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Special Rapporteur for Economic,
Social, Cultural and Environmental Rights

IACHR Inter-American
Commission on
Human Rights

COMPENDIUM

Labor and Trade Union Rights Inter-American Standards



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Approved by the Inter-American Commission on Human Rights on October 30, 2020

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CHAPTER 1
INTRODUCTION

INTRODUCTION

A. *Objective*

1. The right to work is a fundamental right, inseparable from and inherent to human dignity. Its development is key to strengthening economic and social systems from a human rights approach, since this is vital for guaranteeing and exercising other human rights, and for the autonomous development of the person. It is also a way to guarantee that people live dignified lives.
2. International human rights law has recognized the importance of the right to work as a central, fundamental, and guiding element for advancing the protection of human rights. In the inter-American system, this is verified in the contents of Articles 1, 16 and 26 of the American Convention on Human Rights (hereinafter the “American Convention”, the “Convention” or the “ACRH”); of Articles XIV, XV and XXII of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration” or the “ADRDM”); and of Articles 6, 7 and 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter the “Protocol of San Salvador” or the “Additional Protocol”), as well as in the text of other instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the “Convention of Belém do Pará”) and the Inter-American Convention on Protecting the Human Rights of Older Persons.
3. The Inter-American Commission on Human Rights (hereinafter the “IACHR”, the “Commission” or the “Inter-American Commission”) has as its main mandate the promotion and defense of human rights in the Americas. It fulfills these duties by visiting countries, drafting reports on the human rights situation in a given country or on a specific thematic issue, adopting precautionary measures or requesting provisional measures from the Inter-American Court of Human Rights (hereinafter the “Inter-American Court” or the “Court”), processing and reviewing petitions through the system of individual cases, and providing States with technical advice and cooperation services.
4. In response to the above, during the 146th Period of Sessions held in November 2012, the IACHR decided to establish a Unit on Economic, Social and Cultural Rights (the “ESCR Thematic Unit”). Among the objectives of the Work Plan of the ESCR Thematic Unit were the development of standards for the interpretation of the inter-American human rights instruments in relation to economic, social, and cultural rights, and the search to extend the jurisprudence of the inter-American system in this area.
5. In 2014, the IACHR made the decision to create a Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, which became fully operational towards the end of August 2017. Its purpose is to strengthen the institutional structure of the Commission in order to deepen and expand the work

it has been doing in this area by establishing an autonomous office with its own work plan to address the hemisphere's priorities on the matter.

6. Based on this framework, the Inter-American Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, since its creation, have been monitoring on a constant basis the human rights situation in the various countries of the hemisphere, with a special interest in fair, equitable and satisfactory working conditions and trade union rights.
7. Through its various mechanisms, the IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights have been able to observe the development of practices and the progress made by the American States in fulfilling their obligations related to the right to work. Although this has made States express genuine recognition and concern, the IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights note that today huge and important challenges still lie ahead to ensure the protection and guarantee of this substantive right.
8. At an international level, it is extremely important to highlight the consensus reached by the United Nations with the adoption of the Sustainable Development Goals on September 25, 2015.¹ At that time, 193 States committed to achieving 17 Goals by 2030. In particular, Goal 8 advocates for decent work and economic growth. In the Americas, it is possible to identify structural problems that perpetuate the lack of decent work opportunities, insufficient investment and low consumption. In this context, there is an erosion of the basic social contract that is at the foundation of democratic societies: the right of all persons to share progress. The creation of quality jobs guaranteed by the relevant rights remains a major challenge for almost all the economies in the hemisphere.
9. Additionally, it should be noted that in the framework of the monitoring tasks carried out for the supervision of the rights enshrined in the Protocol of San Salvador, the same instrument in its Art. 19 indicates the mechanisms for the presentation of periodic reports for its supervision. To this end, the OAS Permanent Council was mandated by the General Assembly to create a working group to supervise and monitor the progressive development of these rights. Therefore, the Working Group is constituted following the parameters established in resolution AG/RES. 2262 (XXXVII-O/07) with the designation of its titular members; of which there must be a representation of the IACHR that by delegation of the plenary of the Commission, to date falls to the Special Rapporteur on ESCER. Although this compendium only refers to the standards developed by the IACHR itself, it should be noted that the aforementioned Working Group also carries out important tasks based on the mechanism of periodic reports based on progress indicators, with respect to the right to work and trade union rights recognized by the Protocol of San Salvador, in relation to the States of the hemisphere that have ratified it.
10. Given this scenario, the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights consider that it is essential to strengthen

¹ [United Nations. Sustainable Development Goals, Doc A/70/1](#)

the capacities and the scope of the contents of the right to work. Through the systematization of the inter-American standards, this compendium serves as a tool to improve and strengthen existing legislation, practices and public policies that seek to promote labor rights with a human rights approach. As for the development of the inter-American standards in this area, considering the fact that up to the present the bodies of the inter-American system have not yet established comprehensive legal standards in this matter, this compendium will mark the first time in which the IACHR collects and systematizes standards about the international legal obligations of the States on this field, in particular with regard to the areas established in the Protocol of San Salvador: the right to work; fair, equitable and satisfactory working conditions; and trade union rights.

11. The IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also present this tool to promote the implementation of the inter-American standards developed on labor rights. In this regard, they reaffirm the objective of raising awareness and strengthening the human rights situation of all workers. One of the priorities of the 2017-2021 IACHR Strategic Plan for the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights is the development and strengthening of standards related to the right to decent and equitable working conditions and the protection of trade union rights. In this context, the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights work plan approved at the 167th Period of Sessions in Bogotá includes as one of its future projects the advancement on labor and trade union rights in the continent.
12. As a result, the IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights² have prepared this compendium with the aim of providing the users of the inter-American system, state public policy makers, judges, Congress members and other state officials, civil society organizations, social movements, members of academia, experts, among other relevant actors, with a tool of technical cooperation. The document is structured to be used by all those involved in the field of labor rights.

B. Structure

13. This compendium is made up of five substantive chapters, which present the most relevant inter-American standards developed by the IACHR in this field. The first section presents the objectives and the methodology used and the structure of the chapters in which international and inter-American labor rights standards are explored.
14. Chapter II focuses on the main concepts related to the right to work. The first part presents content on the right to freedom of work, decent work, the prohibition of

² The IACHR acknowledges and appreciates the important efforts made by the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights and the Department of Technical Assistance in Public Policies of the IACHR Executive Secretariat to prepare this compendium.

slavery and servitude, equality and non-discrimination in labor matters and freedom of expression in work contexts.

15. The next chapter of the compendium is about the main obligations of the States with regard to the right to fair, equitable and satisfactory working conditions. In addition, this section systematizes the standards adopted by the IACHR when enforcing the norms in the inter-American instruments through both the system of individual cases and other mechanisms in human rights situations related to work safety and hygiene, child labor, the work of women and the work of migrants.
16. Then, Chapter IV presents the standards on trade union rights. In this section, the IACHR reports on the obligations of the States in relation to freedom of association, collective bargaining, and strike through a set of relevant extracts from reports approved by the Commission. Finally, a number of conclusions relevant to this field are drawn.

C. Methodology

17. This compendium was prepared after reviewing, systematizing, and evaluating the inter-American standards developed by the IACHR in the field of labor rights.
18. With the aim of providing readers with a comprehensive and consistent tool, the drafting of this compendium required a review of the documents and reports approved and published by the IACHR. In particular, thematic and country reports were examined, together with substantive decisions made on individual cases submitted to the inter-American protection system, including reports published by the IACHR pursuant to Article 51 of the ACHR and reports on cases submitted to the Inter-American Court pursuant to Article 61 of the ACHR and Article 45 of the IACHR's Rules of Procedure. The Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights intend to reflect on how labor rights have been understood, applied, and developed by the inter-American system and on the enforcement and development of standards in specific cases, as well as in relation to a general topic or context.
19. In this regard, this compendium collects the historical work that the Commission has carried out while developing its mandates and includes a selection of relevant extracts from reports adopted by the IACHR that account for the inter-American standards developed in the area of labor rights.
20. After a detailed assessment of the above-mentioned documents, relevant standards were systematized and, in order to promote technical cooperation, each chapter compiles the most relevant extracts from each source, report and resolution approved and adopted by the IACHR, including merits reports, cases submitted to the Inter-American Court, thematic reports and country reports. Although the systematized information is not fully comprehensive, the examples cited are those that have been considered most relevant for the purposes of the stated purpose of

this compendium, and therefore additional citations are included to expand the information collected in this field.

CHAPTER 2
INTER-AMERICAN STANDARDS
ON THE RIGHT TO WORK

INTER-AMERICAN STANDARDS ON THE RIGHT TO WORK

21. In this first section, the Inter-American Commission seeks to explore the relationship between the inter-American instruments, such as the OAS Charter, the American Declaration and the American Convention established by the IACHR when interpreting the rights and guarantees contained in these regulatory bodies with regard to the right to work and the role of States to guarantee the rights on labor relations. Then, relevant extracts from reports approved by the IACHR that contain inter-American standards related to the concept of freedom of work and decent work are presented.
22. In this chapter, the Commission also identifies a number of relevant extracts that address the prohibition of slave labor, servitude and forced labor. Similarly, the IACHR and its Special Rapporteurship include a special reference to the concept of labor stability and to the criteria set forth in the reports approved by the IACHR to promote equality and non-discrimination. Finally, the interrelationship between freedom of expression and labor rights is explored.

A. Specific Considerations on the OAS Charter, the ADRDM and the ACHR

23. In this section, the IACHR presents a set of examples of reports approved by the IACHR on the interpretation of the inter-American instruments. In particular, it shall be recalled that the OAS Charter and the ADRDM are sources of international obligations for all the Member States of the Organization of American States.
24. In contrast, the ACHR is a human rights treaty that helps interpret the scope of the right to work based on the relationship between these inter-American instruments. This is why the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights highlight the importance of this selection of relevant extracts from reports approved by the IACHR, since they help make visible the scope of the obligations to respect and guarantee labor rights contained in these inter-American instruments.

Cases in the Court

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

136. When applying the above-mentioned parameters to this case, the Commission begins by emphasizing that Article 45 of the OAS Charter includes the right to work in the following terms:

The Member States [...] agree to dedicate every effort to the application of the following principles and mechanisms:

(b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living [...].³

137. In broader terms, Article 34 g) of the Charter also includes, among the objectives for an integral development, “(f)air wages, employment opportunities, and acceptable working conditions for all.”⁴

138. The Inter-American Court has expressed that “the [American] Declaration contains and defines those essential human rights to which the Charter refers, so that the Charter of the OAS cannot be interpreted and applied in the field of human rights without putting together its relevant rules and the relevant provisions of the Declaration, all of which result from the practices followed by the organs of the OAS.” Thus, the American Declaration represents one of the relevant instruments for identifying the economic, social, and cultural rights referred to in Article 26 of the ACHR. As mentioned above, it may be necessary to resort to other international instruments to signal that a right derives from a public policy measure or objective included in an economic, social, cultural, educational or scientific standard of the OAS Charter.⁵ In particular, Article XIV of the American Declaration states that “(e)very person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.” Similarly, the Protocol of San Salvador states that “(e)veryone has the

³ [Charter of the Organization of American States.](#)

⁴ [Charter of the Organization of American States.](#)

⁵ The International Covenant on Economic, Social and Cultural Rights; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and other treaties such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Conventions of the International Labor Organization are all especially important.

right to work, which includes the opportunity to secure the means for living a dignified and decent existence.”

139. Accordingly, the Commission considers that it is clear that the right to work is one of the economic and social norms mentioned in Article 26 of the Convention and that, in this regard, States Parties are under the obligation to seek the progressive development of the right to work, and to respect, guarantee and take the necessary measures to enforce such right.

Report No. 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. OAS/Ser.L/V/II.170. Doc. 170. December 7, 2018.

44. In addition, Article 26 of the American Convention establishes the obligation of States Parties to seek the progressive development of the rights contained in that norm. Both organs of the inter-American system⁶ have reaffirmed their jurisdiction to rule on possible violations of Article 26 of the American Convention within the framework of the system of petitions and individual cases.

45. The Commission recognizes that Article 26 of the Convention and the specific determination of its scope and content may lead to some interpretative complexities. Thus, the Commission considers that the analysis of a specific case in light of Article 26 of the American Convention should be performed on two levels. First, it is necessary to establish whether the right in question derives from “the economic, social and educational, science and culture standards set forth in the Charter of the Organization of American States,” as set forth in Article 26. In other words, Article 26 of the ACHR establishes that the OAS Charter is a direct source of rights and considers the provisions on the matter that may be derived from that treaty as human rights. Since the OAS Charter was not aimed at identifying rights but at establishing an international body, it is necessary to resort to auxiliary texts to identify the rights that arise from the provisions of that instrument, especially in the American Declaration and other relevant norms of the international *corpus iuris*.

⁶ See, for example, some admissibility reports in which the possible violation of Article 26 of the Convention has been admitted: Report 29/01. Case 12,249. Jorge Odir Miranda Cortez et al. El Salvador, March 7, 2001; and Report 70/04. Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas et al. (pensioners of the Venezuelan aviation company - Viasa). Venezuela, October 13, 2004. Also, see the merits statement on Article 26 in Report 38/09. Case 12,670. National Association of Former Employees of the Peruvian Social Security Institute et al. v. Peru. March 27, 2009. In this regard, the Court reaffirmed said jurisdiction in the case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru (Preliminary objections, merits, reparations, and costs), Judgment of July 1, 2009; Inter-American Court of Human Rights. Case of Cuscul Pivot et al. v. Guatemala. Preliminary objections, merits, reparations, and costs. Judgment of August 23, 2018. Series C No. 359. Paras. 74-97.

46. When applying the above-mentioned parameters to this case, it is important to know that the Commission and the Court have already established that the right to work is one of the rights derived from the economic and social norms mentioned in Article 26 of the Convention. There is therefore no need to recapitulate this analysis.⁷

47. Then, it is necessary to determine whether the State in question failed to fulfill the obligation to “progressively achieve” the full application of the right to work, or those general obligations to respect and guarantee such right. In this second level of analysis, consideration must be given to the nature and the scope of the obligations of States under Articles 1.1, 2 and 26 of the Convention, as well as to the contents of the law in question.

48. In this regard, the Commission understands that Article 26 of the American Convention imposes on States several obligations that are not limited to prohibiting regressiveness, which is a correlate of the obligation of progressiveness, and it cannot be understood as the only justiciable obligation in the inter-American system under this norm. Thus, the Commission affirms that, taking into account the interpretation of Article 29 of the American Convention, Article 26, as seen in light of Articles 1.1 and 2 of the same instrument, gives rise to at least the following immediate and enforceable obligations: i) general obligations to respect and guarantee, ii) application of the principle of non-discrimination to economic, social and cultural rights, iii) obligations to take steps or measures to achieve the enjoyment of the rights enshrined in that article, and iv) to provide adequate and effective resources to protect those rights. The methodologies or sources of analysis that are relevant to each of these obligations shall be set forth according to the circumstances of each case.

49. With regard to the mandatory and immediate components of the obligation to take steps or measures, the UN Committee on ESCRs has indicated, for example, that taking steps is not qualified or limited by other considerations; thus, while the full realization of the relevant rights may be achieved progressively, steps towards that goal should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. States also has basic obligations which must cover essential levels of such rights,

⁷ I/A Court H.R., *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 146; I/A Court H.R., *Case of Workers Dismissed from Petroperu et al. v. Peru*. Preliminary objections, merits, reparations, and costs. Judgment of November 23, 2017. Series C, No. 344. Para. 192; and I/A Court H.R., *Case of San Miguel Sosa et al. v. Venezuela*. Merits, reparations, and costs. Judgment of February 8, 2018. Series C, No. 348, para. 220.

which are not subject to progressive development and are immediate in nature.⁸

Report on the Situation of Human Rights in Haiti. OAS/Ser.L/V/II.46. Doc. 66 rev. 1. September 13, 1979.

10. With regard to the effectiveness of the right to education, health, welfare, and the right to work and to a fair wage, it may be said that it is almost nonexistent, particularly because of the extreme poverty, illiteracy, poor hygiene, high birth rate and high infant mortality rate, high rate of unemployment, the lack of medical materials, the low per capita income, etc., which prevent the citizens from enjoying the economic, social and cultural rights set forth in the OAS Charter and in numerous international instruments.

B. The Role of the State in Respecting and Guaranteeing Labor Rights

25. In this section, the IACHR presents relevant extracts from reports adopted by the IACHR with regard to the international obligations of the States and their role in ensuring and protecting the right to work of all persons, in particular those groups in situations of vulnerability and historical discrimination, with special focus on those cases in which the employers are non-state actors. In addition, a relevant selection of recommendations made to States to ensure labor rights in contexts of health emergencies is provided.

Cases in the Court

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

143. With regard to the duty to provide protection against actions of non-state actors, the Court said that the “failure to comply with such duty occurs when States Parties refrain from taking all the appropriate measures to protect persons under their jurisdiction against violations of the right to work ascribable to third parties.”⁹ The Court has also pointed out that “the State is then responsible for itself, when it acts as an employer, and for the actions of third parties, when they act based on the tolerance, acquiescence

⁸ United Nations Committee on Economic, Social and Cultural Rights. General comment 3: The nature of the States Parties’ obligations (paragraph 1, Article 2 of the Covenant), 1990. Also see: IACHR. *Report on Poverty and Human Rights in the Americas*, OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017), paras. 236 and 237.

⁹ UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005. Para. 35.

or negligence of the State, or with the support of any state policy or guideline that favors the creation or existence of situations of discrimination.”¹⁰

144. In this regard, the IACHR understands that in light of the duty to guarantee under Article 1.1 of the ACHR and of the interpretation of it made by the organs of the inter-American system, States Parties should prevent any violation of the rights contained in Article 26 in the context of business activities. According to the UN Committee on ESCRs, this includes adopting a legal framework to ensure the protection of such rights and to provide effective access to resources for the victims of such violations. Among the actions that ensure an adequate legal framework, States shall demand that companies exercise due diligence in the field of human rights so as to identify, prevent and mitigate any risk of violation of rights in their activities.¹¹

145. Finally, the basic obligations of States with regard to the right to work include ensuring access to employment, particularly for disadvantaged and marginalized persons and groups,¹² such as those in poverty.

Resolutions

Pandemic and Human Rights in the Americas. Resolution No. 1/2020. April 10, 2020.

(Recommendation)

5. Protect the human rights, and particularly the economic, social, cultural, and environmental rights, of working people who are at higher risk of the pandemic and its consequences. It is crucial that measures be taken to ensure that all working people have income and means of subsistence, so that they are able, on an equal footing, to comply with containment and protection measures during the pandemic, as well as have access to food and other essential rights. People who must continue to work should be protected against the risks of contagion, and in general, there must be adequate protection of jobs, wages, freedom of association and collective bargaining, pensions and other social rights related to employment and trade unions.

¹⁰ I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, requested by the United Mexican States; para. 152.

¹¹ UN Committee on Economic, Social and Cultural Rights. General comment 24. On state obligations in the context of business activities. August 10, 2017; paras. 14 *et seq.*

¹² UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005; para. 31.

Thematic Reports

Report Business and Human Rights: Inter-American Standards, OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19. Doc. November 1, 2019.

26. The IACHR, together with its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, has clearly emphasized that to guarantee human rights in the context of business activities, States have specific duties to regulate, prevent, monitor and investigate, and provide access to reparations,¹³ including the protection of labor and trade union rights.

218. Thus, for example, in transitional justice processes, although civil and political rights have traditionally been linked to such processes due to the visible gravity and impact on the enjoyment of those rights, it is paramount that States give greater importance to assessing the impacts on economic, social, cultural and environmental rights in these contexts. Investigating and understanding the role of some companies in connection to the enjoyment of social rights could help identify and address those violations. In addition, given the role and the impact of companies on workers, trade unions and peasants, it is urgent to put special emphasis on the labor, trade union and peasant rights that are violated during these periods of repression.

330. (...), the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also received worrying information that indicates that trade unionists and workers – in their role as human rights defenders – were and still are a particular target of attacks in past armed conflicts and dictatorships and in current regional situations.¹⁴ In addition, the Commission has received a considerable amount of information denouncing economic actors who independently or with state complicity have executed threats, killings, arbitrary arrests, telephone surveillance and wiretapping, blackmailing, harassment and dismissals, stigmatization campaigns and persecution, among other forms of aggression, to weaken the position of workers, limit the enjoyment of labor rights and obstruct trade union freedoms, including the right to collective bargaining and to strike. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights note that public complaints are varied and involve both state-owned enterprises and the private sector, in different countries and in different sectors. Some examples include the defense of trade union and labor rights in melon

¹³ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; para. 80-146.

¹⁴ IACHR. Public hearing. Guarantees for Freedom of Expression, Association, and Peaceful Assembly for Trade Unions in the Americas, 169th Period of Sessions, October 2, 2018.

plantations in Honduras¹⁵, in food processing plants in Guatemala¹⁶, in the cement industry in Mexico¹⁷, in the civil aviation sector in Colombia¹⁸, or in the press in Argentina¹⁹, among many others.

27. With regard to women's rights, the IACHR has expressed with concern that the influence of negative sociocultural stereotypes can seriously affect women's rights in the workplace. This may encompass situations such as work harassment, sexual harassment, and violence in the workplace. The IACHR recalls that the significant increase in female participation in the labor market in the region has not yet lead to real equality of opportunities for women, a situation that becomes worse for indigenous and Afro-descendant women, no matter whether this is related to the workplace, to access to quality work or to the establishment of equal labor relations. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights put a special focus on violations of women's labor rights in business activities in the textile industry. For example, women in the sector are forced to work in dangerous, precarious, and unhealthy conditions; are required to take pregnancy tests to be hired, and have to work double shift, among others.²⁰

331. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights consider it necessary to emphasize that States have a key role in guaranteeing women's human rights in the context of business activities, since such activities impact women's rights in various ways. In general, the threats faced by women in this area are marked by the prevailing gender discrimination and violence in societies, the imbalance of power between business actors and women, the omissions of States when providing protection, the impunity of these acts and the lack of complaint mechanisms, as well as the intersectional impact on women when there are several coexisting factors of discrimination. This is exacerbated when such practices and behaviors are part of a patriarchal social, political and regulatory context that upholds and conceals those practices, for example, by undermining women's right

¹⁵ See, *inter alia*, In These Times. [Labor unrest is erupting on Honduran plantations and rattling the global supply chains](#), February 13, 2019; The Times. [Union row costs lives, says ethical recognition](#), March 26, 2019.

¹⁶ Trade Union Confederation of the Americas. [CSA y CSI condenan nuevo asesinato contra sindicalista en Guatemala](#), September 4, 2017; Solidarity Center. [Guatemala: Another union leader murdered](#), September 7, 2017.

¹⁷ El Sol de Hermosillo. [Empleados de cementera denuncian despidos injustificados](#), January 22, 2019; IndustriALL-union. [LafargeHolcim fires workers for organizing union in Mexico](#), April 2, 2019.

¹⁸ See, *inter alia*, Business and Human Rights Resource Center. Colombia: [Despido de 107 pilotos y sanciones a 109 participantes en la huelga de Avianca; sindicatos internacionales expresan solidaridad](#) (information gathered between 2017 and 2018); El Espectador. [El capítulo Avianca en las chuzadas ilegales](#), December 22, 2018; IndustriALL-union. [Líderes sindicales de Colombia sufren amenazas y violencia](#), August 27, 2018.

¹⁹ See, *inter alia*, TELAM. [La agencia Telam tiene futuro](#). June 26, 2018; El País. [Argentina protesta por el despido de 354 trabajadores de la agencia estatal de noticias](#). July 5, 2018; Tiempo. [Los Trabajadores de Télam protestaron contra la sanción de a periodistas por manifestarse el 8M](#). March 22, 2018; Página 12. [Sumariadas tras protestar el 8m](#). March 21, 2018.

²⁰ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; para. 331-339.

to fair and equitable working conditions compared to men, preventing women from having the same access to and participation in the use of land and natural resources and their interrelationship with business activities, or the disproportionate burden that girls and women bear in contexts of privatization of basic services, such as education.

332. However, it should be acknowledged the extent of the areas involved in the respect and protection of women's rights in the labor sphere, such as: land and natural resource management, privatization of basic services for the enjoyment of human rights, trade and investment, access to effective reparations, armed conflicts and transitional justice processes, employment and labor rights,²¹ among others. Only a general reference to the issue of employment and labor rights will be made in light of the scope and purpose of this report. Nevertheless, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights highlight the need to incorporate a gender perspective in the actions of States in this field, as well as in the human rights due diligence processes requested of companies. In particular, a comprehensive approach that addresses the impacts of business operations and structures on women shall be taken, while observing women's specific needs in the prevention, supervision or accountability actions taken with regard to violations of women's rights.²²

333. Given this context, in the area of employment and labor rights, for example, the Argentine State stressed how unequal income distribution between men and women is, and how unequal the distribution of domestic tasks and unpaid care is. In this regard, the Argentine State supported initiatives to a) increase the participation of women in the economy; b) reduce the wage gap between men and women; and c) promote the participation of women in leadership. It also put emphasis on the role of the Equal Opportunities Commission as a multi-sectoral space where various actors from trade unions, businesses and the government could meet, and on the tasks performed by the National Communications Agency to prevent violence against women in the media and the activities carried out by the Office of Advice on Violence in the Workplace. According to this office, during the first half of 2017, 87 per cent of all complaints of

²¹ The Danish Institute for Human Rights. [Women in business and human rights \(2018\)](#) (2018); Bourke Joanna and Elizabeth Umlas. [Gender-responsive due diligence for business actors: Human Rights-based approaches](#). Geneva Academy, December 2018; Marston, Ama. [Women, Business and Human Rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice](#). Marston Consulting, March 7, 2014.

²² In this regard, the Working Group on Business and Human Rights has pointed out that: "To eliminate all forms of discrimination against women and achieve substantive gender equality, States and business enterprises should work together with women's organizations and all other relevant actors to ensure systematic changes to discriminatory power structures, social norms and hostile environments that are barriers to women's equal enjoyment of human rights in all spheres." See Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. UN Doc. A/HRC/41/43, May 23, 2019.

violence in the workplace occurred in the private sector and 78 per cent of the victims were women. Ecuador said that among the main problems in the work sphere were the wage gap that negatively impacted women, the lack of sound mechanisms to control working conditions for women in all economic sectors, restrictions on leaves and maternity leaves, and the intersectionality of several forms of discrimination against women.

334. Similarly, Brazil's Ministry of Labor stressed the great inequality between men and women to access the labor market. According to information provided, the average remuneration of women accounts for 77.5 per cent of that of men. The Ministry also indicated that, with regard to the role of enterprises in guaranteeing women's rights, there are no effective policies to ensure equality and representativeness of women when accessing managerial positions and that they continue to face discriminatory practices in the workplace. Patriarchal structures and the prevalence of negative and harmful gender stereotypes about women not only create serious barriers for women that prevent them from leading and running companies, but also influence the marketing and trade practices of many companies that systematize discriminatory social norms against women. In this regard, States should take special measures to ensure that women are not objectified in processes related to product manufacturing or service supply in enterprises, and take concrete actions to promote their entry into leadership and managerial positions.

335. The Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights emphasize that the influence of these negative sociocultural stereotypes can also seriously affect investigations into cases of violence and harassment in the workplace since they are marked by stereotyped notions of how women should behave. Therefore, it is extremely important that States advocate for the eradication of those stereotypes. For instance, in cases of violence against women, including those related to business activities, States Parties should know that the general obligations set forth in Articles 8 and 25 of the American Convention are supplemented and reinforced by the obligations arising from the specific inter-American treaty on the subject: the Convention of Belém do Pará. Article 7.b of the Convention of Belém do Pará specifically obliges States Parties to apply due diligence to prevent, punish and eradicate violence against women. Thus, in the face of an act of violence against a woman in the context of business activities, it is particularly important that the authorities responsible for the investigation carry it forward with determination and effectiveness by taking into consideration the duty of society to reject violence against women and the obligations of States to eradicate it and to provide trust so victims are able to find protection in state institutions.

336. The Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights underline the importance of women's contribution to the effectiveness, the innovations, and the profits of companies, in addition to the overall contributions they make to the national economies. The IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recall that the significant increase in female participation in the labor market in the region has not yet led to real equality of opportunities for women, a situation that becomes worse for indigenous and Afro-descendant women, no matter whether this is related to the workplace, to access to quality work or to the establishment of equal labor relations.²³ This situation has an impact on the full enjoyment of other human rights, and state actions to overcome these challenges must therefore be strengthened. In this context, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights underline the importance of implementing the Beijing Platform for Action as a road map for achieving gender equality. In particular, they draw attention to the fact that women contribute to development not only through their paid work, but also through significant unpaid work, for example, domestic work, child care, elderly care, protection of the environment, or unpaid work in family businesses, among others. The increased visibility of this type of work will help women to share responsibilities with men in a better way and ensure that women's rights are guaranteed. That is why States, for example, have to take concrete and effective action to determine the value of women's unpaid work, and this unpaid work should be considered in employment and social security policies, or to review and reformulate policies or standards related to business and commercial matters to ensure that there is no discrimination against women.²⁴

337. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights have received information on business activities that, together with the State's lack of protection, perpetuate widespread discrimination and violence against women, contribute to maintaining unstable and vulnerable working conditions, and lead to gender-based human rights abuses. For example, violence and harassment in the workplace, including sexual harassment, continue to be situations of high concern to the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, since they do not only limit women's professional development, but also directly violate the enjoyment of women's human rights with serious consequences. The

²³ IACHR. *The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143 Doc. 59, November 3, 2011; para. 81.

²⁴ Beijing Platform for Action. Fourth World Conference on Women, held on September 4-15, 1995; paras. 150–180.

IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights underline the importance of the recent adoption of a treaty in this field and its recommendations within the ILO, which will help guide the conduct of States Parties in a more concrete manner.²⁵ They also emphasize that in light of the interpretation of other international sources of women's rights, States are obliged to respect and guarantee women's rights in the workplace,²⁶ though, for example, the implementation of standards for the eradication of violence and harassment at work, preventive measures within company policies, and effective access to resources and reparations for women who have been victims of harassment or violence in the workplace. In addition, the irregular application of maternity leaves or the lack of access to such right, together with the absence of paternity leaves or reduced paternity leaves in the context of business activities in the region, directly affect women's autonomy since they have to bear disproportionate burdens of child care. It is therefore paramount that States establish clear binding rules and monitor and oversight actions aimed at effectively protecting women's rights in these contexts.

338. Other situations reported before the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights regarding violations of women's rights in the context of business activities occur in the textile industry and include the following: women are forced to work in dangerous, precarious and unhealthy conditions; are required to take pregnancy tests to be hired, and have to work double shift, among others.²⁷ Investigations into this matter indicate a serious violation of the labor rights of these workers, particularly in Nicaragua, Guatemala, El Salvador and Honduras. Given this scenario, the privileges (usually tax benefits) given by States to these companies and their omissions in observing labor standards contrast with the strenuous conditions under which these persons work. There are additional factors that violate their dignity, such as poor hygiene conditions in factories or restricted access to bathrooms.²⁸ The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also received information on women working in rural activities. For instance, the Trade Union Association of Banana and Peasant Agricultural Workers of Ecuador has reported that female workers in banana farms receive wages lower than men, even though they do the same work, and they are

²⁵ ILO. Convention No. 190 Concerning the Elimination of Violence and Harassment in the World of Work, June 21, 2019.

²⁶ For example, see the statement issued by various international experts on women's rights: "[Violence and harassment against women and girls in the world of work is a human rights violation, say independent human rights mechanisms on violence against women and women's rights](#)", May 31, 2019.

²⁷ IACHR. *The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143. Doc. 59, November 3, 2011; para. 115. See also IACHR. *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015; paras. 405-415.

²⁸ OXFAM. *Derechos que penden de un hilo*, April 2015.

sometimes victims of sexual harassment by their managers. In a similar fashion, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights were informed that after the Mariana dam disaster in Brazil in 2015, the work of the women affected by the disaster was not recognized and prevented them from receiving a compensation on an equal footing with men since it was considered that these women depended on their partners and did not make their own income, thereby limiting their ability to participate in the deliberations on the reparation process.

339. Finally, the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights stress that women are not only poorly represented in leadership and managerial roles in companies, but are also forced to resort to unsafe, dangerous, and unstable forms of employment. The forms of employment available to women are much more likely to be in the informal economy, where working conditions are less secure, wages are lower or inconsistent, employment status is short-term and working hours are irregular, when compared to the jobs available to men. Women employed in these sectors are also particularly vulnerable to harassment, physical abuse, including sexual violence, at work, while going to work and when returning from work, especially in conflict and post-conflict contexts.

28. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also emphasize that in the field of businesses and human rights, the rights of indigenous peoples and Afro-descendants can be affected, especially due to structural discrimination or widespread poverty, which are deeply rooted in the culture and institutions of societies. The IACHR has proved that discrimination against these groups has been a clear determinant of the precariousness of social mobility channels and of barriers to equal access to quality education and employment.²⁹

352. The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recalls that available information proves that discrimination against these groups has been a clear determinant of the precariousness of social mobility channels and of barriers to equal access to quality education and employment.³⁰ In general, it notes that these populations are among the poorest groups in society, have low rates of participation in political processes and decision-making, face unequal access to the labor market and have several difficulties in accessing and completing quality education.³¹ Hence, the IACHR and its Special Rapporteurship on Economic, Social,

²⁹ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; para. 352.

³⁰ IACHR. *Report on Poverty and Human Rights in the Americas*, OEA/Ser.L/V/II.164. Doc. 147, September 7, 2017; paras. 372, 373, 374, 382 and 385.

³¹ Committee on the Elimination of Racial Discrimination. General recommendation No. 34, UN Doc. CERD/C/GC/34. October 3, 2011; para. 6.

Cultural and Environmental Rights underline that States must pay special attention to respect the self-determination of these peoples, and to ensure that these populations have access to a comprehensive quality education that respects their culture and facilitates access to decent work on equal conditions. In other words, States must also ensure that they have the possibility to access decent work in the main economic and labor sectors without discrimination through programs to promote their rights in state-owned enterprises and the private sector and policies aimed at eradicating discrimination and segregation in this area.

29. With regard to persons deprived of their liberty, the IACHR has pointed out that when there are agreements or financing bodies involved in the development of productive projects with persons deprived of their liberty, or there are companies that establish labor relations with these persons through their productive and commercial processes, States have the obligation to regulate, monitor and protect the labor rights of these persons. States must pay special attention to the fact that the established labor relations respect and guarantee human rights, particularly fair and equitable working conditions and the labor rights of persons, whether this is in terms of wages, working hours, social benefits, non-discrimination or safety and hygiene in the productive activities that they may carry out in light of the particular situation they are experiencing. In addition, States must ensure effective and accessible resources for these individuals to report potential abuses or violations; continuous monitoring, including that of independent actors; comprehensive frameworks to guarantee transparency in the permitted labor schedules, practices, and relationships; and that the companies and authorities involved are held accountable, where appropriate.³²

368. With regard to the latter, when there are agreements or financing bodies involved in the development of productive projects with persons deprived of their liberty, or there are companies that establish labor relations with these persons through their productive and commercial processes, the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights underline that States have the obligation to regulate, monitor and protect the labor rights of these persons. Given this context, for instance, the State of Guatemala reported on the existence of programs that connect private enterprises and persons held in prisons; however, the country's prison system only serves as a link between both parties. This is the case of female prisoners that pack beans and oats, or bottles of perfumes at the Women's Orientation Center.

369. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recognize that the role of

³² IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; paras. 368-369.

companies can lead to concrete benefits for these persons and their families by helping them develop skills or reintegrate into society.³³ To fulfill this goal, States must pay special attention to the fact that the established labor relations respect and guarantee human rights, particularly fair and equitable working conditions and the labor rights of persons, whether this is in terms of wages, working hours, social benefits, non-discrimination or safety and hygiene in the productive activities that they may carry out in light of the particular situation they are experiencing. In addition, States must ensure effective and accessible resources for these individuals to report potential abuses or violations; continuous monitoring, including that of independent actors; comprehensive frameworks to guarantee transparency in the permitted labor schedules, practices, and relationships; and that the companies and authorities involved are held accountable, where appropriate.

30. With regard to persons in a situation of human mobility, the IACHR has pointed out that one of the greatest challenges to respect and guarantee their rights in the context of business activities and human rights arises in the area of labor. The huge barriers to access to formal work not only create incentives to develop long-term assistance dependency, but also put them at risk of poverty or life-threatening situations and may have detrimental effects on the effective exercise of other human rights. Some categories of migrants, such as migrant women and children, temporary migrant workers and irregular migrants, are inherently more vulnerable to abuse, violence, and exploitation.³⁴

375. The IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights observes that one of the greatest challenges to respect and guarantee the rights of persons deprived of their liberty in the context of business activities and human rights arises in the area of labor. The huge barriers to access to formal work not only create incentives to develop long-term assistance dependency, but also put them at risk of poverty or life-threatening situations and may have detrimental effects on the effective exercise of other human rights, such as access to housing, health and education, and may promote certain forms of exploitation, including human trafficking, modern forms of slavery or forced recruitment.³⁵ In this regard, the United Nations Special Rapporteur on the human rights of migrants has indicated that: "Migrants, especially those with a precarious residence status, are vulnerable to abuse and labor exploitation. Certain categories of migrants, such as migrant women

³³ See, *inter alia*, The New York Times. [De las cárceles de Perú a las tiendas de lujo](#), January 22, 2019; EFE. [Empresa colombiana busca reinserción de presos con confección de ropa de bebé](#), January 17, 2019; World Bank. [Trabajar desde la prisión, una salida para miles de reclusos en Latinoamérica](#), March 12, 2014.

³⁴ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; paras. 375-378.

³⁵ UNHCR, Local Integration and Self-Reliance, UN Doc. EC/55/5C/CRP. June 15, 2015; para. 6.

and children, temporary migrant workers and undocumented migrants are more intrinsically vulnerable to abuse, violence and exploitation”³⁶ and that “States seem to invest very few resources in trying to reduce the informal sector and sanction employers who profit from the exploitative conditions of work to boost their competitiveness.”³⁷ Similarly, the Committee of Experts on the Application of Conventions and Recommendations of the International Labor Organization has indicated that: “The migrant workers instruments cover displaced persons and refugees where they are employed as workers outside their country of origin.”³⁸

376. The Commission has referred on several occasions to the condition of structural vulnerability faced by migrants, and to the abuses to which they are exposed, including poor working conditions.³⁹ For example, in 2015, on its report on a visit to the Dominican Republic, it expressed concerns about the fact that Haitian migrant workers were particularly exposed to diseases resulting from labor exploitation, accidents at work, overcrowding conditions and the subsequent deprivation of rights associated with their work. In particular, it identified that historically the migration of Haitian workers contributed to the profits of the sugar industry, which, taking advantage of language barriers, discrimination, and lack of access to basic services, has subjected these persons to intense labor exploitation.⁴⁰

377. The Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also see with high concern the information available on allegations of labor exploitation in countries that have been receiving people from Venezuela in the context of the mass migration that has resulted from the social, political and economic crisis in that country. For example, public records show that up to 51 per cent of Venezuelans might have suffered some form of labor exploitation in Peru, with working days of up to 12 hours, wages below the allowed minimum salary and

³⁶ Report of the Special Rapporteur on the human rights of migrants. UN Doc. A/ HRC/35/25. April 28, 2017; para. 49.

³⁷ Report of the Special Rapporteur on the human rights of migrants. UN Doc. A/ HRC/26/35, April 3, 2014; para. 17.

³⁸ International Labor Organization, General Survey concerning the migrant workers instruments. ILC.105/III/1B, 2016; para. 371.

³⁹ See, *inter alia*, IACHR. Annual Report. Second Progress Report of the Special Rapporteurship on Migrant Workers and their Families, OAS/Ser./L/V/II. 111. Doc. 20, rev. April 16, 2001; para. 64.

⁴⁰ IACHR. Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015; paras. 92-107, 565-574; IACHR. Annual Report 2018. Chapter V. Follow-up on Recommendations Issued by the IACHR in its Country and Thematic Reports (Dominican Republic); paras. 59 and 60.

sexual harassment in the case of Venezuelan women.⁴¹ There are also complaints of similar nature in Brazil⁴², Colombia⁴³ and Ecuador⁴⁴. The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also had access to public information on complaints about violations of rights by companies and poor oversight by States to guarantee various human rights of migrant workers in the United States⁴⁵ and Canada⁴⁶. The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has also shown various concerns about the exploitation of irregular migrant workers by enterprises in Mexico, Argentina, Honduras, and Guyana. Such violations include low wages, lack of formal contracts, no payment of wages or irregular pay, no access to social protection, excessive working hours, restrictions on freedom of movement, among others. The industries involved are agriculture, textiles, construction, fishing, forestry, mining, and manufacturing.⁴⁷

378. Given this context, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recall that States have obligations to respect and guarantee all economic, social, cultural and environmental rights, including the right to work and

⁴¹ Publimetro. [Estudio señala que 51% de venezolanos que viven en el Perú sufrió explotación laboral](#), October 19, 2018, Latina. [Venezolanos denuncian ser víctimas de explotación laboral en el Perú](#), March 14, 2018; El Telégrafo. [18 venezolanas fueron rescatadas por presunta explotación laboral y sexual](#), August 24, 2018.

⁴² Brazil's Ministry of Labor. ["MP sobre assistência a refugiados deve abordar empregabilidade", diz procuradora](#), April 19, 2018; Reporter Brasil. [Medo, fome, noites ao relento e tralho escrevo: A travessia two venezuelans in the northern border of Brazil](#). May 12, 2018. See also: La República. [Migrantes venezolanos en Brasil, víctimas de explotación laboral](#), March 8, 2018; The New York Times. [Debemos detener la esclavitud de venezolanos en Brasil](#), May 9, 2018.

⁴³ La FM. [Por explotación laboral a venezolanos 600 empresas han sido sancionadas: cancillería](#), January 31, 2018; El Colombiano. [La explotación laboral que padecen los venezolanos en Medellín](#), July 4, 2018; Canal1. [La explotación laboral de venezolanos en Colombia; WRadio. Inician investigaciones para establecer explotación laboral de venezolanos en Boyacá](#), February 26, 2019.

⁴⁴ Pública FM. [1200 casos de explotación laboral en contra de migrantes se reportan](#), July 13, 2018; Ecuador inmediato. [Venezolanos no requieren permiso laboral, pero empresas deberán registrar contrato, explica Ministro de Trabajo](#), February 23, 2018; El diario. [Venezolanos, víctimas de la discriminación y explotación laboral](#), June 18, 2017.

⁴⁵ EFE. [Expertos advierten sobre explotación laboral de inmigrantes y jornaleros](#), November 21, 2015; The Guardian. [Immigration crackdown enables worker exploitation, labor department staff say](#), March 17, 2017; The New York Times. [La realidad sobre el trabajo de personas indocumentadas en EE.UU.](#), December 13, 2018.

⁴⁶ The New York Times. [Foreign Farmworkers in Canada Fear Deportation if They Complaint](#), August 13, 2017; CBC. [Police in Ontario free 43 Mexicans brought to Canada by alleged human traffickers](#), February 11, 2019; Global News. [Calls for reform after Ontario migrant workers claim they worked in terrible conditions](#), March 16, 2019.

⁴⁷ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Concluding observations (Guyana). UN Doc. CMW/C/GUY/CO/1, May 22, 2018; paras. 32-33; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Concluding observations (Mexico). UN Doc. CMW/C/MEX/CO/3, September 27, 2017; paras. 47-48; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Concluding observations (Honduras). UN Doc. CMW/C/HND/CO/1, October 3, 2016; paras. 42-43; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Concluding observations (Argentina). UN Doc. CMW/C/ARG/CO/1, November 2, 2011; para. 21.

social security; that is, regardless of a person's immigration status, when a labor relationship is entered into, the protections conferred by law on workers, with all rights and obligations covered, shall apply to all workers without discrimination, regardless of whether they are documented or undocumented.⁴⁸ The latter is recognized in the UN Guiding Principles which refer to migrants as one of the groups that often do not enjoy the same level of legal protection of their human rights as the general population; this may facilitate human rights violations in the context of business activities and prevent administrative or judicial review of such cases.⁴⁹

31. With regard to LGBTI persons, the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights notes that in the context of business activities and human rights, LGBTI persons tend to experience discrimination and violence at work due to their sexual orientation and gender identity. The IACHR has identified cases in which LGBTI persons are asked invasive questions about their private lives at work, they must conform to the requirements of the binary concepts of femininity or masculinity to be accepted, and in many cases they hide, deny or keep their sexual orientation and gender identity in secret, whether to access or keep a job, or to avoid harassment, ridicule or retaliation. As a result, the IACHR stresses the importance of initiatives led by companies and other private agencies to promote social inclusion efforts for LGBTI persons, especially with regard to access to their economic rights through employment.⁵⁰

379. With regard to LGBTI persons, the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights notes that in the context of business activities and human rights, LGBTI persons tend to experience discrimination and violence at work due to their sexual orientation and gender identity.

380. The IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recall that the Americas are a continent in which societies are dominated by deeply rooted ideas and cultural patterns such as heteronormativity, cisnormativity, sexual hierarchy, sex and gender binaries, and misogyny. These cultural ideas and patterns, combined with almost widespread intolerance towards people with non-normative sexual orientations, gender identities and expressions, and diverse sexual characteristics

⁴⁸ IACHR. Merits Report No. 50/16, *Undocumented Workers v. United States of America*, November 30, 2016; para. 76; I/A Court H.R., *Advisory Opinion OC-18/03 of September 17, 2003*. Series A, No. 18, para. 134.

⁴⁹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other businesses. UN Doc. A/HRC/17/31, March 21, 2011, comments on principles 3, 12 and 26.

⁵⁰ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; paras. 379-385.

favor violence and discrimination against LGBTI persons or those perceived as such.⁵¹

381. In the labor sphere, for example, the ILO has identified cases in which LGBTI persons are asked invasive questions about their private lives at work, they must conform to the requirements of the binary concepts of femininity or masculinity to be accepted, and in many cases they hide, deny or keep their sexual orientation and gender identity in secret, whether to access or keep a job, or to avoid harassment, ridicule or retaliation.⁵² The studies carried out on this subject illustrate this problem. For example, in Argentina lesbian women reported more cases of sexual harassment at work, while bisexual women and trans men denounced unequal treatment at work.⁵³ In Costa Rica, evidence was found of persistent prejudices that encourage discrimination against LGBTI persons across the labor sphere without sufficient state mechanisms or an adequate regulatory framework to protect them from abuses and violations of their rights. There is also a lack of procedures for channeling complaints, and the tools for identifying violations of their rights are scarce.⁵⁴

382. In Colombia, high rates of intolerance have been also identified. In no less than 75 per cent of cases, the use of hostile and humiliating language against LGBTI persons in the workplace is recognized, and layoffs for making sexual orientation apparent might account for up to 51.4 per cent for the gay population and 53.8 per cent for lesbians. With regard to trans persons, the lack of promotion opportunities is up to 92 per cent.⁵⁵

383. The information available on trans persons indicates that they often face the most severe forms of labor discrimination. According to the ILO, among the main problems trans persons face in the workplace are the following: impossibility of obtaining an identity card that reflects their gender and name; disrespect of their acquired name and non-acceptance of their gender expression in relation to their way of dressing; deterrence from using bathrooms because of their gender; in addition, they are more vulnerable to harassment by their peers. Trans workers are frequently excluded from formal employment; this leaves few survival strategies other than sex work,

⁵¹ IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OEA/Ser.L/V/II.rev.2. Doc. 36, November 12, 2015; para. 48.

⁵² ILO. [Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project](#) (Factsheet).

⁵³ ILO. [work: Study](#) (2015).

⁵⁴ ILO. [work: Study](#) (2016).

⁵⁵ National Trade Union School and Corporation Caribe Afirmativo. [Raros... y oficinas, Diversidad sexual y mundo laboral: discriminación y exclusión](#) (2013).

which often reinforces their vulnerability and exposes them to dangerous conditions in which they are more susceptible to violence.⁵⁶

384. As a result, the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights highlights the importance of initiatives led by companies and other private agencies to promote social inclusion efforts for LGBTI persons, especially with regard to access to their economic rights through employment. For example, in the province of Buenos Aires in Argentina, state-owned enterprises, businesses that received subsidies from the provincial state and utility companies must hire at least 1 per cent of trans persons of all their staff.⁵⁷ In Mexico, the Ministry of Labor and Social Welfare grants the Inclusive Company Award "Gilberto Rincón Gallardo" to recognize the work done by enterprises that apply best practices and policies to support people in situations of vulnerability and promote equal opportunities, inclusion and non-discrimination.⁵⁸

385. In this context, notwithstanding the standards developed in this report, the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights consider it appropriate to urge States to redouble their efforts to respect and effectively guarantee the rights of LGBTI persons, in particular by ensuring that, through their various powers, companies fulfill their duty to respect the rights of this group. It is also important to mention the standards of conduct for business to tackle discrimination against LGBTI people promoted by the Office of the United Nations High Commissioner for Human Rights since 2017. These standards emphasize the permanent obligation of companies to respect the human rights of these individuals, eliminate discrimination, provide support to the LGBTI members of their staff, pay attention to the impacts that their business relationships or their products or services have on LGBTI persons, and help eliminate such abuses by maximizing their role in the community and acting publicly in support of these people.⁵⁹

32. With regard to persons with disabilities, the IACHR has highlighted the importance of initiatives that create a global labor culture that respects and includes persons with disabilities, and raise awareness of the positive relationship between this group of people and greater business success. Priority areas include employability in developing countries, digital accessibility, combating stigma and stereotypes, and

⁵⁶ ILO. [Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project](#) (Factsheet).

⁵⁷ MERCOSUR Institute of Public Policies on Human Rights. [LGTBI: compendio regional de buenas prácticas gubernamentales de garantía y protección de derechos](#) (2017), pp. 65-66.

⁵⁸ IACHR. *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, OEA/Ser.L/V/II.170. Doc. 184, December 7, 2018; para. 215.

⁵⁹ OHCHR. [Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People standards of conduct for business](#) (2017).

support for mental health at work. Other barriers may include physical barriers to access in the workplace.⁶⁰

390. The Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recall that people living with some form of disability are more likely to experience adverse socioeconomic conditions, such as lower levels of education, worse health conditions and a higher percentage of unemployment.⁶¹ This is exacerbated by additional situations of vulnerability, including factors such as sex, ethnicity or age, which create differentiated and intersectional forms of discrimination or violence; it is also noted that there is a higher prevalence of persons with disabilities in low-income countries, and that the number of persons with disabilities in the region amounts to 66 million (12 per cent).⁶²

391. As in the above-mentioned situations, the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights notes that the rights of persons with disabilities in relation to business behavior or activity is a matter that encompasses various types of circumstances. On the one hand, much of the information available is about situations of widespread discrimination over access and decent working conditions, including complaints about the impacts on workers who acquire a disability due to occupational risks at work; on the other hand, there is still a considerable gap because of poor reasonable adjustments to standards, services, equipment, facilities and products (particularly those necessary for the enjoyment of their rights and the respect for their personal autonomy), which do not comply with the required availability, accessibility, affordability or quality criteria; these adjustments are presented as unnecessary and costly, and are generally less visible to the rest of the population.

392. For example, according to information provided by the Office of the Ombudsperson of Peru, companies with over 50 workers must hire at least 3 per cent of persons with disabilities of their total staff. Although not complying with this standard is considered a serious violation, the unemployment and inactivity rates of this group continue to be high due to the lack of practical application of this norm and poor state oversight. While this report was being prepared, the Council for the Prevention and Elimination of Discrimination in Mexico City stated that 45.9 per cent of the complaints on discrimination against persons with disabilities in that country were

⁶⁰ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; paras. 390-395.

⁶¹ IACHR. *Report on Poverty and Human Rights in the Americas*, OEA/Ser.L/V/II.164. Doc. 147, September 7, 2017; para. 427.

⁶² World Health Organization and World Bank. *World Report on Disability* (2011).

related to violations of the right to work committed by companies of various sizes.

393. Given this context and notwithstanding the obligations of the States in this area, the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights emphasizes the role of initiatives such as the ILO Global Business and Disability Network to create a global labor culture that respects and includes persons with disabilities, and raise awareness of the positive relationship between this group of people and greater business success. Priority areas include employability in developing countries, digital accessibility, combating stigma and stereotypes, and support for mental health at work.⁶³ For example, different initiatives to include these persons in the workplace have taken place in Brazil, Canada, Chile and Costa Rica through business networks or organizations.⁶⁴

394. The IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights also received information on permanent barriers permitted and sometimes facilitated by States that hinder the suitability of services managed by enterprises for the proper development and enjoyment of the rights of persons with disabilities. For example, in the education sector, there is information on constant denials to enrollment due to disability status or enrollment restrictions to hire a personal assistant or a therapy; lack of vacancies for students with disabilities; inaccessible infrastructure; lack of accessible furniture and materials for students with disabilities; lack of measures to counter aggression and ill-treatment against students with disabilities; and poor state supervision of pedagogical management and practices at private educational institutions.

395. Other barriers may include physical barriers to access in the workplace and in transport; barriers to information and communication (such as lack of sign language interpretation services, written information, screen readers, Braille, and easy-to-read formats). In general, there is a lack of accessible devices to reduce and eliminate existing barriers that take into account the diversity of disability situations. In particular, it is important for States to ensure that business actors that provide public services such as education, health, and water, as well as companies such as shops or cinemas do not limit the rights of these persons, in particular as regards accessibility. Any business facilities designed to serve the general public must be accessible to persons with disabilities not only when

⁶³ For more information on this initiative, see: ILO. [Global Business and Disability Network](#).

⁶⁴ ILO. [Disability in the Workplace: Employers' Organizations and Business Networks](#) (January, 2016). See also ILO and Global Compact. [Guide for business on the rights of persons with disabilities](#) (2018).

they offer a good or service, but also so that persons with disabilities can receive or make equal use of that good or service.

33. Finally, with regard to older persons, the IACHR has stressed that notwithstanding the obligation of States to guarantee the right to social security, especially to retirement, they must also promote public policies in the private sector that support access to decent work for older people.⁶⁵

402. In addition, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights underline that notwithstanding the obligation of States to guarantee the right to social security, in particular to retirement, State must also promote public policies in the private sector that support access to decent work for older people. For example, in Costa Rica, where there is a growing population of older adults, state institutions are trying to articulate actions to provide a consolidated service offering, contribute to the process of active and healthy aging, and create actions to promote entrepreneurship and employability.⁶⁶

C. Decent Work

34. The right to decent work is enshrined in Article XIV of the American Declaration of the Rights and Duties of Man, and in Article 6 of the Protocol of San Salvador, and guarantees working and living conditions for individuals. The Inter-American Commission has interpreted the content of the right to decent work to help States fulfill their obligations in relation to this subject matter. In addition, it is worth noting that the right to decent work in the Inter-American System of Human Rights is highly consistent with the concept of decent work developed by the International Labor Organization (ILO).

Cases in the Court

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

158. However, with regard to the content of the right to work and its connection to this case, the Commission notes that the UN Committee on Economic, Social and Cultural Rights, in its General comment 18, indicated the following:

Work as specified in article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human

⁶⁵ IACHR. *Business and Human Rights: Inter-American Standards*. Special Rapporteurship on Economic, Social, Cultural and Environmental Rights. November 1, 2019; para. 402.

⁶⁶ Ministry of Labor and Social Security (Costa Rica). *Programas de Atención a Personas Adultas Mayores (2019)*.

person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.⁶⁷

D. Prohibition of Slavery and Servitude

35. The IACHR has developed specific inter-American standards on the prohibition of slavery, servitude and forced labor. In this regard, this section presents the content of these three prohibitions and the scope of the relevant obligations of States to eradicate these practices.

Cases in the Court

Report No. 169/11. Case 12,066. Admissibility and merits. Hacienda Brasil Verde. Brazil. November 3, 2011.

123. The absolute and non-derogable prohibition to subject persons to slavery, servitude or forced labor is also enshrined in the American Convention and in other international instruments to which Brazil is a party. Article 27.2 of the American Convention indicates that the states of emergency do not authorize the suspension of certain rights, including Article 6 of the American Convention, which addresses the prohibition of slavery and servitude, or the judicial guarantees indispensable for the protection of such right.

132. In this case, the Commission shall determine whether the above facts are forms of slavery or forced labor, and whether the Brazilian State is responsible for them, when appropriate. To this end, it is necessary for the Commission to make an extensive interpretation of the rights of the American Declaration and the Convention based on other international instruments relevant to the case, under the clause enshrined in Article 29 b) of the American Convention, so as to have a more comprehensive characterization of the facts.⁶⁸

133. In this regard, both the Inter-American Court of Human Rights and the European Court of Human Rights (hereinafter “the European Court”) have highlighted the dynamic nature of international human

⁶⁷ UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005. Para. 7.

⁶⁸ Article 29 b) establishes that no provision of the American Convention may be interpreted as “limiting the enjoyment and exercise of any right or liberty that may be recognized in accordance with the laws of any of the States Parties or in accordance with another convention to which one of those States is a party.”

rights instruments and the need for their interpretation to be consistent with “the evolution of current times and living conditions.”⁶⁹ Similarly, the Inter-American Court has concluded that “certain acts or omissions that violate human rights, pursuant to the treaties that they do have competence to apply, also violate other international instruments for the protection of the individual.”⁷⁰ In light of this and in view of the nature of the facts denounced, as well as the context in which these facts occurred, the Commission considers it necessary to have before it other international instruments concerning the prohibition of slavery, servitude and forced labor, to which Brazil is a party,⁷¹ to be able to make a full interpretation and application of the content and scope of the rights protected in the American Convention.⁷²

134. In this regard, it should be noted that Article 1.1 of the 1962 Slavery Convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

135. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of the United Nations identifies practices similar to slavery as follows:

1. a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined [...]

136. On the other hand, Article 2.1 of the ILO Convention 29 defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

⁶⁹ I/A Court H.R., *Case of “Street Children” (Villagrán Morales et al. v. Guatemala)*. Merits. Judgment of November 19, 1999. Series C, No. 63, paras. 192-193.

⁷⁰ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C, No. 70, para. 208.

⁷¹ The 1926 Slavery Convention and its Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, ratified on January 6, 1966; the ILO Convention 29 of 1930, ratified on April 25, 1957; the ILO Convention 105 on the Abolition of Forced Labor of 1957, ratified on June 18, 1965.

⁷² See, *inter alia*, IACHR, Report No. 86/10 of Case 12,649 of July 14, 2010; para. 225; and IACHR, Report 57/97, Case 11,137, of November 18, 1997; para. 167.

137. With regard to the concept of servitude, the European Court has determined that:

[...] what is prohibited is a “particularly serious form of denial of freedom [...]” It includes “in addition to the obligation to perform certain services for others [...] the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition.” In this regard, by examining a claim under Article 4, the Commission should pay particular attention to the Convention on the Abolition of Slavery.⁷³

138. In addition, the International Criminal Court for the former Yugoslavia (ICTY) has considered the following:

[...] slavery, as a crime against humanity under customary international law, consists in the “exercise of any or all of the powers attaching to the right of ownership over a person.” [...] It was found that “the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person,” and the “*mens rea* of the violation is the intentional exercise of such powers.” [...]

[...] The question of whether a particular phenomenon is a form of slavery will depend on the operation of the factors or indicia of slavery identified by the Trial Chamber. These factors include: “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labor.” [...] Therefore, it is not possible to list in a comprehensive manner all the contemporary forms of slavery that are included in the original idea.⁷⁴

⁷³ “With regard to the concept of “servitude”, what is prohibited is a “particularly serious form of denial of freedom” (see *Van Droogenbroeck v. Belgium*, Commission's report of 9 July 1980, Series B no. 44, p. 30, §§ 78-80). It includes, “in addition to the obligation to perform certain services for others ... the obligation for the ‘serf’ to live on another person's property and the impossibility of altering his condition”. In this connection, in examining a complaint under this paragraph of Article 4, the Commission paid particular attention to the Abolition of Slavery Convention (see also *Van Droogenbroeck v. Belgium*, no. 7906/77, Commission decision of 5 July 1979, DR 17, p. 59)”, *ECHR, SILIADIN V. FRANCE*, 26 October 2000.

⁷⁴ “116. After a survey of various sources, the Trial Chamber concluded “that, at the time relevant to the indictment, enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person”.¹⁴³ It found that “the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person”, and the “*mens rea* of the violation consists in the intentional exercise of such powers.” [...]

119. The Appeals Chamber considers that the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement identified by the Trial Chamber. These factors include the “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration,

139. The IACHR notes that the contemporary concept of slavery includes debt bondage as a practice similar to slavery. According to the international instruments and jurisprudence mentioned above, the following elements are emphasized: i) a person commits to provide services as a security for a debt, but services are not applied to the payment of the debt; ii) the duration of services is not limited; iii) the nature of the services is not defined; iv) the person lives in the property where the services are provided; v) their movements are controlled; vi) there are measures in place to prevent their escape; vii) psychological control exists; viii) the person cannot change their condition; and ix) the person is subjected to cruel treatment and abuse. Forced labor includes work under threat of punishment and is not voluntary.

143. The Commission notes that in this case the fact that some of the workers received payment – described as “derisory” by domestic authorities – does not prevent the facts from being considered as servitude and forced labor. In this regard, the European Court of Human Rights has stated that “while remunerated work may also qualify as forced or compulsory labor, the lack of remuneration and of reimbursement of expenses constitutes a relevant factor when considering what is proportionate or in the normal course of business.”⁷⁵ There is information that on several occasions workers received no remuneration due to their alleged debts to the landlord.

145. In this regard, the IACHR stresses that the ILO has determined that there is a close connection between forced labor and other related abusive practices, such as slavery and practices similar to slavery, debt bondage, human trafficking and labor exploitation.⁷⁶ The ILO has also emphasized that slave labor is “not a secular practice of labor exploitation, or a simple crime against labor rights, but a total negation of rights, and therefore, a crime against the human rights of the worker.”⁷⁷ In addition, the United Nations Rapporteur on the subject has established that debt bondage and forced labor are

assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour”.¹⁴⁸ Consequently, it is not possible exhaustively to enumerate all of the contemporary forms of slavery which are comprehended in the expansion of the original idea...”. ICTY, *Prosecutor v. Kunarac*, Case No. IT-96-23-A (12 June 2002) (Appeals Chamber).

⁷⁵ “While remunerated work may also qualify as forced or compulsory labor, the lack of remuneration and of reimbursement of expenses constitutes a relevant factor when considering what is proportionate or in the normal course of affairs”, *ECHR, VAN DER MUSSELE V. BELGIUM*, 23 November 1983.

⁷⁶ ILO. Report of the Director-General. The cost of coercion. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. 98th Session of the International Labor Conference, 2009. [Report I \(B\) Geneva](#).

⁷⁷ ANNEX 6. TRINIDADE MARANHAO COSTA, Patricia. *Combatendo o Trabalho escravo Contemporane o exemplo do Brasil*. ILO (2010) Brasilia. p. 35.

known in Brazil as slave labor.⁷⁸ In accordance with the foregoing paragraphs, the Commission considers that the facts of this case constitute debt bondage and forced labor.

146. In addition to what has been said, the Commission has considered that servitude and forced labor may also involve violations of other rights such as personal integrity (both physical and psychological and moral), minimum conditions to live a dignified life, education, as well as access to justice in such circumstances.⁷⁹

Thematic Reports

Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco. OAS/Ser.L/V/II.Doc.58. December 24, 2009.

58. Slavery, bondage, and forced labor often entail violations of other fundamental human rights under the American Convention and other instruments of the universal system of human rights, such as the right of all persons to liberty, not to be subjected to cruel, inhuman, or degrading treatment, freedom of movement, the right of access to justice, freedom of expression, and freedom of association and identity.⁸⁰

Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American System of Human Rights. OAS/Ser.L/V/II.Doc.46/15.

218. Article 6 of the American Convention establishes an absolute and non-derogable prohibition of slavery, servitude, trafficking in women and slaves in all its forms. Under Article 6(2) of the Convention, no one shall be required to perform forced or compulsory labor. Convention Article 27(2) includes the prohibition of slavery, servitude and human trafficking among the basic rights that States cannot suspend “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.”⁸¹

⁷⁸ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian* A/HRC/15/20/Add 30 August 2010. Mission to Brazil.

⁷⁹ See IACHR. Report on Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco. Chapter IV: Rights of Indigenous Peoples and Peasant Communities, D. Situation of Forced Labor, Bondage and Slavery.

⁸⁰ David Weissbrodt and Anti-Slavery International. *Abolishing Slavery and Its Contemporary Forms*, paras. 26 and 27.

⁸¹ IACHR. Report on Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia, OEA/Ser.L/V/II. Doc. 58, 2009 (hereinafter “*Report on Captive Communities*”:

219. The prohibition of slavery and similar practices, such as the trafficking, are part of customary international law and jus cogens.⁸² Protection against slavery is an obligation erga omnes and binding on the States, emanating from international human rights standards.⁸³ Likewise, slavery and forced labor committed by public officials or private individuals, against any person, constitutes not only a violation of human rights but also represents an international criminal offense regardless of whether a State has ratified international conventions prohibiting these practices.⁸⁴

222. The Commission has argued that human trafficking and slavery-like practices, represent a violation of multiple or continuous character, that character is maintained until the victim is released. The means by which perpetrates human trafficking placed the victim in a state of utter helplessness, which leads to other related violations. This is particularly serious when trafficking occurs within a systematic pattern or an applied or tolerated by the state or its agents practice. In this sense, the Palermo Protocol underlines the need for a comprehensive approach to combating trafficking in persons, including measures to prevent trafficking and protect victims and survivors, in addition to measures to punish traffickers.⁸⁵

Country Reports

Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia. OAS/Ser.L/V/II.Doc.34. June 28, 2007.

275. In any case, the Commission must emphasize that the design of policies and programs to eradicate this alarming situation must begin with a thorough diagnosis that includes data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and government players involved, particularly the shortcomings in the various administrative and judicial bodies whose effective presence in many of the places where this reality persists is virtually nonexistent.

Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia"); para. 282

⁸² IACHR, *Report on Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia*; para. 54.

⁸³ International Court of Justice, *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, failure of February 5, 1971, ICJ Reports, 1970, para. 3.4.

⁸⁴ IACHR, *Report on Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia*; para. 54.

⁸⁵ IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*; para. 351.

Report on the Situation of Human Rights in the Dominican Republic. OAS/Ser.L/V/II.Doc. 45/15. December 31, 2015.

639. The American Convention establishes an absolute and non-derogable prohibition against slavery, servitude, trafficking in women, and the slave trade in all their forms. Under Article 6(2), no one shall be required to perform forced or compulsory labor. In addition, article 27 (2) provides that the prohibition of slavery, servitude, and trafficking in persons is one of the fundamental human rights that cannot be suspended by states “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.”⁸⁶

640. For the purpose of determining the scope of trafficking in persons within the inter-American system, the Commission is of the view that the provisions contained in Article 6 of the American Convention should be interpreted in the light of the definition of trafficking in persons contained in Article 3.a of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), also known as the “Palermo Protocol.” The definition of trafficking in persons set out in the Palermo protocol encompasses three elements: (1) acts, (2) means, and (3) purpose. The Palermo Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁸⁷ (...)

641. In addition to the foregoing, the Palermo Protocol provides that the consent of a victim of trafficking in persons to any of the forms of exploitation set forth therein shall be irrelevant where any of the means set forth in Article 3 have been used. As for the trafficking of children and adolescents, the Protocol provides that recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons”

⁸⁶ See, IACHR. Report No. 169/11, Case 12,066, Merits, *Fazenda Brasil Verde Workers*, Brazil, November 3, 2011, para. 123; see also IACHR. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. 2013; para. 344; and IACHR. *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*. OAS/Ser.L/V/II. Doc. 58, 2009; para. 55.

⁸⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, and Especially Women and Children, supplementing the United Nations Conventions against Transnational Organized Crime, Article 3.a.

even if this does not involve any of the means set forth in subparagraph (a) of Article 3.

642. Trafficking in persons, servitude and forced labor often entail violations of other fundamental human rights under the American Convention, the Convention of Belém do Pará, and other instruments of the universal system of human rights. Those fundamental rights include the right to life, the right to humane treatment, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and personal security, protection of one's honor and dignity, freedom of expression, the rights of the child, the right of women to a life free of violence, the right to private property, equal protection and access to justice.⁸⁸

E. Equality and Non-Discrimination

36. In this section, the IACHR presents a particular interpretation of the content of the principle of equality and non-discrimination, as part of what is provided for in Article 1 of the American Convention and in the context of labor relations. The earliest jurisprudence of the inter-American system has emphasized that the principle of equality follows directly from human nature and is inseparable from the essential dignity of the person. This is why any situation in which a particular group is considered superior and is thus treated with privileges is incompatible. The same applies to any situation in which a group is considered inferior and thus is treated with hostility or is discriminated against and prevented from enjoying their rights. In this regard, given their international obligations, States must refrain from taking actions which in any way are aimed, directly or indirectly, at creating situations of discrimination and must take positive measures to reverse or change discriminatory situations in their societies, based on the principle of equality and non-discrimination.
37. The IACHR notes that the relevant extracts from reports approved by the Commission that have been included herein have been selected with the intention of presenting essential criteria in connection to the principle of equality and non-discrimination and its relationship with labor rights. In this regard, the IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights present a series of examples that give account of situations of racial discrimination based on nationality, gender, political and structural opinion, in relation to the status of workers.⁸⁹ At the same time, the Commission has carried out extensive and detailed work on this subject.⁹⁰ In this section, the Commission refers to various

⁸⁸ See IACHR. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. 2013; para. 350; and IACHR, *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*. OAS/Ser. L/V/II. Doc. 58, 2009; para. 58.

⁸⁹ IACHR. *Compendium on Equality and Non-Discrimination. Inter-American Standards*, OAS/Ser.L/V/II.171. Doc. 31, February 12, 2019.

⁹⁰ IACHR. *Compendium on Equality and Non-Discrimination. Inter-American Standards*, OAS/Ser.L/V/II.171. Doc. 31, February 12, 2019.

documents it has published that expand on the matter, with the goal of facilitating and promoting further analysis.

Cases in the Court

Report No. 169/11. Case 12,066. Admissibility and merits. Hacienda Brasil Verde. Brazil. November 3, 2011.

171. The inter-American system has emphasized the duty of States to adopt measures to ensure real and legal equality among individuals and to combat historical or *de facto* discrimination against different social groups. The Commission has pointed out that the implementation of special measures for the protection and advancement of equality are necessary to guarantee that groups that suffer structural inequalities or have been victim of historical exclusion can exercise their rights.⁹¹

172. The American Convention prohibits any form of discrimination, a notion that includes unjustified distinctions based on race, color, national or social origin, economic status, birth, or any other social condition. In this regard, the Inter-American Court has stated that “non-discrimination, together with equality before the law and equal protection of the law in favor of all persons are central elements of a basic and general principle related to the protection of human rights.”⁹² The Court has also established that States are obliged to take positive measures to reverse or change discriminatory situations in their societies that affect certain groups of persons. This includes the special duty of protection that States must exercise with respect to the actions and practices of third parties who, under state tolerance or acquiescence, create, maintain, or favor discriminatory situations.⁹³

173. Likewise, international human rights law not only prohibits deliberately discriminatory policies and practices, but also those whose impact is discriminatory against a certain category of persons, even if discriminatory intent cannot be proven.

⁹¹ See, *inter alia*, IACHR. *Access to Justice for Women Victims of Violence in the Americas*, OAS/Ser. L/V/II. Doc. 68, January 20, 2007; paras. 100–101; IACHR. *Considerations regarding the Compatibility of Affirmative Action Measures Designed to Promote Political Participation of Women with the Principles of Equality and Non-Discrimination*, Annual Report of the Inter-American Commission on Human Rights, 1999, OAS/Ser.L/V/II. 106. Doc. 3, April 13, 2000, Chapter VI.

⁹² I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A., No. 18; para. 83. The UN Human Rights Committee has stated that “[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.” UN Human Rights Committee. General comment 18: Non-Discrimination, November 11, 1989; para. 1.

⁹³ See, *inter alia*, I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, September 17, 2003. Series A, No. 18, para. 104.

Report No. 75/15. Case 12,923. Merits. Case of Rocío San Miguel et al. v. Venezuela. October 28, 2015.

168. Of particular relevance to the analysis of the alleged discrimination, the Commission stresses that in accordance with the indications listed in the previous section is that of the total of 23 employees at the National Border Council to date the only those who signed the presidential recall referendum request were notified of their contract termination, as is the case of the three alleged victims. According to her statement, in the case of Thais Coromoto Peña, the Executive Secretary of the National Border Council told her that she could keep her job if she withdrew her signature petitioning for the presidential recall referendum. Also, as noted, the State has failed to controvert the fact that Mr. Jorge Guerra Navarro, was able to keep his job after he disavowed his signature. With these elements, the Commission considers that the National Border Council granted differential treatment to those public employees who participated in the petition for the presidential recall referendum.

169. The Inter-American Court has, however, noted that "not all differences in treatment may be considered offensive by itself," but only that distinction that "has no objective and reasonable justification".⁹⁴ The Court made the difference between "distinction" and "discrimination" so that the first are compatible with the American Convention as they are reasonable and objective, while the latter are arbitrary differences that lead to the detriment of human rights.⁹⁵

170. Article 1.1 of the Convention specifically stipulates that the rights enshrined in the treaty should be respected and guaranteed "without discrimination on grounds of [...] political opinion". As for the reason for the different treatment received by the three victims, the Commission already stated in the previous section that the dismissal was based on the expression of their political opinions, so it is not necessary to further explore this point.

171. However, the Commission notes that the specific criteria under which discrimination is prohibited under Article 1.1, although not an exhaustive list,⁹⁶ it constitutes an illustrative list of categories for

⁹⁴ I/A Court H.R., *Judicial Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17; para. 46.

⁹⁵ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 211, quoting I/A Court H.R., *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 84.

⁹⁶ I/A Court H. R., *Case of Atala Riffo and daughters v Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 85.

which the differences in treatment are particularly problematic.⁹⁷ In the case *Granier et al (Radio Caracas Televisión) v. Venezuela*, the Court found that "political opinion" is one of those categories that trigger strict scrutiny against any difference in treatment based on it.⁹⁸

172. In practical terms this means that, having established a difference in treatment based on political opinion, the same is presumed incompatible with the American Convention, reversing the burden of proof for the State, which must give reasons of much weight to support a distinction of this nature in the light of the judgment of proportionality and its sub-principles of legitimate aim – that in the case of a strict judgment must be a pressing social need - suitability, necessity and proportionality in strict sense.⁹⁹

173. In the present case the Commission notes that the State has denied that the dismissal had taken place as a result of the political views of the victims expressed by signing the petition for the recall referendum. Consequently, the State has not attempted to justify the difference in treatment based on political opinions, because their argument has been based on objecting that this was the real reason for the dismissal, which has already been undermined by the Commission throughout this report.

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

141. In the same general comment, the UN Committee on ESCRs explored the elements of availability and accessibility as follows: Availability: States Parties must have specialized services to assist and support individuals in order to enable them to identify and access available employment. Accessibility: Access to employment comprises three dimensions: non-discrimination, physical accessibility, and access to information. Discrimination in access to employment and continuity of employment is prohibited. States must ensure reasonable accommodation to make workplaces accessible, particularly for persons with physical disabilities. All individuals have the right to seek, obtain and impart information on employment opportunities.¹⁰⁰

⁹⁷ See IACHR. [Application before the I/A Court H.R. in the Case of Karen Atala Riffo and Daughters against the State of Chile](#), September 17, 2010; para. 88.

⁹⁸ I/A Court H. R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, merits, reparations, and costs. Judgment of June 22, 2015. Series C No. 293; paras. 223-227.

⁹⁹ See IACHR. [Application before the I/A Court H. R. in the Case of Karen Atala Riffo and Daughters against the State of Chile](#), September 17, 2010, para. 89.

¹⁰⁰ UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005.

142. Also, the UN Committee on ESCRs referred to the right to freely choose and accept employment and to “safe working conditions” as part of the standard of *acceptability and quality* of the right to work as follows:

Acceptability and quality: Protection of the right to work has several components, notably the right of the worker to just and favorable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.¹⁰¹

Report No. 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. OAS/Ser.L/V/II.170 Doc. 170. December 7, 2018.

50. In the case of *San Miguel Sosa et al. v. Venezuela*, and while applying the relevant contents of the right to work, the Inter-American Court established a violation of the right to work, in relation to the principle of equality and non-discrimination, after finding that three female public officials were separated from their jobs in a discriminatory manner.¹⁰²

51. The Commission considers that, even though the alleged victim did not lose her job but had to stop being a teacher of religion and accept a position different from the one she had held for over 20 years, the information presented above is relevant due to the fact that there was an allegedly discriminatory act that had an impact on the victim’s work, which involved public service as a teacher. Thus, in addition to the principle of equality and non-discrimination and the right to privacy and autonomy, the Commission also considers it appropriate to analyze this case in light of Articles 23.1 c) and 26 of the Convention.

62. Based on the foregoing information, the Commission reiterates that the differential treatment based on sexual orientation received by Sandra Pavez could not be justified in any way and did not allow for an analysis of even the first phase of the judgement of proportionality, i. e., the legitimacy of the aim, which, in the case of the suspicious categories set out in Article 1.1 of the Convention, must be strictly assessed (there must be an imperative necessity). As a result, such differential treatment did not pass the first phase of the judgement of proportionality and was therefore discriminatory and in violation of Articles 24 and 1.1 of the Convention. The Chilean State is accountable for this case of discrimination, since it was an unjustified differential treatment not only because the victim was

¹⁰¹ UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005. Para. 12.

¹⁰² I/A Court H.R., *Case of San Miguel Sosa et al. v. Venezuela*. Merits, reparations and costs. Judgment of February 8, 2018. Series C, No. 348; paras. 221 and 222.

exercising a public function, such as education, but also because of her status as a state worker. Moreover, the differential treatment took place as a result of a regulation that granted absolute authority to religious authorities without any safeguards to prevent violations of fundamental rights, including the principle of equality and non-discrimination. In cases involving the provision of services of public interest, such as health, the Inter-American Court has pointed out that States have a duty to regulate and oversight such services, regardless of their public or private nature.¹⁰³ The IACHR considers that the educational sphere, which includes the employment-related aspects of teachers, has similar characteristics for the fulfillment of these obligations. In this regard, the IACHR considers essential that the principle of equality and non-discrimination guides all regulations governing the access and continuity of teachers in schools, so as to prevent human rights violations as in this case, to which Decree 924 of 1983 does not apply because of the reasons stated above.

63. The Commission recalls that it has already urged the OAS Member States to adopt and enforce effective measures to prevent violence and discrimination against LGBTI persons in both state and private educational institutions.¹⁰⁴ Given this context, the IACHR considers that any acts of retaliation, discrimination or harassment at work based on sexual orientation are particularly critical when they take place in an educational context, since States must ensure that their education policies, which include the employment-related aspects of teachers as mentioned above, tackle social and cultural patterns of discriminatory behavior. Otherwise, a strong social message of rejection is sent against people with various non-dominant sexual orientations, thus promoting behaviors against both the teachers and the student community, mostly children, that belong to this group. It also reinforces the stigma and the feelings of shame and inferiority about these people.

64. In addition to the violation of the principle of equality and non-discrimination, the Commission considers that the prior inquiries into Sandra Pavez's sexual orientation and life partner relationship, including the warnings to "correct" such issues, together with the revocation of her certificate of suitability, were an interference in her private life and autonomy. The victim indicated that internal processes made her reveal an aspect of her private life. As indicated above, in the inter-American jurisprudence the analysis of the arbitrariness of an interference in the private life and autonomy of a person follows the same methodology as that of differential

¹⁰³ I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary objections, merits, reparations, and costs. Judgment of May 21, 2013. Series C, No. 261; para. 132.

¹⁰⁴ IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*. November 12, 2015; para. 453.

treatment, and thus must be subjected to the same judgement of proportionality. In this regard, the conclusion of the previous paragraphs that no legitimate aim was found for the actions taken by the Chilean State also applies here and thus is sufficient to establish that the interference in the private life and autonomy of Sandra Pavez was arbitrary and violated Article 11.2 of the Convention.

65. The IACHR reiterates that among the immediate obligations regarding the right to work protected by Article 26 of the ACHR is the obligation to guarantee its exercise without suffering from any form of discrimination and to adopt measures or take deliberate and concrete steps towards the full realization of the right in question; these obligations cannot be limited either by progressive application or available resources. According to the UN Committee on ESCRs, “[d]iscrimination in the field of employment comprises a broad cluster of violations affecting all stages of life [...] and can have a considerable impact on the work situation of individuals and groups; accordingly one of these core obligations is “[t]o avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups.”¹⁰⁵ Therefore, according to the facts proven in this case, the IACHR observes that not only was Sandra Pavez discriminated against for sexual orientation at her work, but there were also no concrete and deliberate actions aimed at preventing such violations; on the contrary, the State ratified and reinforced them through the decisions made by its judicial authorities. The IACHR stresses that one of the core elements of the content of the right to work is the free choice or acceptance of employment, which in turn entails, either through the creation of opportunities or through the adoption of measures, following one’s vocation and dedicating to an activity that responds in a reasonable way to one’s expectations or plans in life.

Merits Reports Published by the IACHR

Report No. 66/06. Case 12,001. Merits. Simone André Diniz. Brazil. October 21, 2006.

99. First, the Commission understands that excluding a person from access to the labor market on grounds of race is an act of racial discrimination. In this respect, the Commission takes into consideration that Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides: “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or

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UN Committee on Economic, Social and Cultural Rights. General comment No. 18, February 6, 2006. Para. 31.

impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

100. The IACHR understands that Article 24 of the American Convention is violated, in conjunction with Article 1(1), if the State allows such conduct to remain in impunity, validating it implicitly or giving its acquiescence. Equal protection before the law requires that any expression of racist practices be dealt with diligently by the judicial authorities.

Report No. 56/10. Case 12,469. Merits. Margarita Cecilia Barberia Miranda. Chile. March 18, 2010.

37. The Commission notes that the great majority of the member States of the Organization of American States do not make citizenship a requirement for the practice of law. For example, the laws regulating the practice of law in Argentina, Brazil, Canada, the member States of the Caribbean Community (CARICOM), Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Paraguay, Peru, the United States and Venezuela establish requirements such as passing some professional exam to qualify for the bar association in the country in question, or revalidation of their studies in recognized universities in the country where they want to practice. In some cases, two options are offered for a foreign attorney to practice outside his or her country: the first is revalidation of his or her studies in a recognized national university in the country where he or she wants to practice; the second is that the country of origin may have some international treaty or a principle of reciprocity. In Chile, on the other hand, attorneys trained in another country will only be able to practice in Chile if there is some international treaty with that country. In other words, revalidation of studies is not an option.

40. Nationality is expressly mentioned in Article 1 of the American Convention among the factors that must not be grounds for discrimination in the exercise of Convention-protected rights. The American Convention also includes the equal protection clause in Article 24. The Inter-American Commission has written that: “Distinctions based on grounds explicitly enumerated under pertinent articles of international human rights instruments are subject to a particularly strict level of scrutiny whereby states must provide an especially weighty interest and compelling justification for the distinction”.¹⁰⁶

41. In international human rights law, not every difference or distinction is considered discriminatory. If the distinction serves some legitimate end and if applied in a manner that is proportional to

¹⁰⁶ IACHR. *Report on Terrorism and Human Rights*, October 22, 2002; para, 338.

that end, this is not discrimination. But because nationality is one of the factors that Article 1 of the Convention provides must not be grounds for discrimination, the State must explain what legitimate end is being served and the overwhelming social need that justifies it. As to the matter of proportionality, the State must use the least restrictive means possible to accomplish the end sought. In the present case, the Chilean State invoked Article 62 of Law No. 4409, on the Bar Association, the immediate precedent for Article 526 of the Organic Code of Courts, which was adopted for the following reasons which were regarded as matters of national interest: suppression and punishment of the illegal practice of law; enhancement of the practice of the law, and so that Chilean attorneys do not have to compete with foreign attorneys.¹⁰⁷

42. As for the first part of the State's explanation, the Inter-American Commission believes that less burdensome and less discriminatory methods can be applied, such as revalidation of studies or a test of one's knowledge. In this way, only those attorneys who have a solid understanding of Chilean law will be able to practice, irrespective of nationality. By the same token, it makes no sense that a Chilean who has studied law abroad, under a different legal system, should be able to practice law in Chile, while a foreigner who studied law in Chile cannot practice in Chile. In the petitioner's case, she proved that she had the knowledge necessary to practice this profession, having completed her degree in a university recognized by the State. The IACHR does not see how the State's argument with respect to the enhancement of the practice of law applies in the case of the petitioner, since she did all her studies in the law in Chile and would therefore, in theory, be the equal of any other Chilean attorney who had completed the same program. Furthermore, although the petitioner might be competing with her colleagues, the IACHR does not regard this as a legitimate reason for discriminating against her on the grounds of her nationality. Respect for the right to equality before the law and the prohibition of discrimination demand that restrictive measures of this type serve some overriding social need. Protecting Chilean attorneys from the competition of their foreign colleagues clearly does not qualify as an overriding social need.

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In its submission of November 7, 2003, the State explained that Law No. 69885 added this to the text of Law No. 4409. Later, Article 32 of Law No. 7200, of July 21, 1942, authorized the President of the Republic to combine in a single text the 1875 Law on the Organization and Functions of the Courts and all other laws that had amended it and added to it. The combined text would be numbered as a law and be titled the Organic Code of Courts. The Ministry of Justice issued a decree in the Official Gazette of July 9, 1943, containing the new text of the Organic Code of Courts, classified as Law No. 7421. Article 526 of the new law basically echoed Article 62 and is still in force today.

Report No. 81/13. Case 12,743. Merits. Homero Flor Freire. Ecuador. November 4, 2013.

100. Based on the evolutionary interpretation of treaties as “living instruments” whose interpretation has to accompany the evolution of the current times and living conditions, and also considering international standards, case-law of the European Court of Human Rights and comparative law, the IACHR already established that sexual orientation is a suspect category of discrimination under the criteria of non-discrimination contained in Article 1(1) of the American Convention and as such any distinction based on it should be examined with strict scrutiny. [...].

114. In summary, the Commission deems that the considerations set forth in the case-law indicated make it possible to establish that provisions that punish a given group of persons for engaging in a consensual sexual act or practice with another person of the same sex are not admissible, for this is directly at odds with the prohibition on discrimination based on sexual orientation. This prohibition should be understood as described above, i.e. that such provisions ought not be used to repress or sanction a person due to his or her actual or perceived sexual orientation.

119. In addition, the Commission notes that the prohibition on discrimination based on actual or perceived sexual orientation requires that no one be discriminated against in accessing and keeping his or her employment based on this aspect. Along these lines, the Committee on Economic, Social and Cultural Rights has indicated that any discriminatory treatment based on a person’s sexual orientation in “access to the labour market or to means and entitlements for obtaining employment” constitutes a violation of the international obligations of the State on these matters.[...].

Thematic Reports

Report on the Situation of People of African Descent in the Americas. OAS/Ser.L/V/II.Doc.62. December 5, 2011.

41. The IACHR reiterates that including the variable “Afro-descendance”, in educational, health, employment and State instances, among others, is a State obligation according to the Durban Programme of Action.¹⁰⁸ In addition, the identification and mainstreaming of the variable “Afro-descendance” contributes to the visibility and awareness of this group, and also provides essential information for the action of the States as regards their obligations to promote and protect human rights, taking into account the concrete needs and the percentage of population they represent. The

¹⁰⁸ Durban Programme of Action, para. 92.

Commission also reminds the States that they should make sure that this information, highly valuable for the statistics and the design of government policies, is not used to stigmatize and revictimize the Afro-descendant population.

Recommendation 24. Affirmative action measures must prioritize the inclusion of the Afro- descendant population in all levels of the labor market, the educational spheres, and the private and public sectors. Affirmative action measures must also strengthen the inclusion of the Afro-descendant population in public decision-making.

Report on the Human Rights of Persons Deprived of Liberty in the Americas. OAS/Ser.L/V/II. Doc. 64. December 31, 2011.

513. In light of the foregoing considerations, the IACHR reaffirms that all persons deprived of liberty must receive humane treatment, in accordance with respect for the dignity inherent to them. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under their jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty. This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards that apply in general to persons deprived of liberty. In particular, they must have access on an equal footing to the health care services of the jail; to education, job and training programs; to work shops and reading materials; and to cultural, sports and religious activities; and to contact with the outside world and their family members.

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164. Doc.147. September 7, 2017.

(Recommendation)

11. States must adopt affirmative action measures to prioritize the inclusion of Afro-descendants in all areas of the labor market, as well as in education at all levels, in both public and private spheres. The IACHR also urges States to adopt an ethnic-racial awareness approach in social policies to combat poverty, so as to address the particular situation of Afro-descendants, especially women and children. The obstacles in achieving equality and the high levels of poverty of Afro-descendants in the entire region will continue unless States implement through the media national social campaigns on a permanent basis to combat racism in all its forms.

14. Any strategy in connection with disability must be based on the change of paradigm where persons with disabilities must cease to be regarded as “persons needing protection” and must instead be treated as “holders of rights and obligations”. States must ensure that

persons with disabilities and the organizations that represent them be consulted for the purposes of conducting a systematic review of laws, policies, and programs in light of a human rights-based approach. All laws or programs promoting distinctions, restrictions, or denial of rights of persons with disabilities must be modified in order to ensure their full right to labor, education, housing, food security, cultural life, health, social security and all dimensions required for overcoming conditions of poverty.

Country Reports

Report on the Situation of Human Rights in the Dominican Republic. OAS/Ser.L/V/II.Doc. 45/15. December 31, 2015.

539. The Commission would point out that the vulnerability of migrants can be attributed to the difficulties these persons have in communicating in the language of the country where they find themselves; their lack of familiarity with the culture and local customs; their lack of political representation; the difficulties they encounter in exercising their economic, social, and cultural rights – particularly the right to work, the right to education, and the right to health; the obstacles they face when attempting to obtain their identity documents; and the obstacles they encounter when attempting to avail themselves of effective judicial remedies when their rights are violated or in seeking redress for those violations.¹⁰⁹

540. The situation of vulnerability of migrants is exacerbated when a migrant is in an irregular migratory situation. In the Commission's view, migrants in an irregular situation face a situation of structural vulnerability, in which it is common for migrants to become victims of arbitrary arrest and a lack of due process; collective deportation; discrimination in access to the public and social services to which foreign-born nationals of other states are entitled by law; inhumane detention conditions; unlawful harassment by police and immigration authorities; obstacles in accessing and obtaining justice for crimes committed against them; and an inability to defend themselves when exploited by unscrupulous employers.¹¹⁰

541. The Commission has confirmed how migrants' structural vulnerability is complicated by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion, or

¹⁰⁹ IACHR. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OAS/Ser.L/V/II. Doc. 48/13, December 30, 2013; para. 80.

¹¹⁰ See in this regard IACHR. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OAS/Ser.L/V/II. Doc. 48/13. December 30, 2013; para. 82; IACHR. Annual Report of the IACHR, 2000, Chapter V. Special studies. Second progress report of the Rapporteurship on migrant workers and members of their families, OEA/SER./L/V/II.111. Doc. 20, rev, April 16, 2001; para. 64.

any other social condition, factors which, if presented at the same time, may lead to migrants becoming the victims of inter-sectorial discrimination.¹¹¹

Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OAS/Ser.L/V/II. Doc. 43/15. December 31, 2015.

70. Historical discrimination against the indigenous peoples is evident in the lack of respect for and enforcement of human rights of which they are the holders, places them in a situation of poverty and extreme poverty, and situates them among the majority of the population in the departments with the highest rates of social exclusion.⁸⁹ This exclusion can be observed in various areas, including land ownership, access to basic services, working conditions, access to the formal economy, participation in decision making and State institutions, and representation in the media and public debates.[...].

Situation of Human Rights in Guatemala. OAS/Ser.L/V/II. Doc. 208/17. December 31, 2017.

377. The violence faced by indigenous peoples is closely connected to the situation of discrimination and exclusion they experience. This exclusion can be seen in spheres such as land ownership, access to basic services, working conditions, access to the formal economy, participation in decision-making and in the institutions of the State, representation in the media and public debate, and the lack of access to justice.. [...].

F. Freedom of Expression in Labor Contexts

38. In the following section, the IACHR gathers a number of relevant extracts from reports approved by the Commission about the specific characteristics of the content on the right to freedom of expression in labor relations. In this regard, the IACHR has identified a number of violations of this right, which take place when workers act contrary to the interests of employers or when they represent a group of employees. Also, this section presents relevant extracts from reports approved by the IACHR containing legal standards on States' responsibility to guarantee these rights in the private sector, since in many cases labor rights are violated by private actors. In particular, reference is made to the positive obligations of States to guarantee the right to freedom of expression against the interference from non-state actors. Finally, issues relating to unjustified dismissals of workers who have denounced corruption are included.

¹¹¹ IACHR. *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013; para. 83.

Cases in the Court

Report No. 27/15. Case 12,795. Merits. Case of Lagos del Campo v. Peru. July 21, 2015.

73. The right to freedom of thought and expression, according to the protection granted by Article 13 of the American Convention, includes both the right to express one’s own thoughts and the right to seek, receive, and disseminate information and ideas of all kinds.¹¹² This right is vitally important for the personal development of every individual, for the exercise of his or her autonomy and other fundamental rights, and finally, for the consolidation of a democratic society.¹¹³

74. The Inter-American Commission and Court have held that freedom of expression has two dimensions: an individual dimension and a social dimension. The individual dimension of freedom of expression consists of the right of every person to express his or her own thoughts, ideas, and information, and is not limited to the theoretical acknowledgement of the right to speak or write; rather, it includes inseparably, the right to use any appropriate means to disseminate thoughts and enable them to reach the greatest number of people.¹¹⁴ The second dimension of the right to freedom of expression—the collective or social dimension—consists of society’s right to seek and receive any information, to know other people’s thoughts, ideas, and information, and to be well informed.¹¹⁵ In this respect, the Court has established that freedom of expression is a

¹¹² IACHR. [Report No. 82/10](#), Case 12.524, Merits, Jorge Fontevicchia and Hector d’Amico, Argentina, July 13, 2010, para. 86.

¹¹³ IACHR. [Report No. 82/10](#), Case 12,524, Merits, Jorge Fontevicchia and Hector d’Amico, Argentina, July 13, 2010, para. 85.

¹¹⁴ See. I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). [Advisory Opinion OC-5/85](#) of November 13, 1985. Series A No. 5, para. 31.

¹¹⁵ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, reparations, and costs. Judgment of May 2, 2008 Series C, No. 177, para. 53; I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C, No. 151, para. 75; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C, No. 141, para. 163; IACHR. Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C, No. 107, para. 101.1 a); *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C, No. 107, para. 108; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C, No. 74, para. 146; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C, No. 111, para. 77; *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C, No. 73, para. 64; I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). [Advisory Opinion OC-5/85](#) of November 13, 1985. Series A, No. 5, para. 30; IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. Doc. 9, rev. February 17, 1995; IACHR. [Report No. 130/99](#). Case No. 11.740. Víctor Manuel Oropeza. Mexico. November 19, 1999, para. 51; IACHR. [Report No. 11/96](#), Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 53.

means for the exchange of ideas and information among individuals; it includes their right to communicate their opinions to others, but it also involves all people's right to freely know about opinions, accounts, and news of all kinds.¹¹⁶

75. The right to freedom of expression is also a mainstay of democratic society, due to its essential structural relationship to democracy.¹¹⁷ The very purpose of Article 13 of the American Convention is to strengthen the workings of pluralist and deliberative democratic systems through the protection and encouragement of the free flow of information, ideas, and expressions of all kinds.¹¹⁸ In this respect, the Court has held that "Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion."¹¹⁹ Democratic oversight through public opinion fosters the transparency of government activities and promotes the responsibility of government employees in the management of public affairs.¹²⁰

76. The IACHR has affirmed that within the sphere of the American Convention, freedom of expression is the right of all persons, under equal conditions and without discrimination. According to the Court's case law, the entitlement to the right to freedom of expression enshrined in the Convention cannot be restricted to a specific profession or group of people, nor to the sphere of press freedom.¹²¹

¹¹⁶ See I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary objections, merits, reparations, and costs. Judgment of July 2, 2004. Series C, No. 107, para. 110; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, reparations, and costs. Judgment of August 31, 2004. Series C, No. 111, para. 79; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, reparations, and costs. Judgment of February 5, 2001. Series C, No. 73, para. 66.

¹¹⁷ See. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C, No. 151, para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C, No. 107, para. 116; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 86; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70.

¹¹⁸ IACHR. Arguments before the Inter-American Court in the Case of Ivcher Bronstein v. Peru. Transcribed in: I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C, No. 74, para. 143. d); IACHR. Arguments before the Inter-American Court in the Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Transcribed in: I/A Court H.R. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Judgment of February 5, 2001. Series C, No. 73, para. 61. b).

¹¹⁹ See. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70.

¹²⁰ I/A Court H.R., *Case Kimel v. Argentina*. Merits, reparations, and costs. Judgment of May 2, 2008 Series C, No. 177 para. 87.

¹²¹ I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary objections, merits, reparations, and costs. Judgment of January 27, 2009. Series C, No. 193, para. 114. See also, IACHR. Report No. 103/13, Case 12.816, Honduras, Adán Guillermo López Lone et al. March 17, 2014, para. 201.

77. This expansive perspective on entitlement to the right to freedom of thought and expression adopted by the American Convention includes, of course, workers. As a fundamental human right, freedom of expression governs all types of legal relationships, including labor relations. Workers do not set aside their fundamental rights upon assuming their positions; rather, they enjoy—just like everyone else—a broad right to freedom of expression.

78. Indeed, when exercised in the workplace, freedom of expression protects the workers' right to express their thoughts, opinions, information, or personal ideas, as well as to level criticism and to complain about the working conditions at a company and the protection of their rights in general. This includes the guarantee of doing so without being subject to punishment in retaliation, the most drastic of which is wrongful dismissal.

79. This is especially relevant when the right to freedom of expression is tied to the right of association enshrined in Article 16 of the American Convention, and the right of workers to organize trade unions in accordance with Article 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador." The protection of the freedom of workers to express themselves in a way that allows them to disclose information and promote their interests and demands in a concerted manner is one of the objectives of the right of association in this sphere. To this point, the Inter-American Court has held that, "Labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. [...] Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State's actions, or those that occur with it tolerance, that could render this right inoperative in practice."¹²²

80. The Court affirmed in Advisory Opinion OC-5 that the right to freedom of expression is also a *conditio sine qua non* for the development of [...] trade unions"¹²³

81. In view of the above, the IACHR finds that members and officers of labor unions must enjoy broad freedom of expression in relation to their activities and demands, which includes the freedom to criticize the economic and social policies of the government. If the members and leaders of trade unions are denied the opportunity to express themselves freely, to disseminate information in defense of their

¹²² I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C, No. 121.

¹²³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5.

interests, and communicate it to their employers and the company's employees, as well as to the government and the general public, they are deprived of one of the most important lawful means of action and pressure. The dual dimension of the right to freedom of expression lays the groundwork for the right of organized workers and labor leaders to express themselves and convey opinions and information, as well as the right of workers and society in general to receive the information that they put out.

82. The Committee on Freedom of Association of the Governing Body of the ILO has recognized that “The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities.”¹²⁴ In this regard, it has affirmed that “The right to express opinions through the press or otherwise is an essential aspect of trade union rights,” and that this right “should in no way differ from the right to express opinions in exclusively occupational or trade union journals.”¹²⁵ The Committee underscored that “The right of workers’ and employers’ organizations to express their views in the press or through other media is one of the essential elements of freedom of association; consequently the authorities should refrain from unduly impeding its lawful exercise.”¹²⁶

83. The European Court of Human Rights has also acknowledged in its case law that the right to freedom of expression protects the right of union members to express their demands to their employers, for purposes of improving their working conditions.¹²⁷ According to the Court, the freedom of expression of labor unions and their leaders is an essential means of action, without which they would lose their effectiveness and their *raison d'être*. Accordingly, the national authorities are obligated to ensure that the imposition of disproportionate sanctions do not have a chilling effect on the right of union representatives to express and defend workers’ interests.¹²⁸

¹²⁴ ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Para. 154.

¹²⁵ ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Para. 155 – 158.

¹²⁶ ILO. Freedom of Association Digest of decisions and principles of the Freedom of Associate Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Para. 159.

¹²⁷ ECHR, Case of Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria (Application No. 15153/89). Judgment of 19 December 1994; European Court of Human Rights. Case of Palomo Sánchez and Others v. Spain (Applications Nos. 28955/06, 28957/06, 28959/06 and 28964/06). Judgment of September 12, 2012.

¹²⁸ ECHR. Case of Palomo Sánchez and Others v. Spain (Applications Nos. 28955/06, 28957/06, 28959/06 and 28964/06). Judgment of September 12, 2012, para. 56.

84. As explained below, the right to freedom of expression may be subject to specific limitations in the context of labor-related matters. It is not an absolute right, and as such may be restricted to protect other relevant legal interests in accordance with Article 13.2 of the American Convention.

85. The case law of the Inter-American Commission and Court has consistently held that the establishment of limitations to the right to freedom of thought and expression must be exceptional in nature, and in order to be admissible must be subject to three basic conditions set forth in Article 13.2 of the Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

86. According to Article 13.2 of the American Convention, all limitations on freedom of expression must be established by law. The Inter-American Court has repeatedly explained that it must be a law that establishes, in advance, and in the clearest and most precise terms possible, the grounds for the subsequent imposition of liability to which the exercise of freedom of expression may be subject.¹²⁹ The Court has therefore held that vague or ambiguous legal provisions granting very broad discretion to the authorities are incompatible with the American Convention, because they can be used as the basis for arbitrary acts that amount to prior censorship or that impose disproportionate liabilities for the use of speech protected by the Convention.¹³⁰

87. The fact that a measure restricting freedom of expression is established clearly and specifically in a law is not enough for it to be considered lawful. Under the terms of Article 13.2 of the Convention, it must be determined whether the aim pursued by the restriction is lawful and justified under the American Convention. As previously mentioned, Article 13.2 of the Convention establishes that the exercise of the right to freedom of expression is subject only to the

¹²⁹ I/A Court H.R., Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, paras. 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C, No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C, No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary objections, merits, reparations, and costs. Judgment of January 27, 2009. Series C, No. 193, para. 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OAS/Ser. L/V/II.88. Doc. 9, rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996; para. 55; IACHR. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C, No. 111, para. 72. a).

¹³⁰ See IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter III; para. 71.

subsequent imposition of liability to the extent necessary to ensure “respect for the rights or reputations of others,” or “the protection of national security, public order, or public health or morals.” Along these lines, the Commission notes that in an employment relationship, restrictions of certain expressions that may be detrimental to a harmonious workplace, the reputation and good name of employers and employees, or the hierarchical order within the company may result legitimate.

88. Nevertheless, it would be erroneous to maintain that it is sufficient for the restriction to freedom of expression to have a legitimate aim in order for it to be consistent with the Convention. Article 13.2 of the Convention requires that the restriction be suitable, necessary, and strictly proportional to accomplish that legitimate aim. The examination of the suitability of a restriction to the right to freedom of expression focuses on determining whether the measure effectively allows for the attainment of the legitimate aim pursued. In other words, it is necessary to evaluate whether the limitations appropriately contribute to the attainment of aims compatible with the American Convention, or whether they are able to contribute to the realization of those objectives. The need for the measure is determined by evaluating whether the restrictions are essential for the achievement of the legitimate aim, or whether there are other, less harmful measures. Finally, and provided that they are necessary and suitable, the restrictions must be strictly proportionate to the legitimate aim pursued, and narrowly tailored to the attainment of that objective, interfering as little as possible with the lawful exercise of that freedom. Assessing the strict proportionality of the limitation measure requires determining whether the sacrifice of freedom of expression that it entails is exaggerated or disproportionate to the advantages obtained through its use.

89. In labor-related matters, the strict proportionality of restrictions to freedom of expression must be judged on the basis of their effects on the right of labor organizations and their leaders to seek the protection of their constituents’ rights. The right to freedom of expression in these cases is intrinsically linked to the objective of freedom to organize trade unions. The Commission finds that, in order to be considered proportional, penalties against a worker for exercising freedom of expression in this context cannot have a chilling effect on the rights of labor or trade union leaders to defend and advocate for the rights and interests of the people they represent.

90. This balancing test must also take account of the fact that in a democratic society there is a slim margin for any restriction on political speech or speech concerning matters of public interest. In a democratic and pluralist system, expressions, information, and opinions regarding matters of public interest, the State, and

government institutions, enjoy greater protection under the American Convention. This means that the State must more rigorously abstain from limiting these forms of expression, and that, because of their public nature, the entities and employees of the State, as well as those who aspire to hold public office, must have a higher threshold of tolerance for criticism.¹³¹

92. The Commission and the Court have not only required that States abstain from committing human rights violations. They have also required States to take affirmative measures to guarantee that the individuals under their jurisdiction are able to exercise and enjoy the rights contained in the American Convention. This State duty extends to the prevention of, and response to, acts committed by private individuals¹³²

94. The European Court has held that the States have the positive obligation to establish courts with jurisdiction over labor matters in order to hear and decide cases of alleged violations against workers.¹³³ Specifically, the Court has held that, “This is also the case for freedom of expression, of which the genuine and effective exercise does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.” The European Court has found that in matters concerning the dismissal of workers by a private company, “The responsibility of the authorities would nevertheless be engaged if the facts complained of stemmed from a failure on their part to secure to the applicants the enjoyment of the right enshrined in Article 10 of the Convention [freedom of expression].”¹³⁴

95. Similarly, the IACHR recognizes that freedom of expression governs at all times and in all types of legal relationships, including private ones, and that the State therefore has the positive obligation to protect the exercise of this right, even from attacks from private individuals.

96. Under these circumstances, the national courts play a fundamental role as guarantors of the right to freedom of expression. A complaint before the courts alleging the violation of freedom of expression by private individuals requires the courts to resolve the dispute bearing in mind the relevant human rights obligations assumed by the State. Accordingly, the courts of each State are obligated to exercise “conventionality control,” which means that at

¹³¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C, No. 107, para. 127.

¹³² See, for example, Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, May 26, 2004; I/A Court H.R. *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C, No. 4.

¹³³ ECHR. *Schüth v. Germany*. Application No. 1620/03. Judgment. 23 December 2010, para. 59.

¹³⁴ ECHR. *Schüth v. Germany*. Application No. 1620/03. Judgment. 23 December 2010, para. 59.

all times their judgments must be consistent with the human rights standards of the American Convention.

Report No. 75/15. Case 12,923. Merits. Case of Rocío San Miguel et al. v. Venezuela. October 28, 2015.

143. With regard to indirect restrictions on freedom of expression, the Court has held that the scope of Article 13.3 of the Convention should be the result of a joint reading with Article 13.1 of the Convention, in the sense that a broad interpretation of this standard allows to consider that it specifically protects communication, distribution and circulation of ideas and opinions, so that the use of "indirect methods or means" to restrict it are prohibited.¹³⁵ In this regard, the Court has stated that what seeks this subsection is to exemplify more subtle forms of restricting the right to freedom of expression by State authorities or individuals,¹³⁶ and that the enunciation of mechanisms for indirect restriction of Article 13.3 of the Convention is not exhaustive.¹³⁷ The Court has also indicated that for a violation to Article 13.3 of the Convention to be configured, it's required that the method or means effectively or indirectly restrict, the communication and circulation of ideas and opinions.¹³⁸

151. Given the argument of the petitioners according to which the real motivation of the contract termination with the alleged victims was to punish them for their political expression in the petition for referendum, the analysis of the Commission cannot be based solely on the motivation formally declared in the preceding paragraphs. It is up to the Commission to evaluate all available evidence to determine whether the termination was a misuse of power, understood as the use of formally valid procedures to conceal an illegal practice. [...].

164. The Commission recalls that there are formally valid decisions which can be used not as legitimate means of administering justice, but as mechanisms for achieving undeclared ends that were not evident at first sight and seek to impose an implicit sanction with a purpose other than those for which they have been prescribed by law.

166. The Commission considers that all these elements are consistent with each other and allow to reach the conviction that the

¹³⁵ I/A Court H. R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary objections, merits, reparations, and costs. Judgment of June 22, 2015. Series C, No. 293, para. 161.

¹³⁶ I/A Court H. R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary objections, merits, reparations, and costs. Judgment of June 22, 2015. Series C, No. 293, para. 162.

¹³⁷ I/A Court H. R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary objections, merits, reparations, and costs. Judgment of June 22, 2015. Series C No. 293, para. 163.

¹³⁸ I/A Court H. R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary objections, merits, reparations, and costs. Judgment of June 22, 2015. Series C, No. 293, para. 140. See case of Ríos et al. v. Venezuela, para. 340, and Case of Perozo et al. v. Venezuela, para. 367.

termination of contracts of Rocío San Miguel Sosa, Magally Chang Girón, and Thais Coromoto Peña, constituted an act of misuse of power in which the existence of a discretionary power was used in the contracts as a veil of legality for the true motivation to punish the victims for their expression of political opinion by signing the petition for the recall referendum. This implicit sanction constituted a violation of political rights and an indirect restriction on freedom of expression.

Thematic Reports

Corruption and Human Rights: Inter-American Standards OAS/Ser.L/V/II. Doc. 236. December 6, 2019

417. The Commission has noted the role of those whistleblowers who, being government workers, disclose information on corruption; and it has indicated that there is a duty to protect them from legal, administrative, or labor sanctions so long as they have acted in good faith. To that end, good faith is presumed in any whistleblower who reports acts of corruption. Those who knowingly lodge a false report or simulate evidence to initiate an investigation into a third person act in bad faith and are not covered by the protection accorded good-faith whistleblowers. Nor are those who have obtained the information by violating fundamental rights covered by such protection. To the contrary, the purported participation of the whistleblower in the unlawful acts reported should not lead to denying him or her any form of protection. This is without prejudice to the determination of any criminal or civil liabilities arising from such participation.

427. Another form of impact is unjustified dismissal in response to reporting a corrupt act. The IACHR reiterates that it is essential to guarantee labor rights so that other rights can be enjoyed, and to be able to lead a dignified life. While international human rights law does not establish an absolute and unconditional right to have a job, it does recognize that each person should have an opportunity to have a job that is freely chosen or accepted, and the state should adopt measures to guarantee that right. Such measures include ensuring that persons are not deprived of their work unjustly and that they not suffer discrimination in accessing the labor market or in the conditions of their employment. The State must not only respect this right, but also protect persons from conduct that undermines their right to work, such as the measures commonly taken against whistleblowers. Workers have the right not to be dismissed without justification and reporting an act of corruption is not just cause for ending the employment relationship.

428. In the case of public servants dismissals, removals, or decisions on promotions and suspensions that are unwarranted, such as those

adopted in response to a report of corruption, may violate this right to job stability. The Inter-American Court has indicated that Article 23(1) of the American Convention does not establish the right to accede to public office, but to do so in general conditions of equality. Accordingly this right is respected and guaranteed when the criteria and procedures for the appointment, promotion, suspension, and removal are reasonable and objective; the Court also indicated that persons are not subject to discrimination in the exercise of this right.

G. Professional Organizations and Freedom of Association

39. Professional organizations are institutions that seek to safeguard the interests of their members as a substantial human right. However, the regulations imposed by States on them may create some violations of the right of persons to associate freely in the exercise of their profession. In this way, the IACHR has recognized acceptable limits that States can establish for the exercise of the right to association for a professional activity. This section presents the most relevant existing standards to illustrate these conditions.

Merits Reports Published by the IACHR

Resolution No. 17/84. Case No. 9178. Costa Rica. Resolutions relating to individual cases. OAS/Ser.L/V/II.63, 15. October 3, 1984.

6. (...) The Commission believes that obligatory membership of journalists or the requirement of a professional card does not restrict the freedom of thought and expression established in Article 13 of the American Convention on Human Rights as long as the associations protect the freedom to seek, receive and distribute information and ideas of every kind without imposing conditions leading to the restriction or curtailment of that right, do not impose controls on information or prior censorship thereof, and are not limited to government officials, but are actually participated in by journalists. The associations of journalists originate in exercise of the right of association, which may serve as advisory agencies of the government, have control over journalists' ethics and over standards for qualifying degrees, and seek social and professional improvement of their members. There is nothing against having the exercise of professions monitored and controlled either directly by official agencies or indirectly through authorization or delegation by the pertinent statute to a professional organization or association under the state's supervision and control, because it must always be subject to the law in carrying out its mission. Membership in an association or requirement of a card to exercise the profession of journalist does not restrict anyone's freedom of thought or expression but is rather a regulation incumbent on the Executive Branch of the suitability of degrees, as well as supervision of the exercise of these freedoms as a

requirement for social security and a guarantee of the best protection of human rights.

Professional associations grow out of professional groups that are recorded in the Registry, which, according to legal doctrine, constitute institutions in the juridical-technical sense. Sociologically speaking, such an institution has the features of a necessary community whose members have common interests to pursue and safeguard through the efforts of all, since the efforts of one would not be enough to attain that end. Such interests, although they are sectorial in nature, are also relevant to the state due to its recognition of the social function of specific professions like journalism, which it has regulated through special provisions. The members of the group are interconnected through an organizational link that provides them with incentives and compels them to conform to certain patterns of behavior, such as faithfulness, loyalty, comradeship, mutual confidence and solidarity, which can be considered common interests in the overall concept of membership in an association.

This means that associations perform a social function, have disciplinary power for breaches of ethics, and seek improvement of the profession as well as the social security of their members. Compulsory membership does not restrict, but rather regulates, freedom of thought and expression, but it must be kept in mind that the Convention's intention was "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man." This means that membership in an association cannot be an instrument to control information officially. Rather it enables those practicing the profession of journalism to exercise it freely and responsibly within the bounds of ethics and its social functions.

Report on cases No. 9777 and 9718. Conclusions. Argentina. March 30, 1988.

8. (...) The Commission believes that registration with the bar association is a public function and that, because of its condition, the function ought to be and has to be obligatory in nature since otherwise the state would be—by way of the association—establishing a requirement for some professions that it is not requiring for others and, therefore, it would thus violate the right of equality before law and it could also not exert any control over the professional practice of law. This is a matter, then, of the proper activity of a public body with the character, rights and obligations of legal persons under public law which is acting in the name and on behalf of the state. (...)

CHAPTER 3
INTER-AMERICAN STANDARDS
ON FAIR, EQUITABLE AND
SATISFACTORY WORKING
CONDITIONS

INTER-AMERICAN STANDARDS ON FAIR, EQUITABLE AND SATISFACTORY WORKING CONDITIONS

40. In this chapter, the Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights present the inter-American standards developed by the IACHR on the international obligations acquired by the States in relation to fair, equitable and satisfactory working conditions. According to the provisions of the Protocol of San Salvador, these working conditions include: a minimum wage that guarantees dignified and decent living; fair and equal wages for equal work; the right of every worker to follow their vocation; the right to promotion; stability of employment; safety and hygiene at work; reasonable limitation of working hours; rest, leisure and paid vacations, as well as remuneration for national holidays; and the prohibition of child labor. The right to fair, equitable and satisfactory conditions of work must be analyzed in particular in relation to specific groups of workers, such as migrant workers and women.
41. In this chapter, the IACHR addresses issues related to fair, equitable and satisfactory working conditions. First, relevant extracts from reports approved by the IACHR on occupational safety and health are presented. The Commission then sets out a series of extracts that contain inter-American standards developed on employment in relation to vulnerable groups, such as children, women and people in situations of human mobility.

A. *Health and Safety*

42. In this section, the IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights present the relevant standards of the reports adopted by the IACHR on the international obligations of States in the field of occupational safety and health. It should be noted that in the inter-American system the content of this right is based on the General comment 14 of the UN Committee on ESCRs and the European Court of Human Rights.

Cases in the Court

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

106. It should be noted that the International Covenant on Economic, Social and Cultural Rights was binding on the State at the time of the facts. Specifically, General comment 14 of the UN Committee on Economic, Social and Cultural Rights refers to state obligations

related to reducing and preventing occupational accidents as follows: Furthermore, States Parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, and prepare a consistent national policy on occupational safety and health services. (...) Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; (...)¹³⁹

107. The case of *Öneryıldız v. Turkey* is about an explosion in which 39 people died. The case was analyzed by the European Court in light of the right to life, enshrined in similar terms in the American Convention. In this regard, the European Court determined that the obligation to respect rights, primarily the right to life, includes the positive duty of States to act to safeguard the rights of persons under its jurisdiction, especially in the case of industrial activities which, by their very nature, are dangerous. The European Court added that in such cases regulations must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.¹⁴⁰

119. [...] The Commission takes into consideration that labor relations are part of an area that States are responsible for regulating and inspecting. As indicated, these obligations are reinforced when the activities are dangerous to the life, personal integrity, or health of persons [...]

43. It should be noted that the IACHR also referred to the issue of safety and health by resuming the analysis on the applicability of the UN ESCR Committee's General comment and exploring States' duty to take the necessary supervisory actions.

Merits Report No. 64/18. Opario Lemoth Morris et al. (Miskito Divers). Honduras. May 8, 2018.

261. In addition, the IACHR understands that to comply with the minimum content of this right, one of the essential elements is for States to regulate and take actions aimed at ensuring their effective compliance, in particular by auditing and punishing any violations by state and private employers. This becomes especially important in view of the existing unequal and abusive forms of labor treatment

¹³⁹ UN Committee on Economic, Social and Cultural Rights. General comment 14. The Right to the Highest Attainable Standard of Health. August 11, 2000. Para. 36.

¹⁴⁰ European Court of Human Rights. *Öneryıldız v. Turkey*. Judgment of November 30, 2004; para. 90.

that arise from precarious labor relations. This means that if a State is aware that a company or an employer has had harmful effects on the enjoyment of this right, it must take actions to investigate and eventually punish these violations, as well as to provide integral reparations for the victims through legitimate processes that comply with the recognized rules of due process.

262. The IACHR considers that work inspections are among the essential measures that States must implement to prevent and monitor the respect for this right; in particular, States must ensure independence, the existence of trained members of staff, a prior mapping of sensitive and risky areas and industries, and they shall have the authority to enter any workplaces without giving prior notice and to facilitate the victims' access to justice. States Parties should impose appropriate penalties on third parties, including adequate reparation, criminal penalties, pecuniary measures and administrative measures.¹⁴¹

B. Child Labor

44. With regard to girls, boys, and adolescents, the IACHR has developed special inter-American standards to address the conditions of children. This section presents a number of relevant extracts from reports approved by the IACHR that contain legal standards on States' obligations to prohibit child labor. In this regard, the IACHR has followed the analysis of the criteria established by other international bodies such as UNICEF, the ILO, the UN Committee on the Rights of the Child, and the Inter-American Court. The standards in this area are aimed at protecting girls and boys from economic exploitation and from the execution of any work that imposes limits on their development as human beings. In addition, setting a minimum working age is important to enable girls and boys to fully enjoy the right to education. This means that the public policies developed by States must be focused on eradicating girl, boy and adolescent labor by virtue of their status, and on identifying groups of girls, boys and adolescents whose rights are being violated and that need interventions aimed at covering their protection needs so that their rights are effectively respected. The selection of relevant extracts from reports and cases resolved by the IACHR presented below account for these standards.

Cases in the Court

Report No. 25/18. Case 12,428. Admissibility and merits. Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families. Brazil. OAS/Ser.L/V/II. 167. Doc. 29. March 2, 2018.

109. On the basis of these two central axes, the Commission and the Inter-American Court have indicated that "children are beneficiaries

¹⁴¹ UN Committee on Economic, Social and Cultural Rights. General comment 23. The right to just and favorable conditions of work. April 27, 2016. Paras. 54 and 59.

of the rights enshrined in the American Convention, as well as enjoying special protective measures set out in Article 19, which must be interpreted according to the particular circumstances of each case at hand.”¹⁴² In addition, “States must pay special attention to the needs and rights of girls and boys, especially if they are in vulnerable conditions.”¹⁴³

110. Article 32 of the Convention on the Rights of the Child¹⁴⁴ states that “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. States Parties shall take legislative, administrative, social and educational measures [...]” In addition, it establishes that States shall provide for a minimum age or minimum ages for admission to employment and for appropriate regulation of the hours and conditions of employment.¹⁴⁵

111. Article 7 of the Protocol of San Salvador establishes the right to fair, equitable and satisfactory conditions of work and, with regard to minors, it requires States Parties to prohibit any work that jeopardizes their health, safety or morals, and to ensure that work is subordinated to the provisions regulating compulsory education. In this regard, the Commission has stressed the importance of having effective legislation and carrying out inspections of workplaces to ensure that minors are not exposed to dangerous working conditions.¹⁴⁶

112. UNICEF has also addressed this topic and has made a distinction between the concepts of “child work”, “child labor” and “the worst forms of child labor”, taking into account Conventions No. 182 and 138 of the ILO:

Child work: UNICEF is not against the fact that children work. The participation of girls, boys, and adolescents in a job – an economic activity – that does not adversely affect their health and development or interfere with their education is often positive. ILO Convention No.

¹⁴² IACHR. Report No. 102/13. Case 12,723. Merits. TGGL. Ecuador, para. 150. See Inter-American Court of Human Rights. Case of *Fornérón and Daughter v. Argentina*. Merits, reparations and costs. Judgment of April 27, 2012, Series C, No. 242, para. 44; I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and reparations. Judgment of February 24, 2011, Series C, No. 221, para. 121.

¹⁴³ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary objections, merits, reparations, and costs. Judgment of August 31, 2010. Series C, No. 216, para. 201.

¹⁴⁴ Convention on the Rights of the Child. Adopted by the General Assembly of the United Nations on November 20, 1989; ratified by Brazil on September 24, 1990.

¹⁴⁵ Convention on the Rights of the Child. Adopted by the General Assembly of the United Nations on November 20, 1989, Article 32.

¹⁴⁶ IACHR. *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, Chapter XII; paras. 11 and 24.

138 allows for any kind of light work (which does not interfere with education) from the age of 12.

Child labor: Child labor is a more limited concept that refers to children that work in violation of ILO standards as set out in Conventions 138 and 182. This includes all children under the age of 12 who work in any economic activity, as well as those aged 12 to 14 who work in lighter work, and children who are subjected to the worst forms of child labor.

Worst forms of child labor: These include slavery, compulsory recruitment, prostitution, human trafficking, and the obligation to carry out activities.

113. Although Brazil was not a party at the time of the facts, it can be noted that at the international level Article 3 of the ILO Convention 182 defines “the worst forms of child labor” as follows:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.¹⁴⁷

114. With regard to States’ obligations in the face of the worst forms of child labor, the Inter-American Court has indicated that priority measures should be taken to eliminate them, such as, *inter alia*, developing and implementing action programs to ensure the full exercise and enjoyment of the rights of the child. It also noted that:

(...) Specifically, States have the obligation to: i) prevent the engagement of children in the worst forms of child labor; ii) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration; iii) ensure access to free basic education, and, wherever possible and appropriate, vocational

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International Labor Organization. Convention No. 182 - Worst Forms of Child Labor Convention, 1999. Ratified by Brazil on February 2, 2002.

training, for all children removed from the worst forms of child labor; iv) identify and reach out to children at special risk; and v) take account of the special situation of girls.¹⁴⁸

115. General comment 16 of the UN Committee on the Rights of the Child sets forth that States have the obligation to regulate and monitor working conditions and to establish safeguards that protect children from economic exploitation and work that interfere with their education or affect their health or their physical, mental, spiritual, moral or social development. Within this framework, the authorities responsible for regulating and supervising the activities and operations of enterprises should take into account the principle of the best interests of the child, the principle of non-discrimination, the holistic concept of child development and the right of children to be heard.¹⁴⁹ Also, given that girls and boys are often found doing dangerous jobs in the informal sector of the economy and in family economies, “States are required to design and implement programs aimed at reaching businesses in these contexts, including by enforcing international standards regarding legal minimum age for work and appropriate conditions of work.”¹⁵⁰

116. Similarly, the General comment 18 of the UN Committee on Economic, Social and Cultural Rights stresses the need to protect children “from all forms of work that are likely to interfere with their development or physical or mental health,” including economic exploitation, and in such a way that they are allowed “to pursue their full development and acquire technical and vocational education.”¹⁵¹ Particularly on child labor, the UN Committee on ESCRs has indicated that States must “adopt effective measures to ensure that the prohibition of child labor will be fully respected.”¹⁵²

¹⁴⁸ I/A Court H.R., *Case of the Hacienda Brasil Verde workers v. Brazil. Preliminary objections, merits, reparations, and costs*. Judgment of October 20, 2016. Series C, No. 318, para. 376.

¹⁴⁹ UN Committee on the Rights of the Child. General comment 16. On States’ obligations regarding the impact of the business sector on the rights of the child (April 17, 2013). Paras. 13-23.

¹⁵⁰ UN Committee on the Rights of the Child. General comment 16. On States’ obligations regarding the impact of the business sector on the rights of the child (April 17, 2013). Para. 36.

¹⁵¹ UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005. Para. 15.

¹⁵² UN Committee on Economic, Social and Cultural Rights. General comment 18. The right to work. November 24, 2005. Para. 24.

Thematic Reports

Towards the Effective Fulfillment of Children's Rights: National Protection Systems. OAS/Ser.L/V/II.166. Doc. 206/17. November 30, 2017.

346. At the same time, the IACHR emphasizes that the right of children and adolescents to exercise increasing levels of autonomy and responsibility in decision-making does not obviate States' obligations to guarantee their protection. Therefore, a balance should be ensured between respecting the evolving capacities of adolescents and appropriate levels of protection.¹⁵³ Thus, States should keep in mind the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse, such as, for example, by setting a minimum age limit of 18 years for marriage, recruitment into the armed forces, and involvement in hazardous work.

(Recommendation)

118. The IACHR recommends adopting legislation that expressly and clearly prohibits all forms of violence against children, and explicitly those forms of violence that continue to be socially tolerated, such as corporal punishment, psychological violence, and exploitation such as domestic child labor (*criadazgo, restavek*) or the use of children and adolescents for microtrafficking of drugs. Equally important is that policies, programs, and services be guaranteed for preventing and eradicating all forms of violence with a view to promoting social changes in relation to perceptions and behaviors that legitimize and reproduce forms of violence against children and adolescents. Such efforts should constitute a suitable and sufficient measure for effectively protecting children and adolescents from violence and for guaranteeing their rights.

C. Women's Work

45. The Commission has identified women as a group within society that has been traditionally discriminated against in terms of the enjoyment and full exercise of their human rights. It has stressed the importance and urgent need for States to adopt new and diverse actions for the promotion and protection of equality to ensure that women enjoy and exercise their rights without discrimination. In the exercise of its mandate and through its various working mechanisms, the IACHR has developed inter-American standards based on the ADRDM, the ACHR and the main universal and regional instruments for the protection of gender equality, such as the Convention of Belém do Pará. In this section, the IACHR and the Special

¹⁵³ In that same connection, see General Comment No. 20 on the implementation of the rights of the children during adolescence. Paras. 19, 20, 39 and 40.

Rapporteurship on Economic, Social, Cultural and Environmental Rights intend to illustrate the contents of States' obligations to guarantee women's rights at work, especially in relation to immediate, deliberate, and concrete measures. In particular, States must take action to eliminate the wage gap and harassment at work, and to promote equal opportunities. A special reference concerning the care of female workers in health emergencies is also included. The Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights have considered both inter-American human rights instruments and the ILO Conventions to develop the contents of State obligations and to apply them to specific cases or situations described in the reports. It should be noted that the work of the IACHR on this priority group has been extensive and comprehensive. However, this compendium presents a weighted selection of the most relevant standards in the field.

Thematic Reports

The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OAS/Ser.L/V/II.143. Doc. 59. November 3, 2011.

17. Women's right to work –free of any form of discrimination and on an equal footing with men- must be adequately observed and ensured, as it is key to eradicating poverty and to women's empowerment and autonomy. The constraints on women's exercise of the right to work affect their exercise of all other rights, including their economic, social and cultural rights in general. It is vital that the States not only refrain from practicing discrimination and tolerating discrimination in the workplace, but that they also fulfill their obligation to create the conditions that will make it easier for women to enter and remain in the workforce. In connection with maternity specifically, the IACHR is recommending that the States adopt a comprehensive strategy encompassing not just maternity leave, but also paternity and parental leave, so that women's reproductive role does not become an exclusionary and discriminatory variable.

84. Proper observance and the guarantee of women's right to work – free of any form of discrimination and as men's equals- is a critical factor in eradicating poverty, empowering women, and ensuring their autonomy. The constraints on the exercise of women's right to work have repercussions on their exercise of their other human rights, including their economic, social and cultural rights in general. It is important that the States not only abstain from discriminating or tolerating discrimination of any kind in labor-related matters, but also honor their obligation to create the conditions that will better enable women to join the workforce and remain on the job.

127. Nevertheless, the Inter-American Commission recognizes that despite the existing wage gap, women are entering the labor market in increasing numbers and the wage gap between men and women has narrowed in the last 20 years. [...] However, the IACHR would emphasize how important it is that the States adopt legislative and policy measures to ensure wage equality in practice and to eradicate the various forms of discrimination in this area, in both the public and private sectors.

129. The IACHR reminds States of their duty to adopt measures to advance the equality of men and women within the family so that men become more involved in household matters and share the responsibility for performing these functions. [...]

135. The sexual division of labor has a direct influence on women's economic autonomy, as it limits their options for earning income and their access to and control of necessary resources, as will be discussed later in this report. This problem is one of the factors driving the feminization of poverty and is compounded in the case of widowhood, termination of a marriage or breakup of the family.¹⁵⁴ The sexual division of labor severely limits women's use of time, as they are overburdened with the functions they are performing, limiting their ability to enter the job market and have access to executive or management positions in economic, social and political sectors. The IACHR believes that the way to address this problem is through proper policies and measures better geared toward improving the distribution of wealth, assets, job opportunities and time.¹⁵⁵ Summarizing, the sexual division of labor is a serious constraint on women's exercise of their human rights in every economic, social, civil and political sphere.

137. The Commission appreciates the efforts that a number of States have made to include provisions in their domestic laws, requiring that nursery schools, daycare centers and other child care services be created to assist women while they are at work.¹⁵⁶ These measures

¹⁵⁴ ECLAC. Roads Towards Gender Equity in Latin America and the Caribbean, IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico, D.F., June 10-12, 2004 (document published in April 2006), p. 24.

¹⁵⁵ ECLAC. Roads Towards Gender Equity in Latin America and the Caribbean, IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico, D.F., June 10-12, 2004 (document published in April 2006), p. 24.

¹⁵⁶ For example, in its reply to the questionnaire Ecuador reported that Article 155 of its Labor Code provides that "in permanent working businesses with fifty or more employees, the employer shall establish, either as an annex or in a facility nearby the business or place of work, a daycare center for the children of its employees; the child care services, food, premises and equipment for this service shall be at no cost to the employee." Guatemala pointed out that under Article 155 of its Labor Code, every employer with more than thirty women in his/her employ "shall arrange a place where mothers may safely nurse or feed their children under the age of three and leave them there during working hours, in the care of a suitable person hired and paid by the employer. The arrangement must be a simple one, within the employer's financial means, as determined and approved by the Office of the Inspector General of the Ministry of Labor and Social

are critical to ensuring that women are able to enter, remain in and move up in the workforce. However, the IACHR would again underscore the States' obligation to review the provisions of their domestic laws with a view to preventing and eradicating any discriminatory effect against women that the law might be creating. For example, the IACHR has received information indicating that provisions requiring businesses with a certain number of women employees to create daycare centers, may have the effect of discouraging the hiring of female employees.¹⁵⁷ The Commission is therefore recommending that the creation of daycare centers or nurseries not be determined by the number of women employees, but the total number of employees, men and women alike.

138. Under ILO Convention 156, the State must either provide or promote the organization of care services taking the needs of working mothers and fathers into account. Often schedules, costs or the quality of pre-school and school programs do not make it easier to reconcile work and family.¹⁵⁸ Then, too, many of the measures adopted by the States tend to focus on protecting maternity, without tending to other family responsibilities and care needs within the family, such as the elderly, the infirm, or the disabled.¹⁵⁹

139. However, some States report that financial constraints prevent them from taking measures to provide child care services while parents are at work. [...] The IACHR is reminded that States have an obligation to take deliberate, concrete measures targeted as clearly as possible toward meeting their obligations in the area of economic, social and cultural rights and the right of women to live free of discrimination.

152. The Commission recalls that States and their branches of government – including the executive, legislative and judicial branches- have an obligation to closely examine and analyze any laws, norms and practices whose effect might be to discriminate against women. The IACHR also reminds States of their obligation to

Welfare.” Costa Rica, for its part, reported that community homes had been established and were run by the Social Assistance Institute; these homes offer support, food, care, stimulation and a safe environment for infants and children while their parents are away at work, studying or in training. Canada reported that the Child Care Expense Deduction (CCED) is the main source of support that working parents have for child care expenses. Under this system, parents can deduct the cost of eligible care from their income. Mexico also told the IACHR that the Program of Child Care Homes to Support Working Mothers, run by the Secretariat of Social Development (SEDESOL), is targeted at working mothers and single fathers with children between the ages of one and four. As of December 2009, 8,923 Child Care Homes were in operation nationwide, in 193 municipalities. The State also reported on the Child Care Service operated by the Instituto Mexicano del Seguro Social (Mexican Institute of Social Security – IMSS), which in 2009 helped 184 thousand mothers by providing services in 1,577 child care facilities.

¹⁵⁷ IACHR. *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134. Doc. 63, March 27, 2009; para. 157.

¹⁵⁸ ILO-UNDP. *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 86.

¹⁵⁹ ILO-UNDP. *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 97

ensure that the umbrella of maternity protections is as wide as practicable, encompassing all groups of working women –including those working in the informal sector and women working as domestics- while paying particular attention to the needs of those groups of women whose human rights are especially susceptible to violation, such as girls, Afro-descendant women and indigenous women.

154. It is vital that the law protects a pregnant working woman from being dismissed because of her pregnancy; but it must also protect her from any type of inferior job-related treatment or mistreatment based on her pregnancy, such as denial of promotions, suspensions or transfers.

155. Another great concern related to maternity in employment is that the vast majority of the States' efforts focus entirely on the mothers. This compounds the problem of the sexual division of labor and adds to women's work within the family. The IACHR is recommending that the States adopt a comprehensive strategy that includes not only maternity leave, but paternity and parental leave as well. It is also important that paternity-leave incentives be offered to get fathers to apply, without fear of any form of job-related retribution, given the social stigma that tends to be attached to leave of this type. The ILO has recommended that measures be taken to offer other types of leave such as paternity leave, parental leave, and adoption leave to help workers reconcile their family life and work and so that women's reproductive role does not become an exclusionary and discriminatory factor mitigating against them in their efforts to find employment.¹⁶⁰

168. The IACHR would remind the States that under the Convention of Belém do Pará, sexual harassment is a form of violence against women that the States must investigate and punish with due diligence and without delay. Access to justice continues to be the first line of defense to protect the rights of women in this area. Hence, States have an obligation to clear away the obstacles standing in the way of women's right to live free of violence, and to act on their positive obligation to ensure this right by protecting women from sexual harassment.

169. While the States are working towards the full and progressive fulfillment of their obligations with respect to women's right to work, the IACHR has singled out a number of obligations that are immediate priorities for the States with a view to respecting and ensuring women's right to live free of discrimination in this area:

- Conduct a rigorous and detailed analysis of all laws, norms, practices, and public policies whose language establishes gender-

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ILO. *Maternity at Work: A Review of National Legislation* (2010).

based differences, or that in practice can have a discriminatory impact on women's exercise of their right to work.

- Adopt the necessary legislative, policy-related and programmatic measures to narrow the wage gap between men and women for work of equal value, in both the formal and informal sectors.
- Adopt legislative measures to formally recognize women's unremunerated work and to grant them benefits similar to those granted for remunerated work, particularly in the area of social security.
- Adopt a comprehensive state policy to ensure women's rights during pregnancy, including a guaranteed minimum fourteen weeks' paid maternity leave, as prescribed in ILO Convention 183; adopt protections against dismissal and any other form of job-related mistreatment during pregnancy; adopt laws protecting working women during the nursing period, and adopt laws granting paternity and parental leave.
- Adopt policies that take into account the fact that laws protecting women from work-related hazards are sometimes invoked to discriminate against women in the workplace; take steps to offer work-related protections prescribed by law to women working in the informal sector, domestic workers, women working in assembly industries, indigenous women, Afro-descendant women, girls, migrant women and other groups.
- Adopt measures geared toward creating daycare centers and nurseries in the terms defined in this report.
- Adopt legislative measures to make sexual harassment a punishable offense in the criminal, civil and administrative jurisdictions, and support these measures with the regulations and training that law enforcement personnel require.
- Promote the compilation of data and figures broken down by sex, age, race, ethnicity and other factors, so as to have accurate information available with a view to adopting anti-discrimination legislation and public policy.
- Guarantee due diligence so that all cases of gender-based violence in the labor area are investigated promptly, thoroughly and impartially, and those responsible are properly punished and the victims redressed.

255. The States must adopt immediate, deliberate and concrete measures to eliminate the obstacles that restrict women's access to and control over economic resources, particularly the problem of

discrimination and the need to take steps to ensure women's true equality in this area. Women's access to and control of both economic and financial resources have important implications for women's economic roles in sustaining household livelihoods, in labour markets and in the wider economy. [...].

Resolutions

Pandemic and Human Rights in the Americas. Resolution No. 1/2020. April 10, 2020.

(Recommendation)

52. Offer differentiated care to female health care professionals working as front-line responders to the COVID-19 health crisis. In particular, offer them adequate resources to help them do their job, mental health care, and means of reducing their double workload as professionals and as homemakers.

Requests for an Advisory Opinion sent to the Court

Scope of State Obligations under the Inter-American System with regard to the Guarantee of Trade Union Freedom, its Relationship to Other Rights, and its Application from a Gender Perspective. Request submitted on July 31, 2019.

5. From a gender equality perspective, it should be taken into account that women account for around 51 per cent of the total population and only receive 38 per cent of the total monetary income created and earned by people, with the other 62 per cent going to men.¹⁶¹ The IACHR has indicated that women suffer from different forms of discrimination both *de jure* and *de facto* with regard to the access to and control of economic resources, and to the distribution and control of these resources within families and outside households; and they continue to face obstacles to acquiring the means to obtain these resources, a situation that is particularly serious in the labor sphere.¹⁶² The IACHR has also identified some issues of concern that affect women in this area, including the wage gap, unpaid work, harassment and occupational segregation.¹⁶³

6. Despite these developments, there are still no clear criteria on the specific obligations of States related to freedom of association, including the rights to collective bargaining and strike, or on their

¹⁶¹ ECLAC. *Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*. 2015. Accessed on: January 16, 2019, p. 26.

¹⁶² IACHR. *The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II. 143, Doc. November 3, 2011; 28.

¹⁶³ IACHR. *The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II. 143, Doc. November 3, 2011; 82 and 83.

direct interdependence with fair and equitable working conditions. Furthermore, it has not been specifically determined the guarantees States should implement when they act as employers or when there are other actors involved, such as companies, international organizations, or non-profit organizations. Bearing in mind that historically and traditionally trade union and labor rights have been understood from a male labor force perspective, developing standards on the obligations of States to guarantee the principle of equality and non-discrimination against women in this field is of paramount importance for the protection of their labor rights.

7. In this regard, the purpose of this request is to have a joint interpretation of several key inter-American norms on the obligations of States in relation to the exercise of freedom of association, and collective bargaining and strike as catalysts for the protection of labor rights, as well as an interpretation of these standards from a gender perspective. In the context of anti-union practices, unemployment, loss of the real value of wages, job precariousness, discrimination and gender violence against women at work, and the impacts of the intensive use of new technologies on employment in the continent, it is relevant and timely for the Inter-American Court to explore these issues and prepare guidelines that help States fulfill their obligations.

D. The Work of Persons in Situation of Human Mobility

46. The Commission has identified that one of the main challenges faced by people in situation of human mobility in the region is the persistence of a large number of state policies, laws and practices, as well as actions and omissions by non-state actors and individuals, who are unaware of the fact that persons in human mobility are subjects of law and violate their human rights. In this section, the Commission presents a relevant selection of legal standards derived from reports approved by the IACHR that illustrate the labor rights of migrant workers, with a special focus on those in irregular migration situations. It should be noted that the IACHR, through its mechanisms, has developed differentiated inter-American standards related to the protection of the work of migrant workers, regardless of their administrative situation. In this way, the standards in this field assume that the status of a person as a migrant is not a valid reason for depriving them from enjoying their labor rights. In this regard, the IACHR understands that there is no reason to limit migrant workers from enjoying their rights to reduce the imbalance created by their migratory situation. This section presents the most relevant examples that the IACHR has developed and which refer to the protection of the aforementioned group of persons, as well as to the international obligations of States in this area.

Merits Reports Published by the IACHR

Report No. 50/16. Case 12,834. Merits. Undocumented Workers. United States of America. November 30, 2016.

74. The Commission has previously recognized that while Article II does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, it does require that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, “regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought”.¹⁶⁴ Regard should also be given to the fact that “[O]ne of the American Declaration’s objectives . . . was to assure in principle ‘the equal protection of the law to nationals and aliens alike in respect to the rights set forth’”.¹⁶⁵ In this regard, the Commission takes note of similar conclusions reached by UN treaty bodies, which have interpreted the prohibition of discrimination to include non-nationals, regardless of their legal status and authorization to work.¹⁶⁶

76. Regarding employment of undocumented workers, the Commission deems it pertinent to state at the outset that neither the State nor individuals in a State are obligated to offer employment to undocumented workers. In other words, the State and individuals, such as employers, can abstain from establishing an employment relationship with migrants in an irregular situation. However, upon assuming an employment relationship, the Commission considers that the protections accorded by law to workers, with the range of rights and obligations covered, must apply to all workers without discrimination, including on the basis of documented or undocumented status.

77. In the present case, the Commission finds that Mr. Zumaya and Mr. Lizalde, who assumed an employment relationship and were later injured on the job, experienced treatment different than that given to

¹⁶⁴ IACHR, Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra et al., United States, Apr. 4, 2001, para. 238 (citing as support of its position Eur. Ct. H.R., Belgian Linguistics Case, July 23, 1968, Series A No 6, 1 E.H.R.R. 252, p. 35, para. 10).

¹⁶⁵ IACHR. Report No. 113/14, Case 11.661, Merits, Manickavasagam Suresh, Canada, November 7, 2014, para. 86; IACHR. Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra et al., United States, Apr. 4, 2001, para. 239. See also IACHR. *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OAS/Ser.L/V/II.106. Doc 40, rev. (February 28, 2000), para. 96.

¹⁶⁶ See, e.g., U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment no. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2 (Aug. 2013). Para. 18 (citing U.N. Committee on Economic, Social and Cultural Rights, General comment no. 20 on non-discrimination in economic, social, and cultural rights, E/C.12/GC/20 (July 2009). Para. 30).

documented workers when they sought to obtain workers' compensation for their injuries and to access justice.

78. This difference in treatment is not attributable to a facial distinction in the laws but rather to a “distinction, exclusion, or preference” in their implementation, which has the practical effect of impairing the rights of undocumented workers. As the State has put forth and petitioners acknowledge, there are several laws that protect workers and mechanisms in place to enforce these laws, and on the face of these laws it does not matter whether the worker involved has work authorization. However, the Commission observes that, despite the terms of these laws and mechanisms, neither Mr. Zumaya nor Mr. Lizalde were able to obtain full benefits under workers' compensation programs, including medical benefits.

89. In the present case, the Commission observes that, despite the State's argument that benefits other than lost wages are still available to undocumented workers post-Hoffman, neither Mr. Zumaya nor Mr. Lizalde received full medical benefits for the injuries they sustained. Further, the foregoing analysis makes plain that the State subjected the two victims, Messrs. Zumaya and Lizalde, as non-nationals lacking authorization to work, to a legal regime in relation to their workers' compensation proceedings that is fundamentally distinct from that applicable to other national and/or authorized workers.

90. The Commission therefore considers that the State has failed to ensure that the protections in the law for workers, including remedies for labor rights violations, are recognized and applied without discrimination to every worker. The Commission acknowledges that the State has the prerogative to prosecute persons who commit social security fraud, but it emphasizes that such prosecution is irrelevant to and in no way should affect the right of an undocumented injured worker to receive and enjoy labor rights, such as to workers' compensation, once the person has assumed an employment relationship in the US.

Thematic Reports

Forced Migration of Nicaraguans to Costa Rica. OAS/Ser.L/V/II. Doc.150. September 8, 2019.

243. (...) The IACHR also notes that in the framework of the Summits of the Americas, the Heads of State and Government have consistently expressed the importance of guaranteeing the protection of the human rights for migrants, including labor rights, by expressing

specific mandates on the subject.¹⁶⁷ This has also been reflected by the OAS General Assembly.¹⁶⁸ Within the framework of the United Nations, the General Assembly also requested compliance of employment legislation and respect and promotion of international labor standards and the rights of migrants in their places of work.¹⁶⁹

250. The Commission expresses its concern about the issuance of the work permit, at the earliest, within 9 to 12 months after submission of the asylum application. This situation may also generate pernicious effects in the exercise of the right to work, exposing Nicaraguans in need of international protection to a lack of access to formal employment, as well as working conditions of exploitation or under-employment. In this regard, the UNHCR has pointed out that “restricting the rights of refugees and delaying the attainment of durable solutions for years causes frustration and tension among refugees and in the host community. In such situations refugees, particularly women and children, become more vulnerable to various forms of exploitation such as trafficking and forced recruitment, and may develop a long-term dependency on humanitarian assistance.”¹⁷⁰

251. Likewise, the IACHR has referred on several occasions to the condition of structural vulnerability faced by migrants, and to the abuses they face, including poor working conditions.¹⁷¹ Along the same lines, the Guiding Principles on Business and Human Rights refer to migrants as one of the groups that often does not enjoy the same level of legal protection of their human rights as the general

¹⁶⁷ OAS. Summits of the Americas: Follow-Up and implementation: Mandates (Migration). (last visited February 4, 2019).

¹⁶⁸ OAS, GENERAL ASSEMBLY, HUMAN RIGHTS OF MIGRANTS, INCLUDING MIGRANT WORKERS AND THEIR FAMILIES. AG/RES. 2729 (XLII-O/12). JUNE 4, 2012.

¹⁶⁹ UN General Assembly. Resolution 68/179. Protection of Migrants. UN Doc. A/RES/68/179, January 28, 2014; UN General Assembly. Declaration of the High-level Dialogue on International Migration and Development. UN Doc. A/RES/68/4, January 21, 2014. See, inter alia, UN. Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work, U.N. Doc. E/C.12/GC/18, November 24, 2005. Also, the Preamble to ILO Convention No. 168, of 1988, which provides: “(...) the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to the workers, the social role which they confer and the feeling of self-esteem which workers derive from them.”

¹⁷⁰ UNHCR. Local Integration and Self-Reliance, U.N. Doc. EC/55/5C/CRP.15, June 15, 2015, para. 6. See, inter alia UN. Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, A/HRC/35/25, April 28, 2017, para. 49. UN. Committee on Economic, Social and Cultural Rights, General comment No.18: The right to work, U.N. Doc. E/C.12/GC/18, November 24, 2005. International Labor Organization, Promoting Fair Migration – General Survey concerning the Migrant Workers Instruments, ILC.105/III/1B, 2016, para. 371.

¹⁷¹ IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OAS/Ser.L/V/II, Doc. 46/15 (2015); para. 8; IACHR. Annual Report. Second Progress Report on the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere, OAS/Ser./L/V/II.111. Doc. 20, rev. April 16, 2001, para. 64.

population, which may facilitate abuses by companies and prevent administrative or judicial review of such cases.¹⁷²

254. For its part, the Inter-American Court has established that “the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment,” and that “on assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his regular or irregular status in the State of employment. These rights are a consequence of the employment relationship.”¹⁷³ Therefore, the IACHR considers that asylum applicants who begin an employment relationship must enjoy the same employment rights and benefits as nationals. In this regard, the UN Committee on Migrant Workers (CMW) has warned about the need to take effective measures against non-payment of wages, deferment of payment until the workers’ departure, the transfer of wages to accounts inaccessible to migrant workers or the payment of lower wages than those received by nationals.¹⁷⁴

255. In this regard, the States must adopt appropriate measures to ensure that companies hiring these individuals also respect their employment rights, on equal terms as national workers. For these purposes, it is important that companies exercise due diligence in their procedures to identify possible risks and negative impacts on human rights, and the State's supervisory task in these cases is essential as part of its international obligations in this area.

256. On the other hand, the Commission observes that under Costa Rican legislation, documented aliens have permission to work. In this regard, the Commission recalls that anyone requesting recognition of refugee status also has documented status, even if their request for recognition thereof has not yet been resolved. Within this framework, the Commission observes that the issuance of the work permit three months after the eligibility interview within the procedure for determining refugee status, represents an inequality in relation to other migrants. Notwithstanding the foregoing, the IACHR recalls that irrespective of the migratory status of the person when an employment relationship is established, the protections accorded by law to workers, with the full range of rights and obligations covered,

¹⁷² UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, June 16, 2011, Resolution 17/4, observations on Principles 3, 12 and 26.

¹⁷³ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No.18, para. 134.

¹⁷⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. General comment No.2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, August 28, 2013. Para. 63.

must apply to all workers without discrimination, including on the basis of documented or undocumented status.¹⁷⁵

257. In this regard, the Commission urges the State of Costa Rica to adopt both legislative and administrative measures within the procedure for the recognition of refugee status, in order for individuals who have declared that they need international protection through their asylum application have access to a work permit from the time they submit said application, without distinction. This guarantees their right to work and their exercise of other human rights that depend on it. In addition, taking into account the particular historical position of Costa Rica as a host State in the Central American region, the Commission considers that as part of the fulfillment of its international guarantee obligations in these contexts, the design and incorporation of programs focused on individuals requiring international protection within their national employment policies and regulatory labor frameworks will not only be necessary at the national level, but may serve as an example of a good practice to be followed by the other States in the region.

259. (...) the Inter-American Court of Human Rights has indicated that States cannot discriminate based on one or more of the prohibited categories set out in Article 1.1 of the American Convention.¹⁷⁶ Similarly, the Commission notes that this differential treatment of access to the right to work based on the individual's migratory status could only be considered legitimate when it pursues a valid, reasonable and proportionate objective.¹⁷⁷

263 Consequently, the IACHR recognizes and welcomes the policies adopted by the State of Costa Rica and, at the same time, urges the State to take the necessary measures to respect and guarantee the right to work of Nicaraguans who have been forced to flee their country and request international protection in Costa Rica, in a timely and effective way by issuing the work permit from the time the applicant initiates the procedure to determine a need for international protection, and by allowing access to all occupations without distinction based on migratory status. Additionally, taking into consideration the particular situation of migrants' vulnerability, the State must adopt measures aimed at supervising hiring companies, in order to prevent possible violations of their human rights.

¹⁷⁵ IACHR. Report No. 50/16, *Undocumented Workers v United States of America*, Merits, November 30, 2016; para.76.

¹⁷⁶ See, American Convention on Human Rights, Article 1.1.

¹⁷⁷ I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No.18, para. 119.

Seventh Progress Report of the Special Rapporteurship on Migrant Workers and their Families for the period from January to December 2005.

177. Migrant workers need information about their labor rights and about how to protect and ensure them. States can take pro-active measures to protect the rights of their citizens abroad by waging information campaigns and by promoting and signing agreements with the receiving State's Labor Offices. (...)

Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OAS/Ser.L/V/II. Doc. 48/13. December 30, 2013.

599. [...] While the principle of non-discrimination and equal protection under the law requires that the State guarantee observance of migrant workers' labor rights, the fact of being a migrant in practice means not being recognized as a person before the law; the situation is even worse in the case of migrants in an irregular situation.¹⁷⁸

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164. Doc.147. September 7, 2017.

(Recommendation)

12. The rules and standards of international human rights law contemplate the special protection needs of migrants forced to leave their countries of origin because of death threats, threats to their families, or in order to seek dignified employment. As regards development of standards, the organs of the Inter-American System have progressively moved forward in the development of concepts such as the right to a life with dignity, in addition to identifying various forms of cruel, inhuman and degrading treatment. These new standards should be taken into account at the moment of establishing whether the migration of persons living in poverty has taken place as a consequence of the violations of these standards. The use of concepts such as the right to a life with dignity and the prohibition of cruel, inhuman and degrading treatment could be grounds to prevent the return or deportation of migrants in situations of poverty.

¹⁷⁸ IACHR. Report on the Situation of Human Rights in the Dominican Republic, OAS/Ser.L/V/II. Doc. 45/15. December 31, 2015; para. 574.

Country Reports

Report on the Situation of Human Rights in the Dominican Republic. OAS/Ser.L/V/II.Doc. 45/15. December 31, 2015.

573. As for the labor rights of the migrant workers, the Commission recalls what the Inter-American Court of Human Rights wrote in its advisory opinion on the Juridical Condition and Rights of Undocumented Migrants to the effect that the labor rights of migrant workers, regardless of their migratory situation, come from their employment relationship and not their migratory situation.¹⁷⁹

574. For the Commission, these cases illustrate what life is like for the Haitian worker in Dominican territory: a frequent victim of labor exploitation, resulting in the loss of the rights associated with labor. The Commission observes that these situations have become so commonplace that abuse and exploitation have become the norm for Haitian migrant workers. While the principle of non-discrimination and equal protection before the law requires that States guarantee observance of migrant workers' labor rights, in practice these persons are not regarded as subjects of the law precisely because they are migrants. The situation is much worse for those in an irregular migratory situation.

Annual Report

Annual Report. Second Progress Report of the Special Rapporteurship on Migrant Workers and their Families, OAS/Ser./L/V/II. 111. Doc. 20, rev. April 16, 2001.

64. Thus it becomes clear that immigrants and migrant workers find themselves in a vulnerable position. Often they are not familiar with the law and do not speak the language. At times they meet with outright hostility on the part of the local population, including authorities. Undocumented migrant workers find themselves in an especially difficult situation and even more exposed to abuse. In fact, the specific circumstances facing migrant workers shows that they face a situation of structural vulnerability.¹⁸⁰ Migrants constantly run up against roadblocks, including arbitrary arrest and the lack of due process, collective deportation, discrimination in the granting of citizenship or in acceding to social services that foreigners have a right to by law, inhumane detention conditions, harassment on the part of authorities, including police and immigration officers, and the inability to defend themselves when exploited by unscrupulous

¹⁷⁹ I/A Court H.R. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No. 18.

¹⁸⁰ United Nations. Working Group of Intergovernmental Experts on the Human Rights of Migrants, Report E/CN.4/AC.46/1998/5, paragraph 28. United Nations, Report of the Special Rapporteur on the Human Rights of Migrant Workers, paragraph 13.

employers. These problems become even more acute for women and children migrants, who must also deal with sexual harassment, beatings and below-standard working conditions.

CHAPTER 4
INTER-AMERICAN STANDARDS
ON TRADE UNION RIGHTS

INTER-AMERICAN STANDARDS ON TRADE UNION RIGHTS

47. In this chapter, the IACHR illustrates, through a selection of inter-American standards from approved reports, the content of trade union rights and the scope of States' obligations in this field. This chapter consists of three substantive sections, which explore the contents of Article 45.c of the OAS Charter and Article 8 of the Protocol of San Salvador, namely the right to freedom of association, collective bargaining, and strike.

A. Freedom of Association

48. Freedom of association is recognized as a civil and political right and an economic, cultural, and social right, provided for in the ACHR and its Additional Protocol. In this section, the IACHR presents the inter-American standards on the subject developed through its mechanisms, with a special focus on freedom of assembly; freedom of affiliation, non-affiliation and disaffiliation; freedom of choice of the organization's structure; the centrality of collective bargaining for the defense of workers' interests and against violent actions as ways of discouraging participation in trade unions.

49. Freedom of association is of the utmost importance for collective interests to be adequately defended and claimed, and for workers to have the means of action to balance employment relationships. Collective bargaining and actions are important mechanisms for workers to be able to demand better working conditions from both their employers and from States. This freedom involves the power to establish trade union organizations and to choose their structure, together with activities and action programs, without the intervention of state authorities that limit or hinder the exercise of the above-mentioned rights.

50. Freedom of association also implies the possibility of forming associations without legal or necessary restrictions in a democratic society. It is also a right that implies the freedom of every person to accept or to challenge their affiliation to trade unions. The inter-American system has understood that freedom of association has two dimensions: individual and collective.

51. The recognition of freedom of association imposes on States the obligation to refrain from creating barriers to the collective organization of workers so that they can defend their interests on the basis of their decisions. Similarly, States cannot prevent or hinder the association of workers with trade unions and must ensure that individuals can freely exercise their freedom of association without fear of being subjected to violence of any kind; otherwise, the ability of groups to organize to protect their interests could be reduced. Thus, this section includes the most

relevant extracts from the reports on freedom of association approved by the IACHR that give an account of the scope of this right.

Cases in the Court

Case 11,325. Workers Dismissed under Law 25 of 1990. Panama. January 18, 1998.

176. The Supreme Court could not ignore that the Government of Panama, when enforcing Law 25, imposed penalties on the union leaders that led the labor movement of state workers, precisely because they were associated with this organization. In addition, it could not ignore the fact that the same law deprived these workers from of all the rights they had enjoyed before and until the passing of the law, and that, because of their trade union association, they now became perpetrators of actions against democracy and the constitutional order. The Law 25 referred to such unions of state workers in a specific and concrete way; it states in Article 40: "For the purposes of the enforcement of this Law," it refers to the "case of state workers' unions."

177. In addition to the violation of the right to association of state workers, the premises of the state workers' associations were taken by public force, their members were expelled, pursued or detained, and their facilities were looted; there was an intervention of the funds and current accounts, which consisted of modest membership contributions.

178. The Committee on Freedom of Association of the International Labor Organization stated that the freedom and right to association were affected by Law 25.

179. Law 25 and its enforcement hindered the exercise of the petitioners' freedom of association and the norms guaranteeing the exercise of this right, as provided for in the American Convention on Human Rights. The Commission reiterates that it does not believe that Law 25 prohibited the exercise of freedom of association, but alleges that it imposed sanctions on those who exercised the right to freedom of association, which is a violation of the American Convention. The exercise of the rights protected by the Convention can never justify attacks, reprisals, or sanctions on those who have exercised those rights. That is why the Panamanian State violated through its actions the right to association of the dismissed workers enshrined in Article 16 of the Convention.

Case 10,435. Saúl Isaac Cantoral Huamaní and Consuelo Trinidad García Santa Cruz. February 21, 2006.

111. The extrajudicial execution of the victims was motivated by their trade union activities: in the case of Mr. Cantoral Huamaní, due to his role as Secretary-General of the National Federation of Mining, Iron and Steel Workers of Peru, and his promotion of union struggles, supra 28;¹⁸¹ in the case of Consuelo Trinidad García Santa Cruz, due to her active participation in women's associations linked to trade union activities, in women's organization Micaela Bastidas in Comas, in the Organizing Committee of the District Coordinator of Women of Comas and in the Filomena Tomaira Pacsi Women's Center, which has been providing female partners of mining workers with assistance since its foundation in 1984, supra 29.¹⁸²

112. The high profile and trajectory of the victims in trade union activities, miserably and criminally distorted by their immediate and mediate executors, caused their death;¹⁸³ supra 41.¹⁸⁴

113. The right to association recognized in the American Convention includes the freedom of a person to associate freely for any purpose, including labor purposes. Freedom of association allows persons not

¹⁸¹ Saúl Isaac Cantoral Huamaní, born in Ayacucho, 42, lived in Nazca, was married, and had four children. He began working as a welder in the North American company UTA, a shareholder of the Marcona Mining Company. In 1984, he was elected as Secretary-General of the Marcona union and was re-elected in 1986. On January 29, 1987, he was promoted to Secretary-General of the National Federation of Mining, Iron and Steel Workers of Peru, after winning the elections of the union. That same year he led the first major strike for the recognition of the national miners' list of demands (*pliego nacional minero*), which paralyzed the mining industry from July 18 to August 18, 1987. In October 1988, he led another strike in which he reached an early agreement with government representatives. During the first months of 1989 and before his extrajudicial execution, he participated in a series of meetings to demand the Government to comply with the national miners' list of demands.

¹⁸² Consuelo Trinidad García Santa Cruz, born in Trujillo, studied at Universidad Guzmán y Valle, "La Cantuta". She was a teacher and specialized in textiles. She was a literacy teacher in the municipality of Comas, and she joined women's organization Micaela Bastidas in 1979. Between 1981 and 1982, she served in the Organizing Committee of the District Coordinator of Women of Comas. In 1984, in the municipality of Concho, she and other women founded Filomena Tomaira Pacsi Women's Center, an organization that provided female partners of mining workers with assistance; she worked there until the day of her death. In the course of these activities, she met Saúl Isaac Cantoral Huamaní and joined the activities of the General Secretariat of the National Federation of Mining, Iron and Steel Workers of Peru. She was a militant of the Democratic Union Party of Peru.

¹⁸³ Statement by Mr. Percovich Cisneros, in Annex 3: "They were causing quite a bit of trouble and they were costing a lot of money to the country."

¹⁸⁴ This statement is also referred to before the Investigative Commission of the Congress of the Peruvian Republic (known as the "Herrera Commission"), during the second period of ordinary sessions of the Peruvian Congress in 2002, which documented a series of cases concerning the government of former President Alberto Fujimori.

to be subjected to the interference of state authorities that may wish to restrict or limit such exercise.¹⁸⁵

114. In recent jurisprudence, the Inter-American Court considered that the execution of a trade union leader in the same context as the one mentioned herein, during the period of internal conflict in Peru between 1980 and 2000, violated not only the victim's freedom of association, but also the right and freedom of a particular group to associate freely, without fear.¹⁸⁶ On the basis of the analysis on the two dimensions of freedom of expression developed in its prolific jurisprudence,¹⁸⁷ the Court referred to the individual and collective dimensions of the right to association.

115. In the case of Pedro Huilca, the Court noted that in its individual dimension,

“labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. When the Convention proclaims that freedom of association includes the right to freely associate ‘for [... any] other purposes,’ it is emphasizing that the freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes. Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State’s actions, or those that occur with its tolerance, that could render this right inoperative in the practice.”¹⁸⁸

116. In its social dimension, “freedom of association is a mechanism that allows the members of a labor collectivity or group to achieve certain objectives together and to obtain benefits for themselves.”¹⁸⁹ Both dimensions must be guaranteed simultaneously, respecting the restrictions allowed in Article 16.

117. Trade union freedom, a form of freedom of association, entails the power of choice as to how to exercise it States must ensure that

¹⁸⁵ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005, Series C, No. 121, para. 69, quoting the case of Baena Ricardo et al. Judgment of February 2, 2001. Series C, No. 72, paras. 156 and 159.

¹⁸⁶ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005, Series C, No. 121, para. 69.

¹⁸⁷ I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C, No. 107, para. 108; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C, No. 74, para. 146; *Case “The Last Temptation of Christ” (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C, No. 73, para. 64; and Mandatory membership in a professional association for the practice of journalism (Articles 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 30.

¹⁸⁸ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005, Series C, No. 121, para. 70.

¹⁸⁹ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005, Series C, No. 121, para. 71.

individuals can freely exercise their freedom of association without fear of being subjected to violence of any kind; otherwise, the ability of groups to organize to protect their interests could be reduced.¹⁹⁰

Report No. 117/10. Case 12,343. Merits. Edgar Fernando Garcia. Guatemala. October 22, 2010.

161. For its part, with regard to freedom of association as established by the Court in its jurisprudence, the Court protects the right to associate freely with others to achieve a common lawful purpose without pressure or interference that could alter or denature such purpose.¹⁹¹ In addition to these negative obligations, the Court has recognized that freedom of association also “gives rise to positive obligations to prevent attacks on it, to protect those who exercise it, and to investigate violations of this freedom.”¹⁹²

162. Under the terms of Article 16.1 of the Convention, the “lawful purposes” referred to are not limited to a particular scope, but may be “ideological, religious, political, economic, labor, social, cultural, sports or other purposes.” The Court has analyzed Article 16 both in the context of the trade union association¹⁹³ and in the context of association for other “lawful purposes” such as the defense of human rights.¹⁹⁴ The IACHR considers that the context that applies to the case of Edgar Fernando García is the first context mentioned above, with the victim being a student and union leader. With regard to the members of his family, and specifically to his wife, Nineth Montenegro, and his mother, María Emilia García, the context that applies is that related to the defense of human rights.

163. Likewise, as in the case of freedom of expression, the Court has addressed the double dimension of the right to association: an individual dimension that is violated when there is an interference with the exercise of this right by the individual, and a social dimension that is violated by the “frightening and intimidating effect” of the facts that reduce “the freedom of a given group to associate

¹⁹⁰ Id. Para. 77.

¹⁹¹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, reparations, and costs. Judgment of April 3, 2009, Series C, No. 196, para. 143.

¹⁹² I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121, para. 76; and case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of July 10, 2007. Series C, No. 167, para. 144.

¹⁹³ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121; and case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of July 10, 2007. Series C No. 167

¹⁹⁴ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, reparations, and costs. Judgment of April 3, 2009, Series C, No. 196, para. 145-149

freely, without fear.”¹⁹⁵ In this regard, as to the relationship between the right to association and freedom of association, the Court has considered that the killing of a trade union leader motivated by his opposition and criticism of state policies violates the victim’s own freedom of association and restricts the freedom of a determined group to associate freely, without fear.¹⁹⁶ Accordingly, the Court has recognized that freedom of association can be fully exercised only in a context in which fundamental human rights, especially those relating to the life and security of persons, are respected and guaranteed.¹⁹⁷ The Court has pointed out that a violation of the right to life or to personal integrity by the State could in turn lead to a violation of Article 16.1 of the Convention if that violation has been motivated by the legitimate exercise of the victim’s right to freedom of association.¹⁹⁸

168. In this regard, the IACHR considers that the forced disappearance of Edgar Fernando García represented a violation of his right to freedom of expression and that the purpose of his disappearance was to suppress the exercise of his right to freedom of association in a context of repression and elimination of leaders and members of any opposition organization. Also, the forced disappearance of a union and student leader also led to a violation of the freedom of other persons to associate freely, without fear.¹⁹⁹

169. Consequently, the Commission considers that the mere fact of forcibly disappearing a person as a result of their alleged political ideas and the exercise of their right to association violates the State’s obligations under Articles 13 and 16 of the Convention to the detriment of Edgar Fernando García (...).

¹⁹⁵ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121, paras. 70- 72; and case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of July 10, 2007. Series C, No. 167, para. 148.

¹⁹⁶ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121, para. 69.

¹⁹⁷ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121, para. 75; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary objections, merits, reparations, and costs. Judgment of July 10, 2007. Series C, No. 167, para. 146.

¹⁹⁸ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, reparations, and costs. Judgment of April 3, 2009, Series C, No. 196, para. 150.

¹⁹⁹ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121, para. 75; and case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of July 10, 2007. Series C, No. 167, para. 146.

Report No. 25/15. Case 10,737. Merits. Victor Manuel Isaza Uribe and Family v. Colombia. OAS/Ser.L/V/II.155. Doc.4, July 21, 2015.

142. Article 16 of the American Convention provides:

Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

143. The Court has held: “These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual.” It added that, “they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.”²⁰⁰

144. The Court has determined that the right to form trade unions and to collectively pursue protection of labor rights is protected by freedom of association. This freedom translates into the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right. It also supposes that each person may determine, without any pressure, whether or not she or he wishes to form part of the association.²⁰¹

145. In addition to recognizing the autonomy and independence of labor unions and allowing free exercise of union rights, States must also ensure that human life and personal safety are fully respected when an individual exercises his or her union activities.²⁰²

146. The ILO Committee on Freedom of Association has stated that:

Freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.²⁰³

²⁰⁰ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, reparations, and costs. Judgment of February 2, 2001. Series C, No. 72, paras. 156 and 159. *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment March 3, 2005. Series C, No. 121, para. 69.

²⁰¹ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, reparations, and costs. Judgment of February 2, 2001. Series C, No. 72, para. 156.

²⁰² IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc 66, para. 258.

²⁰³ ILO. Decisions of the Committee on Freedom of Association: 233rd Report, Case No. 1233 (El Salvador), para. 682; 238th Report, Case No. 1262 (Guatemala), para. 280; 239th Report, Cases Nos. 1176, 1195 and 1215 (Guatemala), para. 225, c); 294th Report, Case No. 1761 (Colombia), para. 726; 259th Report, Cases Nos. 1429,

147. As this report has established, Víctor Manuel Isaza Uribe was an active member of the SUTIMAC trade union. At the time of the events, acts of violence were committed against members of that trade union, a fact known to the authorities and the public at large. As the statements to which the Commission has had access attest, the members of the trade union in Puerto Nare lived in fear of being murdered or disappeared and several felt obliged to leave. In that connection, the Court has held that “[t]he State must ensure that people can freely exercise their freedom of association without fear of being subjected to some kind of violence; otherwise, the ability of groups to organize themselves to protect their interests could be limited.”²⁰⁴

Merits Reports Published by the IACHR

Report No. 57/02. Case 11,382. Merits. Finca La Exacta. Guatemala. October 21, 2002.

80. In coming together in a trade union to carry out union activities, the workers had embarked on an initiative protected by Article 16 of the Convention. The Government agents, who worked with the owners of the estate, punished with the severest sanction possible, the decision of the workers of *Finca “La Exacta”* to form a trade union organization, by killing three men, seriously wounding 11 others and endangering the lives and security of an entire group of persons. The reprisals taken against the union activities and the suppression of the trade union movement constitute a violation of Article 16.

117. The Government has also failed in its obligation to guarantee rights with respect to the acts committed by private individuals in violation of the rights, enshrined in the Convention, of the workers organized on *Finca “La Exacta”*. The owners and administrators of *Finca “La Exacta”* dismissed a large number of workers on the estate in reprisal for the decision of these workers to organize a union and to file a labor claim in the courts. Persons associated with the owners and administrators of *Finca “La Exacta”*, together with other private persons, also collaborated with the police force in preparing and executing the raid of August 24, 1994. These actions of private individuals resulted in violations of the right to freedom of association, the right to life and to humane treatment and the right of children.

1434, 1436, 1457 and 1465 (Colombia), para. 660; see also UN Human Rights Committee, López Burgo case, Communication 52/1979: Uruguay, 29/07/81, referred to in I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment March 3, 2005. Series C, No. 121, para. 75.

²⁰⁴ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, reparations, and costs. Judgment of March 3, 2005. Series C, No. 121; para. 77.

Thematic Reports

Report on the Situation of Human Rights Defenders in the Americas. OAS/Ser.L/V/II.124. Doc. 5, rev. 1. March 7, 2006.

73. In this sense, the guarantee that people who associate for trade union purposes will be protected from retaliatory actions is fundamental for the exercise of this right. The Committee on Freedom of Association has stated in this regard that [o]ne of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer, or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom."²⁰⁵

74. On this point, it is important to underscore that measures to protect or safeguard union delegates should not be restricted unreasonably. They should also include, for example, leaders of minority unions or those in formation, since acts of harassment sometimes occur with the consent of existing trade union structures in collusion with companies or with the state. In this regard, the Committee on Freedom of Association stated that. Any measures taken against workers because they attempt to constitute organizations of workers outside the existing trade union organization are incompatible with the principles that workers should have the right to establish and join organizations of their own choosing without previous authorization.²⁰⁶ It further stated that no person should be prejudiced in his or her employment by reason of

²⁰⁵ Committee on Freedom of Association, Digest of Decisions and Principles on Freedom of Association, 1985 para. 724. Among the actions that may be considered violations of freedom of association, the IACHR has included, for example, matters such as arbitrary arrests, death threats, attempts against the lives of union leaders and their arbitrary dismissal, as well as docked wages of those who participate in union assemblies, job discrimination against union members, etc. See IACHR, Report on the Human Rights Situation in Guatemala (1993), Cap. IX. Doc. OAS/Ser.L/V/II.83. Doc. 16, rev., June 1, 1993.

²⁰⁶ Committee on Freedom of Association, Case 1594, Ivory Coast. In the same way, the Committee affirmed that "[m]easures taken against workers because they attempt to constitute organizations or reconstitute organizations of workers outside the official trade union organization would be incompatible with the principle that workers should have the right to establish and join organizations of their own choosing without previous authorization. (CFA, 301) and that "[t]he necessary measures have to be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish." (CLS, 302).

membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned.²⁰⁷

209. Since they first appeared in history, trade union organizations have played a fundamental role in the defense of the human rights of thousands of workers throughout the hemisphere who have faced precarious labor conditions in their workplaces. In addition, these institutions have been key in the political and social organizing of thousands of persons, as they constitute key examples of organized political expression for presenting the labor and social demands of many sectors of society.

(Recommendation)

20. Guarantee effective administrative and legal measures for the protection of union delegates, including mainstream and minority unions and those in formation, against discrimination and harassment associated with carrying out their functions.

Country Reports

Fourth Report on the Situation of Human Rights in Guatemala. OAS/Ser.L/V/II.83. Doc. 16, rev. 1. June 1, 1993.

Capítulo IX, III. Right of Association, 1. Union Freedom. The economic adjustment produced [...] has had positive macroeconomic effects [...] Though these trends are positive, poverty is still widespread and income poorly distributed. [...] In such circumstances, exercise of freedom of association for economic and labor purposes is crucial. Obstacles to the exercise of that right are not only a violation of it, but also invariably lead to violent social friction and violations of the rights to life and to humane treatment.

Report on the Situation of Human Rights in Venezuela. OAS/Ser.L/V/II.118. Doc. 4, rev. 1. October 24, 2003.

512. [...] The IACHR is of the view that allowing the population at large to participate in that referendum, i.e., including persons other than union members, entailed a violation of the right to form and join trade unions, and the right of workers to elect their leaders. The above-mentioned actions were severely criticized by the Committee on Freedom of Association of the International Labor Organization (ILO), as well as by other international human rights organizations that declared their concern over the matter [...]

²⁰⁷ Committee on Freedom of Association, Digest of Decisions and Principles on Freedom of Association, 1985, para. 693.

521. The Commission notes that the right to elect and to be elected, and the right of workers to organize, are rights recognized in the American Convention and in the Inter-American Democratic Charter. The freedom to form and to join a labor organization, without undue interference by the State, constitutes in the IACHR's judgment an important element of any democratic system.

Democracy and Human Rights in Venezuela. OAS/Ser.L/V/II. Doc. 54. December 30, 2009.

1085. The Inter-American Democratic Charter recognizes that the right of workers to associate freely to protect and promote their interests is essential for the full realization of democratic ideals. The American Convention on Human Rights recognizes this right in Article 16, as does Article 8 of the Protocol of San Salvador. The latter international instrument establishes that states must guarantee the right of workers to organize trade unions and to affiliate with the one of their choice, and that no one may be compelled to belong to a trade union. The Protocol also provides that states must allow trade unions to function freely, and that the exercise of trade union rights may be subject only to such limitations and restrictions that are established by law and necessary in a democratic society for safeguarding public order or for protecting public health or morals or the rights and freedoms of others.

1092. [...] Whether elected trade union officials may seek reelection or whether they must alternate positions with others is a matter for decision exclusively by the members of the organization in the exercise of the freedom to choose whomsoever they wish as representatives, without state interference.²⁰⁸

1120. The Inter-American Court has recognized that trade union rights suffer when violations to the right to personal integrity or to life aim to constrain the exercise of such rights and freedoms. It follows, therefore, that trade union rights cannot be exercised in a

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In this respect, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO) stated: "The Commission recalls that, according to the provisions of Article 3 of the Convention, the workers' and employers' organizations have the right to draft their statutes and administrative rules and to freely elect their representatives. In this sense, the imposition of the alternation of the members of labor union boards through legislative means is an important obstacle to the guarantees consecrated in the Convention." See CEACR. *Individual observation on Convention No. 87, Freedom to unionize and protection of the right to unionize, 1948 Venezuela* (ratified: 1982) Publication 2001. Available in Spanish at: <http://bravo.ilo.org/ilolex/cgi-lex/singles.pl?query=062001VEN087@ref&chspec=06>. For its part, the Committee on Labor Union Freedom of the ILO has stated that "The prohibition of the reelection of labor union leaders is not compatible with Convention No. 87. This prohibition could also have serious consequences for the normal development of a union movement in which there is an insufficient number of persons capable of adequately carrying out the functions of union leadership." See. ILO. Committee on Labour Union Freedom. *Labour union freedom: Compilation of Decisions and Principles of the Committee on Labour Union Freedom of the Administrative Council of the ILO (1996)*, para. 388.

context of impunity in the face of violence leveled against labor. In that sense, states must ensure that individuals can freely exercise their labor rights without fearing any violence.²⁰⁹

Annual Reports

Annual Report of the Inter-American Commission on Human Rights 2004. OAS/Ser.L/V/II.122, Chapter 5, rev. 1, February 23, 2019.

320. The Inter-American Commission agrees with the CEACR that an essential element for the free exercise of union rights is to have the powers of government oversight bodies drafted in clear and unambiguous terms. The freedom to organize must not be subject to any type of State intervention[...]

330. The exercise of trade union freedoms includes freedom for workers to select the union that in their opinion best defends their working interests, without interference of any kind from the authorities. The fact that the authorities are encouraging workers to join or to quit a specific union represents clear interference in the private affairs of its members and constitutes an attack on trade union freedoms.²¹⁰

B. Collective Bargaining

52. In this section, the IACHR presents a series of Inter-American standards that arise from reports approved by the Commission on collective bargaining as a procedure that is part of the basic collective labor rights. The purpose of collective bargaining is to enable workers to defend or claim their interests together in a direct dialog with their employers.

²⁰⁹ I/A Court H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C, No. 167, paras. 145-149.

²¹⁰ ILO Committee on Freedom of Association, Digest of Decisions and Principles of the Freedom of Association Committee, 1996, paragraph 304, which declares:

By according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impeded their lawful exercise; more indirectly, it would also violate the principle that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. It would seem desirable that, if a government wishes to make certain facilities available to trade union organizations, these organizations should enjoy equal treatment in this respect.

Country Report

Seventh Report on the Situation of Human Rights in Cuba. OAS/Ser.L/V/II.61. Doc. 29, rev. 1. October 4, 1983.

52. The right to strike and to collective bargaining, although not specifically set forth in the American Declaration on the Rights and Duties of man, are closely linked to fundamental labor rights. In addition, the Charter of the Organization of American States declares in Article 43 that:

Employers and workers, both rural and urban, have the right to free association to defend and promote their interests, including the right of collective bargaining and the right to strike of workers.

53. In view of this, the Commission considers that the right to strike and to collective bargaining should be considered, implicitly, as basic collective rights.

C. Strike

53. In this section, the IACHR refers to strike as a trade union right that must be guaranteed by States. It is enshrined in Article 8.1.b of the Protocol of San Salvador. In interpreting this right through its mechanisms, the IACHR understands that strikes are a tool that workers have at their disposal to defend their interests; it also establishes the connection between the right to strike, freedom of association and collective bargaining. A number of selected extracts from reports approved by the IACHR explore this issue.

Country Report

Democracy and Human Rights in Venezuela. OAS/Ser.L/V/II. Doc. 54. December 30, 2009.

1112. The Commission believes, in that regard, that boycotts can represent a peaceful form of labor protest, which is why its criminalization through the imposition of prison sentences or exorbitant fines is tantamount to a new threat against the right to strike. Such action seeks to constrain the negotiation capacity of labor organizations at the very time they are fighting to improve working conditions.

1119. The Commission considers it timely to recall that trade union organizations play a very important role in protecting the human rights of workers faced with precarious labor conditions in the workplace, and that they have become key protagonists of organized political expression aimed at furthering the presentation of labor and

social demands of many sectors in society.²¹¹ One of the mechanisms available to trade unions to press for an answer to such demands is the right to strike. That is why the IACHR calls upon the State to refrain from subjecting labor leaders to judicial processes who are exercising that right legitimately and peacefully.

Cases in the Court

Merits Report No. 157/19 Case 12,432. Former Employees of the Judiciary. Guatemala.

78. Beyond the direct reference to the right to strike in the OAS Charter, the IACHR considers that it is appropriate to take into account the sources, principles and criteria of international law to determine the scope and content of that right, including Article 29 of the American Convention, which deals with the rules of international law for its interpretation and application.²¹²

83. In short, the IACHR notes that the protection of the right to strike, together with freedom of association and collective bargaining, is a fundamental pillar for guaranteeing the right to work and fair and equitable working conditions, since strike is a right that workers and organizations can use to defend their economic, social and professional interests.²¹³ Bearing in mind that the exercise of the right to strike consists of the collective suspension of work activity on a voluntary and peaceful basis, usually to achieve some kind of improvement related to certain socioeconomic or working conditions, the IACHR emphasizes the instrumental role of this right for the achievement of other fundamental rights within the labor sphere, the balance in the relations between employers and workers, the resolution of collective bargaining disputes and the respect for human dignity and labor rights; in other words, it promotes the principle of participatory democracy within the sphere of work.

84. Although the right to strike is not absolute and may be limited by law, restrictions must take into consideration the purpose of that right, so that workers are not restricted from their right unduly or the right is inoperative in practice. However, as with freedom of association and the right to collective bargaining, the IACHR understands that the right to strike can be described as a freedom, and therefore it is necessary for States to refrain from interfering unduly in the exercise of that right and to ensure the conditions and guarantees required for its effective realization. The IACHR notes that

²¹¹ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006; para. 209.

²¹² I/A Court H.R., *Case of Muelle Flores v. Peru*. Preliminary objections, merits, reparations, and costs. Judgment of March 6, 2019. Series C, No. 375, para. 174.

²¹³ Committee on Freedom of Association. *Compilation of decisions and principles of the Committee on Freedom of Association of the Governing Body of the ILO (2006)*; para. 521-522.

the enjoyment of the right to strike is a prerequisite and, at the same time, the result of the enjoyment of other human rights; for example, it may help identify irregular or unsatisfactory labor practices and thus contribute to the realization of the right to work and its fair and equitable conditions; in turn, it can be a corollary of the exercise of the freedoms of expression and assembly, since it is a collective and temporary defense of the interests of workers and might be directly related to those rights on a case-by-case basis.

89. The IACHR shall assess whether such legal limitation to the right to strike was conventionally acceptable. The IACHR recalls that to determine whether the restriction on a right is conventionally acceptable, both the Commission and the Court have come to a phased judgement of proportionality, which includes the following elements: i) the existence of a legitimate aim; ii) the suitability, i.e. the determination of whether there is a logical relationship of causality between the means and the aims sought; iii) the necessity, i.e. the determination of whether there are less restrictive and equally suitable alternatives; and iv) proportionality, i.e. the balance of interests at stake and the degree of sacrifice of one interest to the other.²¹⁴

²¹⁴ IACHR. Application before the Inter-American Court of Human Rights, Karen Atala and Daughters, September 17, 2010, para. 86; I/A Court H.R., Case of Atala Riffo and Daughters v. Chile. Merits, reparations, and costs. Judgment of February 24, 2012. Series C, No. 239, para. 164.

CHAPTER 5
CONCLUSIONS

CONCLUSIONS

54. The mandate of the inter-American system for the protection of human rights in relation to the right to work and economic, social, cultural, and environmental rights in general is of special importance and continues to be developed and consolidated. This becomes particularly necessary in the times of the so-called “fourth industrial revolution”, in which artificial intelligence and robotics are challenging current labor relations, sources of employment and social security systems.²¹⁵
55. Along these lines, it is important to emphasize that this compendium presents a diagnosis of the situation at the time of publication, of the developments in labor and trade union rights in the framework of the work developed by the IACHR and its Special Rapporteurship on ESCER. Therefore, it is also a tool that serves to identify progress, such as gaps and challenges that remain to be addressed in order to add to the full protection and protection of these rights in the context of the regional human rights protection system.
56. The IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights recall how important it is for States to make diligent efforts to implement the legal standards of the inter-American system in the field of labor rights. The legal development of the inter-American system in the areas of the right to work, together with the guarantee of fair, equitable and satisfactory conditions of work and trade union rights, must be accompanied by state initiatives to implement these inter-American standards at the national level.
57. Within the framework of the inter-American system, labor rights are encompassed under the right to work, the right to fair, equitable and satisfactory working conditions, and trade union rights. The right to work, established in Article 6 of the Protocol of San Salvador, provides for a more general perspective on labor rights. The right to fair, equitable and satisfactory working conditions, set forth in Article 7 of the Protocol, presents the individual dimension of labor rights guaranteed in labor contracts. Trade union rights, as set out in Article 8 of the Protocol, provide for the collective dimension of labor rights, in which freedom of association, strike and collective bargaining are the core elements for protecting and promoting the right to work and to fair, equitable and satisfactory conditions of work.
58. Freedom of association is a right that enables the promotion of democracy, good governance of the labor market and decent working conditions, and guarantees the collective organization of workers by helping them assess their enjoyment of labor rights and put them into practice. In addition, it is a directly justiciable right in the inter-American system, pursuant to Article 19.6 of the Protocol. Other labor rights

²¹⁵ International Labor Organization. *Work for a brighter future*. January 22, 2019.

are justiciable under Article 26 of the ACHR, as it has been highlighted in the section on specific considerations about the OAS Charter, the ADRDM and the ACHR.

59. That is why labor rights offer legal protection to workers who participate in relationships marked by economic inequality and that favor employers. Labor rights guarantee basic social and economic conditions so that workers have the means to enjoy a life in dignity and freedom. For this reason, labor rights are central to the concept of economic and social rights.
60. The IACHR considers this compendium as a tool for technical cooperation, aimed at improving and strengthening the legislation, policies and practices of States aimed at addressing labor rights and at ensuring that the human rights of all individuals and groups of persons are duly respected and protected. Through this compendium, the IACHR provides users of the system, state public policy makers, judges, Congress members and other state officials, civil society organizations, social movements, members of academia, experts, among other relevant actors in the region with an up-to-date and easy-to-access technical cooperation tool to be used and implemented in the relevant area of labor and trade union rights.
61. The IACHR and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights have developed this compendium to promote the knowledge and the use of the inter-American human rights standards to advance towards strengthening the abilities of local and international actors for the protection of human rights in relation to work, a central matter for the dignity of persons.
62. Through its advocacy and technical assistance mandate, the Inter-American Commission seeks to promote greater knowledge and use of the inter-American standards on human rights. In addition, the Commission seeks to provide a tool for advancing the capacity-building of local and international actors for the protection of human rights. Consequently, the purpose of this compendium of the standards issued by the IACHR is to improve the design of the interventions, measures and public policies aimed at guaranteeing the exercise of labor and trade union rights, especially to guarantee dignified and equitable working conditions and to address the situation of inequality and poverty experienced by those living in the Americas, with a special focus on achieving sustainable progress and real equality in the enjoyment of human rights.
63. The Inter-American Commission reiterates its commitment to collaborating with the American States through technical assistance and cooperation as a tool for institutional strengthening, and to contributing to the guarantee of real and objective conditions towards the realization of public policies with a human rights approach in the Americas.