

HUMAN RIGHTS INTEREST GROUP NEWSLETTER

Editor's note:

The past year brought several key human rights challenges worldwide: the continuation of the pandemic, access to and distribution of the vaccines, major migration crises, attacks on democracy, and natural disasters associated with climate change, to name a few. In this context, it is noteworthy that human rights bodies around the world have done remarkable work in consolidating human rights standards to promote their full compliance by States.

This newsletter contains a sample of such activities and decisions of the organs of the Universal, African, European, and Inter-American Human Rights Systems in the last quarter of 2021. For example, the newsletter reports on the development and consolidation of human rights standards on the management of social protests, corruption, university autonomy, children's rights, gender violence, among others. In addition, the newsletter includes a mention of the new open-access database of the decisions of the Inter-American Human Rights Commission, which can facilitate the search for litigants and academics on the topics of their interest.

Finally, the newsletter includes an interesting decision of the Human Rights Committee in which it declared admissible and decided on the merits of a case declared inadmissible seven years earlier by the Inter-American Court of Human Rights. This demonstrates that victims have different opportunities to access international protection systems and that the decisions of different human rights bodies are autonomous and independent.

This newsletter is the third issue of a new format focused on decisions and pronouncements of the various human rights bodies around the world. We hope you find it interesting and useful. If you would like to include any news, events, or announcements in the next newsletter, you are invited to send them to mhernandez@alvarezmartinezlaw.com.

Best regards,

Mariana Hernández
Newsletter Editor

I. UNIVERSAL HUMAN RIGHTS SYSTEM

1. United Nations High Commissioner for Human Rights (HCHR)

News concerning the HCHR:

- **On December 15, 2021, the HCHR published the report “The National Strike 2021: Lessons learned for the exercise of the right to peaceful assembly in Colombia”, requesting the State of Colombia to urgently reform protest management.** According to the HCHR, the Colombian authorities should reform how protests are managed to avoid a recurrence of the loss of

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* The news contained in this publication refers to the period October-December 2021.



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life and injuries such as recently happened during widespread demonstrations in the country. Between April 28 and July 31, the HCHR Office in Colombia received 63 allegations of deaths in the context of the protests. In addition, the Office has verified 46 deaths, of which 44 were civilians and two police officers. Of the documented deaths, 76% were caused by gunshot wounds.

The report details some areas where the investigations into alleged human rights violations have made progress and welcomes the Government's declaration of zero tolerance for violations by security forces. Additionally, the report sets out some lessons learned from the handling of protests, and, among its recommendations, it urges the Colombian authorities to take the necessary measures to ensure that institutions in charge of managing protests, in particular the National Police, only resort to the dispersal of demonstrators in strict compliance with international human rights standards. The full report (in Spanish) can be found [here](#) and the press release [here](#).

2. Human Rights Committee (HRC)

News concerning the HRC:

- **On December 15, 2021, the HRC considered and rendered its decision, for the first time, on a case that had previously been declared inadmissible by the Inter-American Court of Human Rights.** Years earlier, this case had been brought before the Inter-American Court of Human Rights, which in 2014 declared it inadmissible for non-exhaustion of domestic remedies. Therefore, in the proceedings before the HRC, the State argued that the Spanish version of the Optional Protocol to the International Covenant on Civil and Political Rights states that the Committee cannot consider any communication that has been submitted to other international procedures (Article 5, paragraph 2.a), which would make this case inadmissible.

Given the above, the HRC, using the rules of interpretation outlined in the Vienna Convention on the Law of Treaties (1969), determined that the expression “has been submitted” in the Spanish version of article 5, paragraph 2(a), should

be interpreted as “is being examined” by another international procedure, since such interpretation reconciles the meaning of that article with the authentic texts of the Covenant, the Optional Protocol, and its versions in other languages. Thus, the HRC dismissed this objection to the admissibility of the communication and, in addition, declared that although the decisions of the Inter-American system deserved full consideration, this did not imply that the HRC could not reach different conclusions on the same case.

The case concerns the criminal proceedings against Allan Brewer Carías, renowned Venezuelan jurist, for his alleged participation in the *coup d'état* in Venezuela in 2002 and his alleged involvement in the drafting of the so-called “Carmona Decree”. This decree ordered the establishment of a transitional government after the aforementioned *coup d'état*, which saw the then-President Hugo Chávez ousted from office for 47 hours before he was restored to power.

It is noteworthy that, the IACtHR considered that the remedies had not been exhausted because the criminal proceedings were still at an intermediate stage and its non-completion was because Mr. Brewer Carías had traveled outside Venezuela since the beginning of the proceedings, claiming that he would not return until there were guarantees of a fair trial.

In turn, the Committee found that the issue of exhaustion of remedies was intimately linked to the merits of the case, and therefore declared the case admissible. The Committee then ruled on the merits, and found that Mr. Brewer Carías was not afforded the right to be tried by an independent tribunal, in violation of the International Covenant on Civil and Political Rights to which Venezuela is a State party. The Committee also considered that his right to be presumed innocent was violated, highlighting public statements by the then-President Hugo Chávez, and also a book by the then-Attorney General that claimed he was involved in writing the decree. Finally, the Committee requested that Venezuela declares the criminal proceedings null and void and that Mr. Brewer Carías be

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awarded adequate compensation. It also called for the State to take measures to prevent the recurrence of such violations. The full decision (in Spanish) can be found [here](#) and the press release [here](#).

3. Committee Against Torture (CAT)

News concerning the CAT:

- **On 18 November 2021, the CAT, in the case “Damián Gallardo v. Mexico”, found Mexico responsible for the torture of an indigenous human rights defender.** The case concerns that Mr. Gallardo, a teacher, and activist for the rights of indigenous peoples and the right to education, was arrested at his home without a warrant, and taken to a clandestine detention center.

While there, he was held incommunicado and tortured, as well as forced to sign blank sheets of paper, which were then used as an alleged confession of his involvement in organized crime and the kidnapping of two young men, nephews of one of Mexico’s most important businessmen. As a result, Mr. Gallardo was detained for more than five years, brutally beaten, deprived of water and sleep, and held in solitary confinement for 22 hours a day. No prompt and immediate investigation was carried out into these events, despite several judicial appeals.

The Committee determined that the criminal proceedings initiated against Mr. Gallardo are part of a pattern of criminalization of social protests in Mexico. Thus, the HRC urged Mexico to take the necessary measures to provide guarantees of non-repetition, including ensuring that those who defend education and indigenous peoples’ rights are not criminalized for their legitimate human rights activities. Furthermore, in response to the State’s allegations that Mr. Gallardo’s injuries were not the result of acts of torture, the Committee concluded that such acts had occurred, based on a medical-psychological report based on the Istanbul Protocol. The Committee also found that Mr. Gallardo’s relatives are also victims because of the psychological and emotional impact of the torture he suffered, as well as the stigmatization and harassment they faced. The decision (in Spanish) can be found [here](#).

4. Committee on the Elimination of Discrimination Against Women (CEDAW)

News concerning the CEDAW:

- **On October 25, 2021, the CEDAW found that Georgia failed to protect an ethnic minority woman who died after being a victim of gender-based violence.** On September 16, 2014, three relatives of Ms. Jeiranova’s husband accused her of being unfaithful and dragged her through the village while she was brutally beaten. At midnight, the village governor and police officers were called to the house of Ms. Jeiranova’s father. There she told the village governor that her family members wanted her to kill herself for “honor” reasons. As a result, she was taken to the governor’s house, but she did not receive medical care and no arrest was carried out. The next day, the village governor handed Ms. Jeiranova over to her mother, who found her body hanging by a rope on the morning of September 18, 2014.

More than six years later, those responsible for the mistreatment of Ms. Jeiranova, and possibly for her death, have not been tried or punished. On the contrary, the prosecution merely described Ms. Jeiranova’s “behavior” as dishonorable, and considered, without even conducting an autopsy, that the victim had committed suicide because of her “shameful” behavior.

The CEDAW found that the treatment inflicted, the justification based on “honor” and the attitude of the authorities demonstrated that Ms. Jeiranova had been a victim of intersectional discrimination. Furthermore, it found that the State had permitted and condoned the gender-based violence against Ms. Jeiranova. Therefore, the Committee recommended that Georgia should bring legislation that considers honor-related violence an aggravating circumstance in criminal proceedings, rather than an acceptable justification in cases of gender-based violence. The decision can be found [here](#).

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II. AFRICAN HUMAN RIGHTS SYSTEM

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

News concerning the ACHPR:

- **Between November 15 and December 5, 2021, the ACHPR culminated its 69th Ordinary Session.** During this session, the ACHPR elected its new Bureau, with Rémy Ngoy Lumbu as Chairperson and Maya Sahli-Fadel as Vice-Chairperson. In addition, the ACHPR launched two new documents: (i) Newsletter 15 on Police and Human Rights in Africa; and (ii) Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realization of Human and Peoples' Rights. Additionally, several panels were organized on different topics, such as the situation of human rights defenders in exile. The ACHPR also examined the periodic reports from various countries, considered four communications, and adopted several resolutions, among others. The press release can be found [here](#).

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

News concerning the ACtHPR:

- **On November 4-5, 2021, the ACtHPR organized a judicial dialogue on the theme "Building Trust in African Judiciaries", in which judicial authorities from Member States, African Union institutions, civil society organizations, and other stakeholders were present.** This was the fifth of a series of judicial dialogues organized by the ACtHPR, which was held in the City of Dar es Salaam, Tanzania. The dialogue was held in a hybrid manner, both physically and virtually.

The main objective of this meeting was to identify ways and means for the judiciaries to foster justice in Africa and to establish lasting trust between justice actors and litigants. The discussions were focused on: (i) the report on the implementation of the recommendations of previous judicial dialogues; (ii) the independence and impartiality of the Judiciary; and (iii) the effectiveness and efficiency of the Judiciary.

After two days, the participants adopted the following recommendations: (i) States should implement an African Judicial Network and increase funding to the Judiciary for accelerated digitalization of national judicial systems; (ii) the ACtHPR should strengthen the rules guaranteeing the independence of judges, in particular with regard to remuneration, an adequate pension scheme, the improvement of their working conditions and appointment, as well as those that allow them to do their work with full independence and impartiality; (iii) the training of judges should be improved through the establishment of high-level training institutes, and their continuous training should be ensured; and (iv) a system for assessing the effectiveness and efficiency of African judicial systems should be developed and/or improved. The final communiqué can be found [here](#).

- **On December 2, 2021, the ACtHPR declared that it lacks jurisdiction to determine whether or not the withdrawal of a State's declaration recognizing the Court's jurisdiction constitutes a human rights violation.** In this regard, on February 8, 2016, the Republic of Benin deposited a declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights, through which it accepted the jurisdiction of the ACtHPR to receive applications from individuals and non-governmental organizations. Then, on March 25, 2020, the State withdrew this declaration.

In response, on May 7, 2020, two Beninese jurists filed an application before the ACtHPR to challenge the withdrawal of the Declaration as they considered that it constitutes, in itself, a violation of human rights, in particular to the right to access to justice. They also requested provisional measures, which were denied. The State argued that, by its sovereignty, it was not compelled to remain under the jurisdiction of the Court, and therefore the application fell outside its material jurisdiction.

The ACtHPR upheld the objection raised by the State and declared that it has no material jurisdiction, given that the withdrawal of the declaration

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did not concern the application or interpretation of the African Charter or its Protocol, over which it has jurisdiction, but constituted a unilateral act based on the principle of sovereignty in international law. The judgment can be found [here](#).

III. EUROPEAN HUMAN RIGHTS SYSTEM

1. European Court of Human Rights (ECtHR)

News concerning the ECtHR:

- **On December 14, 2021, the ECtHR condemned Russia for failing to establish a legal framework for combating acts of domestic violence.** The case “Tunikova and Others v. Russia” concerns the situation of four women who were victims of domestic violence, including death threats, bodily injuries, and severe mutilation, by their former partners, and the subsequent domestic authorities’ failure to establish a legal framework for combating such acts and bringing the perpetrators to account.

The ECtHR found that the Russian authorities had failed to establish a legal framework to combat domestic violence effectively; they had not assessed the risks of recurrent violence, and they had not carried out an effective investigation on the domestic violence that the applicants had suffered. Accordingly, the ECtHR recommended urgently making changes to domestic law and national practice to prevent similar violations from occurring. The judgment can be found [here](#).

- **In December 2021, the ECtHR issued a new factsheet concerning the rights of the child.** The document sets out many standards on the right to access to a court and the right to respect for the private and family life of children and adolescents. The factsheet also includes some developments in cases related to (i) children born as a result of surrogacy treatment; (ii) compulsory childhood vaccination; (iii) sex education in State schools; (iv) freedom of expression and religion; (v) family reunification rights; and (vi) child custody and access rights, among others. The factsheets aim to provide an overview of the Court’s jurisprudence and pending cases. The factsheet can be found [here](#).

IV. INTER-AMERICAN HUMAN RIGHTS SYSTEM

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

News concerning the IACHR:

- **On December 7, 2021, the IACHR and the Konrad Adenauer Foundation presented the first open-access database of IACHR decisions.** The repository constitutes a tool that makes it possible to carry out an intelligent search of decisions and standards developed by the IACHR. It contains admissibility, merits, and friendly settlement reports; thematic and country reports; resolutions on precautionary measures; and relevant constitutional and Inter-American jurisprudence from the region. It also includes judgments, resolutions issuing provisional measures, and advisory opinions from the IACtHR, as well as judgments from constitutional courts in the region.

The repository allows users to filter using parameters such as country, keywords, date, case number, and the name of the victims or the judges, among others. According to the then-president of the IACHR, Ms. Antonia Urrejola, the project “is part of the IACHR’s efforts to make human rights standards more transparent and more accessible to all users, while strengthening the tools available for addressing the IACHR’s procedural backlog”. The press release can be found [here](#) and the repository (in Spanish) [here](#).

- **On December 7, 2021, the IACHR published the “Guide on Best Practices and Basic Guidelines to Implement Decisions Made by the Inter-American Commission on Human Rights”.** The guide draws on the actions that have been implemented at the national level in the countries of the region to ensure compliance with the IACHR’s decisions and recommendations. It also expands the available information on the subject, intending to foster the exchange of best practices and experiences among the various actors of the Inter-American Human Rights System, to increase the implementation and compliance with IACHR’s recommendations, and therefore to strengthen

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the Inter-American justice for the benefit of the victims, their families, and the society. The guide (in Spanish) can be found [here](#).

- **On December 9, 2021, the IACHR issued, along with its Special Rapporteurship for Freedom of Expression, the Declaration of Inter-American Principles on Academic Freedom and University Autonomy.** The declaration applies to higher education and stresses the importance of science and knowledge as public goods and as pillars of democracy, the rule of law, sustainable development, pluralism, and academic progress.

In the Declaration, the IACHR expressed its concern about allegations made in various countries regarding repression against student groups and student unions, as well as harassment, attacks, and budget cuts affecting academic institutions, and also regarding retaliation against members of academic communities based on arbitrary or discriminatory measures.

The IACHR noted that academic freedom is an independent and interdependent right, which plays an enabling function for the exercise of various rights. Among the principles included in the Declaration, it is worth highlighting: the inviolability of academic spaces; the protection from State interference; the ban on censorship and the exceptionality regarding the exercise of State sanctions; and education concerning human rights. The press release can be found [here](#) and the Declaration (in Spanish) [here](#).

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

News concerning the IACtHR:

- **On November 14, 2021, the IACtHR issued its judgment in the case “Barbosa de Souza et al. v. Brazil”, in which the State was found responsible for the improper use of parliamentary immunity to keep femicide with impunity.** The case concerns the responsibility of the State of Brazil for the facts related to the death of Márcia Barbosa de Souza at the hands of a former deputy of Paraíba,

as well as for the Brazilian authorities’ failure to investigate and sanction those responsible.

The victim, a 20-year-old afro-descendant student, met the then deputy on June 17, 1998. The following day, a bystander observed someone throwing the body of a person, later identified as Márcia, from a car into a wasteland. The autopsy revealed that the victim had been beaten prior to her death and determined that she had died of asphyxiation by suffocation. Although a police investigation was formally initiated and the police commissioner in charge issued a report indicating the direct involvement of the then deputy, the internal processes were hindered by the parliamentary immunity he enjoyed at the time. Specifically, the Legislative Assembly of the State of Paraíba never authorized the initiation of a criminal proceeding against the congressman.

Accordingly, the IACtHR ruled that parliamentary immunity is an institute that has been conceived as a guarantee of independence for the Legislative as a whole and its members, and therefore cannot be seen as a personal privilege. In line with this, for parliamentary immunity to be compatible with the American Convention on Human Rights, due process guarantees must be respected and there must be a “proportionality test” that takes into account the seriousness of the offense and whether or not it is related to parliamentary activity.

Thus, the IACtHR found that Brazil violated the rights to judicial guarantees, equality before the law, judicial protection, and the personal integrity of Marcia’s mother and father. In consequence, it ordered the State to: (i) carry out an act of recognition of international responsibility about the facts of the case; (ii) develop and implement a national and centralized system of disaggregated data compilation that allows the analysis of facts of gender-based violence and, particularly, of violent deaths of women; and (iii) adopt a standardized national protocol for the investigation of gender-based violent deaths of women, among other things. The judgment can be found [here](#) and the press release [here](#) (both in Spanish).

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- **On December 16, 2021, the IACtHR launched its updated Jurisprudence Bulletin No. 23, “Corruption and Human Rights”.** The Jurisprudence Bulletin Series is intended to provide information on IACtHR judgments concerning various issues of relevance for the region. In this regard, this update focuses on the standards developed by the IACtHR concerning corruption. In particular, the bulletin includes excerpts from judgments in which the relationship between corruption and human rights was analyzed in the context of adoption processes, prior consultation, child trafficking, among others. The bulletin also emphasizes the several connections between corruption and freedom of expression, the protection of people at risk for their fight against corruption, and the legitimacy of this fight. The bulletin (in Spanish) can be found [here](#). ■



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