

From San José to Geneva: How the Inter-American System of Human Rights can inform the inclusion of safe and healthy working conditions within the ILO's fundamental rights framework

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Abstract

The COVID-19 pandemic has had a significant impact upon a large range of labor issues in Latin America. Despite the existence of a significant breadth of legislation related to health and safety, which should have protected workers, the workplace has, unfortunately, been one of the main epicentres of the spread of the virus. This has been worsened by the fact that Latin American countries tend to have a considerable percentage of the workforce in the informal sector, which is barely covered by health and safety legislation.

The right to health and safety in the workplace has been traditionally addressed by the ILO through the ILO Conventions No. 155 on Occupational Safety and Health Convention and its protocol, No. 161 on the Occupational Health Services, and No. 187 on the Promotional Framework for Occupational Safety and Health. The 2019 ILO Centenary Declaration for the Future of Work states that ‘safe and health and working conditions are fundamental to decent work’. More recently, the ILO Governing Body has proposed the inclusion of the rights for safety and health at work in the ILO's framework of fundamental principles and rights at work. In this proposal, references have been made to

international instruments as well as the European Social Charter. However, the Inter-American system seems to have been overlooked.

In our paper, we examine how and to which extent the Inter-American standards on fair and satisfactory working conditions can inform the debate to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work. Specifically, we study the recent judgments of Inter-American Court of Human Rights - *Spoltore* and *Empleados de la Fábrica de Fuegos* - that have recently recognised the right to fair and satisfactory working conditions as a human right and the relevance of its preventive nature with a special focus on health and safety in the workplace. Furthermore, the Inter-American Court has recently adopted an intersectional approach that considers the vulnerability of certain groups based on socio-economic, gender and race grounds, and the consequent more stringent obligations on State Parties regarding working conditions.

Keywords: Health and Safety, Human Rights, Inter-American System, International Labour Organisation, Labour Rights.

1. Introduction

The COVID-19 pandemic has had a significant impact upon a large range of labor issues in Latin America. Despite the existence of a significant breadth of legislation related to health and safety, which should have protected workers, the workplace has, unfortunately, been one of the main epicentres of the spread of the virus. This has been worsened by the fact that Latin American countries tend to have a considerable percentage of their workforce in the informal sector, which is barely covered by health and safety legislation.

The right to health and safety in the workplace has been one of the key areas regulated by the International Labour Organization (hereinafter, 'ILO'). The ILO has adopted important instruments such as the ILO Conventions No. 155 on Occupational Safety and Health and its protocol, No. 161 on the Occupational Health Services, and No. 187 on the Promotional Framework for Occupational Safety and Health. However, the ratification level of these instruments in Latin America is relatively low. The 2019 ILO Centenary Declaration for the Future of Work states that 'safe and healthy working conditions are fundamental to decent work'. More recently, the ILO Governing Body has proposed the inclusion of the rights for safety and health at work in the ILO's framework of fundamental principles and rights at work. In this proposal, references have been made to international instruments as well as the European Social Charter. However, despite the recent progressive case law of the Inter-American Court of Human Rights (hereinafter, 'the Court') in terms of protection of social rights, the Inter-American system seems to have been overlooked.

Since the landmark judgment, *Lagos del Campo v Peru* delivered in 2017, the Court has declared that economic, social and cultural rights can be autonomously protected within the Inter-American system. Relying upon this approach, the Court delivered two major judgments in 2020 - *Spoltore v. Argentina* and *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil* - in which it recognized the direct protection of the right to fair and satisfactory working conditions.

In our paper, we examine the extent to which the comprehensive and progressive approach adopted by the Court, which focuses on the preventive nature of this right as well as the intersectional

approach that considers the vulnerability of certain groups based on socio-economic, gender and race grounds can inform the ILO Governing Body.

2. Labour Rights as Human Rights in the Inter-American Human System

The Inter-American system has adopted several instruments, whose legal nature and content are diverse, to ensure the protection of human rights in the region. Given the traditional distinction between civil and political rights, and economic, cultural and social rights, labor rights have been unevenly protected in the Inter-American system. This makes necessary the analysis of the case law of the Court, with a special emphasis on the case *Lagos del Campo v Peru* (2017).

2.1. The Fragmented Corpus Iuris of the Organisation of the American States

The 1948 Universal Declaration of Human Rights adopted a holistic approach in which economic, social and cultural rights and civil and political rights are interdependent and indivisible. In the same vein, the 1948 American Declaration on the Right and Duties of Man (hereinafter, 'the American Declaration') - adopted prior to the Universal Declaration - took a similar approach. However, the American Convention on Human Rights (hereinafter, 'the American Convention') - the most important Inter-American instrument - has mainly proclaimed civil and political rights with a timid reference to economic, social and cultural rights. The fragmented corpus iuris of the Inter-American system needs to be understood through this lens (Piovesan, Morales Antoniazzi & Cortez da Cunha Cruz, 2020, 156).

The 1948 OAS Charter is a pan-American treaty that sets out the creation of the Organization of American States. The original charter did not contain any specific labor rights. However, the 1967 reform, through the Protocol of Buenos Aires, included Article 34 in which the Member States agreed to accomplish the following basic goals: fair wages, employment opportunities and acceptable working conditions for all (g). It also incorporated Article 45, which recognizes that work is a social right and duty that requires the protection of fair wages (b). It also enshrined the right to collective bargaining and the right to strike (h).

Other than the founding treaty, there are three Inter-American instruments that protect labor rights. Firstly, the American Declaration guarantees the right to equality and non-discrimination (Article 2); the right to work and to a fair wage (Article 14); the right to rest (Article 15); and freedom of association (Article 22). Since the American Declaration was not an international instrument subject to ratification, there were some doubts regarding its legal nature. However, in the *Advisory Opinion OC-10/89*, the Court recognized that it constitutes a source of international obligations.

Secondly, the American Convention, adopted in 1969, is the most important human rights instrument of the Inter-American system. The American Convention constitutes a source of direct obligations for States Parties (Articles 1(1) and 2). Furthermore, Article 2 requires that States adopt all the legislative and other types of measures to achieve the full effectiveness of the rights and freedoms recognized herein. It is, however, to the State Parties, through their constitutional systems, to decide the hierarchy of the American Convention within their domestic legal order (Domínguez, 2018).

The American Convention has also created the Inter-American Commission on Human Rights (hereinafter, 'the Commission') and the Court, which are in charge of overseeing the respect of human rights. The role of the latter is crucial. However, there are three procedural elements that must be borne in mind: firstly, cases can only be initiated against State Parties that have accepted its

jurisdiction. Secondly, individuals do not have direct access to the Court. Only State Parties and the Commission can bring legal actions to the Court. Thirdly, in principle, only American Convention provisions can be invoked in contentious cases to the Court. This is vital because the American Convention was not meant to be a charter of labor rights. After all, social and economic rights had already been enshrined in the OAS Charter and the American Declaration. Nonetheless, some labor rights have been incorporated, such as: the prohibition of discrimination (Articles 1 and 24), freedom from slavery (Article 6), the prohibition of child labor (Article 19), and freedom of association (Article 16). Beyond these general provisions, labor rights are protected by the only specific provision of the American Convention, Article 26, which sets out that States should adopt measures to achieve 'the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter as amended by the Protocol of Buenos Aires. However, given the procedural organization of the Inter-American system, doubts were casted upon the justiciability of these rights.

The lack of economic, social and cultural rights in the American Convention led to the adoption in 1988, which came into force in 2003, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter, 'Protocol of San Salvador') (Montejo, 2015). In its preamble, it emphasized the importance of the interdependence of the civil and political rights, and the economic, social, and cultural rights. Article 6 recognizes the right to work. Article 7 enshrines the right to fair and satisfactory working conditions, the right to a minimum wage, the right to employment stability, the right to safe and healthy working conditions, the right to reasonable limitation of working hours, both daily and weekly, and the right to rest, leisure and paid vacations as well as remuneration for national holidays. Article 8 includes the right of workers to organize trade unions and to join the union of their choice and also protects the right to strike. Despite this wide-ranging list of labour rights, Article 19 (6) of the Protocol of San Salvador has erected a major procedural hurdle by stating that only violations by a State Party against freedom of association (Article 8, a) and the right to education (Article 13) may authorize to bring legal proceedings before the Court.

2.2. The Holistic Approach of the Inter-American Court of Human Rights

The Court has traditionally played a rather limited role in the protection of labor rights. Until the mid-2010s, the direct protection of labor rights was restricted to trade union rights - especially freedom of association - whilst the others were protected indirectly (for instance, wages were protected as part of the right to property). However, this has recently changed in the 2017 *Lagos del Campo v. Peru* case in which the Court, for the first time, relied directly upon Article 26 of the American Convention to protect labor rights. This constitutes a major development because the Court has adopted a systemic approach vis-à-vis all the Inter-American instruments, opening a new era where labor rights are taken seriously within this regional system. This approach has materialised the until then theoretical interdependence and indivisibility between civil and political rights and economic, social and cultural rights.

Under this new approach, the Court has mainly focused on the right to work to protect the right to job security. However, Article 45 of the OAS Charter is quite rich and also includes the right to strike, the right to collective bargaining, the right to consultation, the right to participation, and the right to social security. For this matter, the role of the Court is crucial in strengthening workers' rights enshrined in this provision through the direct application of Article 26 of the American Convention.

Given this complex institutional and legal architecture, the role of the Court has been crucial to ensuring the protection of labor rights. Firstly, from the moment it was established in 1979 until 2001, the Court protected them through the lens of the right to life (Article 4) and the right to personal liberty (Article 7). This was mainly due to the fact that trade unionists were being assassinated in the region. The case of *Caballero Delgado and Santana v. Colombia* (1995) illustrates this approach. Mr. Caballero Delgado was a leader of the Teachers' Union who went missing because of his active involvement in labor issues. Rather than relying on Article 16 (freedom of association), the Court concluded that Colombia had violated Articles 4 and 7 of the American Convention. This approach changed in 2005 when the Court considered an extrajudicial killing of a trade union leader constituted a violation of freedom of association in the leading case of *Huilca Tecse v. Peru*.

Secondly, the Court took an important step forward and decided to protect labor rights directly and indirectly (2001-2017). The case *Baena Ricardo et al. v. Panamá* (2001) marked the beginning of this new approach in which the Court considered that there had been a direct violation of Article 16 (freedom of association) of the American Convention. Under the same approach, the Court protected labor rights directly by recognizing the violations of Article 6 (freedom from slavery) in cases such as *Ituango Massacres v. Colombia* (2006) and the *Hacienda Brasil Verde Workers v. Brazil* (2016). The Court also went beyond its traditional case law and decided to protect labor rights via other civil rights. This was done in those cases where the American Convention had not expressly enshrined labor rights. An example is the case of *Abril Alosilla et al. v. Peru* (2011) when the Court stated that remuneration is part of the right to private property of workers. The Court also protected the right to work indirectly through the lens of procedural rights such as the right to a fair trial and the right to judicial protection, particularly in cases where workers had been unfairly dismissed (*Belle Antoine*, 2015, 287-288).

Thirdly, the Court has taken a major leap by deciding to protect labor rights autonomously (2017-now). In *Lagos del Campo v. Peru*, the Court has decided to protect labor rights through a systemic interpretation of the American Convention along with other Inter-American instruments. Under the new methodology, the Court, relying upon Article 26, considers that it has the competence to interpret and declare direct violations of economic, social and cultural rights (Ferrer Mac-Gregor, 2020, 180). This has permitted the Court to protect the right to work with a special focus on job stability (i.e. *Lagos del Campo v. Peru*), the right to health (i.e. *Poblete Vilches et. al v. Chile*), the right to social security (i.e. *Muelle Flores v. Peru*), and the right to fair and satisfactory working conditions (i.e. *Spoltore v. Argentina*). This is a crucial step not only from an Inter-American perspective but also from a domestic level where national actors could rely upon this new approach to ensure the protection of labor rights (Ebert & Fabricius, 2018, 185).

3. The Right to Fair and Satisfactory Working Conditions in the Inter-American System

In order to guarantee equality of opportunities and the elimination of extreme poverty, Member States committed themselves to devote their utmost efforts to accomplishing diverse goals, such as 'acceptable working conditions for all' (Article 34 of the OAS Charter). The Protocol of San Salvador expressly recognizes the 'right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions' (Article 7). Despite the procedural hurdles, the Court has adopted a broad interpretation (3.1) that has emphasized the preventive nature of this right (3.2.) as well as the importance of an intersectional approach in Latin America (3.3.).

3.1. Autonomous Protection

In June 2020, the Court delivered a landmark judgment in the case *Spoltore v. Argentina*. It was the first time it has evaluated and considered the right to fair and satisfactory working conditions that guarantee the health of workers as part of the right to work protected in the Charter of the OAS. The Court has followed the two-step methodology and the systemic interpretation of the American Convention adopted in the recent case of *Lagos del Campo vs. Peru*.

Firstly, it identified the source of the right at issue. In this case, the Court went beyond the American Convention and identified the right to fair and satisfactory working conditions protected in the OAS Charter. This is crucial because labor rights are barely developed in the American Convention. Nonetheless, the Court considers that Article 26 of the American Convention, which enshrines economic, social, and cultural rights, is part of Part I ("States Obligations and Rights Protected"). Therefore, relying upon Article 1(1) of the American Convention, the Court considers that Member States must respect those obligations recognized, among others, in the OAS Charter. Articles 34 and 45 of the OAS Charter constitute a rich source of labor rights as previously described. In this particular case, the Court also relied upon Articles 8 and 25 of the American Convention, which protect the right to a fair trial and the right to judicial protection respectively, because there was excessive delay in deciding Mr. Spoltore occupational disease claim.

Secondly, the Court defines the scope of the right in question. To do so, the Court relies upon Article 29 of the American Convention that establishes the *pro persona* principle. This prevents the Member States from suppressing the enjoyment or exercise of the rights and freedoms recognized in the American Convention or to restrict them to a greater extent than is provided for herein. Furthermore, when examining the scope of the obligations as defined in Article 1(1) of the American Convention, the Court considers other international instruments, such as the American Declaration that contains and defines the fundamental human rights referred to in the OAS Charter, UN Declarations and ILO conventions.

Specifically, the Court's starting point was Article 45(b) of the OAS Charter, which determined that adequate protection of the health of workers should be guaranteed. Similarly, it referred to Article XIV of the American Declaration that enshrines the right to fair and satisfactory working conditions. It sets out that every person has the right 'to work under proper conditions'. The Court also drew upon the international *corpus iuris* on this subject, such as: (i) Article 7(e) of the Protocol of San Salvador; Article 7(b) of the International Covenant of Economic, Social and Cultural Rights; and Article 23 of the Universal Declaration of Human Rights.

One of the main contributions of the Court has been the recognition of the prevention of accidents and occupational diseases as a key element of the right to fair and satisfactory working conditions. To reach this conclusion, the Court specifically referred to the ILO Convention No. 155, and the General Comments No. 18 and No. 23 of the Committee on Economic, Social, and Cultural Rights.

The Court also considered that the protection of this right entails two dimensions: one that focuses on aspects that are immediately enforceable, and, another one that concentrates on its progressive realization. Concerning the former, it entails an obligation to have effective complaint mechanisms in case of violation of labor rights to guarantee the right of access to justice and effective judicial protection. This applies to the right to fair and satisfactory working conditions. States have to ensure that workers who have suffered an accident or occupational disease dispose of adequate and effective mechanisms to seek compensation. Concerning the latter, States have a specific and continuing obligation to act as expeditiously and effectively as possible towards the full realization of

this right. To do so, States should adopt, to the extent of their available resources, all the necessary legislative and other types of measures. Furthermore, States have an obligation of non-regression, which entails that any measure that aims to restrict the exercise of the right to fair and satisfactory working conditions has to be duly justified.

In July 2020, the Court went a step further in the protection of this right in its judgment of the case of *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*. It retook the two-step methodology and the systemic interpretation of the American Convention to find that the right to just and favorable conditions that ensure safety, health and hygiene in the workplace is a right protected by Article 26 of the American Convention as expressed in the case of *Spoltore v. Argentina*.

In this case, the Court has ruled on the right to fair and satisfactory working conditions as a component of the right to work to examine its violation regarding the explosion in the fireworks factory that caused the death of 60 people (40 women, 19 girls, and 1 boy). Six people survived, none of which received adequate treatment to recover from the consequences of the accident. Most of the women who lost their lives were Afro-descendants, living in poverty, with low levels of schooling, working in precarious conditions (they used to work 12 hours a day and didn't receive personal protective equipment or training), and with no economic alternative other than work in the fireworks factory. Despite the fact that the factory had a licence to operate, there was no record of any oversight activity by the state authorities to investigate the working conditions.

As in the case of *Spoltore v. Argentina*, the Court has referred the international *corpus iuris* to examine this right and considered the International Covenant of Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the ILO Conventions No. 81 and No. 155, and the General Comments No. 14, No. 18 and No. 23 of the Committee on Economic, Social and Cultural Rights.

3.2. Preventive Approach

In the judgment of the case of *Spoltore v. Argentina*, the Court analyzed and protected the right to fair and satisfactory working conditions, specifically emphasizing that workers have the right to perform their tasks in a safe environment that prevents work accidents or occupational diseases from happening.

In the judgment of the case of *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, the Court pointed out that States have the obligation to ensure the right to fair and satisfactory working conditions and that this entails the adoption of the necessary measures to prevent its possible violation. The Court also determined the State has the obligation to regulate, supervise and oversee that the working conditions are safe to prevent occupational accidents due to the handling of dangerous materials (according to paragraph 149).

The Court, relying upon the judgement of the case of *Spoltore v. Argentina*, reiterated the double dimension of the right to fair and satisfactory working conditions. Considering the particularities of the case of *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, the Court highlighted the immediately enforceable nature of these obligations and that States should guarantee the exercise of this right without discrimination and take measures to ensure its full realization (according to paragraph 172). Workers must be able to carry out their work in adequate conditions of safety, hygiene and health that prevent occupational accidents, which is

especially relevant in the case of activities that involve large risks to the life and integrity of the workers (according to paragraph 174).

In this sense, the Court considered that the protection of this right entails the exercise of supervision and oversight actions to verify whether working conditions meet the minimum legal standards of safety, which can avoid and prevent occupational accidents. Workers have to receive information on safety measures and work-related protection equipment (according to paragraph 175).

To determine the content of the right to fair and satisfactory working conditions, the Court also used sources, principles, and criteria of the international *corpus iuris* to supplement the provisions of the American Convention. Its preventive approach entails that States: (i) have to ‘formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment, in order to prevent accidents and injury to health arising out of, linked with or occurring in the course of work’, as enshrined in the ILO Convention No. 155 on occupational safety and health (according to paragraph 165); (ii) should adopt ‘preventive measures in respect of occupational accidents and diseases’, as referred in the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (according to paragraph 166); (iii) need to take into account that ‘preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant¹ rights, in particular the right to the highest attainable level of physical and mental health’ and ‘should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment’, as indicated in the General Comment No. 23 of the Committee on Economic, Social and Cultural Rights (according to paragraph 168).

3.3. Intersectionality

The American Convention enshrines two key provisions related to the principle of equality and non-discrimination. Article 1 states that State Parties ‘undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition’. Article 24 of the American Convention establishes that all persons are equal before the law and are entitled to equal protection of the law. Despite these provisions, and even though it has recognized children and women (Belém do Pará Convention) as groups deserving special attention the American Convention does not make explicit references to intersectional discrimination (Sosa, 2017, 91).

Nonetheless, the Court has recently adopted an intersectional approach to examine cases that involve discrimination. In the *González Lluy and relatives v Ecuador (2015)*, the Court recognized that an Ecuadorian girl had been discriminated against because she had been diagnosed with HIV/AIDS. In addition, she was a girl whose socio-economic condition had prevented her from enjoying her social rights. The Court considered that it was not only a multiple factor discrimination but that the confluence of all these grounds caused a new and different type of discrimination of which she had been a victim. If one of the grounds had not existed, the type of discrimination would have been different (para. 285).

¹ This refers to the International Covenant on Economic, Social and Cultural Rights.

Intersectionality was first considered in a case related to labor rights in the judgment *Hacienda Brasil Verde Workers v. Brazil* (2016), in which 85 workers, some of them children, who had been working in slavery-like conditions were rescued from a privately-owned estate. The Court stated that failure to adopt measures to reverse structural discrimination concerning individuals in particularly vulnerable situations, particularly their extreme poverty, engaged the state responsibility (para. 338). Though, it did not rely expressly on Article 1(1) and Article 24.

In the *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil* judgment, the Court addressed again the issue of structural discrimination, with a particular emphasis on Article 24 of the American Convention. It is worth noting that the victims of the fireworks factory explosion belonged to extremely vulnerable groups. They were women and children, mainly Afro-descendants, that lived in extreme poverty. The Court noted that the economic and social disadvantages of the victims pushed them to accept a precarious job that was performed in extremely unsafe working conditions. However, the Court pointed out that ‘the intersection of factors of discrimination increased the comparative disadvantages of the presumed victims’ and that ‘they also suffered a specific form of discrimination owing to the confluence of all these factors and, in some cases, because they were pregnant, because they were girls, or because they were girls and pregnant’ (para 191).

Despite some doubts regarding the scope of an intersectional approach, the Court considered that the fact that the presumed victims belonged to particularly vulnerable groups increased the State’s obligations to respect and ensure their rights (para 198). Relying upon Article 24 of the American Convention, the Court stated that State Parties have an obligation to ensure ‘material equality’, which ‘requires the adoption of positive measures of promotion in favor of groups that have historically been discriminated against or marginalized.’ (para. 199). Specifically, it meant that given the vulnerability of the population, Brazil, as a State Party, ‘had an enhanced obligation to oversee the operating conditions of the factory and to ensure that real measures were taken to protect the life and health of the workers and to guarantee their right to material equality’ (para 201). The lack of control and inspection by the Brazilian authorities meant a breach of the right to just and favorable working conditions as well as the worsening of the existing structural discrimination (para 201).

The intersectional approach has had an impact upon another crucial dimension, that is, reparations. Traditional remedies have focused on unidimensional grounds, which has partially dismissed the complexity of vulnerable groups (Parra Vera & Franco Franco, 2020, 587). The Court decided that Brazil owed a pecuniary damage payment in favor of each victim who died in the explosion. It ordered that the judgment had to be published in the official gazette, newspapers and radio and television. It also decided that Brazil should acknowledge its responsibility. More importantly, the Court pointed out the double dimension of the State Parties’ obligation to ensure the protection and the progressive realization of social rights. On the one hand, State Parties must adopt all necessary measures to prevent the violation of human rights (para 285). On the other hand, State Parties must adopt positive measures in order to guarantee the full effectiveness of the human rights recognized in the Inter-American system instruments. In this particular case, the Court has requested Brazil to adopt two types of measures. Firstly, the State needs to implement a systematic inspection policy in order to guarantee a healthy working environment in the fireworks factory (para 287). Secondly, relying upon its intersectional approach, the Court ordered the State ‘within two years of notification of this judgment, to design and execute a socio-economic development program especially for the population of Santo Antônio de Jesus, in coordination with the victims and their representatives’ (para 289). This program should focus on vocational training as well as the strengthening of the educational system in order to guarantee access to decent and less precarious jobs.

This intersectional approach seems to be a step towards a more effective realization of social rights, particularly, in a region characterized by profound inequalities and where the enjoyment of social rights is a mere illusion for vulnerable groups. Nonetheless, the Court and its approach will face crucial challenges to ensure its full implementation. State Parties, directly and indirectly, and some national judicial authorities have opposed in the last decades the authority of the Court (Contesse, 2019). More specifically, the appropriateness of the reparation remains uncertain. It is unclear to what extent the Court has the power to require State Parties to adopt and implement such measures. Furthermore, it is also unclear whether available resources of the condemned State Party may be considered by the Court when assessing the adequate implementation of the required reparation - in this case the socio-economic program. This is not a minor aspect given the economic challenges that countries in the region face, which have been accentuated by the COVID-19 pandemic.

Unlike other regions, Latin America has a rather weak tradition of respect for the rule of law by executive agencies and legislative bodies. The adoption of a holistic and intersectional approach by the Court may 'improve domestic legal standards, protect the most vulnerable people, and decrease social injustices in the continent' (Paz González, 2018, 14). It also contributes to a better understanding of discrimination as a complex phenomenon rather than a unidimensional issue. This gives the possibility of a dynamic interpretation of individual and collective rights that can attack the root causes of inequality and structural discrimination (Parra Vera & Franco Franco, 2020, 595).

4. The Dialogue between the Inter-American System and the ILO

The recent discussion to include safe and healthy working conditions in the ILO's framework of fundamental principles and rights started in 2019. In the 108th Session of the International Labor Conference (2019), its constituents adopted the Centenary Declaration for the Future of Work that stated "safe and healthy working conditions are fundamental to decent work". The Conference also adopted a resolution requesting the Governing Body "to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work" (ILO, 2019).

The Governing Body, in its 337th session (October-November 2019), approved a road map to plan the discussion on this topic. In its 341st session (March 2021), it decided to approve the revised procedural road map, considering the evolution of the COVID-19 pandemic and the development of the debate among employers, workers and governments (ILO, 2021a).

The follow-up document that was presented to guide the discussion in the Governing Body 341st session stated that the fundamental principles and rights at work are embodied in the ILO Constitution and the Declaration of Philadelphia and are also recognized as human rights in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (according to paragraph 6).

The importance of safe and healthy working conditions is reflected in the development of standards in the last decades by the ILO, especially the Conference, the Governing Body and the Commission on the Application of Standards. Similarly, the document also referred to documents outside the ILO standards such as to the General Comment No. 23 of the Committee on Economic, Social, and Cultural Rights, the Digest of the Case Law of the European Committee of Social Rights, the Constitution of the World Health Organization, and the 2030 Agenda for Sustainable Development (according to paragraph 13).

The relevant principles and rights for safety and health at work, considering the ILO Constitution, the 1998 Declaration and its main Conventions and Protocols on this topic, are: the prevention, the assessment of occupational risks or hazards, the combating of occupational risks or hazards at source and the establishment of hierarchy of controls, the development of a national preventative safety and health culture that includes information, consultation and training. It is worth noting that the preventative dimension had been emphasized (according to paragraphs 22 and 23).

During the discussions in the 341st session of the Governing Body (ILO, 2021b), the workers' spokesperson highlighted that the preventative dimension of safe and healthy working conditions as a possible fundamental principle and right at work should be prioritized (according to paragraph 167). Moreover, the government representative of Senegal, speaking on behalf of the Africa group, supported any proposal aiming to include safe and healthy working conditions in the fundamental principles and rights at work along the same lines as key international and regional instruments (according to paragraph 172).

The resolution on a global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient (ILO, 2021c), adopted in the 109th session of the International Labor Conference, is an important document to evaluate how the current pandemics impacted the discussions on the relevance of the right to safe and healthy working conditions.

The resolution recognizes that the COVID-19 pandemic led to new challenges to health, safety and rights at work and that this crisis has affected the most disadvantaged and vulnerable disproportionately, such as workers in the informal economy and in insecure forms of work, those in low-skilled jobs, migrants, older persons, those belonging to ethnic and racial minorities and with disabilities or living with HIV/AIDS, and women. The crisis has exacerbated pre-existing decent work deficits, increasing poverty and widening inequalities within and among countries (according to items 2, 3 and 4).

Among the different urgent actions to advance a human-centred recovery that is inclusive, sustainable and resilient, governments and employers' and workers' organizations commit to, among a broad range of measures, address the needs of the most vulnerable and hardest hit by the pandemic by working to protect all workers, providing them with adequate protection, which includes respect for safety and health at work with particular attention to the ongoing challenges presented by the COVID-19 pandemic (according to item 11, B, a); and strengthening occupational safety and health measures by cooperating with public institutions, private enterprises, employers, workers and their representatives on: the introduction of appropriate control and emergency preparedness measures and measures to prevent new outbreaks or other occupational risks (according to items 11, B, d, iii and iv). Moreover, it recognizes that safe and healthy working conditions are fundamental to decent work.

Concerning the ILO leadership and support of a human-centred recovery, the resolution indicates that the ILO will strengthen the support to Member States' efforts to protect all workers. To do so, it will strengthen policy advice, capacity-building and technical assistance in support of sound labor relations and the promotion of legal and institutional frameworks based on international labor standards, including fundamental principles and rights at work, with particular emphasis on occupational safety and health in the light of the experience of the COVID-19 pandemic (according to item 13, b, i).

Considering this scenario, there are two main axes in which the inter-American standards can inform the ILO discussions on including safe and healthy working conditions in the fundamental principles and rights at work: the preventative perspective and the intersectional approach.

On the preventative aspect, the distinction between immediate enforceable obligations and the progressive ones can contribute to clarify the content and the timing of the legislative and administrative. This helps to distinguish between those that should be adopted immediately and those that may be implemented depending on the availability of resources. With respect to the former, it implies non-retrogressive as regards the realization of other rights that have been attained.

Moreover, the development of the inter-American standards on the right to fair and satisfactory working conditions, specifically related to preventive efforts, may inform the content of the obligations derived from the ILO Conventions. It may reinforce the importance to regulate, supervise and oversee actions to verify whether the working conditions meet the minimum standards of safety for carrying out a dangerous activity and, thus, to avoid and prevent occupational accidents.

Regarding intersectionality, the standards developed by the Court can contribute to improving the evaluation of the obligations on the right to safe and healthy working conditions by properly targeting the particularities of the most vulnerable groups. The COVID-19 pandemic has demonstrated how losses and damages on occupational, safety and health issues disproportionately affect the most disadvantaged, which has been noted by the ILO as the resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis shows.

Finally, the right to fair and satisfactory working conditions is a fundamental right in the Inter-American system, considering Article 45 (b) of the Charter of the OAS, Article XIV of the American Declaration and the preamble² and Article 7 (e) of the Protocol of San Salvador. Moreover, to determine the content of this right, the Court considered the international *corpus iuris* on this matter, as mentioned above, which were also used in the follow-up document that guided the debates on the 341st session of the Governing Body. This is relevant for two main reasons. Firstly, it demonstrates that the development of the Inter-American standards on this right has its roots in international human rights law. Secondly, it addresses a particular concern that has been raised in the Governing Body debates on the need to consider what other key international and regional instruments to include safe and healthy working conditions in the fundamental principles and rights at work.

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² "(...) Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources (...)"

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