

# Press Release

Inter-American Court of Human Rights

I/A Court H.R.\_PR-47/2021 English

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## I/A Court H.R. Protecting Rights

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### **ADVISORY OPINION ON RIGHTS TO FREEDOM TO ORGANIZE, COLLECTIVE BARGAINING, AND STRIKE, AND THEIR RELATION TO OTHER RIGHTS, WITH A GENDER PERSPECTIVE**

*San José, Costa Rica, July 20, 2021.* On May 5, 2021, the Inter-American Court of Human Rights issued an Advisory Opinion on the rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective. The request for this Advisory Opinion was submitted by the Inter-American Commission on Human Rights. The full text of the Advisory Opinion can be found [here](#) and the official summary [here](#).

The Court interpreted the scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Para; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man.

Specifically, the Court addressed the following:

- a) The scope of the rights to the freedom to organize a union, collective bargaining, and strike and how they relate to the rights to freedom of expression, freedom of association, assembly, and work and their fair, equitable, and satisfactory conditions;
- b) The content of the right of women to be free from all forms of discrimination and violence in the exercise of their trade union rights;
- c) The duty of the State to protect the autonomy of unions and guarantee the effective participation of women as union members and leaders; and
- d) The scope of the State's obligations with regard to guaranteeing the participation of unions in designing labor regulations and public policy in the context of changes to the labor market brought on by the use of new technologies.

The Court highlighted that trade union freedom must be guaranteed for public and private employees. It includes exercise of the right to form and join the organizations considered suitable; the right to adequate workplace protection from all direct or indirect coercion aimed at undermining the exercise of trade union freedom; and the right to conduct trade union activities. Likewise, it found that the right to collective bargaining constitutes an essential component of trade union freedom, as it provides the means necessary for workers to be able to defend and promote their interests. States must therefore refrain from intervening in the negotiation processes. Regarding the right to strike, it indicated that this is one of the fundamental rights of workers and their organizations, as it constitutes a legitimate means of defending their economic, social, and professional interests. States must therefore protect the exercise of this right by law.

The Court addressed the relationship between freedom of association, the right of assembly, freedom of expression, freedom to form a union, and collective bargaining and its impact on the content of the right to work and to do so under fair, equitable, and satisfactory conditions. In this

regard, it found that protection of trade union freedom plays an important social role, as the work of unions and other employee and worker organizations helps maintain and improve the working conditions and lives of workers, and therefore, their protection makes the realization of other human rights possible. Therefore, trade union freedom is crucial for enabling the adequate defense of the rights of workers, including their right to work and to just, equitable, and satisfactory working conditions. At the same time, guaranteeing the rights to assembly, association, and expression is crucial for the exercise of trade union freedom.

The Court also emphasized that there is no question that conduct that could be considered discriminatory with regard to women's exercise of their trade union rights is expressly prohibited. However, it warned States that they must adopt the positive measures necessary to revert or change discriminatory situations, thus requiring them to move toward true equality between men and women in the exercise of trade union rights. These measures must be aimed at guaranteeing, among other things, women's right to equal pay for equal work; special protection for women workers when they are pregnant; sharing of domestic labor between men and women; and preventing violence and sexual harassment in both the public and private spheres.

Lastly, the Court found that labor regulations in the context of new technologies must be implemented pursuant to the universal and absolute criteria of labor rights, guaranteeing dignified and decent work. States should adopt legislative and other measures that center persons—not principally or exclusively markets—and that address the challenges and opportunities arising from the digital transformation of work, including work on digital platforms. Specifically, States must adopt measures aimed at recognizing workers in legislation as employees and fully recognizing the rights to freedom to form a union, collective bargaining, and strike.

In the framework of this process, which is highly participatory, 61 written observations were received from States, State bodies, international and national organizations, academic institutions, nongovernmental organizations, and individuals. They can be accessed [here](#). Within the framework of this Advisory Opinion, on July 27, 28 and 29, 2020, a virtual public hearing was held, during which the Court received the oral observations of 38 delegations. Watch the video of the public hearing [here](#).

The composition of the Court for issuing this Advisory Opinion was as follows: Judge Elizabeth Odio Benito (President); Judge Patricio Pazmiño Freire (Vice President); Judge Eduardo Vio Grossi; Judge Eduardo Ferrer Mac-Gregor Poisot; Judge Humberto Antonio Sierra Porto; Judge Eugenio Raúl Zaffaroni; and Judge Ricardo Pérez Manrique.

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Avenida 10, Calles 45 y 47 Los Yoses, San Pedro, San José, Costa Rica.