledged the powerful role of social actors in the consolidation of democracy.

The Secretariat of the Summits of the Americas actively cooperates with civil society organisations to provide opportunities for their continued participation in the activities of the OAS. Moreover, through the OAS General Secretariat and the Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities, the OAS has developed a number of initiatives to create opportunities for participation and discussion and to report on Summit policy developments in the Inter-American system. Such initiatives include:

- Regional forums and discussions organised by civil society organisations, with support from the OAS, to afford opportunities for policy-making and implementation and follow-up to the Summit mandates;
- Presentation of proposals and recommendations resulting from a series of national and regional consultations held with various actors on topics on the regional agenda, covering social, political, economic, and cultural issues;
- Establishment of strategic networks of civil society organisations, governments, and inter-American and international organisations to exchange information and provide feedback on implementation and follow-up of the Summit mandates;
- Institutionalisation of dialogue between civil society organisations and high-ranking national officials from Ministries of Foreign Affairs to exchange views on policy design and the fulfilment of Summit mandates;



Market Day in the municipality of Palín. Photos from the Archive of the Poqomam Linguistic Community, ALMG. Photo: ALMG

- Holding special meetings with civil society organisations during meetings of the Summit Implementation Review Group (SIRG) to exchange information on the Summit Process; and
- Elaboration of strategies to engage various social actors more effectively, including through the use of Information and Communication Technologies (ICTs), such as the Summits Virtual Community.

Participating in activities organised in the context of the Summits offers an excellent opportunity to contribute to greater awareness on the part of government authorities and members of civil society with regard to the situation of indigenous women in the Americas. Indigenous peoples' representatives, and civil society members in general, can also join the Summits of the Americas Virtual Community (SVC), an interactive website. The SVC brings together representatives of civil society organisations, international organisations, workers and union representatives, indigenous peoples, Afro-descendants, and members of the private and academic sectors, among others. Their participation enables ongoing discussion on the progress made, the challenges being faced and the regional collaboration in place for implementation of the mandates and commitments of the Summits of the Americas. More information on this useful platform can be found at <http://svc.summit-americas.org/>.

Information on meetings and activities in which NGOs can participate can be found at www.summit-americas.org/cs_meet.html.

Publications relating to civil society participation in the Summit Process are available at www.summit-americas.org/cs_pub.html.

General Assembly

The General Assembly is the supreme body of the Organization of American States and is composed of all Member States. Each Member State has the right to one vote in the General Assembly and is usually represented by the State's Minister of Foreign Affairs. The General Assembly meets at least once a year, but can hold special sessions as approved by the Permanent Council. Goals,

policies, and actions of the OAS are determined by the General Assembly. Its functions are defined in Chapter IX of the OAS Charter.

The General Assembly has adopted several resolutions on the rights of indigenous peoples and the rights of women. These are reviewed in Information Note #2.

Indigenous peoples' participation

Several networks allow indigenous peoples' and other civil society organisations to participate in the activities of the General Assembly. While these organisations cannot participate or intervene in the formal debates surrounding resolutions, they have the opportunity to make general statements. There are also parallel events organised by civil society organisations when the General Assembly meets.

Over the years, participation of civil society organisations has gained importance and a formal dialogue has now been instituted between civil society organisations and members of State delegations, run in parallel with the General Assembly meetings. More information on how civil society organisations can play a role at the General Assembly level can be found at www.oas.org/en/ser/dia/civil_society/index.shtml. See also the Introduction to the Toolkit with more tips on how indigenous peoples and women can participate.

Permanent Council

The Permanent Council reports to the General Assembly. Its powers are assigned under Chapter XII of the OAS Charter and other inter-American instruments, and include functions entrusted to it by the General Assembly. It is based at the OAS's headquarters in Washington, DC, and is composed of ambassadors of Member States. The Permanent Council is responsible for maintaining friendly relations among Member States and for assisting them in cases of dispute. It oversees the operations of the Organization's Secretariat and considers reports of the organs, agencies, and entities of the Inter-American system and presents observations and recommendations to the General Assembly.

The Permanent Council has various committees: the General Committee, the Committee on Juridical and Political Affairs, the Committee on Administrative and Budgetary Affairs, the Committee on Hemispheric Security, and the Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities. It can establish other committees, sub-committees, and working groups, as needed. It has done so in the past; for example, in 1999 it created a working group to develop a draft American Declaration on the Rights of Indigenous Peoples.

Indigenous peoples' participation

Indigenous peoples and civil society can attend the meetings of the Permanent Council and also lobby for resolutions related to issues of their own interest. They can also participate in the working groups set up by the Permanent Council. One example is the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, in which the participation of indigenous peoples has been key to advancing the negotiations. The American Declaration on Indigenous People is explained further in Information Note #2.

Overview of the Inter-American Human Rights System

The States Parties to the Organization of American States have adopted a series of instruments (Declarations and Treaties) to protect certain rights. These form the basis of the Inter-American Human Rights System. The system is composed of two main organs: the Inter-American Commission on Human Rights ('IACHR' or 'Commission'), and the Inter-American Court on Human Rights ('IA Court' or 'Court'). Within this system certain rights are protected and the States have clear obligations to promote and protect those rights. The main function of the system's principal organs is to supervise State compliance with these obligations and to act in the case of violation of a right protected under its instruments.

The Inter-American system formally came into being with the approval of the American Declaration of the Rights

and Duties of Man ('American Declaration') in 1948. In November 1969 the Inter-American Specialized Conference on Human Rights was held in San José, Costa Rica, at which OAS Member States adopted the American Convention on Human Rights ('American Convention' or 'Convention'). Ever since, the system has expanded the scope and deepened the protection of those rights through more concrete and binding obligations, such as those contained in instruments like the protocols and conventions on specialised matters. These include the Convention to Prevent and Punish Torture; the Convention on Forced Disappearance of Persons; and the Convention on the Prevention, Punishment, and Eradication of Violence against Women, among others; as well as the Rules of Procedure and Statutes of its bodies.

All these developments have taken place within the framework of the OAS.

Organs of the Inter-American system

Principal human rights bodies

- Inter-American Commission on Human Rights
- Inter-American Court on Human Rights

Political organs of the OAS

- Summits of the Americas
- General Assembly
- Permanent Council

Other human rights bodies

- Inter-American Council for Integral Development (Protocol of San Salvador)
- Inter-American Commission of Women

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights became operational in 1960. It is an autonomous body composed of seven experts in human rights who act in their personal capacity, i.e. they do not represent the State of which they are nationals. However, States elect members to the Commission through the OAS General Assembly. Given that it is the Commissioners who decide on cases, formulate the agenda, and carry out all the Commission's activities, its composition is key in guaranteeing full respect of human rights. Civil society organisations, therefore, carry out important advocacy work to ensure that the elected candidates are capable and knowledgeable with respect to human rights.

The Commission's headquarters are in Washington, DC, where its Executive Secretariat is based. The Executive Secretariat provides legal and administrative support to assist the Commission in performing its functions. It is organised in regional sections (Andean I; Andean II; Southern Cone; Mexico, Central America and the Spanish-speaking Caribbean countries; and the rest of the Caribbean and non-Spanish-speaking countries). In addition, the Secretariat gives support to Thematic Rapporteurships and special groups such as those responsible for the protection of rights (with responsibility for precautionary measures), Court and Friendly Settlements.

In 1969 the American Convention on Human Rights ('American Convention') (available at www.cidh.org/Basicos/English/Basic3.American%20Convention.htm) was adopted. This legal instrument guarantees a wide range of human rights, and defines the functions and procedures of the Commission and Court, as reviewed below.

The functions of the Inter-American Commission are defined in Article 41 of the American Convention:

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a. to develop an awareness of human rights among the peoples of America;*
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;*

c. to prepare such studies or reports as it considers advisable in the performance of its duties;

d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

g. to submit an annual report to the General Assembly of the Organization of American States.

The Commission's on-site visits, reports and hearings are discussed in Information Note #3. Information about the Rapporteurships can be found in Information Note #4 and the Petition system is analysed in Information Note #5.

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is the other main body of the Inter-American human rights system. It is an autonomous judicial institution established in 1979. The Court is composed of seven judges selected from among the human rights experts of Member States' nationals (Article 52, American Convention). The judges act in an individual capacity (rather than as representatives of their States). They are elected by the States that have accepted the jurisdiction of the Court. As with the Commissioners, civil society carries out advocacy activities in order to ensure that the selected members of the Court have a thorough knowledge of and experience in human rights.

The Inter-American Court has two main functions: (1) to adjudicate (decide) cases (see Information Note #6) which are binding on the States that are party to the case; and (2) to issue advisory opinions (in Spanish: *Opiniones Consultivas* or 'OC'). The Commission, States Parties to the American Convention and OAS bodies can request the Court to issue advisory opinions regarding the interpretation of the American Convention. Additionally, the Inter-American Commission on Women can request an advisory opinion from the Court on the Inter-American Convention on Violence against Women (Convention

of Belém do Pará). The Inter-American Commission on Women is a specialised organ of the OAS established in 1928 (see Information Note #8). This advisory competence strengthens the capacity of the organisation to resolve matters that arise from application of the Convention, since it allows the OAS bodies to consult the Court on topics relating to them.

The Court has thus far issued 20 advisory opinions. In some instances, advisory opinions have referred to specific provisions of the Convention, such as restrictions on the death penalty (OC-3), habeas corpus (OC-8), or restrictions to rights under states of emergency (OC-9). In other cases, they have referred to a specific country, such as the proposition for amendments to the Costa Rican Constitution (OC-2). Finally, they have also referred to the scope of the functions of other OAS bodies, such

as OC-15 and OC-19, which looked at the functions of the Inter-American Commission.

In terms of contentious jurisdiction, the Court covers all cases which concern the interpretation and application of the provisions of the American Convention, provided that States Parties to a case have recognised the jurisdiction of the Court, whether by special declaration or by a special agreement (Article 62(3), American Convention).

As of June 2014, 22 States had accepted the Court's contentious jurisdiction: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, Uruguay, and Venezuela.



Indigenous Ayoreo bracelets made from caraguatá fibre. Paraguay. Photo: TEKOKA Con Los Pueblos Indígenas.

Information Note #2

Legal instruments and norms pertaining to the rights of indigenous peoples and women

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Women of the Force of Wayuu Women. Colombia.

Photo: Miguel Iván Ramírez Boscán

While there are no specific legal instruments that protect indigenous women in the Inter-American system, this Information Note brings together key legal instruments pertaining to human rights, the rights of indigenous peoples, and the rights of women, which can be used to support advocacy activities and calls for the rights of indigenous women to be respected. It is recommended that indigenous peoples and civil society organisations appeal to these instruments in their efforts to develop further norms applicable to indigenous women and peoples.

This Information Note analyses the American Declaration, American Convention, Protocol of San Salvador, Convention of Belém do Pará and the Draft Declaration on the Rights of Indigenous Peoples. It also will examine documents and resolutions of the political bodies of the OAS, specifically related to indigenous peoples' rights, which may be relevant to indigenous women. Finally, it lists other inter-American and international standards that may be useful. Information Note #7 provides examples of ways in which the Court and the Commission have applied the instruments to protect the rights of indigenous women.

The American Convention, its Protocols and other Conventions are binding for the States Parties to each of them. This means that if one State has signed and ratified a Convention, this becomes mandatory for that State. The American Declaration is considered mandatory by the organs of the system as seen below.

American Declaration on the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man ('American Declaration') (available at: www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm) was the world's first general international human rights instrument, adopted in 1948, before the Universal Declaration on Human Rights.

The American Declaration sets forth civil, political, economic, social, and cultural rights. Unlike other documents, such as the American Convention, the Declaration does not distinguish between civil and political rights and economic, social and cultural rights. Its preamble recognises that all 'are born free and equal, in dignity and in rights' and proclaims that:

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

While the Declaration does not expressly set out specific rights for indigenous women and peoples, all the rights proclaimed in the declaration apply to them. Certain articles are especially relevant, such as the provisions concerning equality, the right to religious freedom and worship, and the right to the benefits of culture:

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

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 XIII. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

Article 23, relating to the right to property, protects indigenous peoples' rights to property. The Inter-American Commission and Inter-American Court have both declared that this provision protects indigenous peoples' rights to their land and natural resources.

Article XXIII. Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

Although Declarations are, in principle, not legally binding, both the Inter-American Commission and Inter-American Court have indicated that the American Declaration has, in part, attained the status of customary international law. Customary law (which derives from international obligations) arises from a practice that States follow out of a sense of legal obligation – even if the obligation is not written in binding documents. Both bodies have, therefore, understood that the Declaration gives content to binding human rights obligations. This has special relevance for States that have not ratified the American Convention on Human Rights, as is the case for Canada, Cuba, the United States, and other Caribbean countries, or countries that have withdrawn from the Convention, such as Trinidad & Tobago and Venezuela. However, even for States that have withdrawn from the Convention, cases solely based on the Declaration can be brought to the Commission. (See 'Maya indigenous community of the Toledo District v. Belize', Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004); see also Information Note #5a). The fact that parts of the Declaration are considered customary law is also highly relevant when addressing rights that are included in the Declaration but not specifically covered by the American Convention.

American Convention on Human Rights

The American Convention on Human Rights ('American Convention') (available at: www.cidh.org/Basicos/English/Basic3.American%20Convention.htm) was adopted at the Inter-American Specialized Conference on Human Rights in San José, Costa Rica, in November 1969 and entered into force in 1978. It is also known as the 'Pact of San José'. To date, 25 countries have ratified the treaty (www.oas.org/juridico/english/sigs/b-32.html). These are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad & Tobago, Uruguay and Venezuela.

Trinidad & Tobago denounced the Convention in 1998 as a result of disagreement over the death penalty. In 2012, Venezuela also denounced the Convention. The denunciation means that the Convention is no longer applicable to situations that occurred more than one year after the denunciation.

The rights guaranteed by the American Convention are for the most part civil and political. However, there is a general provision, entitled 'progressive development', which protects economic, social, and cultural rights as follows:

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires. (Article 26)

Additionally, the preamble to the Convention recognises the importance of economic, social and cultural rights, and that 'the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights ...'.

While all provisions apply to all without distinction, specific Articles relating to equality and non-discrimination, as well as the right to property, are particularly relevant for indigenous women and peoples:

The States Parties to this Convention undertake to

respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. (Article 1)

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law. (Article 24)

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. ... (Article 21)

Both the Inter-American Commission and Inter-American Court have the competence to oversee States Parties' compliance with the Convention.

What is the difference between the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights?

The American Convention on Human Rights, adopted in 1969, is a treaty, which is a legally binding instrument for States that have ratified it. Ratification is a procedure by which a government takes legislative measures to confirm the signature of a specific treaty and then deposit its instrument of ratification with the OAS General Secretariat. In so doing, a State confirms that it undertakes to respect the rights guaranteed by the ratified instrument.

Declarations serve to proclaim a shared vision or point of view about certain issues by the international community. Although non-binding, they have an undeniable moral force for States as they demonstrate common agreement on the issues being dealt with.

While Declarations may not always have the binding strength of Conventions, they are nevertheless important in that they articulate the duties and obligations previously affirmed in binding conventions and treaties and apply them to specific situations or people. Alternatively, they may be considered customary international law, i.e. norms which have become binding because States have considered them as having mandatory compliance. Moreover, in some cases, a Declaration may be the only norm to be applied when the State has not signed or ratified a Convention on similar issues.

What is the difference between Treaties, Conventions, Covenants, Pacts and Protocols?

In reality, the terms Treaties, Conventions, Covenants and Pacts are used interchangeably and have no technical difference. In all cases these documents are binding on the States that have signed and ratified them, consequently making them States Parties to these documents.

Protocols are also binding documents and their approval by the States Parties is technically equal to Treaties or Conventions. Protocols are additional instruments (supplements) to an existing Convention, Pact, or Treaty. In general, they address issues related to the Convention to which they are associated. Protocols are often negotiated and concluded separately, either to achieve consensus on the main text, or to include in the Protocol those issues that have not achieved the same level of consensus; or alternatively they are developed subsequent to the instrument.

To be part of a Protocol, the State must first sign (or sign simultaneously) the Convention to which the Protocol relates. Also, the State may choose to sign the Treaty and not join the Protocol.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: 'Protocol of San Salvador'

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador' or 'Protocol') (available at: www.oas.org/juridico/english/treaties/a-52.html) was adopted in San Salvador, El Salvador, in November 1988 and entered into force in 1999. It is an instrument that enshrines economic, social, and cultural rights in an attempt to complete the American Convention, which only contains one general provision on these rights. The Additional Protocol covers areas such as work, health, food and education, and provides for the right to a healthy environment. The Optional Protocol has often been used in cases involving indigenous peoples and interference with their land rights. It provides that:

Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. Article 6(1)

Everyone shall have the right to live in a healthy environment and to have access to basic public services. Article 11(1)

Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. Article 12(1)

Everyone has the right to education. Article 13(1)

The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. ... Article 13(2)

As with the American Convention, Article 3 of the Protocol contains a special provision on protection against discrimination:

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

The Protocol establishes two mechanisms to monitor compliance with its provisions:

- An individual petitions mechanism before the Inter-

American Commission and the Inter-American Court in cases of violation of trade union rights (Article 8) or the right to education (Article 13). The State against which a petition before the Inter-American Court is formulated must have expressly accepted its jurisdiction. See Information Note #5;

- The States' periodic reports mechanism, which requires States to submit periodic reports every three years detailing measures taken to ensure due respect for the rights set forth in the Protocol (Article 19). See Information Note #3.

To date, the Protocol has been ratified by 16 States: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam and Uruguay. On the other hand, Chile, Haiti, Dominican Republic and Venezuela have signed but not ratified the Protocol. (See: www.oas.org/juridico/english/sigs/a-52.html)

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará') (available at: www.oas.org/juridico/english/treaties/a-61.html), was adopted in Belém do Pará in June 1994 and entered into force the following year. It is the most ratified Convention of the Inter-American Human Rights System, with only Canada, Cuba, and the United States not party to the Convention.

The Convention recognises that violence against women constitutes a violation of human rights and seeks to regulate violence in both the private and public spheres (Article 1). It recognises that women have the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments (Article 4) and that violence prevents and nullifies a woman's exercise of her rights (Article 5). The Convention specifies that:

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and*
- b. The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination. (Article 6)*

The Convention establishes two mechanisms:

- (1) States have the duty to report to the Inter-American Commission on Women on measures they have adopted to address violence against women and to assist victims, as well as on obstacles they face in achieving these ends;
- (2) Petitions can be lodged with the Inter-American Commission to denounce a State's violation of its obligations under Article 7 of the Convention of Belém do Pará.

The Convention specifies that States Parties and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights an advisory opinion on the interpretation of the Convention (Article 11).

Draft American Declaration on the Rights of Indigenous Peoples

In 1989, the OAS General Assembly adopted Resolution 1022 (available at: [AG/RES. 1022 \(XIX-O/89\) www.oas.org/DIL/AG-RES_1022_XIX-O-89_eng.pdf](http://AG/RES.1022(XIX-O/89).www.oas.org/DIL/AG-RES_1022_XIX-O-89_eng.pdf)) requesting that the Inter-American Commission prepare a legal instrument which would enshrine the rights of indigenous peoples. The Commission believed that a specific instrument for indigenous peoples was needed to address the common problems they face, including: attempts at physical or cultural genocide; legal or de facto disregard for their rights and institutions; the usurpation of their lands and their right to collective and permanent use of their habitat; their legal or de facto condition as second-class citizens; the rejection or ignorance of their cultural and pedagogical practices; and the generalised destruction and erosion of their standard of living. The Commission also believed in the transcendental value of a regional instrument which would contribute to mobilising national efforts towards a better protection of indigenous peoples' rights.

Accordingly, the Commission approved a first Draft Declaration on the Rights of Indigenous Peoples in 1997 (available at: www.cidh.org/Indigenas/chap.2g.htm). A meeting of government experts was held in 1999 and it was decided to launch a negotiation process to achieve a consensus on the text of the Draft Declaration.

In 1999, the General Assembly instructed the Permanent Council to create a Working Group to continue working on the draft. Notably, the Resolution establishing the Working Group (see Resolution 1610, available at: www.oas.org/juridico/English/ga-res99/eres1610.htm) invited the Group to provide for appropriate participation by representatives of indigenous communities. Since 2001, the participation of indigenous peoples' representatives has been strengthened. A Specific Fund was created in 2002 to support the participation of indigenous

peoples' representatives (see: www.oas.org/consejo/CAJP/Indigenousspecificfunds.asp). In 2006, the Working Group initiated a final phase for the review of the text of the Draft Declaration, which is still ongoing.

Since 2006, the Chairperson of the Working Group has worked towards consolidating different text proposals from State delegations, representatives of indigenous peoples, specialised OAS bodies and independent experts.

For more than 20 years now, the Draft Declaration has been enriched by contributions from various stakeholders involved in the negotiation process. Documents have been developed to record the progress achieved and to highlight the points of contention. At the present time, the text being used in deliberations is called: Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples (available at: www.oas.org/dil/GT-DADIN_doc_334-08_rev4_eng.pdf). This working document emerged from 11 negotiation meetings and keeps track of the process of preparing and negotiating the Draft Declaration.

Content of the Draft American Declaration

The Draft Declaration contains individual and collective rights applicable to indigenous peoples. While the extent of these rights remains to be agreed, at present the Draft Declaration recognises the right of indigenous persons and peoples to enjoy all human rights protected under the UN, the OAS, and international law. In addition, it recognises the right to belong to one or more indigenous peoples, in accordance with the identity, traditions, customs, and systems of belonging of each people. The Draft Declaration stipulates that self-identification as indigenous peoples will be a fundamental criterion for determining to whom the Declaration applies.

The rights currently in the Draft Declaration include:

- The right to self-determination;
- The right not to be subjected to discrimination;
- The right not to be subject to genocide, racism, and other related forms of intolerance;
- The right to cultural identity, including the recognition and respect for ways of life, world views, spirituality, uses, customs, traditions, forms of social, economic and political organisation, forms of transmission of knowledge, institutions, practices, beliefs, values and dress;
- The right to preserve languages and means of communication;
- The right to indigenous educational systems;
- The right to freely exercise spirituality and beliefs;

- The right to maintain and promote indigenous family systems;
- The right to obtain the highest attainable standard of physical, mental, and spiritual health;
- The right to voluntary isolation.

It is important to highlight that the Draft contains specific provisions applicable to indigenous women. In its present text, the Draft establishes that:

Article VII. Gender equality

1. Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free of all forms of discrimination.

2. States recognize that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.

3. States shall adopt the necessary measures, in conjunction with indigenous peoples, to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children.

Issues of contention include indigenous peoples' right to: environment, use of natural resources, land and territories, self-government, their own legal system, development, the protection of their cultural heritage, and intellectual property.

Indigenous peoples' participation in the process of the Declaration

Since the Working Group was established, indigenous peoples' representatives have participated in special meetings. Beginning with the special meeting held in April 2001, the participation of indigenous representatives was strengthened and considered necessary for the process of discussion on the Draft Declaration to move forward. The General Assembly approved Resolution 1780, which recommended that the Permanent Council continue 'pursuing mechanisms for the accreditation and the appropriate means of participation in its deliberations of representatives of indigenous peoples so that their observations and suggestions may be taken into account'.

In addition to the intervention of indigenous communities' representatives in negotiations at the international level, the States have convened national consultations and also promote the exchange of information on these consultations among States.

Additionally, the Permanent Council has created a Special Fund consisting of voluntary contributions to support the participation of indigenous peoples' representatives in meetings related to the Draft Declaration. This Fund should be utilised in order to ensure the greatest participation of indigenous communities in the process. For example, during the Third Special Meeting of the Working Group, the Chair secured funding for the attendance of 55 indigenous representatives from the Member States.

Other Inter-American instruments

It is important to note that other important Treaties, Declarations and Principles have been adopted through the Inter-American system. Depending on the circumstances, it may be useful to refer to the

norms set forth in these instruments in advocacy efforts or in the context of a petition with the Inter-American Commission or cases before the Court. More information on the content of these instruments can be found by consulting the links below:

Name of the instrument (date of entry into force)	Link
Inter-American Convention to Prevent and Punish Torture (1985)	www.oas.org/juridico/english/treaties/a-51.html
Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1991)	www.oas.org/juridico/english/treaties/a-53.html
Inter-American Convention on Forced Disappearance of Persons (1996)	www.oas.org/juridico/english/treaties/a-60.html

Name of the instrument (date of entry into force)	Link
Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities (2001)	www.oas.org/juridico/english/sigs/a-65.html
Inter-American Declaration of Principles on Freedom of Expression (2000)	www.cidh.oas.org/declaration.htm
Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008)	www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm

OAS General Assembly Resolutions

As explained in Information Note #1, the OAS General Assembly is the supreme body of the organisation, composed of representatives from each State. Each State has one vote and the General Assembly's decisions are taken through Resolutions. Although the practical impact of the General Assembly's Resolutions can be difficult to appraise, they are nonetheless important for human rights organisations and OAS Member States. A Resolution from the General Assembly indicates that the issues dealt with in the Resolution are of importance for the OAS. While Resolutions do not necessarily entail States acting on them, they indicate a certain level of political commitment on the part of States with respect to certain issues. Moreover, they represent important advocacy tools that can be used to urge States to achieve certain goals.

Over the years, the General Assembly has passed several Resolutions regarding the rights of indigenous peoples. Most of them, however, relate to the Draft American Declaration on the Rights of Indigenous Peoples. (See: www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp)

Mandates of the Summits of the Americas

As explained in Information Note #1, at each Summit of the Americas, the Heads of State and Government undertake commitments, which take the form of Declarations. They also produce a plan for action and establish mandates to translate their commitments into actions. These documents are very important because they define the agenda of the region on different issues, many of which are directly

related to human rights, and in particular to the rights of indigenous peoples and women. It is important to remind States of these commitments and to press for compliance.

The commitments assumed by the Presidents in the Summits of the Americas can be consulted at: www.summit-americas.org/default_en.htm.

INTERNATIONAL SYSTEM

In addition to Inter-American norms, standards have been developed at the international level under the United Nations system. It is possible, and advisable, to support arguments made before the Inter-American system to defend and promote indigenous women's rights by also referring to international standards, provided that they are relevant. The Inter-American Commission and Inter-American Court have often referred to norms and principles of international law found outside the Inter-American system in order to help clarify, interpret and apply legal obligations within the Inter-American system.

Main international legal instruments

The table below sets out the main international instruments of particular relevance to indigenous peoples and women. Further information can be found by following the links provided. In addition, details of all of the cases relating to indigenous peoples and findings of the committees established to monitor compliance with these instruments can be found at www.forestpeoples.org/faceted_search/results/a%20compilation%20of%20un%20treaty. (This provides compilations of UN Jurisprudence and Recommendations.)

Main international legal instruments of relevance to indigenous peoples and women

Title (date of entry into force)	Links
General instruments	
Universal Declaration of Human Rights (1948)	www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng
International Covenant on Civil and Political Rights (1976)	www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
International Covenant on Economic, Social and Cultural Rights (1976)	www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

Title (date of entry into force)	Links
General instruments	
Optional Protocol to the International Covenant on Civil and Political Rights (1976)	www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx
Thematic instruments	
International Convention on the Elimination of All Forms of Racial Discrimination (1969)	www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx See also: www.forestpeoples.org/topics/guides-human-rights-mechanisms/publication/2010/guide-indigenous-peoples%E2%80%99-rights-under-intern
Convention on the Elimination of All Forms of Discrimination against Women (1981)	www.un.org/womenwatch/daw/cedaw/text/econvention.htm See also: www.forestpeoples.org/topics/gender-issues/publication/2012/guide-indigenous-women-s-rights-under-international-convention
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2000)	www.un.org/womenwatch/daw/cedaw/protocol/
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)	www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2006)	www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx
Convention on the Rights of the Child (1990)	www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
Convention on Biological Diversity (1992)	www.cbd.int/doc/legal/cbd-en.pdf
International Convention on the Protection of the Rights of All Migrant Workers and their Families (1990)	www2.ohchr.org/english/bodies/cmw/cmw.htm
Instruments on the rights of indigenous peoples	
ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1991)	www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C169:NO
ILO Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1959)	www.ilo.org/ilolex/cgi-lex/convde.pl?C107 See also: www.forestpeoples.org/topics/guides-human-rights-mechanisms/publication/2010/guide-indigenous-peoples-rights-international
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)	www.un.org/documents/ga/res/47/a47r135.htm
United Nations Declaration on the Rights of Indigenous Peoples (2007)	www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Information Note #3

The Inter-American Commission: On-Site Visits, Reports and Hearings

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Preparatory meeting to organise the “Caravan for Wounmainkat” within the framework of the “Campaign for the Elimination of All Forms of Violence against Wounmainkat”, Colombia. Photo: Miguel Iván Ramírez Boscán.

In this Information Note, three specific functions of the Inter-American Commission are discussed: 1) on-site visits, which typically result in country reports; 2) reports and studies on specific issues, and 3) hearings. These are all important opportunities for indigenous women to raise their concerns with the Commission.

On-Site Visits and Country Reports

In 1961, the Inter-American Commission carried out the first of its on-site visits to observe the general human rights situation in the countries under review and to investigate specific situations. By early 2014, the Commission had carried out more than 93 on-site visits (also known as in loco visits) to 24 countries. These figures exclude visits conducted by individual Commissioners or by Thematic Rapporteurs. The list of on-site visits can be found at: www.oas.org/en/iachr/activities/countries_all.asp.

The Commission has published 62 Country Reports, most of which were as a result of on-site visits (see: www.oas.org/en/iachr/reports/country.asp). From time to time the Commission will publish a report without a visit, for example, when it does not receive an invitation to visit the country. This was the case with Venezuela in recent years. See also Information Note #7 for examples of observations and recommendations issued by the Commission with respect to women and indigenous peoples.

Over the years, the nature, duration and scope of the visits have changed. Typically, but not always, following a visit a report is prepared and approved by the Commission. The report contains recommendations to the State to further the protection of the specific rights that the Commission considers to have been affected in that particular country, and which it has reviewed.

At present, the Commission focuses its visits and reports on those issues which it considers pressing. This was the case, for example, with the visit and Report on Guate-

mala in 2003, focusing on women, justice and human rights defenders, and indigenous peoples. Similarly, the Report on Haiti in 2007 focused on issues such as public security, the justice system and the situation of children.

For a visit to take place, the Commission requires a formal invitation from the State. Even when an invitation has been issued, organising the visit can be complicated, due to postponements by States and the challenges of coordinating numerous schedules to find available dates for all. In some cases, States issue standing invitations to the Commission, which has the effect of allowing the Commission to undertake a visit whenever it wishes to do so. Although this facilitates the organisation of a visit it is, nevertheless, necessary for the State to agree to specific dates.

Before undertaking a country visit, consideration must be given to time and resources. As both are limited, the Commission must give careful consideration to which States it will visit. This means that visits are most frequently undertaken in countries with urgent and serious human rights issues. In order for the Commission to carry out a visit, it is very important that it receives information about a specific situation within that country. In this respect, it is essential that civil society organisations and indigenous organisations in particular maintain a very close relationship with the IACHR's Thematic Rapporteurships. By doing so they can keep the Rapporteurships informed and increase the probability of a visit by the Commission to a particular country. Furthermore, in this way they can increase the likelihood that the Commission will address a particular topic.

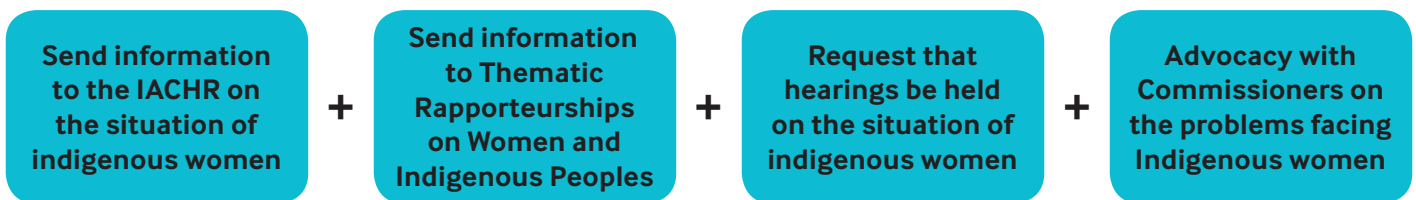
During an on-site visit, Commissioners generally meet with government officials, including the President, the Minister of Foreign Affairs and other Ministers whose portfolios are relevant to the issues within the scope of the visit. The State has to provide the Commission with all necessary facilities to conduct its visit and should grant access to any facility the delegation deems important to visit, including prisons and detention and interrogation sites.

The delegation also meets with representatives from civil society organisations and other relevant stakeholders, such as representatives of any UN missions, UN agencies, and other actors from the international community who are present in the country. It is important to note that while governments generally try to exercise some control over the agenda of the visits, the

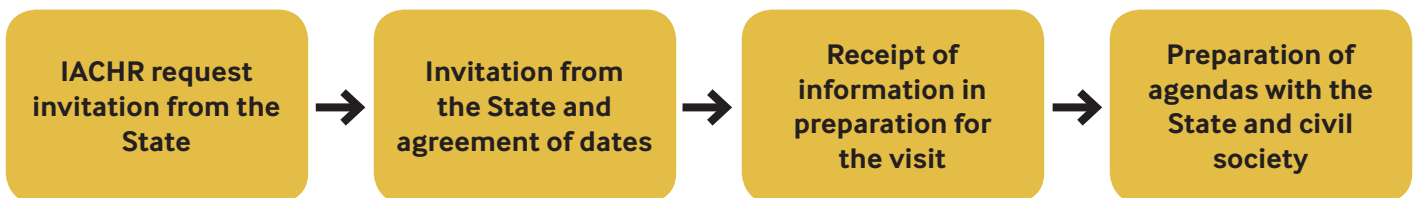
Commission handles the agenda itself. The Commission usually draws up the agenda in conjunction with the government of the country to be visited and shares it with State officials, but does not share its agenda for meetings with civil society organisations. This is to ensure that people can access the Commission during its visit without governmental interference or security problems. Furthermore, Article 56 of the Commission's Rules of Procedure provides that a State cannot take any reprisals against a person or an entity for cooperating with or providing information to the Commission.

During its visits, the Commission sometimes receives claims of human rights violations, either from individuals or groups. The Commission deals with these claims according to the procedure for processing petitions and cases, as explained in Information Note #6.

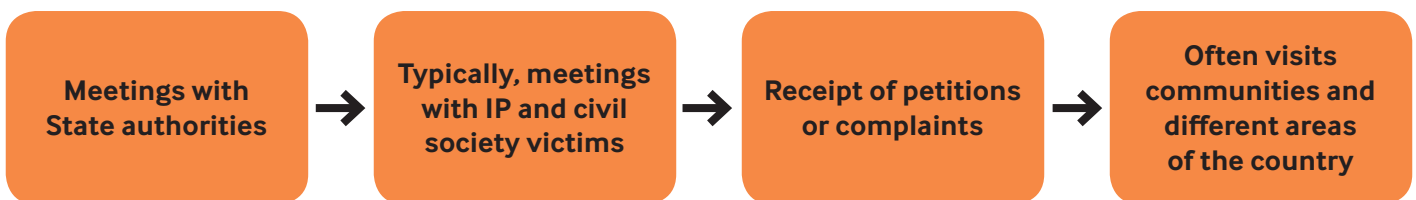
TO OBTAIN A VISIT



PREPARING THE VISIT



DURING THE VISIT



AFTER THE VISIT



Indigenous peoples and on-site visits

Indigenous peoples and other civil society organisations have a very important role before, during and after an on-site visit. First, they can lobby the Commission in order to prompt a decision to undertake a visit to their country. This can be done, for example, during a hearing (which will be discussed below), or they can make a written request; they can also approach a Commissioner to request a visit. Once the Commission has decided to conduct a visit, indigenous peoples and other civil society organisations can help to get the invitation from the government, without which the Commission cannot visit the country. In addition, it is important to send relevant information to the Commission in preparation for the visit, as to which issues are pressing in the country. It is also important to mention the individuals, groups and institutions – governmental or not – with whom the Commission should meet.

During the visit, the Commission schedules meetings with indigenous peoples and other civil society organisations. Because of time constraints during its visit, the Commission schedules the meetings to be attended by more than one organisation. It is important, therefore, that the organisations work together to gain as much agreement as possible on a common agenda, and also to prepare for the meeting in order to make the best use of the available time with the Commission.

After the visit, the indigenous peoples and civil society can use the conclusions and recommendations, as well as the report itself, if issued, to ask the government for changes in the law, policy or practice in order to comply with the Commission's recommendations. The recommendations contained in country reports can help to set standards on the issues dealt with.

Reports and studies

In addition to country reports, the Commission prepares reports on specific issues. Sometimes these reports are called studies, in which a particular topic is treated in more depth, but there is no substantial difference between the two. In preparing such reports, the Commission often requests information from States and civil society organisations. In general, the Commission sends requests for information to those organisations

that maintain regular contact with the Commission and which are included in its database. The requests are also published on the Commission's website.

The Commission has published several reports on the rights of indigenous peoples and the rights of women. These are addressed in Information Note #7. The Commission's reports and studies are available at: www.cidh.oas.org/pais.eng.htm.

Indigenous peoples and reports

Indigenous peoples and other civil society organisations are key in providing the information used by the Commission to write its reports and studies. Increasingly, the Commission also prepares questionnaires for States and civil society organisations, including indigenous peoples. The Commission distributes these among the organisations on their database and also publishes them on the Commission's website.

As with on-site visits, indigenous peoples and civil society organisations can request the Commission to issue a report on a specific issue. This can be done while a hearing is taking place, by written request or by talking with the Commissioners.

Reports and studies set standards that can be used by indigenous peoples and civil society in general to achieve the legal recognition of a specific issue in their own country, get public policy enacted or strengthen State practice.

Hearings

In addition to hearings that the Commission may hold for petitions and cases, precautionary measures, friendly settlements, and follow-up (see Information Note #5), the Inter-American Commission also holds hearings on the general human rights situation in a country or region, or a thematic issue. These hearings normally take place twice a year, during the Commission's sessions. Approximately 50 hearings are held each year. Hearings are regulated under Chapter VI, Articles 61 to 70, of the Inter-American Commission Rules of Procedure. (See: <http://www.cidh.org/Basicos/English/Basic18.RulesOf-Procedure/ACHR.htm>.)

The Commission can decide to hold hearings on its own initiative or at the request of an interested party, although generally the hearings are held at the request of one of the parties. The request for a hearing to present 'testimony or information to the Commission on the human rights situation in one or more States, or on matters of general interest' must be sent in writing to the Executive Secretariat at least 50 days prior to the beginning of the targeted session of the Commission. The request must include: the purpose of the appearance, a summary of the information to be provided, the identity of the participants, and the approximate time required for the hearing. If the Commission accedes to a request for a hearing on the human rights situation in a State, it normally invites the State concerned, or other interested parties to participate, unless it decides to hold a private hearing. The Executive Secretariat informs the participants of the date, place, and time of the hearing at least one month in advance, unless exceptional circumstances require otherwise.

At the hearing, each party will be allocated a period of time for its presentation. Additional time for a response may also be allocated. Once all the presentations have been made the Commission may proceed with questions. Hearings generally last between 45 minutes and an hour. It is important that time is correctly distributed between the various interveners. In hearings of a general nature, such as thematic hearings, it is usual for several organisations to be present. This can be problematic because normally every organisation wants enough time to make their own presentation. Sometimes, they are not sufficiently prepared time-wise, and not everybody has the time to speak. It is important to have clarity

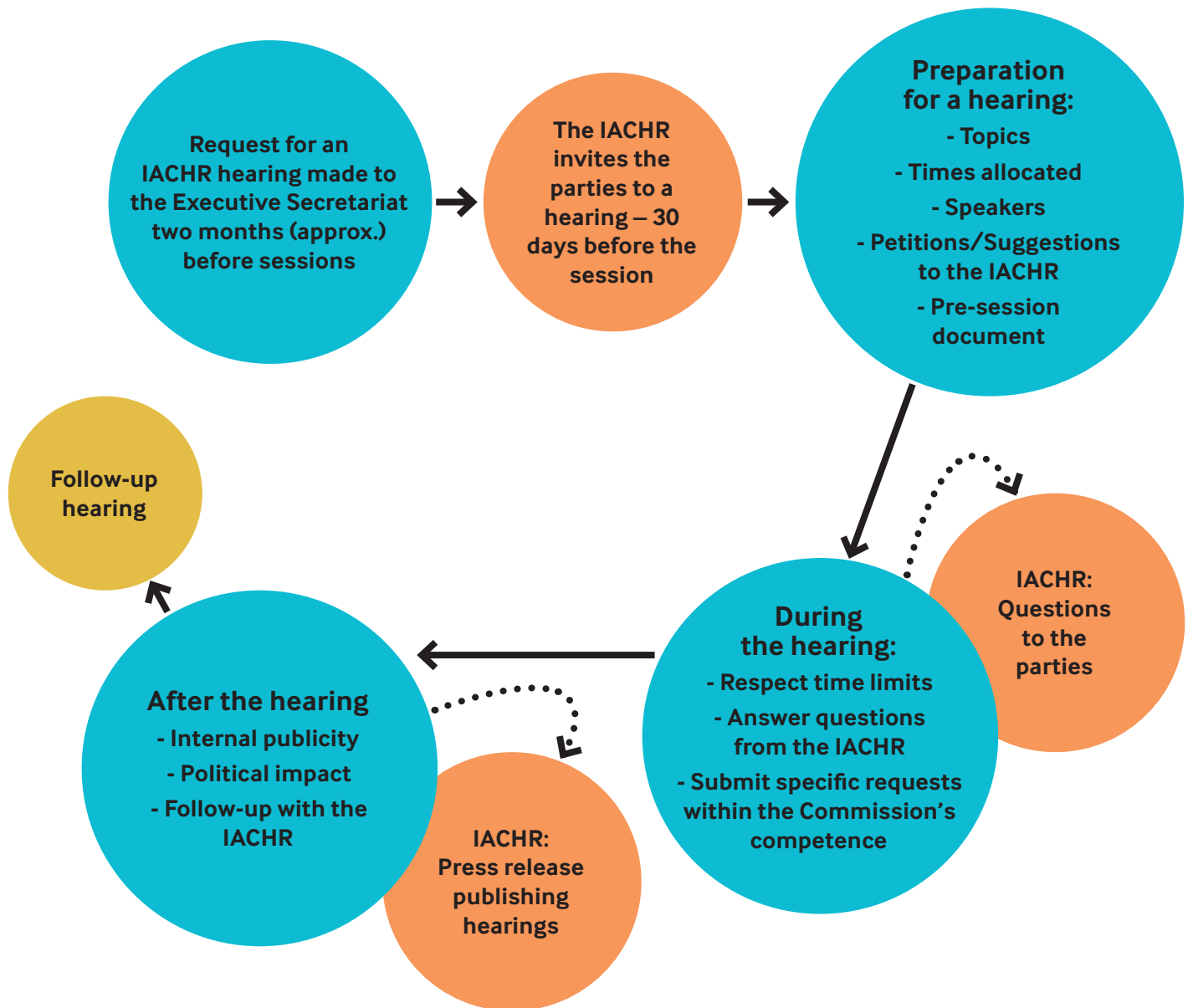
on the objective of the hearing as well as the fact that it is essential to leave time for the Commission to ask questions.

The hearings are not formal. However, that is not to say that they are not organised. It is always advisable to remember the objective set by the hearing and not to lose track of it. It is very important to allocate time appropriately and to decide which information will be presented in the short time allowed. For example, 20 minutes is not long enough to present the situation on indigenous women in the continent. In fact, it is not long enough to present the situation of indigenous women in one country or even one community, so previous preparation for the hearing is very important.

When a hearing is related to a case, the objectives may be easily narrowed down. But when it is a thematic hearing it is easy to lose the focus. So it is important that organisations prepare themselves properly before the hearing. Also, it is important to have the right balance between presentations from international organisations, who are often more familiar with proceedings before the Commission, and local organisations, who are more familiar with the situations related to the issues that are to be presented.

There are various ways to prepare an oral presentation but it is important that it be informative and factual with a central theme and one or more specific examples. It is useful to write the presentation in advance and to practise several times before the hearing.

Each year, the Commission holds a number of hearings related to the rights of indigenous peoples and to women's rights. In 2006, it held a hearing on the general situation of indigenous women in the Americas and received information on the effects of dual (gender and ethnicity) discrimination against them (see: <http://www.cidh.org/annualrep/2006eng/Chap.2.htm#126th>). Since 1996 the Commission has held 82 hearings relating to the rights of women and 95 hearings on the rights of indigenous peoples. The Commission's website has a search engine for hearings (see: <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=EN>). In addition, since 2007, audio recordings of all the hearings are available; for some hearings, pictures and videos are also accessible.



The 'Jurisprudence on Indigenous Women in the Americas' Project

Account based on a presentation by Natalia Silvina Sarapura, Carmen Herrera, Marie Leger and Joanne Ottereyes during a course held in Boruca, Costa Rica, June 2012.

The project on 'Jurisprudence on Indigenous Women in the Americas' was set up through concerted efforts of the Women's Continental Network, Enlace and especially its Commission on International Instruments. During discussions of the Draft of the UN Declaration on the Rights of Indigenous Peoples, several indigenous women reflected on the fact that although the Inter-American system is moving forward, indigenous women are still not visible, despite their inclusion within the indigenous movement's agenda. They noted that progress achieved with regard to rights did not address women's issues.

The project involved women from Colombia, Mexico, Canada and Argentina. Each country chose the specific subject that they wanted to address, covering a range of topics such as legal discrimination (Canada); multiple discrimination in access to health care (Mexico); women in armed conflicts, in particular, indigenous women (Colombia); and equal access to education (Argentina).

The project for jurisprudence on indigenous women in the Inter-American System was initiated in 2005, with the primary goal of preparing a case to bring visibility to the situation of women in a given country, and to be representative of the situation of indigenous women in other countries. The main objective was to highlight the measures necessary to ensure respect for indigenous women's rights, and to demonstrate the State's lack of compliance with its obligations.

The project started at the local level to raise women's awareness about their rights. When the search for a case began, it was realized that not only women do not have access to justice, but they do not know their rights, and even if they do they often cannot bring themselves to make a formal complaint. In addition, it was recognized that a case can take more than seven years in the system and that submitting a case can be difficult. The project organisers decided to start defining the issues, before identifying a case. During this process, it became evident that there was nothing specific on indigenous women in the Inter-American System. It therefore became necessary to create awareness within the Inter-American System with regards to indigenous women.

In 2006, a Thematic Hearing was requested. It was a process of trial and error. Work was carried out with key allies (in this case the University of Quebec in Montreal's International Clinic for the Defense of Human Rights, and Rights and Democracy) while respecting the experience of indigenous communities. The process was regarded as a learning experience. The hearing had two main objectives: to create awareness within the Commission, and to learn about the proceedings before the Commission.

Preparation for the hearing involved discussing documentation, deciding which topics to submit, how questions should be asked, how to anticipate the Commissioners' reactions, and how to allocate time. The preparation was closely guided by the Clinic staff. Work on how to submit different issues from each country was undertaken in teams, but showed the patterns applicable to the different countries. Of all the participating organizations and communities, only ONIC from Colombia had previously attended a hearing, but none of the participants of this programme had been present at the prior hearing. Seeing the system more closely proved to be a good experience.

During the hearing the participants drew attention to the fact that the Rapporteur on the Rights of Women was a man and the Rapporteur on the Rights of Indigenous Peoples was from the United States. This was something to reflect on. The Commissioners asked questions. They did not go into much detail, but they showed interest. Natalia commented: 'I felt that although they may be experts in human rights, they don't have an image of indigenous women, not even from a magazine'.

Most of the questions were related to access to various services and discrimination: whether access was adequate; 'In a sense, these are questions that no longer reflect the current situation. They were asking about access to health care or education. They wanted to know if there has been any progress with respect to these issues'. (Natalia Silvina Sarapura)

The hearing was useful in order to understand where the Commission stands. Little follow-up was given **after the hearing**, but work was still being conducted as part of the project. 'That was part of the trial-and-error process undertaken by the teams' (Natalia Silvina Sarapura). At a meeting in 2010, the project again sought to see if awareness on indigenous women's issues had increased in the IA System. There was for the first time a majority of women Commissioners and the group working on the project also wanted to advocate in particular for the adoption of a methodology specific to indigenous women's

rights issues. Participating in the hearing had a significant impact at the local and national levels. It had an impact in Argentina because a Northern organization went to the IACHR, and that attracted attention. 'It created a hornet's nest, but it did not solve the problems.' (Natalia Silvina Sarapura). The experience gained in 2006 proved useful at a subsequent hearing: 'The second hearing in 2012 was the reflection of the experience acquired'. (Natalia Silvina Sarapura)

'For us, being able to influence the System was not only about finding a case to submit. In fact, it was about finding the driving force to enable the mobilization of indigenous women and build their capacity. It was also about finding a vision for the human rights work to be undertaken. Everything that I know about the system I learned in the context of this project... Indigenous organizations are also able to receive technical training, even though we are not lawyers.' (Natalia Silvina Sarapura)

In spite of the project, in 2012, Argentina still does not have a case to submit on the right to education (which was the main objective set for that country within the project), but a process for identifying problems has taken place. However, the fact remains that women are still reluctant to file complaints. This is the reason why work has been focused on community mechanisms to examine the situation of women in the communities, capacity building in rights, and strengthening the work at the local level. 'Now there are better political conditions that allow our experience to be considered as our own, making it possible to use the System, and giving us the opportunities to develop processes within the movement.' (Natalia Silvina Sarapura)

In 2012, as a follow-up to the first hearing, a request for a new hearing was submitted to the Commission. This took place in March 2012. In addition to updating the information submitted in 2006 and looking at the lessons learned over time, the objective was to make concrete proposals to the Commission, who could then incorporate them in its agenda. New opportunities were sought with the Commission's new team. The preparation for a hearing creates many expectations. The process takes time and it is not certain that the case will be heard. In this case the process was successful.

"A preparatory meeting with the Rapporteur on the Rights of Women took place the day before the hearing. The Rapporteur wanted more information on the situation of indigenous women from Argentina. We learned as well that the Commission had changed its practice, and that it now demanded a written document before the hearing. We were also informed that it was good practice to attach a summary in English, because some of the current Commissioners do not speak Spanish. As a consequence, we had to work much harder before the hearing, but it was positive for the project. The relationship with other organisations and networks is critical. Some of them can offer knowledge and economic assets that smaller organisations do not have." (Natalia)

During the hearing it was put to the Commission the importance of having specific methodological guidelines to deal with indigenous women's issues. In particular, it was emphasised that there is a need to take collective issues into account, as well as specific matters of cultural relevance to indigenous women. A lot of discussion supported the preparation of the methodological guidelines, which were published in January 2014. The methodological guidelines explain that the decisions of the IA System have not so far considered both women's rights and indigenous people's collective rights issues when they dealing with indigenous women's rights cases. They call for this to change and stress the importance of the working with the overlap of legal and human rights concepts pertaining to indigenous peoples' rights and women's rights when dealing with indigenous women's rights cases.

"Many lessons **have been learned** as part of this process. One is that indigenous women can use existing rights under regional and international instruments and call for further specific standards to be adopted so that indigenous women's rights issues can be adequately addressed. But it will take time to give these rights meaning."

Based on this principle, each right being sought is of a different nature in each country. For example, women in Argentina have carried out work on the right to education. In Colombia, work has been undertaken on the issue of the right to live a life free of violence, incorporating the concept of spiritual violence as an issue that is not given consideration in the Convention of Belém do Pará. In Mexico, work has been carried out with indigenous women in different areas on the right to health care and to reproductive health. In Canada, work has focused on the right to identity. These examples were presented to illustrate the framework within which the Commission can carry out its investigations with affected women, according to which right is to be protected.

The common and constant thread is always the issue of discrimination that affects all rights, and particularly economic, social and cultural rights. During the preparation for the hearing it was emphasized that the State fails to give adequate protection when dealing with issues relating to discrimination. This argument helped to identify other rights.

During the hearing on Argentina, the opportunity was taken to request an on-site visit to Colombia. Three Commissioners were present at the hearing and after it was announced that a joint Regional Report of the Special Rapporteur on the Rights of Women and the Special Rapporteur on the Rights of Indigenous Peoples would be realized. It was also mentioned that Indigenous Women were a priority for the IACHR

Notes



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Information Note #4a

Rapporteurships at the Inter-American Commission: mandates and methods of work



Photo: Johan Wildenhagen, Peru.

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The Inter-American Commission on Human Rights ('IACHR' or 'Commission') has the power, under Article 15 of its Rules of Procedure, to 'create Rapporteurships with mandates that are linked to the fulfilment of its functions of promotion and protection of human rights, and in accordance with the thematic areas deemed of special interest for achieving this purpose'. Therefore, different Rapporteurships or Thematic Units have been created to carry out activities which focus on specific human rights issues. The Rapporteurships may function as Thematic Rapporteurships, assigned to a member of the Commission, or as Special Rapporteurships, assigned to other persons designated by the Commission. This Information Note focuses on the Rapporteurships pertaining to the Rights of Women and to the Rights of Indigenous Peoples.

Rapporteurships were created in 1990 with the creation of the Rapporteurship on the Rights of Indigenous Peoples. *Units* were created in 2001, when the Executive Secretariat created the Unit for Human Rights Defenders, managed by the Executive Secretary, and which today is the Rapporteurship on Human Rights Defenders. There is no substantial difference between the work carried out by a Unit or a Rapporteurship. Both have similar functions aimed at centralising the work that the Commission carries out on a specific issue.

As of 2014, there are ten thematic areas: eight are *Thematic Rapporteurships*, one is a *Special Rapporteurship* and one is a *Unit*.

- Rapporteurship on the Rights of Indigenous Peoples (see detailed notes on this mechanism in Information Note #4b);
- Rapporteurship on the Rights of Women (see detailed notes on this mechanism in Information Note #4b);
- Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination;
- Rapporteurship on the Rights of Persons Deprived of Liberty;
- Rapporteurship on Human Rights Defenders;

- Rapporteurship on the Rights of the Child;
- Rapporteurship on the Rights of Migrant Workers and their Families;
- Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons;
- Special Rapporteurship for Freedom of Expression;
- Unit on Economic, Social and Cultural Rights

Rapporteurships or Units are part of the Commission. Each Rapporteurship (special or thematic) and Unit is assigned to a Commissioner, who becomes a Rapporteur for that specific issue. One of the multiple obligations of the Commission's members is to be in charge of a Rapporteurship or Unit. The only exception is the Special Rapporteurship for Freedom of Expression, which is being conducted by a non-member of the Commission who works full-time in this role. Some of these mechanisms benefit from the support of a staff member of the Secretariat working full- or part-time and this person is often, but not in all cases, a lawyer. Over the years, the Commission has tried to balance the capacities of all Rapporteurships/Units. Nonetheless, how active a Rapporteurship is depends a great deal on human and economic resources and on the personal involvement of each Rapporteur.

Rapporteurships/Units generally have the following roles:

- Developing **specific reports** on the issues for which they are responsible;
- Undertaking **working visits** to different countries related to the issues that they manage;
- Taking part in **on-site visits** with the rest of the Commission;
- Assisting with the work developed in each country of rel-

evance to its thematic area, either by preparing **chapters of reports** related to their own working topics, assisting with reports of cases, or **taking part in hearings**, etc.;

- Conducting **awareness-raising activities** on their working topics, either at the Commission Headquarters or in different countries.

All the reports produced by Rapporteurships are approved by the Commission.

Rapporteurships and indigenous women

Indigenous peoples, in particular indigenous women, and civil society organisations can make significant contributions to the work of Rapporteurships while keeping in mind that Rapporteurs have a heavy workload.

While the various Rapporteurships operate differently and have different internal capacities, they all welcome and benefit from the contributions of indigenous peoples and civil society organisations to support and complement their activities.

Here are some ideas for activities to be undertaken by indigenous women:

- Inform the Rapporteurs on the Rights of Women and on the Rights of Indigenous Peoples about the situation of indigenous women and developments at the national level by letter or email sent to the Inter-American Commission Secretariat (addressed for the attention of the Rapporteurs);
- Document violations of the rights of indigenous women at the national level and share evidence with the Rapporteurs;
- Communicate with the Rapporteurs prior to their official missions and arrange a meeting with them when they are in your country or elsewhere (such as during a Commission session in Washington, DC);
- Invite the Rapporteurs to participate in awareness-raising activities on the rights of indigenous women;
- Use the strategies contained in the thematic reports for working at the internal level within your organisation and communities, as well as for domestic advocacy with States. These reports examine the States' duties in a more concrete way, with regard to specific rights.

Relevance of other Rapporteurships

Information Note #4b focuses on the Rapporteurships on the Rights of Women and on the Rights of Indigenous Peoples. Other Rapporteurships, however, may be relevant in certain cases, such as when other issues relate to indigenous women's rights. These are mentioned briefly below, in order of the most recently established:

- The Unit on Economic, Social and Cultural Rights was created in October 2012 (see: www.oas.org/en/iachr/desc/) in accordance with the Commission's commitment to strengthen its work to protect and promote

economic, social, and cultural rights, and in response to suggestions made by the States and by civil society. Through this Unit, the IACHR will continue its collaborative efforts with the OAS Working Group on Economic, Social, and Cultural Rights (created by the Protocol of San Salvador, see Information Note #1). The Unit's mandate is to cooperate with the analysis and evaluation of the situation of these rights in the Americas; provide advice to the IACHR in the proceedings of individual petitions, cases and requests of precautionary and provisional measures which address these rights; undertake working visits to the OAS Member States; and prepare studies and publications.

- The Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons (LGBTI) (see: www.oas.org/en/iachr/lgtbi/default.asp) was created by the Commission in November 2011 in order to strengthen its capacity to protect their rights. This Rapporteurship was first created as a Unit, taking into consideration information received on those issues by the Commission over the years. This was in response to the Commission's Strategic Plan, which aims at a comprehensive approach to promote the harmonious development of all its work areas based on the interdependence and indivisibility of all human rights and the need to protect the rights of all individuals and groups historically subjected to discrimination.
- The Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination (see: www.oas.org/en/iachr/afro-descendants/default.asp) was created in 2005. It is responsible for activities conducive to stimulating, systematising, reinforcing and consolidating the Commission's actions on the rights of people of African descent and on racial discrimination. The core objectives of the Rapporteurship include: working with OAS Member States to generate awareness of the States' duty to respect the human rights of Afro-descendants and to eliminate all forms of racial discrimination; to analyse the current challenges confronting countries of the region in this regard; to formulate recommendations designed to overcome the obstacles and identify and share best practice in the region with respect to this matter; and to provide any technical assistance requested by Member States in the implementation of the recommendations in national law and practice.
- The Rapporteurship on the Rights of Persons Deprived of Liberty (see: www.oas.org/en/iachr/pdl/default.asp) was created in 2004 to keep track of the situation of persons deprived of any form of freedom. The Rapporteurship is involved in promotional activities, participates in on-site visits, writes reports and contributes to the normative development of the system. In 2008, at the request of the Rapporteurship, the Commission adopted the 'Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas' by means of Resolution 1/08. (Text available at www.cidh.org/basicos/english/basic21.a.principles%20and%20best%20practices%20pdl.htm.)
- The Rapporteurship on Human Rights Defenders (see: www.oas.org/en/iachr/defenders/default.asp) was created in 2001. Having been created by the Commission's Executive Secretary, it was originally established as a Unit, without a Commissioner in charge of it. However, in 2011, the IACHR decided it should become a Rapporteurship. Its functions are to receive information on the situation of human rights defenders in the region, to maintain contact with non-governmental and governmental organisations, and to coordinate the work of the Executive Secretariat on this issue.
- The Rapporteurship on the Rights of the Child (see: www.oas.org/en/iachr/children/) was created in 1998 and cooperates with the analysis and evaluation of the situation of the human rights of children in the Americas. It also provides advice to the Commission on the proceedings of individual petitions, cases and requests of precautionary and provisional measures, which address the rights of the child. The Rapporteurs under this mandate have always been very active; they have conducted on-site visits and issued special reports. They have organised seminars, workshops and meetings about international human rights standards.
- The Special Rapporteurship for Freedom of Expression (see: www.oas.org/en/iachr/expression/index.asp) was created in 1997 and is alone in having a dedicated full-time Rapporteur who is not a member of the Commission. It was created as a permanent unit that is functionally autonomous and has its own operating structure. The Special Rapporteur issues an Annual Report that forms part of the Annual Report of the Commission. In October 2000 the Commission approved the Declaration of Principles on Freedom of Expression prepared by the Rapporteurship (available at www.cidh.org/basicos/english/Basic21.Principles%20Freedom%20of%20Expression.htm).
- The Rapporteurship on the Rights of Migrants (see: www.cidh.org/migrantes/defaultmigrantes.htm) was created in 1997. The Commission decided to limit the work of this mandate to situations in which the worker is not in their country of origin. The Rapporteurship follows the impacts of political and economic crises on migratory flows in the region, examines changes in and debates on legislation and policies regarding migration, and investigates state practice in this area. It also participates in conferences and other promotional activities. The Rapporteurship participated in the proceedings of Advisory Opinion OC-18 before the Inter-American Court. This Advisory Opinion was requested to clarify the scope of the right to equality and the principle of non-discrimination, and their application to the labour rights of workers whose immigration status in the state in which they live and work is irregular.

Information Note #4b

Rapporteurships at the Inter-American Commission: mechanisms relevant to the rights of women and indigenous peoples

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



Photo: TEKOHA Con Los Pueblos Indígenas.

Rapporteurship on the Rights of Women

The Rapporteurship on the Rights of Women (see: www.oas.org/en/iachr/women/mandate/mandate.asp) was established in 1994 to ensure the protection and respect of women's rights in Member States. The Inter-American Commission was of the view that despite the guarantee of equality in the constitutions of Member States, national legal systems and practices revealed the persistence of gender-based discrimination across the region.

The Rapporteurship was established 'with an initial mandate to analyse the extent to which Member State law and practices that affect the rights of women comply with the broad obligations of equality and non-discrimination set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)'.

The mandate of the Rapporteur has changed over the years but has always placed special emphasis on the need to eliminate violence against women, which, as recognised in the Convention of Belém do Pará, is a manifestation of gender-based discrimination. The Rapporteur's current mandate focuses on the obstacles preventing women from being able to freely and fully exercise their fundamental rights and seeks to promote a comprehensive vision of how to realise those rights.

Since its creation, the Rapporteur has supported the Commission in various ways, including by:

1. preparing special reports and studies on the rights of women;
2. providing advice on complaints involving women's rights and on precautionary measures, and by providing assistance in the preparation of reports on cases and following up with Member States;
3. investigating issues that affect women's rights during country visits, and drafting country reports, in which the Inter-American Commission makes recommendations to assist Member States in eliminating discrimination and violence against women and to develop policies and strategies for the advancement of women in the Americas; and
4. promoting the inter-American human rights protection mechanisms.

Preparation of thematic reports

The first Rapporteur undertook an in-depth study to provide an overview of the situation of women's rights in the Americas, to formulate recommendations aimed at guiding Member States in eradicating discrimination in law and practice, and to establish priorities for further action by the Rapporteurship and the Commission. The results of that study, which are synthesised in *The Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas* (available at: www.cidh.org/women/Mujeres98-en/Tableof-

[Contents.htm](#)) were presented to and approved by the Commission in 1998. Among the Report's recommendations was a call for Member States which had not yet done so to ratify the regional human rights instruments and, in particular, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) to demonstrate their commitment to observing and protecting the human rights of women victims of violence. Recommendations were also formulated with respect to the recognition of juridical personality for women, equal rights in and outside marriage, women's rights to dispose their own assets, and equality in parental authority. Member States were urged to expand measures to encourage women's participation in decision-making processes and to adopt legislation on violence against women.

Notably, the Report recognised that indigenous women are particularly vulnerable to situations in which they are left unprotected and exposed as they have fewer means of defence. Accordingly, the Commission urged Member States to ensure that the most vulnerable women, including indigenous women, have due access to the mechanisms afforded by the legal system.

Another important study, from 2007, to which the Rapporteur contributed is on *Access to Justice for Women Victims of Violence in the Americas* (available at: www.cidh.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf). This report has significance for indigenous women as it recognised that indigenous women suffer double discrimination: discrimination by virtue of being a woman, and discrimination by virtue of being indigenous. It also recognised the obstacles that indigenous women encounter in attempting to access the justice system, which the Commission considers to be a consequence of the social exclusion and ethnic discrimination that they have historically suffered. These obstacles include: geographic remoteness of indigenous territories; evidentiary problems; financial problems; a lack of information; discomfort with an urban environment; and lack of command of the language of the court, among others.

In 2006, the Inter-American Commission adopted a report based on the results of the on-site visit to

Colombia undertaken by the Rapporteur on the Rights of Women at the time. The report is entitled *Violence and Discrimination against Women in the Armed Conflict in Colombia* (available at: www.cidh.oas.org/pdf%20files/InformeColombiaMujeres2006eng.pdf). It recognises that the situation of indigenous women is especially critical due to the serious effects of the armed conflict and the history of discrimination and exclusion they have faced based on their condition as indigenous women. The box below describes how participation by indigenous women contributed to this visit and the report.

More recently, the Special Rapporteur participated in a study on access to maternal health. The report, entitled *Access to Maternal Health Services from a Human Rights Perspective* (available at: <http://cidh.org/women/SaludMaterna10Eng/MaternalHealth2010.pdf>), was approved in June 2010 by the Inter-American Commission. This report is also important for indigenous women because it recognises that the inequality experienced by indigenous women also reflects on their access to health care, including maternal health. The Commission underscores the State's duty to guarantee that maternal health services are provided through respectful attention to women. In the case of indigenous women, the State must adapt preventive services as well as health care and treatment services, with respect for their culture, for example, through informed choices about types of childbirth.

In 2011, the Rapporteur issued a report which develops important standards for indigenous women. This report is entitled *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights* (available at: www.cidh.oas.org/pdf%20files/womendesc2011.pdf). This report urges States to adopt legislation as well as educational, economic, and public labour policies, which take into account the intersection of economic, social and cultural rights with women's civil and political rights. The report highlights the specificities of target beneficiary populations, taking into account the particular characteristics of girls, indigenous women, women of African descent, migrants, and people with disabilities, among other groups particularly vulnerable to the violation of their human rights.

The Rapporteur's visit to Colombia: an example of participation by indigenous women

In 2006 the Commissioner assigned to Colombia, who was also the Rapporteur on Women's Rights, conducted a visit to the country to obtain information on the differential impacts of armed conflict on women and girls of different racial, ethnic and economic status. In order to study the specific situation of indigenous women, the Rapporteur met indigenous authorities and women leaders from different communities as well as indigenous organisations. Specifically, the IACHR met victims and their families, and civil society organisations in Bogotá, Valledupar and Quibdó. The Rapporteur received testimonies from women who have been subjected to violence and from families of murdered women. In addition, the Rapporteur met traditional indigenous authorities from communities in the Sierra Nevada, indigenous organisations such as the National Indigenous Organization of Colombia (ONIC), the Tayrona Indigenous Confederation (CIT), the Indigenous Authorities of Colombia (AICO), the Organization for Indigenous Peoples of the Colombian Amazon (OPIAC), as well as women representatives of different indigenous peoples in Colombia.

Before and after the on-site visit, and during thematic hearings held at IACHR Headquarters, the Rapporteur and the IACHR received information from victims, civil society organisations, and international agencies on the grave situation of Colombian indigenous women, which was further aggravated by the armed conflict. This information also confirmed that these issues were not being recorded or analysed, nor properly dealt with, by the State. The information obtained was vital for defining key objectives of the visit and for confirming the results. The Commission received testimonies from indigenous women that prompted the conclusion that the armed conflict led to massacres, murders (especially of indigenous leaders and traditional authorities), kidnappings, and massive displacements of indigenous peoples from their ancestral lands. The indigenous women communicated to the Rapporteur that the armed conflict had taken their husbands, children, families and even their land, and they said they were tired of suffering. The Report also states that during her visit to Colombia, the Rapporteur received complaints about the armed actors' use of indigenous women as 'spoils of war' and verified that indigenous women have often been victims of sexual violence perpetrated by members of legal and illegal armed groups.

Following the country visit, the Commission issued a report entitled *Violence and Discrimination against Women in the Armed Conflict in Colombia* (see OEA/Ser.L/V/II. Doc. 67 18 October 2006, available at: www.cidh.oas.org/pdf%20files/InformeColombiaMujeres2006eng.pdf). The report highlighted that the Rapporteur had taken the opportunity to meet indigenous women from different communities in Bogotá and Valledupar. By means of their testimonies, the report corroborated the link between protection of the indigenous women's rights and the ability to live freely and effectively in their ancestral lands. 'Therefore, while the ancestral lands of indigenous peoples are not protected and respected by the armed actors indigenous women will continue to gravely suffer the effects of the armed conflict.'

Other studies in which the Special Rapporteur participated include:

- *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, 2011. Available at: www.oas.org/en/iachr/women/docs/pdf/REGIONAL%20STANDARDS.pdf
- *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, 2011. Available at: www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf
- *Access to Information on Reproductive Health from a Human Rights Perspective*, 2011. Available at: www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf
- *The Road to Substantive Democracy: Women's Political Participation in the Americas*, 2011. Available at: www.cidh.oas.org/pdf%20files/POLITICAL%20PARTICIPATION.pdf
- *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, 2009. Available at: www.cidh.oas.org/countryrep/Chilemujer2009eng/Chilewomen2009toc.eng.htm

- *The Right of Women in Haiti to be Free from Violence and Discrimination*, 2009. Available at: www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Chap.IIIandIV.htm#IV
- *The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination*, 2003. Available at: www.cidh.oas.org/annualrep/2002eng/chap.vi.juarez.htm.

Contribution to the complaints mechanism

The Rapporteurship assists the Commission in processing petitions and cases involving alleged violations of women's rights with a view to developing inter-American jurisprudence on the rights of women. The Rapporteurship's contribution has, notably, enabled the consideration of a number of cases by the Inter-American Court on Human Rights (see Information Note #7).

On-site visits and country reports

Thematic Rapporteurs can participate in on-site visits with the rest of the Commission. When an on-site visit is conducted, it is generally followed by a report, as explained in Information Note #3. It is normally the Rapporteur who prepares the section of the report relevant to the thematic mandate.

Thematic Rapporteurs can also make visits to a country on their own, meeting with government officials, civil society organisations and indigenous peoples, including indigenous women.

In 2002 the Rapporteur on Women carried out the **first independent on-site visit** to Ciudad Juárez, Mexico. The purpose was to focus on the grave situation of violence against women in that area, including the killing of over 250 women and girls since 1993, and the unresolved disappearance of over 200 others. In 2003 the Commission published a report prepared by the Rapporteurship with the recommendation that the impunity be ended, in particular by investigating these crimes with due diligence, both to seek justice and to prevent future crimes of this nature.

Awareness-raising activities

The Rapporteurship undertakes activities aimed at raising awareness of: women's rights in the Americas; the need for further action to ensure that women are able to fully exercise their basic rights; and the inter-American human rights mechanisms for the protection of women's rights. For example, in 2010 the Rapporteur organised two expert meetings to identify progress and challenges in the protection without discrimination of women's economic, social, and cultural rights in the areas of employment, education, and access to and control of resources in the Americas.

Annual Reports

Every year, the Rapporteur produces a detailed account of his/her activities throughout the year which is published in the Annual Report of the Inter-American Commission (available at: www.oas.org/en/iachr/women/reports/annual_reports.asp).

Contact

The current (2014) Rapporteur on the Rights of Women is Commissioner Tracy Robinson who was appointed in 2012. She can be contacted at:

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Rapporteurship on the Right of Indigenous Peoples

The Rapporteurship on the Rights of Indigenous Peoples was created in 1990 to help advance, systematise, reinforce and consolidate the Inter-American Commission's actions in this area. The Rapporteurship has invested considerable effort in facilitating indigenous peoples' access to and participation in the inter-American human rights system. It has also played a significant role in the Working Group of the Permanent Council on the Draft American Declaration on the Rights of Indigenous Peoples (see Information Note #2).

Mandate

The main functions of the Office of the Rapporteur on the Rights of Indigenous Peoples are:

- to promote the development of the inter-American human rights system as it applies to the protection of indigenous peoples and, in particular, to advance and consolidate the system's jurisprudence on the rights of indigenous peoples, and in this context, to promote and facilitate indigenous peoples' access to the inter-American system;
- to participate in the analysis of individual petitions and requests for precautionary measures that allege violations of the rights of indigenous peoples or of their members;
- to support on-site visits to OAS member countries in or-

der to make closer observation of the general situation or to investigate specific situations involving indigenous peoples, as well as to participate in the preparation of reports on such visits;

- to prepare thematic reports on subjects pertaining to the human rights of the indigenous peoples of the Americas with recommendations to Member States on the adoption of measures to help promote and guarantee the human rights of indigenous peoples;
- to carry out and participate in various types of conferences, seminars, and meetings with representatives of governments, academia, civil society, and indigenous peoples, for the purpose of raising awareness and analysing the issues that are part of its mandate;
- to collaborate on a permanent basis with the OAS Permanent Council's Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, and with its chairmanship.

Preparation of special reports and studies

The Rapporteur has been involved in a number of studies. The most recent, entitled *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System* (available at: <http://cidh.org/countryrep/Indigenous-Lands09/Ancestral-Lands.ENG.pdf>) was published in 2010 and lists and discusses the extent of indigenous and tribal peoples' rights over their territories, lands, and natural resources. This report is based on the



2008- General Assembly of Registered Members of the Poqomam Linguistic Community of the ALMG. Vice Minister of Culture, Elsa Son and Waykan Benito, Pogomam Linguist. Photo: ALMG

inter-American system's legal instruments, as interpreted by the Inter-American Commission and Court in light of developments in general human rights law. It also aims to highlight specific problems and best practice so as to enhance the enjoyment of human rights by indigenous and tribal peoples across the Americas.

In a number of places, the report addresses the special importance of taking into account the rights of indigenous women, given that they constitute a particularly vulnerable group. In reviewing the State's specific obligations towards indigenous peoples, the report refers to the *Preliminary observations of the Inter-American Commission on Human Rights on its Visit to Honduras* (May 2010). The report highlights the fact that the State's obligation to adopt specific measures aimed at protecting, favouring, and improving the exercise of human rights by indigenous and tribal peoples is 'enhanced when it comes to indigenous children and women, given that their level of vulnerability is greater' (para. 49). The report also discusses the impact of development and investment projects that affect the environment and emphasises that 'special attention must be paid to especially vulnerable persons, including children, women of fertile age and the elderly', who are particularly affected through their health, basic subsistence activities, and environment (para. 208).

Another recent study to which the Special Rapporteur contributed is entitled *Captive Communities: The Situation of the Guaraní Indigenous Peoples and Contemporary Forms of Slavery in the Bolivian Chaco* (available at: <http://www.cidh.org/countryrep/ComunidadesCautivas.eng/toc.htm>) and was adopted by the Commission in 2010. In that report the Commission found that the Guaraní women in the captive communities are especially vulnerable, as they have no protection whatsoever, and are entirely at the mercy of the boss or estate owner. The IACHR received testimony from several persons indicating that many of them are subject to abuse, humiliation, and physical and psychological violence meted out by their bosses.

Other studies include:

- *Authorities and Precedents in International and Domestic Law for the Proposed American Declaration on the Rights of Indigenous Peoples*, 2001. Available at: www.cidh.org/Indigenas/Indigenas.en.01/index.htm
- *The Human Rights Situation of the Indigenous People in the Americas*, 2000. Available at: www.cidh.org/Indigenas/TOC.htm

- *Special Report on the Human Rights Situation in the so-called "Communities of Peoples in Resistance" in Guatemala*, 1994. Available at: www.cidh.oas.org/countryrep/CPR.94eng/Table.of.Contents.htm

- *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, 1983. Available at: www.cidh.oas.org/countryrep/Miskitoeng/toc.htm

Contribution to the complaints mechanism

The Rapporteurship is highly involved in the development of the inter-American jurisprudence on indigenous peoples' rights and provides input on petitions and cases before the Commission and the Court, as well as the precautionary and provisional measures brought respectively before the Commission and Court.

On-site visits and country reports

As mentioned above, Thematic Rapporteurs often participate in on-site visits with the rest of the Commission. After such visits, the Rapporteurship is responsible for those chapters of the report relating to the situation of the indigenous people in the country concerned. The Rapporteur has participated in visits to: Bolivia (2009 and 2007), Brazil (1997), Colombia (1999, 1993 and 1981), Ecuador (1997), Guatemala (2003, 2001 and 1994), Mexico (1998), Paraguay (2001) and Peru (2000). Occasionally, the Rapporteur contributes to chapters of a more general nature, such as the situation of vulnerable groups (Honduras, 2010), and economic, social and cultural rights (Venezuela, 2009).

In addition, the Rapporteur often visits countries to observe and gather information about the situation of the indigenous peoples. During such visits, the Rapporteur generally meets with representatives of civil society organisations, indigenous peoples' representatives, and government officials, among others.

The Thematic Rapporteurs can also arrange joint visits with the Commissioner responsible for a particular country. For example, in 2008, the Country Rapporteur for Bolivia and the Rapporteur on the Rights of Indigenous Peoples visited Bolivia.

Awareness-raising activities

The Rapporteur takes part in promotional activities aimed at disseminating information on the rights of

indigenous peoples in the Americas as well as on the mechanisms available to enforce their rights. These activities take different forms, including conferences, training seminars, and meetings with representatives from different spheres of society. For example, in 2010, the Rapporteur conducted a workshop on the mechanisms for indigenous peoples' participation in the inter-American system, organised in collaboration with other OAS bodies. The workshop took place at the OAS headquarters in Washington, DC. In 2004, the Guatemalan Office for the Defence of Indigenous Women, in collaboration with the Inter-American Offices for the Rapporteur on the Rights of Indigenous Peoples

and the Rapporteur on the Rights of Women, organised a workshop for indigenous women leaders, in which 40 indigenous women participated. Information on these and other promotional activities can be found on the Rapporteurship's website.

Annual Reports

Every year, the Rapporteur produces a detailed account of his/her activities throughout the year which is published in the Annual Report of the Inter-American Commission (available at: www.oas.org/en/iachr/indigenous/reports/annual.asp).

Contact

The current (2014) Rapporteur for Indigenous Peoples is Rose-Marie Belle Antoine who was appointed in 2014. She can be contacted at:

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