

# HUMAN RIGHTS INTEREST GROUP NEWSLETTER

## Editor's note:

This year the international community was shocked when Russian troops invaded Ukraine on February 24, leaving thousands of people dead and wounded, including children, as well as millions of displaced persons, which could constitute one of the largest refugee crises in recent history. Undoubtedly, this conflict has been one of the main focuses of human rights bodies around the world, whose activity is partially compiled in this newsletter.

For example, from the Universal Human Rights System, four days after the invasion, more than 60 UN experts from the special procedures of the Human Rights Council issued a statement calling for an end to the aggression. Two weeks later, the High Commissioner for Human Rights stated that the attacks may constitute war crimes. As for the African Human Rights System, the African Commission on Human and Peoples' Rights denounced the mistreatment and segregation of African nationals trying to flee Ukraine. Meanwhile, the European Court of Human Rights decided to suspend the examination of all applications against Ukraine and Russia until further notice.

In addition to the human rights crisis caused by the Russian invasion, the newsletter also reports on other interesting developments in human rights bodies around the world. For example, i) the creation of an ad hoc conciliation commission to resolve allegations of racial discrimination between Palestine and Israel; ii) the publication of the first document of the Inter-American System devoted exclusively to climate change; and iii) a recent case from the European System on voting rights and mental disability, among others.

Finally, it is worth noting the issuance of two resolutions of the Inter-American Human Rights Court requesting Peru to refrain from executing a habeas corpus decision of the Constitutional Court in favor of former President Fujimori. This may generate intense debates on the sovereignty of States to grant pardons and their obligation to punish those responsible for serious human rights violations.

We hope you find this new issue useful and interesting. If you would like to include any news, events, or announcements in the next newsletter, you are invited to send them to me at [mhernandez@alvarezmartinezlaw.com](mailto:mhernandez@alvarezmartinezlaw.com).

Best regards,

Mariana Hernández

## INSIDE THIS ISSUE

### New developments concerning the universal and regional systems for the promotion and protection of human rights

Universal Human Rights System

2

African Human Rights System

4

European Human Rights System

4

Inter-American Human Rights System

6

## HUMAN RIGHTS Interest Group

### CO-CHAIRS

Ignacio J. Álvarez

&

Zachary D. Kaufman

### VICE-CHAIR

Jill Iris Goldenziel

### NEWSLETTER EDITOR

Mariana Hernández

Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.

\* The news contained in this publication refers to the period January-March 2022.



## I. UNIVERSAL HUMAN RIGHTS SYSTEM

- **On February 28, 2022, more than 60 UN experts, including special rapporteurs, members of working groups, and independent experts, called for an end to the Russian aggression against Ukraine and urgent protection of human rights.** On the occasion, the experts expressed their outrage and distress over the Russian aggression against Ukraine's sovereignty and territorial integrity. In this regard, they indicated that the use of force by one State against another is fundamentally unacceptable and strikes at the very heart of the object and purposes of the Charter of the United Nations. They also noted that the consequences of such a military attack on the protection and promotion of human rights in Ukraine will be profound and long-lasting, causing immense suffering and irreparable damage through violations of human rights and humanitarian law, forced displacement of civilians, and destruction of the environment.

The Charter of the United Nations, from which the collective work as human rights experts derives, was created expressly to resolve differences between States and to peacefully prevent armed conflict, and protect the right to self-determination. In doing so, it establishes the basis for the protection of human rights and the fundamental freedoms of all people. The experts urged Russia to observe and respect the principles of international law, including the laws and customs of war relating to the protection of civilians, to cease these hostilities immediately and unconditionally, and to restore the ability of the Ukrainian people to exercise all their fundamental rights without military or external interference. The press release can be found [here](#).

### 1. Office of the United Nations High Commissioner for Human Rights (OHCHR)

News concerning the HRC:

- **On March 11, 2022, the OHCHR stated that Russia's attacks on civilians in Ukraine may constitute war crimes.** The OHCHR reminded Russian authorities that any attacks on civilians and civilian infrastructure, shelling of cities and

towns, and other forms of indiscriminate attacks are prohibited by international law and may constitute war crimes. In that regard, in fifteen days of the war, schools, hospitals, and kindergartens were hit by shelling, and, as of midnight on March 9, 2022, the OHCHR recorded 549 civilians killed and 957 wounded in Ukraine, although it was also acknowledged that this figure may be considerably higher. The press release can be found [here](#).

- **On 14 March 2022, High Commissioner Michelle Bachelet spoke out on the execution of 81 people in Saudi Arabia.** Among those executed on March 12, 2022, 41 belonged to the Shiite minority (the second-largest branch of Islam in the world, but a minority in Saudi Arabia) and had participated in the 2011-2012 anti-government protests calling for greater political participation. Another 7 were Yemeni and 1 was a Syrian national. The High Commissioner indicated that some of those executed were sentenced to death following trials that did not meet fair trial and due process guarantees, and for crimes that did not appear to meet the threshold of the most serious crimes, as required by international law.

In this regard, the High Commissioner stressed that the death penalty is incompatible with the fundamental principles of human rights and dignity, the right to life, and the prohibition of torture. Failure to provide relatives with information about the circumstances of executions can amount to torture and ill-treatment. The authorities must return the bodies of those executed to their families. On the occasion, the High Commissioner called on the Saudi Arabian authorities to halt all executions, to immediately establish a moratorium on the use of the death penalty, and to commute the death sentences of those sentenced to death. The press release can be found [here](#).

### 2. Human Rights Committee (HRC)

News concerning the HRC:

- **On March 11, 2022, the HRC expressed concern about freedom of expression issues and dis-**

—continued on page 3



## Universal Human Rights System —continued from page 2

**criminy COVID-19 prevention measures in Cambodia**, after concluding its review of Cambodia's third report on how it implements the provisions of the International Covenant on Civil and Political Rights. One Committee member stated that the situation in the State party concerning press freedom was at crisis levels, as freedom of expression was systematically violated by the closure of multiple media outlets, the blocking of legitimate news websites, and the continued use of laws to silence journalists and citizens. On the other hand, another Committee member referred to allegations that the "Law on Preventive Measures against the Spread of COVID-19 and Other Serious and Dangerous Contagious Diseases" was a weapon used by the State party to repress opponents of the current regime. According to the member, more than 700 people were arbitrarily detained between March and October 2021 for allegedly obstructing the implementation of measures against COVID-19.

On the other hand, the HRC chairperson, Photini Pazartzis, in her concluding remarks, welcomed the measures Cambodia has taken in the reporting period to combat corruption, violence against women, human trafficking, and torture, and to reduce prison overcrowding. In this regard, she expressed her hope that the discussion would contribute to strengthening Cambodia's ongoing efforts to promote and protect human rights, in particular civil and political rights. The press release can be found [here](#) and Cambodia's third report [here](#).

### 3. Committee on the Elimination of Racial Discrimination (CERD)

News concerning the CERD:

- **On February 17, 2021, the CERD established an ad hoc Conciliation Commission that will offer its services to Palestine and Israel to resolve the dispute over allegations of racial discrimination.** The Conciliation Commission was established under Article 12(1) b of the International Convention on the Elimination of All Forms of Racial Discrimination and is composed of five human rights experts from the Committee. The

appointees are independent of any government or organization and serve in their individual capacity. The Conciliation Commission held two virtual preparatory meetings on January 19 and February 10 of this year, during which it adopted its Rules of Procedure and elected Mr. Gün Kut as chairperson. There are several documents relating to the case, such as, for example, the inter-State communication of Palestine against Israel, declared admissible by CERD in 2021, which alleges, as a substantial issue, discrimination on grounds of national or ethnic origin. The Conciliation Commission will examine the information and evidence and prepare a report with its findings and recommendations for the amicable settlement of the dispute. The press release can be found [here](#) and all documents relating to the case [here](#).

In this regard, both the State of Palestine and Israel are parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which, according to Article 11, allows States to submit complaints to the CERD on alleged violations of the treaty by another State party.

### 4. Committee on the Rights of the Child (CRC)

Latest News and Updates from the CRC:

- **On January 13, 2022, CRC denounced the imminent execution of juvenile offender Hossein Shahbazi in Iran.** Hossein Shahbazi was 17 years old when he was arrested for fatally stabbing a classmate during a fight between four individuals. The court that convicted him relied in part on confessions allegedly obtained under torture and ill-treatment when Shahbazi, now 20, was interrogated by police for 11 days. During this time, he was also denied access to a lawyer and his family. Shahbazi's execution has been scheduled four times, resulting in irreversible psychological pain and suffering for him and his family. Experts have raised concerns about the death sentence and the impending public execution.

The CRC stressed that international law unequivocally prohibits the imposition of the death penalty

—continued on page 4



## Universal Human Rights System —continued from page 3

on persons under the age of 18 and that Iran must comply with its international obligations. Shahbazi's execution was scheduled for January 5, 2022, but was temporarily stayed. He remains at risk of imminent execution. Similarly, more than 85 juvenile offenders are currently on death row in Iran, sentenced to death in violation of international human rights law. On November 24, another juvenile offender was executed in Iran. The press release can be found [here](#).

## II. AFRICAN HUMAN RIGHTS SYSTEM

### 1. African Commission on Human and Peoples' Rights (ACHPR)

News from the ACHPR:

- **On March 1, 2022, the ACHPR expressed deep concern over reports of mistreatment and segregation of African nationals in accessing the various means of transportation available to them to leave the territory of Ukraine.** In the press release, the ACHPR deeply regretted the rejection and restrictions faced by African people at the various border crossing points during their attempts to flee the fighting and seek refuge in safe neighboring countries. The ACHPR recalled the importance of respecting the fundamental principles of international human rights law, international humanitarian law, and refugee law, which enshrine respect for the inherent dignity of the human person, the principle of nonrefoulement, and the prohibition of all forms of discrimination and cruel, inhuman, or degrading treatment. The press release can be found [here](#).

### 2. African Court on Human and Peoples Rights (ACtHPR)

News concerning the ACtHPR:

- **On January 10, 2022, the ACtHPR rendered judgment** in the "**Gozbert Henerico v. Tanzania**" case. Gozbert Henerico is a Tanzanian national who, at the time of filing the application, was in Butimba Central Prison awaiting the execution of

the death penalty following his conviction for the crime of murder under Section 197 of the Tanzanian Penal Code, which provides that any person convicted of murder shall be sentenced to death. The applicant alleged the violation by the State of three rights contained in the African Charter on Human and Peoples' Rights, namely: the right to a fair trial (Article 7), the right to life (Article 4), and the right to dignity (Article 5).

Specifically, concerning the alleged violation of the right to life, the ACtHPR considered that the question to be determined was whether the mandatory imposition of the death penalty constitutes an arbitrary deprivation of the right to life. Thus, it concluded that the mandatory nature of the imposition of the death penalty constitutes an arbitrary deprivation of the right to life and that, regardless of the mode of execution of the sentence, the death penalty is ultimately a cruel, inhuman, and degrading punishment, amounting to torture. The ACtHPR, therefore, held Tanzania internationally responsible for the violation of these human rights. The judgment summary of the case can be found [here](#).

## III. EUROPEAN HUMAN RIGHTS SYSTEM

### 1. European Court of Human Rights (ECtHR)

News concerning the ECtHR:

- **On February 15, 2022, the ECtHR handed down its judgment in the case of "Anatoliy Marinov v. Bulgaria".** The case concerns a person who was stripped of his right to vote because he was subject to partial guardianship due to psychiatric disorders in 2000. In 1999, a court decided that Mr. Marinov was unable to care for himself and was occasionally aggressive. However, his diagnosis was not serious. In 2015 and 2016, he tried unsuccessfully to have his legal capacity restored. For that reason, he was unable to participate in the Bulgarian parliamentary elections in March 2017. Subsequently, in December 2017, the Sofia City Court found that he was able to manage his interests and affairs, so it revoked the guardianship.

—continued on page 5





## European Human Rights System —continued from page 4

In the judgment, the ECtHR reiterated that the rule in a democratic State must be in favor of the inclusion of all and that universal suffrage is a basic principle. Although according to the ECtHR this does not mean that persons with disabilities have an absolute right to exercise their right to vote, the indiscriminate suppression of the right to vote, without an individualized judicial assessment and solely based on a mental disability requiring partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote. Furthermore, the ECtHR stated that the treatment as a single class of all persons with intellectual or psychiatric disabilities is a questionable classification, and the curtailment of their rights must be subject to very strict scrutiny and control. Therefore, the ECtHR decided that Mr. Marinov had lost his right to vote as a result of a general and automatic restriction of those subject to partial guardianship without an individual judicial assessment, which constitutes a violation of the right to freely choose. The official summary of the judgment can be found [here](#).

- **On March 2, 2022, the ECtHR published the measures that will be adopted in relation to Ukraine, and on March 16, 2022, the ECtHR decided to suspend the consideration of all applications against the Russian Federation.** In the context of the war in Ukraine and following the request received from the Ukrainian Government on February 24, 2022, to “suspend the examination of all applications against Ukraine until further notice”, the ECtHR decided to adopt several measures that will now be applied in all cases concerning Ukraine until further notice. The measures adopted include: (i) all new applications received by the ECtHR against Ukraine will be registered for consideration at a later date (however, applications for interim measures concerning Ukraine will continue to be processed); (ii) there will be no general extension of the six/four-month time limit, but rather the Court will assess in due course whether this admissibility criterion is met taking into account the exceptional circumstances; (iii) no new time limits will be set and all-time limits already running in pending cases will be suspended until

further notice; among others. The President of the Tribunal may authorize exceptions to these measures when he deems it appropriate.

In addition, following the Resolution of the Committee of Ministers by which the Russian Federation ceases to be a member of the Council of Europe as of March 16, 2022, the ECtHR decided to suspend the examination of all applications against Russia, pending consideration of the legal consequences of this Resolution for the work of the Court. The document with all the measures taken in relation to Ukraine can be found [here](#) and the press release on the suspension of the examination of all applications against the Russian Federation [here](#).

To recap, after 26 years of membership, **the Russian Federation was excluded from the Council of Europe** at an extraordinary meeting of the Committee of Ministers under the procedure initiated under Article 8 of the Statute of the Council of Europe, which provides that any member of the Council of Europe that has seriously violated Article 3 may be suspended from its representation rights and may be asked to withdraw by the Committee of Ministers. In turn, Article 3 provides that any member of the Council must accept the principles of the rule of law and the enjoyment of human rights and fundamental freedoms by all persons under its jurisdiction.

In that vein, on February 25, following an exchange of views with the Parliamentary Assembly, the Committee of Ministers decided to initiate the procedure provided for in Article 8 of the Statute and agreed to suspend the Russian Federation from its representation rights in the Council of Europe, following its corresponding Resolution on the legal and financial consequences of the suspension. Subsequently, on March 15, the Russian Government informed the secretary-general of its withdrawal from the Council of Europe in accordance with the Statute of the Council of Europe and of its intention to denounce the European Convention on Human Rights and, on the same date, the Parliamentary Assembly unanimously adopted an

—continued on page 6

## European Human Rights System —continued from page 5

opinion that the Russian Federation cannot remain a member State of the Organization. Russia joined the Council of Europe on February 28, 1996. The press release can be found [here](#).

## IV. INTER-AMERICAN HUMAN RIGHTS SYSTEM

### 1. Inter-American Commission on Human Rights (IACHR)

News concerning the IACHR:

- **On January 6, 2022, the IACHR announced its new composition for 2022.** As of January 1, 2022, commissioner Roberta Clarke and commissioner Carlos Bernal Pulido joined the IACHR. The new commissioner Roberta Clarke is a citizen of the Republic of Barbados and the new commissioner Carlos Bernal Pulido is a Colombian citizen, both elected during the 51st Session of the OAS General Assembly in November 2021 for a four-year term from January 2022 to December 2025. On the occasion, the IACHR also announced the members of the Board of Directors, the new distribution of country and thematic rapporteurships, among others.

Prior to the beginning of this cycle, the mandate of the first and historic Board of Directors made up only of women, including former President Antonia Urrejola, concluded. The IACHR thanked Antonia Urrejola for her dedication and leadership as president and commissioner, highlighting her tireless work for the victims in Nicaragua, as well as her legacy in the area of indigenous peoples' rights, and the right to memory, truth, and justice for victims and their families in the hemisphere. The press release can be found [here](#).

- **On March 4, 2022, the IACHR and REDESCA published Resolution 3/21 on Climate Emergency and Human Rights in the Americas.** The resolution, entitled "Climate Emergency: Scope of Inter-American Human Rights Obligations", recognizes that climate change is a human rights emergency, constituting one of the greatest threats to

the full enjoyment of human rights of present and future generations, to the health of ecosystems and of all species that inhabit the hemisphere.

Its adoption responds to the initiative of REDESCA in the framework of the mandate received within the 2017-2021 strategic plan of the IACHR, as well as the priority of the topic in the 2021-2023 strategic agenda of the Office of the Special Rapporteur. This is the first document of the Inter-American human rights system specifically dedicated to the issue of climate change. In its preparation, both normative and jurisprudential developments in the Inter-American and Universal Systems have been considered, including Advisory Opinion 23 of the Inter-American Court of Human Rights, which develops the right to a healthy environment. The resolution can be found [here](#) and the press release [here](#).

### 2. Inter-American Court of Human Rights (IACtHR)

Latest News and Updates from the IACtHR:

- **On January 19, 2022, the IACtHR notified the judgment issued on November 25, 2021, in the "Digna Ochoa and family members v. Mexico" case.** The case refers to the fact that on October 19, 2001, Digna Ochoa was found dead in her office located in Mexico City. For years she worked as a lawyer in various cases in which public officials, including members of the then-attorney general's Office and the Armed Forces, were involved in serious human rights violations. As a result, before her assassination, she was the victim of several threats and kidnappings. Due to these situations, in September 1999 Ochoa requested precautionary measures. In November of the same year, a petition was filed before the IACHR for human rights violations against Ochoa by the State of Mexico due to the lack of investigation of the threats and kidnapping. Furthermore, the IACHR initiated a request for provisional measures in favor of Ochoa and, after almost two years, the IACtHR concluded the provisional measures granted. However, months later Ochoa was murdered.

—continued on page 7

## Inter-American Human Rights System —continued from page 6

The IACtHR found Mexico internationally responsible for the serious failures that took place in the investigation of the human rights defender's death and ordered the State to adopt various measures of reparation. The judgment of the case can be found [here](#).

- **On January 24, 2022, the IACtHR, the ECtHR, and the ADHP Court announced the Second Joint Report on their Jurisprudence 2020.** The report integrates a selection of their main jurisprudential developments during that year and is an initiative that is part of the ongoing dialogue that the three regional human rights courts of the world are promoting and carrying out. The Second Joint Report 2020 can be found [here](#) and the press release (in Spanish) [here](#).
- **On March 30 and April 7, 2022, in monitoring compliance with the “Barrios Altos” and “La Cantuta” v. Peru judgments, the IACtHR issued resolutions ordering Peru to refrain from executing the Constitutional Court’s order to release Alberto Fujimori.**

Former President Fujimori was sentenced in 2009 to 25 years in prison as the perpetrator-by-means of homicide and serious injuries in the Barrios Altos and La Cantuta cases. Faced with his imminent release due to a habeas corpus decision in his favor by the Peruvian Constitutional Court, on March 17, 2022, the victims’ representatives filed a request for provisional measures and a request for a public hearing on monitoring compliance and provisional measures before the IACtHR.

On March 30, 2022, the IACtHR issued a resolution in which it requested Peru to refrain from executing the release order in favor of former President Fujimori until it decided on the request for provisional measures at its 147th session. The requested public hearing was held on April 1, 2022.

Then, on April 7, 2022, the IACtHR decided that the matter should be resolved as a matter of monitoring compliance with the obligation to investigate, prosecute and punish the grave human rights violations in the Barrios Altos and La Cantuta cases, and not as a resolution of provisional measures.

Thus, it determined that the State of Peru should refrain from implementing the sentence issued by the Constitutional Court.

Among other reasons, the IACtHR pointed out that the Constitutional Court in its decision did not carry out a control of conventionality or an adequate proportionality test, since it did not consider the seriousness of the crimes committed, nor did it evaluate whether there was really an imperative need for Fujimori to be released due to his health situation and conditions of detention.

This resolution is transcendental since the IACtHR openly requires a State not to release a former high-ranking official implicated in serious human rights violations. The provisional measures resolution of March 30 (in Spanish) can be found [here](#), the provisional measures resolution of April 7 (in Spanish) can be found [here](#), the “Barrios Altos” v. Peru judgment [here](#), and the “La Cantuta” v. Peru judgment [here](#).

The “Barrios Altos” case refers to the death of 15 people (1 child) and the injury of 5 people (leaving 1 person with a disability) by military agents during the Fujimori dictatorship, as well as the lack of investigation and punishment of those responsible for the events. The “La Cantuta” case refers to the forced disappearance and extrajudicial execution of 9 students and 1 professor at La Cantuta University by military agents during the Fujimori dictatorship, as well as the lack of investigation and punishment of those responsible. ■



**We invite all HRIG members to connect through our social media accounts.**



[facebook.com/ASILHRIG](https://facebook.com/ASILHRIG)



[twitter.com/ASILorg\\_HRIG](https://twitter.com/ASILorg_HRIG)



[linkedin.com/groups/12258636/](https://linkedin.com/groups/12258636/)