

AUGUST 2021

HUMAN RIGHTS INTEREST GROUP NEWSLETTER

Dear Colleagues,

We are pleased to publish the HRIG newsletter again. This issue focuses on decisions or pronouncements of bodies of the regional human rights systems (African, European, Inter-American) and of the universal system from April to June of 2021.

We hope you find this issue interesting and helpful. We would appreciate your feedback and suggestions, which will be considered for the next newsletter (covering the third quarter of 2021). In addition, please send to mhernandez@alvarezmartinezlaw.com, by September 30, 2021, news, events, and announcements that you would like to include in the next HRIG newsletter.

Best regards,

Ignacio J. Álvarez
Co-Chair
alvarez@ihr.legal

Zachary D. Kaufman
Co-Chair
zkaufman@uh.edu

Jill Iris Goldenziel
Vice Chair
jgoldenziel@gmail.com

Mariana Hernández
Newsletter Editor
mhernandez@alvarezmartinezlaw.com

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

April to June 2021

Ignacio J. Álvarez & Mariana Hernández

I. UNIVERSAL HUMAN RIGHTS SYSTEM

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

On June 1, 2021, the OHCHR released a **report on the promotion and protection of human rights and fundamental freedoms of Africans and Afro-descendants against excessive use of force and other human rights violations by police officers**. The report analyzes systemic racism among law enforcement agencies and emerges as a response to the social protests over the death of George Floyd and other afro-descendants at the hands of police officers. In this sense, the report presents seven emblematic cases, in order to

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HUMAN RIGHTS Interest Group

CO-CHAIRS

Ignacio J. Álvarez
&

Zachary D. Kaufman

VICE-CHAIR

Jill Iris Goldenziel

NEWSLETTER EDITOR

Mariana Hernández

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study the common patterns and formulate concrete recommendations to achieve structural changes. The report also exposes that systemic racism against Africans and Afro-descendants affects their rights in all spheres of life, aggravating inequalities, marginalization, and deepening their unequal access to opportunities, resources, and power. The report is available [here](#).

2. Committee on the Rights of the Child (CRC)

On June 14, 2021, the **CRC declared that Spain violated a child's right to education**. A.E.A., an 8-year-old Moroccan boy, was not admitted to a public school in Spain because the authorities did not recognize that he had a residence permit, causing him the loss of two years of his academic education. A.E.A.'s mother initiated legal proceedings, but the local administrative and judicial authorities refused to admit him to school. The CRC considered that, although in March 2021 A.E.A. enrolled in school, the time it took for him to be able to study was too long and did not repair the damage caused by his prolonged absence from school. Thus, the CRC recalled that all children have the right to attend school, regardless of their legal status or that of their parents, which is why it found that A.E.A.'s right to education was violated. The decision is available [here](#).

3. Committee on the Elimination of Discrimination against Women (CEDAW)

The **CEDAW held a general discussion on the rights of indigenous girls and women** on June 24, 2021. The first part of the general debate focused on equality and non-discrimination, with a special focus on intersectional discrimination. According to the CEDAW Chair, Gladys Acosta Vargas, this was the first step towards the elaboration of a general recommendation on the rights of indigenous women and girls, based on the inputs brought to the discussion.

In the second part of the debate, the CEDAW referred to the effective participation and consultation of indigenous women and girls in political and

public life. Anne Nuorgam, Chairperson of the UN Permanent Forum on Indigenous Issues, expressed that indigenous women are survivors who have an important role to play in peacebuilding and conflict resolution. Patriarchy, racism, and discrimination, according to Ms. Nuorgam, are central factors in indigenous women's limited access to political participation. The meeting summary is available [here](#).

II. AFRICAN HUMAN RIGHTS SYSTEM

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

On May 4, 2021, **the ACHPR issued Resolution 476 on Conducting a Study on the Impact of COVID-19 on Indigenous Populations/Communities in Africa**. In the Resolution, the ACHPR i) affirmed that access to health care for all is a fundamental right; ii) reiterated its call on States Parties to involve representatives of indigenous communities to obtain their free, prior, and informed consent in decision-making and actions concerning them in relation to COVID-19; iii) mandated the Working Group on Indigenous Populations/Communities and Minorities in Africa to conduct a study on "the impact of COVID-19 on Indigenous Populations/Communities in Africa" and submit it to the Commission for consideration and adoption within 2 years; and iv) requested State and non-State actors to contribute to the conduct of the study. The resolution is available [here](#).

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

On June 25, 2021, **the ACtHPR issued a judgment in the Case of Yahaya Zumo Makame and Others v. Tanzania**. On August 10, 2012, the High Court of Tanzania sentenced the applicants for drug trafficking to 25 years imprisonment. The applicants argued that the legal system of the respondent State allowed only one appeal against a decision of the High Court and, in that regard, that the absence of a



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higher court violated their right to a fair trial and was contrary to Articles 3 and 7 of the African Charter, Article 14.1 and 14.5 of the ICCPR and Article 10 of the Universal Declaration of Human Rights, constituting, moreover, a violation of their right to equality.

The ACtHPR noted that the right to appeal or review a decision of a lower court, as provided for in Article 7 of the African Charter and Article 14.5 of the IC-CPR, simply implies the provision of another level of judicial structures to which recourse a decision of a first instance court. Moreover, it recalled that the essence of the law is that the findings of a first instance court must always be reviewable by another court of the second instance, which is why it considered that the absence of a higher court, above the Court of Appeal, does not constitute a violation either of Article 7 of the African Charter or of Article 14 of the ICCPR. The ACtHPR found no violation of the plaintiffs' human rights, which is why it dismissed their' claims for relief. The judgment is available [here](#).

III. EUROPEAN HUMAN RIGHTS SYSTEM

1. European Court of Human Rights (ECtHR)

A series of **human rights organizations and academics, members of the Extraterritorial Obligations Consortium (ETO), filed an application before the ECtHR against 32 countries**, to persuade governments to design climate policy in a way that recognizes the particular climate risks for children in order to adopt the necessary climate protection measures to safeguard their rights.

The applicants argued that, when interpreting the European Convention on Human Rights in the context of children's rights, the Convention on the Rights of the Child, to which all Contracting Parties to the European Convention on Human Rights are also party, must be taken into account. From the joint reading of these conventions, as the applicants emphasized, the obligations to protect children's rights, especially concerning situations that may endanger their survival and development, are reinforced.

They also stated that Article 6.2 of the Convention on the Rights of the Child imposes a strong obligation on States Parties to "ensure to the maximum extent possible the survival and development of the child" and, in this regard, noted that the report of former UN Special Rapporteur on Human Rights and the Environment, John H. Knox, to the Human Rights Council, on the rights of the child and the environment, clearly described the most serious, long-lasting and sometimes irreversible physical impacts of environmental pollution on children, especially the youngest among them.

The applicants recalled that the report concluded that no group is more vulnerable to environmental harm than children, which is why climate change can impact their health, well-being, and rights, both directly through severe storms, flooding and sea-level rise, and indirectly through landslides and threats to food security, shelter, and access to education and health care, among others. For these and other reasons, the applicants stated that there is an urgent need to address the cross-border issue of climate change. The ECtHR will decide whether it accepts to proceed with the case. The application is available [here](#).

IV. INTER-AMERICAN HUMAN RIGHTS SYSTEM

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

The IACHR concluded its working visit to Colombia from June 8-10, 2021 and presented its observations and recommendations to that State. The IACHR visited Colombia given the intense social protests that began on April 28, 2021, and that are linked to structural and historical demands of Colombian society (such as the profound inequity in the distribution of wealth, extreme poverty, access to economic, social, and cultural rights, among others), enshrined in the 1991 Political Constitution and the 2016 Peace Accords.

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The demonstrations began in response to a tax reform bill (“Sustainable Solidarity Law”) and, subsequently, another bill reforming the provision of health services within the General Social Security System (Bill No. 010) was unveiled. In this sense, the IACHR understood that peaceful protest played an essential role in giving visibility to claims that need to be addressed and voices that must be heard.

In this regard, the IACHR noted with concern the persistence of dynamics of the Colombian armed conflict in the interpretation and response by state agents to the current social mobilization. In the framework of the working visit, the IACHR received information on serious human rights violations and different obstacles to guarantee social protest. According to information provided by the Attorney General’s Office, between April 28 and June 5 of this year, at least 21 people died during the protests.

The IACHR presented general observations on the right to social protest and recommendations on a) the excessive and disproportionate use of force in the context of protests; b) gender-based violence; c) violence based on ethnic-racial discrimination; d) the use of disciplinary powers; e) military assistance and the application of military criminal jurisdiction; f) violations of the rights of third parties and public property in the context of protests; g) roadblocks; h) protection of journalists, freedom of expression and Internet access; and i) medical missions. The observations and recommendations of the IACHR’s working visit to Colombia are available in Spanish [here](#).

On April 29, 2021, **the IACHR published a Practical Guide on guidelines and recommendations for the development of risk mitigation plans for human rights defenders.** The main objective of the document is to provide a tool for civil society and for the States of the region that addresses the basic contents in terms of mitigating the risks faced by human rights defenders. In addition, a series of recommendations are made that seek to contribute to mitigating the risks faced by these people in the Americas. In a context of extreme concern with the fact that in recent years there has been a sustained

increase in attacks against these people, ranging from stigmatizing speeches and subjection to unfounded criminal proceedings, to attacks against their lives and personal integrity, the IACHR seeks, through the Practical Guide, to analyze the obligations of States to guarantee the right to defend human rights. The Practical Guide is available in Spanish [here](#).

The IACHR filed two cases regarding Peru before the Inter-American Court of Human Rights. On May 12, 2021, the IACHR presented the **Humberto Cajahuanca Vásquez case**, referring to the violation of Mr. Cajahuanca’s judicial guarantees in the context of a disciplinary proceeding against him, which resulted in his removal from his position as a judge of the Superior Court of Justice of Huáncο. In its Merits Report, the IACHR analyzed the components of the judicial guarantees applicable to disciplinary proceedings against judges: the principle of legality and favorability, judicial independence and the right to have reasoned decisions, the right to appeal the decision, and judicial protection. The press release regarding Mr. Cajahuanca’s case is available [here](#).

Afterward, on June 4, 2021, the IACHR presented the **Cristhian Manuel Olivera Fuentes case**, referring to the international responsibility of the State for the violation of Mr. Olivera’s rights to equality and non-discrimination, privacy, judicial guarantees, and judicial protection, as a consequence of acts of discrimination based on the expression of his sexual orientation. In its Merits Report, the IACHR analyzed whether Mr. Olivera was subjected to interference in his private life and a difference in treatment based on his sexual orientation and whether these had a reasonable basis. Subsequently, it also analyzed whether the Peruvian State guaranteed the right to effective judicial protection in response to the allegations of discrimination made in domestic proceedings. The press release regarding Mr. Olivera’s case is available [here](#).

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

On June 28, 2021, **the IACtHR declared Honduras internationally responsible for the death of a transgender woman**, sex worker, and well-known activist of the *Colectivo Unidad Color Rosa*. According to the facts of the **case *Vicky Hernández et al. v. Honduras***, on June 28, 2009, a curfew was declared in the context of the Honduran coup d'état, a day in which Ms. Hernández was walking with other people when they were discovered by a police patrol that attempted to arrest them. At that time, the other people fled the scene to different places, and the victim was found dead the next day. The IACtHR expressed that it is of utmost importance and reinforced a State's obligation to investigate violations of the rights of human rights defenders such as the people that defend the rights of LGBTI people and trans women, like Ms. Hernández. The State of Honduras accepted and partially recognized the facts and the alleged violations. The IACtHR declared Honduras internationally responsible for the violation of the rights to life, personal integrity, recognition of legal personality, personal liberty, private life, freedom of expression, and right to a name, all enshrined in the American Convention on Human Rights, and Article 7.a of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence

against Women (Belém do Pará Convention), against Ms. Hernández, in addition to holding the Honduran State responsible for various human rights violations committed against the victim's family members. The judgment in Spanish is available [here](#).

The IACtHR declared the State of Ecuador internationally responsible in the "*Guachalá Chimbo et al. v. Ecuador*" case. The victim, who was 23 years old, was a person with disability suffering from epilepsy. On January 10, 2004, the victim was admitted to the Julio Endara Hospital. On January 17 of the same year, according to the medical records, he reportedly left the hospital and since then his whereabouts have been unknown. Ecuador was held internationally responsible for violations of the following rights: i) the recognition of legal personality, life, personal integrity, personal liberty, dignity, private life, access to information, equality, and health, in relation to the obligations to respect and guarantee human rights without discrimination and the duty to adopt domestic law provisions against Mr. Luis Eduardo Guachalá Chimbo; ii) to an effective remedy, judicial guarantees and judicial protection against Mr. Chimbo and his family members; and iii) to personal integrity and to know the truth against his family members. The judgment is available [here](#).



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