

# The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System

**Diego Rodríguez-Pinzón  
& Claudia Martín**

A HANDBOOK  
FOR VICTIMS AND  
THEIR ADVOCATES

With a Foreword by Claudio Grossman



**OMCT Handbook Series Vol.2**

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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to develop effective international litigation strategies to assist victims of torture and ill-treatment in obtaining legal remedies where none are available domestically, and to support them in their struggle to end impunity in states where torture and ill-treatment remain endemic or tolerated practices. In furtherance of these objectives, OMCT has published a *Handbook Series* of four volumes, each one providing a guide to the practice, procedure, and jurisprudence of the regional and international mechanisms that are competent to examine individual complaints concerning the violation of the absolute prohibition of torture and ill-treatment. This *Handbook* on the prohibition of torture and ill-treatment in the Inter-American System is the second of the series.

## **THE PROHIBITION OF TORTURE AND ILL-TREATMENT IN THE INTER-AMERICAN SYSTEM: A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES**

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## Note to Readers

This *Handbook* is meant to support NGOs, advocates, lawyers, and indeed, the victims of torture themselves, in developing effective litigation strategies before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. As such, OMCT has striven for comprehensive coverage of the relevant areas of substance and procedure but also for clarity and accessibility. We are continuously looking for ways to improve our materials and enhance their impact. Please help us do this by submitting your comments on this book to: [handbook@omct.org](mailto:handbook@omct.org)

Readers are also invited to visit our website featuring a page devoted to this *Handbook* which contains further reference materials including electronic versions of all of the *Handbook's* appendices available for download: [www.omct.org](http://www.omct.org)

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I would also like to express my gratitude to those persons and organizations that generously permitted OMCT to reproduce important and useful legal documents which appear in the appendices or textboxes of this *Handbook*: Maria LaHood of the Center for Constitutional Rights in New York graciously allowed us to reproduce various documents pertaining to the request for precautionary measures in the *Guantánamo Detainees* case; Professor James Cavallaro, Clinical Director, Harvard Law School Human Rights Program, the Global Justice Center and Harvard Law Student Advocates for Human Rights kindly gave permission to publish their *amicus curiae* brief in the case of *Caesar v. Trinidad and Tobago*; and finally Kevin Kitching of INTERIGHTS for authorization to include their *amicus curiae* also in the *Caesar* case.

I am also grateful to Daniela Salazar from the Inter-American Commission on Human Rights, who gave us permission to reproduce several documents available on the Commission's website as well as a letter sent to the petitioners in the *Guantánamo Detainees* case.

I finally wish to give my thanks to Veronica de Nogales Leprevost for contributing the cover illustration for the *OMCT Handbook Series*.

*Leonor Vilás Costa, Editor*

## **DISCLAIMER**

The views expressed in this book are solely those of the authors and do not represent those of any institution or organisation.

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## FOREWORD

The World Organisation Against Torture (OMCT) has provided a great service to academics, practitioners and the general public through the publication of this *Handbook* on the prohibition of torture and ill-treatment in the Inter-American System, authored by Claudia Martín and Diego Rodríguez-Pinzón, two of the most authoritative experts on the Inter-American human rights system.

This *Handbook* presents in a well-structured and comprehensive manner practical and theoretical information about the Inter-American System generally and, in particular, as it relates to the prohibition of torture and cruel, inhuman and degrading treatment or punishment. The *Handbook* fills a very important void since, in spite of the relevance of the topic for the protection of human rights, there are no publications for activists and academics alike that provide information and analysis on the Inter-American System's contribution to eradicate torture.

After introducing the Inter-American System, the *Handbook* refers to its mechanisms of supervision, starting with reports and on-site visits, which formed the bulk of the Commission's work until the early 1990s. The subsequent processes of transitions to democracy that took place in the Western Hemisphere created conditions for the Inter-American System's supervisory organs – the Commission and the Court – to give preference to individual petitions, as the elected governments were generally participating in the system's procedures and did not resort to mass and gross violations of human rights as a state policy. Accordingly, the *Handbook* focuses mainly on individual petitions, addressing all relevant phases for their consideration. Rather than taking a formalist approach following just the dry path of treaty provisions, the authors pose relevant questions to give petitioners a guide for action (*e.g.*, who can submit a petition? what is the scope of the individual rules of admissibility? what are the length and consequences of proceedings?).

This pedagogical and action-oriented approach is not done, however, at the expense of complexity. The *Handbook* provides, for example, a thorough review of the theory of Fourth Instance, which in certain situations bars the Inter-American supervisory bodies from considering petitions against domestic judiciaries. Equally valuable is the identification of applicable jurisprudence for those who want to deepen their study of the Inter-American System. The *Handbook* is unique in its extensive coverage of the jurisprudence of the Inter-American Commission, which is more difficult to access than that of the Inter-American Court.

As to the specific topic of this publication, torture and cruel, inhuman and degrading treatment or punishment, the *Handbook* provides comprehensive coverage of this prohibition through both the theory and practice of the Inter-American System addressing, *inter alia*, the applicable norms, the scope of the prohibition, specific actions that have been of tremendous relevance in the hemisphere (*e.g.*, forced disappearances and extra-judicial executions), the applicable law as well as the impact of the regulation of torture in cases of extradition or expulsion. Equally valuable is the jurisprudence of the system covered by the authors concerning the proof of state responsibility and the tests required for that purpose, as the traditional test of “beyond a reasonable doubt” developed in criminal law cannot apply in situations where the passage of time, distance and the role of a state, which itself is accused of human rights violations, would make illusory the proof of responsibility. Finally, the *Handbook* covers the right to reparations which is more extensive in the Inter-American System than in the universal setting or the European regional system.

The *Handbook* regularly compares the Inter-American jurisprudence with decisions adopted under other international treaties including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This has a practical application for those filing petitions in the Inter-American System, as almost all countries of the hemisphere have ratified both the Inter-American and the United Nations Torture Conventions, and the Inter-American Court has interpreted Article 29 of the Inter-American Convention as allowing the Commission and Court to resort to the UN Convention when interpreting the former. Moreover, the comparative analysis strengthens the notion that torture is not only a hemispheric violation of non-derogable rights, but one that is global in scope. On the other hand, this *Handbook*, by providing access to the treatment of the prohibition of torture in the Inter-American System, will open possibilities for universal and other regional supervisory organs to consider the experience in the Americas, contributing to even greater harmonization of the prohibition of torture in international law.

*Dean Claudio Grossman*  
*Vice Chair, United Nations Committee against Torture*  
*September 2006*

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## INTRODUCTION

This *Handbook* is a practice guide for those wishing to bring legal complaints of torture or other ill-treatment before the Inter-American Human Rights System. The prohibition of torture and cruel, inhuman or degrading treatment is well-established in various Inter-American legal instruments, including the two primary human rights instruments in the Inter-American System, namely the American Convention on Human Rights (the “American Convention”) and the American Declaration of the Rights and Duties of Man (the “American Declaration”). Article 5 of the American Convention sets forth every person’s right to humane treatment. Articles XXV and XXVI of the American Declaration enshrine the right to humane treatment while in custody and the right not to be subjected to cruel, infamous or unusual punishment, respectively. The Inter-American Court of Human Rights has declared the prohibition of torture and other cruel, inhuman or degrading treatment to be a *jus cogens*, or peremptory norm.<sup>i</sup> Other international bodies as well as domestic courts have also declared the prohibition of torture to be a *jus cogens* norm.<sup>ii</sup> Article 27 of the American Convention specifies that the right to humane treatment is a non-derogable right, and prevents governments from resorting to it under any circumstances. The clear and resounding international consensus is that there is never an excuse for torture.

This book details the procedure for bringing successful complaints before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In so doing, the *Handbook* provides useful information on these bodies’ practices and provides advice as to strategy for complaints, drawing from the authors’ extensive experience and long-term work with these institutions. In addition to an examination of procedural matters, the book also provides an analysis of substantive Inter-American law relating to torture and other forms of ill-treatment. Despite the focus on torture and other ill-treatment, the *Handbook* is instructive for those preparing complaints regarding other human rights violations, as well.

The combination of procedure and substance reflects the reality that, as in other areas of the law, the two frequently inform each other. The procedural

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i *Lori Berenson-Mejía v. Peru*, Judgment of November 25, 2004, Inter-Am. Ct. H.R., (Ser. C) No. 119, para. 100; *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, Inter-Am. Ct. H.R., (Ser. C) No. 123, para. 70.

ii *See, e.g., Al-Adsani v. the United Kingdom*, Eur. Ct. H.R., No. 35763/97, November 21, 2001; *Prosecutor v. Anto Furundzija*, International Criminal Tribunal for the Former Yugoslavia, case no. IT-95-17/1-T10, December 10, 1998, para. 144; *Nuru v. Gonzales*, U.S. Court of Appeals for the Ninth Circuit, 404 F.3d 1207, 1222 (2005).



strategies in a particular case may reflect the confines or broadness of the applicable law, and procedural rules may determine or shape the legal arguments advanced. Because it is important to bear this relationship in mind at all stages of case preparation, this *Handbook* analyzes procedural rules and substantive law together in one volume.

The book is meant to be a practical resource for readers of all levels of experience, in litigating cases before the Inter-American System. It attempts throughout to furnish answers to questions and problems which may arise when filing a complaint, whether they be specialized legal questions or practical ones. Readers with little or no experience with this regional system will find the *Handbook* a useful introduction to its organization and procedures. Short explanations have been provided for technical terms, in order to make the contents more accessible to persons with little or no background in international law. These readers and experienced practitioners alike will benefit from the *Handbook's* detailed analyses of procedural requirements and relevant substantive law.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the two organs of the Organization of American States (“OAS”) which examine individual complaints regarding human rights violations. Petitioners must first bring complaints to the Commission; only thereafter may the complaint reach the Court, provided that standing and jurisdiction conditions are met. For this reason, Commission procedures and requirements are dealt with first and, in some instances, in greater depth than those relating to the Court.

Complaints must allege a violation of one or more human rights codified by a number of OAS human rights instruments. These include the American Declaration and the American Convention, as well as the Inter-American Convention to Prevent and Punish Torture and the other OAS human rights treaties, if ratified by the defendant State. This *Handbook* prioritizes complaints filed under the American Convention. However, the legal analysis of ill-treatment claims under the American Convention is also applicable to complaints under the American Declaration and under other Inter-American human rights treaties, such as the Inter-American Convention to Prevent and Punish Torture.

The American Convention refers to individual complaints as “communications” and “petitions.” In other documents, the Commission also uses the term “complaints.” For purposes of this *Handbook*, the three terms are used interchangeably. The person filing the petition is referred to as the “petitioner” or the “complainant,” though in practice that person may be the petitioner’s attorney.

Commission cases are cited according to the following format: *Case Name*, Case No., Report No., Inter-Am. C.H.R., Annual Report, Document No. (year). Inter-American Court cases are cited as follows: *Case Name*, Type of Decision and Date, Inter-Am. Ct. H.R., (Series letter) Decision No.

In attempting to organize this book's contents in a clear and user-friendly manner, it has been divided into three sections:

Section 1 of the *Handbook* outlines the history and organization of the Inter-American Human Rights System. It describes the functions of the Inter-American Commission on Human Rights, with special emphasis on the system of individual complaints under the American Convention and the American Declaration. The discussion of the Inter-American Court of Human Rights describes its composition and explains the Court's dual jurisdictional system. This section is an overview and will be of particular use to readers with little or no prior experience with the Inter-American System.

Section 2 examines the process of filing a complaint from beginning to end. It contains helpful information ranging from basic filing requirements to the more complex admissibility rules. This section studies the presentation of evidence and witnesses, the hearings process and requests for precautionary and provisional measures, and addresses the issues of confidentiality and assistance to victims. Throughout, the procedural discussion incorporates substantive law in order to impart a comprehensive understanding of each step of the complaint process. The procedural flowcharts included as appendices to this book are designed to be of help while reading this section.

Section 3 analyzes the substantive law relating to torture and cruel, inhuman or degrading punishment or treatment, as interpreted and developed by the Commission's and the Court's jurisprudence. This examination starts with a legal analysis of the scope of the right to humane treatment, including the definition of torture. It proceeds to review specific acts and situations found to violate this right, which include but are not limited to rape, the suffering of victims' family members, threats, conditions of detention and the death penalty. Section 3 also addresses two prohibitions closely related to the general ban on perpetrating torture: sending a person to a country where he or she faces a serious risk of being tortured, and the exclusion of confessions obtained through ill-treatment. It continues with an analysis of the duties to respect and ensure, making clear the fundamental distinction between the two and specifying the implications of each. Although these general obligations concern all guaranteed human rights, they are analyzed in the context of the right not to be tortured or otherwise ill-treated. The section concludes with a review of State responsibility and rules relating to serious human rights abuses, focusing in particular on case law regarding torture and ill-treatment claims.

The two final subsections of section 3 (General Duties to Respect and Ensure and Establishing State Responsibility) are not unique to the right to be free from torture and other ill-treatment. However, they represent elements necessary to determine whether a given State has breached a particular right. This *Handbook* discusses these issues to the extent that all complainants will need to address them in order to be successful. In any event, the examination of these topics relies heavily on torture case law. These questions are particularly technical and relatively complicated. Nevertheless, a special effort was made to present them clearly bearing in mind the wide audience of this *Handbook*.

Many related documents are annexed to this *Handbook* for the purpose of illustrating, clarifying and completing the information contained in it. All of the appendices relate to procedural aspects of the Inter-American System and/or substantive issues linked to the right to be free of torture and ill-treatment. A few basic documents essential for an adequate understanding of matters treated here are printed at the end of the book. In addition, and due to space constraints, some appendices were not reprinted in this book but have been made available on the companion web page of the *OMCT Handbook Series* (see [www.omct.org](http://www.omct.org)). The appendices include the relevant conventions and reports of the OAS human rights institutions, *amicus curiae* briefs and sample submissions made by parties in actual cases at various stages of the complaints procedure.