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Global Perspectives on Freedom of Association: Inter-American System of Human Rights

Rafael Jerez Moreno

Societās Exploring the Value of Freedom of Association

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An approach to the Basis of the Right to Freedom of Association According to the Inter-American Court of Human Rights

Rafael Jerez Moreno[*]

I. Introduction

This paper aims to set the basis of how the right to freedom of association is protected in its normative and jurisprudential precedents between 2001 and 2022 within the Inter-American System of Human Rights. For this purpose, Section 2 lays out a historical vision of the international conventions enacted within the Inter-American System of Human Rights that include regulations on the right to freedom of association, emphasising the American Convention on Human Rights (ACHR). Section 3 presents the institutional framework of the Inter-American System of Human Rights through which individual petitions are lodged concerning human rights violations. The latter section addresses the conventionality control doctrine as a means for the enforceability of the decisions of the Inter-American Court of Human Rights (IACHR).

Section 4 dives into the decisions published by the IACHR concerning the right to freedom of association, classified into four major categories: syndical freedom, the defense of human rights, the condition of indigenous communities, and the exercise of political rights. Section 5 analyses vital criteria identified in the four classifications of jurisprudence published by the IACHR on the right to freedom of association. The analysis centers on the consolidation of syndical freedom in the jurisprudential line of the IACHR as a species of the right to freedom of association, an emerging discussion on the protection of syndical freedom within the right to Progressive Development of Article 26 of the ACHR, the intimidating effect of the affectations of the violation of the right to freedom of association, and the conjunct analysis of violation of human rights whose relation enable what the IACHR calls the ‘democratic game’.

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II. The Basis of the Right to Freedom of Association in the Inter-American System of Human Rights

A suitable approach to the basis of the right to freedom of association requires a historical view of the celebration of the ninth American International Conference in Bogota, Colombia, in 1948. This event issued two critical legal instruments: the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States (OAS). Among the rights contained in the first chapter of the declaration, Article XXII addresses the right of association, stating that every person has the right to associate with others to promote, exercise, and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature. On the other hand, in the chapter on 'Integral Development' of the Charter of the OAS, Article 45 develops the principles and mechanisms that Member States agreed to apply to realise a just social order, economic development, and true peace, among which the right to freedom of association figures in Section C of this provision. This section explains that both rural and urban employers and workers have 'the right to associate freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the legal personality of associations and the protection of their freedom and independence, all following applicable laws.' Additionally, Section G of Article 45 recognises the importance of the contribution of labour unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of society and the development process.

The international convention central to this analysis is the American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, organised on 22 November 1969, in San José, Costa Rica. The ACHR contains a catalog of rights, among which, in Chapter II on Civil and Political Rights, Article 16 defines the right of Freedom of Association:

> '1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.
> 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety, or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provision of this article does not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.'

The ACHR became enforceable on July 18, 1978. To this day, 25 States have deposited their adherence or ratification to the ACHR, and 22 States have accepted the competence of the IACHR.[1]

Chart I. States that have adhered to the American Convention on Human Rights and states that accepted the competence of the IACHR.

State	American Convention on Human Rights	Inter-American Court of Human Rights
Argentina	Ratified on 14 August 1984	Accepted on 8 September 1984
Barbados	Ratified on 5 November 1981	Accepted on 4 June 2000
Bolivia	Adhered on 20 June 1979	Accepted on 27 July 1993
Brazil	Adhered on 9 July 1992	10 December 1998
Chile	Ratified 10 August 1990	Accepted on 21 August 1990
Colombia	Ratified 28 May 1973	Accepted on 21 June 1985
Costa Rica	Ratified 2 March 1970	Accepted 2 July 1980
Dominica	Ratified 3 June 1993	-
Ecuador	Ratified 8 December 1977	Accepted 24 July 1984
El Salvador	Ratified 20 June 1978	Accepted on 6 June 1995
Grenade	Ratified 14 July 1978	-
Guatemala	Ratified 27 April 1978	Accepted on 9 March 1987

[1] According to the Official Website of the Inter-American Commission on Human Rights, Trinidad and Tobago notified the denouncement of the American Convention on Human Rights in 1998. Venezuela also denounced the ACHR in 2012 (Inter-American Commission on Human Rights: N.d. B-32); American Convention on Human Rights "San Jose Agreement" (Inter-American Commission on Human Rights); OEA, 'Más derechos para más gente' (2013) 'CIDH manifiesta su profunda preocupación por efecto de la denuncia de la Convención Americana por parte de Venezuela' (Inter-American Commission on Human Rights: September 2013).

Haiti	Adhered on 14 September 1977	Accepted on 20 March 1998
Honduras	Ratified on 5 September 1977	Accepted on 9 September 1981
Jamaica	Ratified 19 July 1978	-
Mexico	Adhered on 2 March 1981	Accepted on 16 December 1998
Nicaragua	Ratified on 25 September 1979	Accepted on 12 February 1991
Panama	Ratified on 8 May 1978	Accepted on 9 May 1990
Paraguay	Ratified on 18 August 1989	Accepted on 11 March 1993
Peru	Ratified on 12 July 1978	Accepted on 21 January 1981
Dominican Republic	Ratified on 21 January 1978	Accepted on 25 March 1999
Suriname	Adhered 12 November 1987	Accepted on 12 November 1987
Trinidad and Tobago	Adhered on 3 April 1991	Accepted on 28 May 1991
Uruguay	Ratified on 26 March 1985	Accepted on 19 April 1985
Venezuela	Ratified on 1 July 2019	Accepted on 24 June 1981

Source: own elaboration.

Another relevant international instrument is the Additional Protocol to the American Convention on Human Rights in Economic, Social and Cultural Rights ('Protocol of San Salvador') adopted on 17 November 1988, and later enforceable since 16 November 1999. Article 19.6 of the Protocol foresees that only the violation of two of the rights recognised in its text may give rise to the system of individual petitions towards the Inter-American System of Human Rights. One of the rights is covered in Section A of Article 8 concerning trade union rights, which essentially expresses that State Parties shall ensure the right of workers to organise trade unions and to join the union of their choice to protect and promote their interests.

The latter provision guarantees trade unions the right to establish and affiliate with existing national federations, confederations, and international trade union organisations.

Considering the normative aspect of the Right to Freedom of Association in the international conventions presented above, Article 16 of the ACHR comprehends the right to associate. Article 8 of the Protocol of San Salvador foresees the right to associate specifically for trade unions, and Section 3 of this article expresses the right to dissociate. The jurisprudence of the IACHR amplifies the scope of the right. In its caselaw, the IACHR explains that the right to freedom of association comprehends a person's liberty to determine without coercion if he wants to be a part of an association or not (right to dissociate).[2] Concerning the association's right to organisational autonomy, Article 16 of the ACHR and Article 8 of the Protocol of San Salvador foresee the only valid restrictions applicable to the right to associate freely and for trade unions.

Additionally, the IACHR explains that the right to associate freely implies no intervention from public authorities to limit or make difficult the exercise of the right.[3] However, the scope of organisational autonomy varies depending on the type of cases reviewed by the Court. For example, the right to associate in syndical affairs consists of the faculty to constitute syndical organisations to implement their internal structure, activities, and action plan without the intervention of public authorities that limits or hinders the exercise of this right.[4]

III. The Institutional Framework and the Conventionality Control Doctrine

Article 53 of the Charter of the OAS created the Inter-American Commission on Human Rights. According to Article 106 of the Charter, the Commission's principal function is to 'promote the observance and protection of human rights to serve as a consultative organ of the Organization in these matters.' According to Article 44, the ACHR recognises the right of any person or group of persons, or any nongovernmental entity legally recognised in one or more member states of the OAS, to lodge a petition to the Inter-American Commission on Human Rights containing complaints of violation to the ACHR by a State Party. Secondly, Article 62

[2] Inter-American Court of Human Rights, *Former Workers of the Judicial Power v Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 17 November 2021, para 112.
[3] Inter-American Court of Human Rights, *Escaleras Mejía v Honduras*. Decision issued 26 September 2018, para 63.
[4] Inter-American Court of Human Rights, *Baena Ricardo y otros v Panama*. Merits, Reparations and Costs. Decision issued 2 February 2001, para 156.

recognises the jurisdiction of the Inter-American Court of Human Rights on cases submitted to its knowledge concerning the interpretation and application of the provisions of the ACHR. For this submission to be valid, the first provision of Article 62 explains that a State Party may, at the ratification or adherence to the ACHR, or at any subsequent time, declare that it recognises as binding the jurisdiction of the IACHR on all matters relating to the interpretation or application of the Convention, as it is portrayed in Chart I.

Once a State ratifies or adheres to the ACHR and recognises the contentious jurisdiction of the IACHR, obligations derive toward its applicability. One of the sources that contributes to understanding the enforceability of the ACHR is the conventionality control doctrine developed through the IACHR´s jurisprudence. The first decision in which the doctrine appeared was the case of *Almonacid Arellano and others v Chile* of 26 September 2006. According to this resolution, the IACHR stated that:

> 'When a State has ratified an international treaty like the ACHR, its judges, as part of the State's apparatus, are also subject to it, which obliges them to oversee that the effects of the applicability of the Convention are not diminished by the enforceability of laws that are contrary to its purpose, and consequently, lack from legal effects from their origin. In other words, the Judiciary Power must exercise a "conventionality control" between local legal regulations and the ACHR.'[5]

IV. The Right to Freedom of Association in the Jurisprudence of the IACHR

This section will dive into the jurisprudential approaches the IACHR took on the right to freedom of association. Eighteen decisions of the IACHR between 2001 and 2022 have been mapped for this analysis.

Chart II. Decisions published by the IACHR on the right to freedom of association between 2001 and 2022.

Case	Published
Baena Ricado and Others v Panamá	2 February 2001
Huilca Tecse v Perú	3 March 2005

[5] Inter-American Court of Human Rights, *Almonacid Arellano y Otros v Chile*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 26 September 2006, para 124.

Cantoral Huamaní and Garcia Santa Cruz v Perú	10 July 2007
Kawas Fernández v Honduras	3 April 2009
Escher and Others v Brazil	6 July 2009
Manuel Cepeda Vargas v Colombia	26 May 2019
Fleury and Others v Haití	23 November 2011
Massacre of Rio Negro v Guatemala	4 September 2012
Gudiel Alvarez and Other ("Military Diary") v Guatemala	November
Garcia and Family Members v Guatemala	29 November 2012
Lopez Lone and Others v Honduras	5 October 2015
Members of the Chichupac Community and the Neighboring Communities of the Municipality of Rabinal v Guatemala	30 November 2016
Lagos del Campo v Perú	31 Augustt 2017
Escaleras Mejía and Others v Honduras	26 September 2018
Isaza Uribe and Others v Colombia	20 November 2018
Former Workers of the Judicial Power v Guatemala	17 November 2021
Movilla Galarcio and Other v Colombia	22 June 2022
Members and Militants of the Patriotic Union v Colombia	27 July 2022

Source: own elaboration.

The following subsections display a chronological and logical sequence of the criteria developed by the IACHR in its decisions. Each subsection presents a classification of the cases

submitted by the Inter-American Commission on Human Rights to the IACHR that have ended in decisions concerning human rights violations including the right to freedom of association.

Most cases mapped for the analysis present the right to freedom of association related to syndical affairs, from the case of *Baena Ricardo and Others v Panama* decided on 2 February 2001, in which the IACHR considered freedom of association in syndical affairs to be of the most significance for the defence of the legitimate interests of workers; [6] to one of the last cases addressing this right in *Former Workers of the Judicial Power v Guatemala* issued on 17 November 2021, in which it expresses the existence of a specific protection to syndical activities derived from Article 26 of the ACHR concerning Progressive Development in Chapter III of Economic, Social, and Cultural Rights.[7]

Although not to the same extent as the cases covering unions, the jurisprudence of the IACHR also includes cases addressing the defence of human rights and cases related to the exercise of the right to freedom of association closely related to political rights. These cases reach the IACHR for two main reasons. According to Section a) Article 46 of the ACHR, a case enters the Inter-American System of Human Rights jurisdiction through the Inter-American Commission on Human Rights only after remedies under domestic law have been pursued and exhausted following general principles of international law. On the other hand, one of the two scenarios in which a case is subject to the jurisdiction of the IACHR is after the completion of a procedure that begins in compliance with Article 44 of the ACHR in which State Parties have different opportunities to provide information to address the allegations of human rights violations towards the Inter-American Commission on Human Rights. The arrival of a case to the knowledge of the IACHR reflects an inadequate management of domestic allegations of human rights violations.

4.1 Freedom of Association and Syndical freedom

The first set of decisions addresses cases concerning syndical freedom as part of the right to freedom of association foreseen in Article 16. The first case of this category is the *Baena Ricardo and Others v Panama* decided on 2 February 2001. This case refers to the dismissal of 270 public employees and union leaders who participated in protest activities against the

[6] *Baena Ricardo* (n 4) para 158.
[7] *Former Workers of the Judicial Power* (n 2), para 110.

government's policy concerning their labour rights. The release of the employees occurred under Law No 25 of December 14, 1990, which authorised the dismissal of public employees who participated in the organisation or execution of activities against democracy and the constitutional order.[8] In parallel to the activities organised by the unions, a military colonel Eduardo Herrera Hassán escaped from prison on December 4, 1990. Hassán led a protest that was directed to the Legislative Palace, but he was detained by military forces of the United States and handed over to Panamanian authorities. The actions led by Hassán did not relate to the activities organized by the unions. However, on December 6, 1990, the Ministry of the Presidency sent a lay proposal to Congress proposing the dismissal of public employees who participated in the call for strike on December 6, 1990, to subvert the constitutional order and install a military regime. Before the law was approved, the majority of the victims of the case were dismissed.[9]

In the *Baena* case, the IACHR explained that the right to freedom of association in syndical affairs consists of 'the faculty to formalize syndical organizations, to put into work its internal structure, activities, and programs, without the intervention of the public authorities to limit or restrict this right' and to guarantee every person's right to decide whether to be a part or not of the organisation.[10] In labour affairs, the right to freedom of association comprehends a right and liberty, the right to create associations without restrictions different from the ones described in Sections 2 and 3 of Article 16 of the ACHR, and the liberty meaning that every person must not be compelled or obliged to associate.[11] The Court indicated that the State of Panama did not comply with the legitimate restrictions provided in Article 16 concerning the right to freedom of association, considering that Law No 25 had applicability to actions that occurred before its approval, as it allowed the dismissal of workers who acted as authorities of union organisations, and it ignored the rights derived from being part of unions.[12]

Seven cases follow the *Baena* case in this analysis. One of the decisions concerns the case of *Huilca Tecse v Peru*, on 3 March 2005, referring to the murder of Pedro Huilca Tecse, a long-time syndical activist and Secretary General of the General Labour Confederation, by the

[8] *Baena Ricardo* (n 4), para 63.
[9] ibid, paras 88.d-88.i.
[10] ibid, para 156.
[11] ibid, para 159.
[12] ibid, para 171.

Colina Squad, integrated by members of the Army, on 18 December 1992.[13] The *Cantoral Huamani and Garcia Santa Cruz v Peru* case, decided on 10 July 2007, addressed the extrajudicial killing of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, both of whom were union leaders in a context of internal conflict in Peru between 1980 and 2000, characterised by extrajudicial killings against mining union leaders committed by the Peruvian Communist Party '*Sendero Luminoso'*.[14]

Later, the IACHR published the decision of the case of *Isaza Uribe v Colombia* on 20 November 2018, concerning the forced disappearance of Victor Manuel Isaza Uribe, a member of the Unique Union of Workers of the Construction Material Industry and part of the Patriotic Union political party, that occurred in November 1987 in Colombia.[15]

This subsection's last two relevant decisions are the case *Former Workers of the Judicial Power v Guatemala* issued on 17 November 2021, and *Movilla Galarcio and Others v Colombia* on 22 June 2022. The first referred to the dismissal of members of the Union of Workers of the Judicial Institution amid the determination of the legality of a strike amid a process to renegotiate a collective agreement of working conditions.[16] The second one addressed the forced disappearance of Pedro Movilla Galarcio, a union leader and member of the Communist Party of Colombia – Marxist Leninist and the Popular Front.[17]

In these cases, the Court addressed the double dimension of the freedom to association right. In labour affairs, the individual dimension does not merely encompass a theoretical recognition of the right to form unions; it must include the right to resort to any means to exercise it.[18] On the social dimension of the right, the freedom of association is a means that allows the members of a group or a collectivity to pursue specific purposes and benefit from them.[19] Both dimensions must be guaranteed simultaneously. Additionally, the IACHR recognised that

[13] Inter-American Court of Human Rights, *Huilca Tecse v Peru*. Merits, Reparations and Costs. Decision issued 3 March 2005, paras 60.1-60.24.
[14] Inter-American Court of Human Rights, *Cantoral Huamani y Garcia Santa Cruz v Peru.* Preliminary Objections, Merits, Reparations and Costs. Decision issued 10 July 2007, paras 51-69.
[15] Inter-American Court of Human Rights. Case *Isaza Uribe and Others v Colombia*. Merits, Reparations and Costs. Official Summary published by the Inter-American Court of Human Rights. Decision issued 20 November 2018, paras 55-60.
[16] *Former Workers of the Judicial Power* (n 2), paras 33-53.
[17] Inter-American Court of Human Rights. Case *Movilla Galarcio and Others Vs. Colombia*. Merits, Reparations and Costs. Decision issued 22 June 2022, paras 76-79, 140.
[18] *Huilca Tecse* (n 14) para 70.
[19] ibid.

syndical freedom is included in Article 16.1 and can only be exercised where fundamental rights are respected and guaranteed, particularly the rights to life and personal security.[20] The IACHR has also explained that the relation between the right to freedom of association and syndical freedom is one of genre and species, considering that the first recognises the right of people to create organisations and act collectively pursuing legitimate interests following Article 16 of the ACHR, while the second one must be understood amid the relation to the specificity of the activity and the importance of the objective pursued by the syndical action, derived from its especial protection under Article 26 of the ACHR and Article 8 of the Protocol of San Salvador.[21]

The IACHR also expressed that the State must guarantee that persons can freely exercise their syndical freedom without fear of being subject to violent episodes.[22] For instance, the *Cantoral Huamani and Garcia Santa Cruz v Peru*, the execution of Cantoral and Santa Cruz had a dissuasive and intimidating effect on the Peruvian mining union's movement; therefore, there was an individual and collective impact on exercising the right to freedom of association, aggravated by the context of impunity.[23]

A distinctive criterion the IACHR included in *Lagos del Campo v Peru* recognises the relationship between the right to freedom of association and the right of progressive development because the latter derives from the economic, social, scientific, and cultural norms contained in the Charter of the OAS, which recognises the right of employers and workers to associate freely to promote the defense of their interests.[24]

4.2 The Right to Freedom of Association and Indigenous Communities

Although the text of Article 16, Section 1, has a broad scope regarding the purposes that drive the right to associate freely, two cases that address the rights of indigenous communities exemplify limitations foreseen in the criteria of the IACHR. The two cases are *Massacre of Rio*

[20] *Cantoral Huamani* (n 15), paras 146-147.
[21] *Former Workers of the Judicial Power* (n 2), para 110.
[22] ibid, para 112.
[23] *Cantoral Huamani* (n 15), para 148.
[24] Inter-American Court of Human Rights, *Lagos del Campo v Peru.* Preliminary Objections, Merits, Reparations and Costs. Decision issued 31 August 2017, para 158.

Negro v Guatemala of 4 September 2012, and *Members of the Chichupac Community and the Neighboring Communities of the Municipality of Rabinal v Guatemala* of 30 November 2016.[25]

These cases refer to massacres, extrajudicial killings, tortures, forced disappearances, and sexual assaults against the Members of the Community of Chichupac and the Neighbouring Communities that occurred in the context of the Guatemalan armed conflict between 1962 and 1996 and massacres against members of the Rio Negro Community between 1980 and 1982. In the latter case, the IACHR expressed that 'the community of Rio Negro cannot be implicitly assimilated as an association in terms of Article 16 of the ACHR', and that the community of Rio Negro that has an indigenous character is not protected by Article 16.[26]

In the case of *Members of the Chichupac Community and the Neighboring Communities of the Municipality of Rabinal v Guatemala*, the Commission argued that the Community of Chichupac lived for several years in the context of forced displacements and persecution of the State; it suffered the destruction of its social structure, the diminishing of its cultural practices, and the weakening of the relationship with its leaders, which constituted the violation of the rights of conscience and religion, and the right to freedom of association.[27] However, the IACHR concluded that the Community of Chichupac and the other communities that are part of the Rabinal 'cannot be considered an association in terms of Article 16 of the American Convention.'[28]

Why did these cases reach the bench of the IACHR if the indigenous communities cannot be considered an association in the terms foreseen in the ACHR? The case of *Massacre of Rio Negro v Guatemala* sheds light on this question. The Inter-American Commission on Human Rights applied the principle of *iura novit curia* and decided to include Article 16 as part of the rights examined amid the allegations of human rights violation presented by the petitioners.[29]

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[25] Inter-American Court of Human Rights. N.d. 'Technical Sheet: *Massacres of Rio Negro Vs. Guatemala*'; Inter-American Court of Human Rights. N.d. 'Technical Sheet: *Members of the Community of Chichupac and the Neighboring Communities v Guatemala*'.
[26] Inter-American Court of Human Rights, *Massacres of Rio Negro v Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 4 September 2012, paras 166-168.
[27] Inter-American Court of Human Rights, *Members of the Chichupac Community and Neighboring Communities of the Municipality of Rabinal v Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 20 November 2016, paras 83, 167-168.
[28] ibid, para 205.
[29] Inter-American Commission on Human Rights. Admissibility Report 13/08 of the Petition 844-05 Case *Rio Negro of Mayan Indigenous Community and Members v Guatemala*. 5 May 2008, paras 2, 5.

When the Inter-American Commission submitted the case to the IACHR, it explained that the massacres produced the disintegration of the community, modifying their traditions and encouraging isolation.[30] The Commission argued that the right to freedom of association had to be analysed amid the communitarian life of indigenous groups.[31]

4.3 The Defense of Human Rights and Freedom of Association

This section will focus on the criteria set up by the Court concerning the link between the defense of human rights and the exercise of the right to freedom of association. One of the cases mapped for this section is *Kawas Fernandez v Honduras* of 3 April 2009, in which the IACHR analysed the extrajudicial killing of the Honduran environmentalist Blanca Jeannette Kawas on February 1995. Kawas was the head of a foundation dedicated to improving the quality of life of the inhabitants of the hydrographic basins of Bahía de Tela, department of Atlántida, Honduras, where she denounced the attempts of personal and private entities to seize the Punta Sal Peninsula illegally, the contamination of the lagoons, and the depredation of the forests of the region.[32] Following the *Kawas Fernandez* decision, the IACHR handed down *Escher and Others v Brazil* on July 6, 2009. The facts of the Escher case referred to the claim presented to the IACHR by the Inter-American Commission on Human Rights due to the interception of communications and recording of conversations belonging to two organisations, the Cooperativa Agricola de Conciliação Avante Ltd (COANA), and the Associação Comunitária de Trabalhadores Rurais (ADECON).[33]

Later, on 26 September 2018, the IACHR issued the *Escaleras Mejia and Others v Honduras* decision concerning the assassination of Carlos Escaleras, a defender of the environment and a candidate in a mayoral race in Tocoa, Colon. Months before his execution, Escaleras opposed installing an African palm oil extraction plant on the banks of the Tocoa River, which would be contaminated by the toxic waste deposited in its bed.[34]

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[30] Inter-American Commission on Human Rights. Report on the Merits 86/10 Case *Rio Negro of Mayan Indigenous Community and Members v Guatemala*. Report approved on 14 July 2010, paras 329-333.
[31] ibid.
[32] Inter-American Court of Human Rights, *Kawas Fernandez v Honduras*. Merits, Reparations and Costs. Decision issued 2 April 2009, paras 50-54.
[33] Inter-American Court of Human Rights, *Escher and Others v Brazil*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 6 July 2009, paras 88, 174.
[34] *Escaleras Mejía* (n 3), para 35.

In the case of the extrajudicial killing of Blanca Kawas, the IACHR stated that the circumstances of the case had an intimidating effect on other people who advocate for protecting the environment in Honduras.[35] In the *Escaleras Mejia and Others* case, the Court explained that the right to defend human rights is integrated with multiple rights whose guarantee enables the efforts of human right defenders, like the right to life, personal integrity, freedom of expression, freedom of association, judicial guarantees and judicial protection.[36]

4.4 Political Rights and Freedom of Association

According to the IACHR, the right to freedom of expression, freedom of association, and political rights conjunctly enable the 'democratic game.'[37] This criterion covered four cases mapped in this classification: *Manuel Cepeda Vargas v Colombia* of 26 May 2010; *Lopez Lone and Others v Honduras* of 5 October 2015; *Gudiel Alvarez and Other ("Military Diary") v Guatemal*a of 20 November 2012; *Members and Militants of the Patriotic Union v Colombia* of 27 July 2022.

In the case of *Manuel Cepeda Vargas v Colombia*, Colombian Senator Manuel Cepeda Vargas was a victim of an extrajudicial killing in August 1994. Cepeda Vargas was a social communicator and leader of the Colombian Communist Party and the Patriotic Union Party.[38] In this case, the fact that Senator Cepeda exercised his rights led to extrajudicial killing because the objective was to prevent him from continuing with his political advocacy activities.[39] The Court recognised the possibility that the affectation of Cepeda´s rights had an intimidating effect on the members of his party or ones who sympathised with his ideas.[40]

The *Lopez Lone and Others v Honduras* decision addressed the disciplinary processes and the dismissal of four judges of the Judiciary Power, members of the Association of Judges for Democracy (AJD), in the context of the coup against the President of the Republic in 2009.[41] According to the IACHR, in the context of a coup, the relationship between these rights

[35] *Kawas Fernández* (n 29), para 153.
[36] *Escaleras Mejía* (n 3), para 60.
[37] Inter-American Court of Human Rights, *Manuel Cepeda Vargas v Colombia*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 26 May 2010, para 171.
[38] ibid, para 2.
[39] ibid, para 176.
[40] ibid, para 178.
[41] Inter-American Court of Human Rights, *Lopez Lone and Others v Honduras*. Preliminary Objections, Merits, Reparations and Costs. Decision issued 5 October 2015, paras 42, 160, 178-183.

strengthens, especially when they are 'exercised conjunctly to protest against the decisions of the state powers contrary to the constitutional order and to claim the return to democracy.'[42]

A recent case comprising the different types of associations analysed in these sections is the decision of *Gudiel Alvarez and Other ("Military Diary") v Guatemal*a of November 20, 2012. This case involved the forced disappearance of 26 people registered in a military intelligence document called the "Military Diary" in detail.[43] The description of many of the victims in the diary included their membership in political parties, student associations, social movements, and unions.[44] The IACHR verified that the organisations to which the victims belonged were considered "internal enemies" during the armed conflict in Guatemala and that the forced disappearances aimed to restrict the victim´s right to associate freely.[45] The right to freedom of association was also violated in prejudice of the families of the disappeared persons who formed a Mutual Support Group to pursue justice.[46] The intimidating effect that the context produced on the family members recognised in the decision resulted in a *de facto* restriction of the right to freedom of association.[47]

V. General Considerations

The first set of cases analysed in this paper evidenced the consolidation of the right to syndical freedom as part of the right to freedom of association. The basis of the criteria concerning syndical freedom is the faculty to formalise syndical organizations to put into work its internal structure, activities, and programs, without the intervention of the public authorities to limit or restrict this right, and every person's right to decide whether to be a part or not of the organisation.[48]

The specialisation of the right to syndical freedom led to an ongoing debate on its relationship with the right to freedom of association exemplified in the Advisory Opinion OC-27/21 in which the IACHR explained that, due to their roots in the Charter of the OAS, syndical

[42] ibid.
[43] Inter-American Court of Human Rights. N.d. 'Technical Sheet: Gudiel Álvarez ("Military Diary") Vs. Guatemala'.
[44] Inter-American Court of Human Rights, *Gudiel Alvarez and Others ("Military Diary") v Guatemala*. Merits, Reparations and Costs. Decision issued 20 November 2012, paras 73, 77, 81, 85, 106, 111, 121, 124, 130, 132, 137, 142, 147, 153, 157, 159, 159, 163.
[45] ibid, paras 220, 222.
[46] ibid, paras 313, 318.
[47] ibid, paras 316-317.
[48] *Baena Ricardo* (n 4), para 156.

freedom, collective bargaining, and the right to strike are rights protected by Article 26 of Progressive Development of the ACHR.[49] The Court recognised the right to syndical freedom as a human right in labour affairs contained in the right to freedom of association, and acknowledged the right to syndical freedom as a general principle of international law and as part of the *corpus iuris* of international law.[50] In this sense, there is a complementary vision of how syndical freedom is protected within the ACHR; however, it is essential to remember the nature of Articles 16 and 26 of the ACHR. According to Article 1.1 of the ACHR, State Parties are obliged to respect both rights and to ensure the free and full exercise of all persons subject to their jurisdictions. However, on the Advisory Opinion, the IACHR recognised that economic, social, and cultural rights recognised in Article 26 of the ACHR entail two types of obligations: obligations of immediate fulfillment and of progressive implementation.[51] The Court expressed that syndical freedom, collective bargaining, and strike are rights of immediate enforceability.[52]

On a concurrent vote on the Advisory Opinion, Judge Humberto Antonio Sierra Porto expressed that assigning immediate enforceability to syndical rights implies disregarding the scope of the ACHR and the nature of Article 26.[53] Judge Sierra Porto explained that the new jurisprudential line assigned to Article 26 in the Advisory Opinion weakens the enforceability of syndical freedom rights already recognised in Article 19 of the Protocol of San Salvador.[54] What initially can be perceived as a harmonic relationship between Articles 16 and 26 of the ACHR evolved into a new debate on the scope of the enforceability of Article 26 of the ACHR and an emerging tension with Article 19 of the Protocol of San Salvador.

Another criterion identified from the decisions of the Court is the one of the intimidating effects that violations to the right to freedom of association have on other people with the same conditions, or who also have a membership in the organisation than that of the victims of each case. In this regard, it is also essential to reflect that the facts of most of the decisions mapped

[49] Inter-American Court of Human Rights. Advisory Opinion: *Right to Syndical Freedom, Collective Bargaining, and Strike, and its Relationship with Other Rights, with a Genre Perspective*. Opinion issued 5 May 2021, para 47.
[50] ibid, paras 53, 71, 123.
[51] ibid, para 117.
[52] ibid, para 118.
[53] Inter-American Court of Human Rights. Concurrent Vote of the Judge Humberto Antonio Sierra Porto in the Advisory Opinion: *Right to Syndical Freedom, Collective Bargaining, and Strike, and its Relationship with Other Rights, with a Genre Perspective*. Opinion issued 5 May 2021, paras 12-13.
[54] ibid, para 14.

for this analysis occurred in contexts of armed conflicts, political turmoil, or violence that transcends the aggravations faced by the victims involved in each case reviewed by the IACHR.

However, despite the view of the intimidating effects extended to cases concerning syndical freedom, defense of human rights, and the exercise of political rights, the IACHR only used the criteria of the individual and social dimensions of the right to freedom of association in cases related to syndical freedom. These dimensions appeared for the first time in the *Huilca Tecse v Peru* case. Based on the concepts conveyed by the IACHR, the individual dimension could relate to the right to associate, but it also contains a social component, considering that the Court expressed that the 'right to associate and pursue collective objectives are indivisibles, a restriction to the possibilities to associate represents a direct limit to the right of the collectivity to reach the objectives it pursues.'[55] The IACHR then explained that the social dimension of the right to freedom of association is a means that enables members of a group or a union collectivity to fulfill particular objectives conjunctly and to benefit from them.[56] The Court's reasoning confirmed the indissoluble relationship between both dimensions.[57] A conjunct analysis of both dimensions shows signs of the right to associate, the right to dissociate, and the right to organisational autonomy in both dimensions. In the individual dimension, because the freedom is comprehended on the liberty to associate, according to foonote 2 of this paper, an individual has the liberty to determine without coercion whether he wants to be a part of an association. On the other hand, the right to organisational autonomy is present in the individual and social dimensions, considering the indivisible character of the right to associate and pursue collective objectives.

Other relevant aspects evidenced in the jurisprudence of the IACHR are the conjunct analyses with other rights in deciding whether there is a violation of the right of freedom of association. As seen in Section 6.4, the conjunct analysis of rights conducted by the IACHR involving freedom of expression, freedom of association, and political rights enables the democratic game; recognising the relevance of the right to freedom of association not just for a person or the functioning of an organisation but for the broader democratic system. Therefore, even when the right of freedom of association has different aspects within its scope, it is relevant to bear in mind that this realisation implies coexistence with others, also recognised in the ACHR.

[55] *Huilca Tecse* (n 14), para 70.
[56] Ibid para 71.
[57] Ibid para 72.

Despite having different aspects of the right to freedom of association recognised in Section 1 of Article 16 of the ACHR, the IACHR expressed in two cases reviewed for this analysis that communities that have an indigenous character cannot be considered as an association in the terms foreseen in Article 16. The conclusion of the Court concerning the inapplicability of the right to freedom of association in indigenous communities awakens a broader theme for analysis: the differences in the criteria of the IACHR and the Inter-American Commission on Human Rights, despite the hierarchy of the jurisdiction of the Inter-American Court of Human Rights foreseen in Articles 62 and 63 of the ACHR to interpret and apply the ACHR's provisions and to rule that the injured party of a human rights violation be ensured the enjoyment of the corresponding right or freedom.