



Advisory function



VII. Advisory function

During 2021², the Court issued one Advisory Opinion and is currently examining one request.

A. Advisory Opinion issued in 2022

Number:	OC-29 / 22
Subject:	Differentiated approaches with respect to certain groups of persons deprived of liberty
Interpretation and scope of Articles:	1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments)
Date issued:	May 30, 2022
Date of hearing:	April 19, 20, 21 and 22, 2021
Number of participants:	86
Written received	100 written, including 11 from national courts

On May 30, the Court issued an Advisory Opinion in response to a request submitted by the Inter-American Commission on Human Rights on November 25, 2019, regarding whether it was possible to justify, based on Articles 24 and 1(1) of the Convention, the need to adopt differentiated approaches or measures with respect to certain groups of persons deprived of liberty to guarantee that their specific circumstances do not affect the equality of their conditions with those of other persons deprived of liberty - this relates to both their detention conditions, and the remedies filed to protect their rights in the context of the deprivation of liberty. The Commission also asked the Court to interpret the specific impact of the content of the rights established in those articles on the scope of the correlative obligations of the States in this matter.

The Court reiterated that respect for human dignity constituted a general principle of the proper treatment of persons deprived of liberty and determined that it would interpret that principle in conjunction with the principle of equality and non-discrimination, identifying the specific obligations required for the decent treatment that the groups of persons deprived of liberty that are the subject of the request should receive, namely: (A) pregnant women, during labor, birth, postpartum, and breastfeeding, and also those who are the principal caregivers; (B) children living in prisons with their mothers or principal caregivers; (C) LGBTI persons; (D) members of indigenous peoples, and (E) older persons.

In this regard, the Court presented general considerations on: (A) respect for human dignity as a general principle of the proper treatment of persons deprived of liberty and conditions of deprivation of liberty; (B) prohibition and prevention of torture and other cruel, inhuman or degrading treatment; (C) purpose of the oversight of sentences in the American Convention; (D) judicial control in the oversight of sentences; (E) right to equality and non-discrimination, differentiated approach and intersectionality; (F) access to basic services for a life with dignity in prison, identifying the international obligations in relation to the rights to health, adequate food and potable water during the deprivation of liberty; (G) generalized overpopulation and overcrowding; (H) prison management and, (I) context caused by the COVID-19 pandemic and the particular harm to certain groups in the prison system.

The Court also determined that States must apply a differentiated approach based on the special needs of the diverse population groups deprived of liberty to ensure that the sentence is executed in a way that respects human dignity. The Court considered that the application of a differentiated approach in prison policies would enable identifying how the characteristics of the population group and the prison environment condition the guarantee of the rights of certain groups of persons deprived of liberty who are minorities and marginalized in prison, and determine the specific risks of the violation of their rights, based on their particular characteristics and needs, in order to define and implement a series of specific measures to overcome the discrimination (structural and intersectional) that affects them. The Court established that, by not adopting this approach, States would be in violation of Article 5(2) of the American Convention on Human Rights and other specific treaties and it could result in treatment that was contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

The text of the Advisory Opinion is available [here](#).

B. Advisory Opinions being processed

- **Activities of private arms manufacturers and their impact on human rights**

On November 11, 2022, the State of Mexico submitted to the Inter-American Court of Human Rights a request for an Advisory Opinion on “the activities of private arms manufacturers and their impact on human rights.”