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IACHR Financial Crisis

July 12, 2016

by Stefania Butoi Varga & Isaac Morales

On May 23, 2016, the Inter-American Commission on Human Rights (IACHR) [exposed an alarming situation](#) that “will result in the dismantling of areas essential to its mandate.” The [least well-funded](#) of the five largest international human rights organizations, [the IACHR reported](#) that, as of July 31, 2016 roughly forty percent of its personnel contracts will expire, and the organization will not have the financial means to renew them. Aside from laying off more than one third of its personnel, the Commission also announced the suspension of planned country visits for this year and, most alarmingly, cancelled its next two sessions of public hearings, which were scheduled for July and October 2016.

[Human rights organizations](#) across the world are troubled by this development, as they consider the IACHR the last line of defense for victims of injustice. For instance, the IACHR’s investigation of 43 disappeared students from Ayotzinapa, Mexico resulted in a highly critical report of the Mexican government’s actions. However, the Commission’s role as the regional human rights guardian has led to speculation that some countries are [retaliating by refusing to fund the Commission](#). Nonetheless, those same countries cite the Commission’s supposed delay in administering justice as a reason for withdrawing support, a somewhat circular argument.

Strikingly, as of April 30, 2016, [only four of the IACHR’s eleven donor Member States contributed to the Commission’s operating fund](#): \$2,483,100 from the United States, \$40,000 from Argentina, \$24,500 from Uruguay, and \$5,000 from Peru. Fortunately, these funds are [supplemented by donations from non-Member States](#), which has allowed the Commission to fulfill its basic functions thus far. These donations, which tend to be sporadic, allowed the IACHR to employ 47 [individuals](#). In comparison, the Organization of American States (OAS) fund, which amounted to less than 5 million dollars in 2016, financed only [31 additional contracts](#). To help alleviate this systematic financial problem, the IACHR must receive consistent commitments from Member States totaling more than just six percent of the OAS budget.

In an attempt to secure additional funding, the [Commission issued a press release](#) prior to the meeting of the General Assembly of the OAS, which took place from June 13 to June 15, 2016 in Santo Domingo, Dominican Republic, “urging the Member States to redouble their efforts to overcome the financial crisis the Commission is going through.” Subsequently, only three Member States—Antigua and Barbuda, Costa Rica, and Panama—[committed to contributing funds](#) during the General Assembly. Two other Member States, Canada and Uruguay, vowed to [address the situation in the future](#).

Yet, the plight of the IACHR has drawn attention from Member States and non-Member States alike, and perhaps the Commission may still be able to serve as a platform for those who struggle to be heard. On June 30, 2016, United Nations Secretary-General, Ban Ki-moon [issued a statement](#) urging Member States “to reaffirm their commitment to human rights by strengthening the Commission and ensuring its long-term financial sustainability.” This comes one day after United States President Barack Obama, Canadian Prime Minister Justin Trudeau, and Mexican

President Enrique Peña Nieto met in Ottawa, Canada as part of the [North America Leader's Summit](#). Following this summit, both the American and Canadian heads of state [released statements](#) calling upon other countries, both regionally and abroad, to support the IACHR and devote more resources to its operation.

Venezuela: On the Brink

August 19, 2016
by Claudia Bingham

According to Human Rights Watch (HRW), the situation in Venezuela is getting [worse](#).

This once wealthy nation is precipitously descending into the realm of becoming a failed state through a slow [conversion](#) from a quasi-democratic nation into a full-blown dictatorship, completely dismantling any semblance of the checks and balances that once existed. Socialist policies, gross mismanagement of funds and the collapse of oil prices have produced an economy on the verge of collapse. Now, with the world's highest inflation rate, second highest homicide rate in the region, and severe basic food and medicine shortages, the situation is rapidly plunging into a desperate [humanitarian crisis](#). According to [Penn Law Professor](#) William Burke-White, "[t]he experience of the everyday citizen in Venezuela on the ground today is one of hunger and starvation."

In May 2016, President Maduro declared a state of exception, which grants his government the power to restrict human rights, purportedly in response to concerns about a foreign-led plot to overthrow his government. The decree allows President Maduro to "adopt measures and execute special security plans that guarantee the sustainability of the public order when faced with destabilizing actions" and "any other social, environmental, economic, political and legal measures he deems convenient." According to HRW, President Maduro has responded to "destabilization" plots by "jailing critics and opponents[,] clamping down on the expression of dissent and the right to freedom of assembly, including through arbitrary arrests of political opponents and critics, and the weakening of the safeguards against torture." In addition, Venezuelan security forces have used excessive force to break up anti-government protests, and since July 2015, have participated in nationwide security operations, which have led to [widespread allegations](#) of abuses against low-income and immigrant communities, "including extrajudicial executions, massive arbitrary detentions, evictions without due process, destructions of homes and arbitrary deportations."

The opposition leader of the Venezuelan National Assembly led the proposed recall referendum in May, a process whereby the president can be removed from office and a fresh election held if there are enough signatures. However, a date has yet to be set and both President Maduro and Vice-President Iusturiz [vehemently deny](#) that a referendum will ever take place, claiming that the referendum process is plagued by fraud. Furthermore, with all power concentrated in the hands of the executive office, it is unlikely that the recall referendum will ever materialize.

Unless President Maduro completely overhauls his policies and changes direction, or agrees to a compromise between the National Assembly, the only hope for Venezuelans is intervention from the international community. However, given the political legacy of former president Hugo Chavez, President Maduro's predecessor, no foreign leaders want to send aid. Even if President Maduro is removed and a legitimate government is installed, the wake of destruction left by the current and prior administrations will take time to rebuild. In the meantime, the fate of Venezuelans hangs in the balance.

Education is a Fundamental Right Not Recognized by the United States

August 25, 2016

by Jessica Lee McKenney

Access to education is paramount for a child's success in life. Without education, children are unlikely to develop the social and educational skills required to live a healthy, fulfilling lifestyle.

The [International Covenant on Economic, Social, and Cultural Rights \(ICESCR\)](#) and the [UN Convention on the Rights of the Child \(CRC\)](#) state as much, mandating that free and compulsory primary education be available to all. Both have almost universal membership, with 164 States party to the ICESCR and 196 party to the CRC.

These conventions were released for signature in 1966 and 1989, respectively, but as of 2013, there were still [124 million children](#) in the world not in school. In places like the Syrian Arab Republic, the dramatic rise in out-of-school children since 2000, the year the Republic “achieved universal primary enrollment,” has largely been the result of armed conflict. Limited resources are also adversely affecting the global goal of universal access to education for children.

[The United Nations Educational, Scientific, and Cultural Organization \(UNESCO\)](#) said that “aid to education remains inadequate and not well targeted.” Moreover, ethnic origin, language, and poverty are also negatively impacting access to education worldwide. Poverty can greatly affect a child's ability to access education. This is particularly true when a child is forced to leave school to help provide for the family, is suffering illnesses due to malnutrition, or is lacking parental support because of their own illiteracy.

Although the United States has not ratified either the ICESCR or CRC, it has come far in achieving the goal of providing free and compulsory education to all. However, more work must be done: the U.S. must also ensure that children receive a quality education. In the United States, dropout rates have declined over the years but are still considerably higher for minority groups, like Black and Hispanic students, than they are for white students. In some states, high school graduation rates are at least [20 percent higher](#) for white students than for Black or Hispanic students.

According to a report by the [National Center for Education Statistics](#), in low-poverty schools during the 2012-2013 school year, 29 percent of white students were eligible for free lunches, while only 7 percent of Black and 8 percent of Hispanic students were eligible. In high-poverty schools, on the other hand, only 8 percent of white students were eligible for free lunches while 45 percent of Black and Hispanic students were eligible. This suggests that a greater number of Black and Hispanic students are located in high-poverty schools while a greater number of white students are located in low-poverty schools.

How do we solve these disparities? [The Global Partnership for Education](#) says that education is the essential element to achieve “no poverty, zero hunger, decent work and economic growth,

reduced inequalities,” and thirteen other global goals that 193 world leaders have committed to accomplish by 2030. The Global Partnership for Education also states that a poor quality of education can be comparable to not receiving an education at all.

In March of this year, [the Education Trust](#) released a report on state and local funding for schools. It found that only six of the forty-seven states surveyed gave the highest-poverty districts 5 percent, or more, less funding per student than they gave the lowest-poverty districts. Twenty-four other states gave similar funding to the highest and lowest-poverty schools. The report stressed that this is problematic because students in the lowest-poverty districts need additional resources to account for additional necessities, such as extra educational materials and a closer relationship with outside service providers, namely, foster care and healthcare systems. The Education Trust estimates that the highest-poverty districts need an additional 40 percent of funding per student to help adequately educate them.

As of 2014, 38 percent of the white labor force, aged 25 and up, had received a bachelor’s degree, along with 27 percent of the Black labor force, and only 19 percent of the Hispanic labor force. When it came to [earnings](#), the white labor force brought home between \$54-\$281 more per week than the Black or Hispanic labor force. States could work to close these gaps by allocating additional resources to high-poverty schools, but there is not much support to require them to do so because of the 1973 Supreme Court decision in *San Antonio Independent School District v. Rodriguez* that ruled education is not a fundamental right, and that “there is no right to equal funding in education under the U.S. Constitution.” In order to truly help students, the U.S. needs to abandon this ideology and join the rest of the world in accepting education as a fundamental human right.

Voter Registration Restrictions in the United States Disproportionately Affect Minority Communities

October 4, 2016

by Andrea Flynn-Schneider

While Virginia [Governor Terry McAuliffe](#) recently restored voting rights to more than 200,000 people with previous felony convictions, at least 14 other states will go to the polls in the November 2016 election with new voting restrictions in place for the first time in a presidential election.

[Restrictions](#) range from voter registration requirements, to early or absentee voting, to photo identification requirements or proof of citizenship. However, critics contend that voter restriction laws disproportionality affect poor and minority voters. Despite the inclusion of voting rights in a number of international [human rights instruments](#) and the importance of voting in protecting human rights in general, voter restrictions are nothing new in the United States, which has a long [history](#) of denying voting rights to women, people with low incomes, and people of color.

The [United Nations Human Rights Committee](#) (UNHRC) has said that voter disenfranchisement policies are not only discriminatory, but are in violation of international law. For example, both the right to vote and to public participation in government are enumerated in Article 21 of the [Universal Declaration of Human Rights](#) (UDHR), which states in part that “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives.”

Article 25 of the [International Covenant on Civil and Political Rights](#) (ICCPR) further codifies the right to vote requiring that, “[e]very citizen shall have the right and the opportunity...without unreasonable restrictions...to vote...” Additionally, Article 5 of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD) mandates that states “guarantee the right of everyone, without distinction as to race...the right to participate in elections...” Even the [United States Constitution](#) mentions the right to vote five times. Yet, notwithstanding these protections, states continue to enact voting restrictions that deny these fundamental principles—a policy the Supreme Court sanctioned when it struck down a portion of the [Voting Rights Act](#) that required federal “preclearance” of voting law changes in states with a history of voter discrimination.

Opponents argue that voting restrictions placed on convicted felons will affect nearly 6 million voting-age Americans in the November election, a majority of whom have served their sentence and now live in the community. However, [General Comment 25](#) to the ICCPR makes clear that, “[i]f conviction for an offense is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offense and the sentence.” Despite this, some ex-offenders remain banned from voting for the rest of their lives. Advocates for voting rights, such

as former [U.S. Attorney General Eric Holder](#), believe rights should be restored as soon as a person is released from prison. Nevertheless, according to the [American Civil Liberties Union](#) (ACLU), African Americans and Hispanics are arrested and convicted for felonies at a higher rate than white Americans committing the same offenses— meaning, in states where felony disenfranchisement exists, more than 20 percent of African American voters cannot cast a ballot. In states that disenfranchise even ex-offenders, more than 40 percent of black men will not be able to exercise their constitutional right to vote this November.

Similar [problems](#) arise with voter ID laws. While proponents argue that increasing requirements for identification and in person voting will increase public confidence in the election process and decrease voter fraud, critics maintain that, “voter ID requirements are a dangerous and misguided step backwards in [the] ongoing quest for a more democratic society.” In fact, there is little evidence that voter fraud actually exists.

Challengers of voter ID laws maintain that the burden on voters and election administrators will unduly restrict the right to vote, unreasonably impacting minority voters. For example, in a [recent challenge](#) to North Carolina’s voter restrictions, the Supreme Court found that the law’s voter identification provisions “retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans.” Moreover, while as many as 25% of voting age African Americans do not have government-issued photo identification, only about 8% of white Americans are without a valid ID.

While some opponents of voting restrictions agree that cleaning up the election process is important, they fear that thousands of eligible voters may be denied their right to vote this fall. Rights advocates maintain voter restriction laws are implemented purely to limit the turnout of black, Latino, and low-income voters in an effort to achieve partisan ends. Nonetheless, what is important, says the ACLU, is the focus on expanding voter turnout and eliminating practices that “threaten the integrity” of elections—such as “improper purges of voters, voter harassment, and distribution of false information about when and where to vote.”

The UN Working Group of Experts on People of African Descent's Report on the United States — An International Perspective on Race in America

October 18, 2016
by Haaris Pasha

On September 26, 2016, the UN Human Rights Council (UNHRC) met with the UN Working Group of Experts on People of African Descent to discuss details from its report published on August 18, 2016.

[The report](#) contained findings from its mission trip to the United States, which took place in January 2016, and highlighted the current and substantive challenges faced by people of the African diaspora within the United States.

In its report, [the Working Group argued](#) that the legacy of slavery in America “remains a serious challenge, as there has been no real commitment to reparations and to truth and reconciliation for people of African descent.” It further reiterated its strong condemnation of the “continuing police killings and violence against African Americans” and “urged the Government to take serious action to prevent any further killings as a matter of national priority.” The report also concluded that “contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching” and that ongoing practices of racial profiling have undermined trust between police and the community. To combat these issues, the Working Group proposed broad policies to address issues of systemic racism and also offered an interesting administrative solution that may stem the number of police killings that take place every year. Specifically, it recommended that the United States implement a national database to track instances of excessive force, and to abolish the practice of racial profiling .

In light of the Working Group's report, it is important to explore the history of this unique organ of the UN, and to examine the United States' potential obligations to comply with the Working Group's proposals. The origins of the Working Group stem from the United Nations' [World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance](#) (WCAR or Durban I), which was held in South Africa in 2001. Parties to the conference adopted the Durban Declaration and Programme of Action. The Working Group was formally established in 2002 through Commission on Human Rights Resolution [2002/68](#). Its mandate requires the group to study the problems of racial discrimination with regard to peoples of the African diaspora, to propose solutions, and to submit recommendations towards the elimination of racial discrimination. Consistent with this mandate, the Working Group holds two annual sessions, undertakes individual country visits, and reports its findings to the UN Human Rights Council and the General Assembly. The Working Group's [current members](#) include prominent human rights lawyers, academicians and general experts in areas of human rights and humanitarian law.

While the mandate does not bind any particular State to act upon its recommendations, the Working Group [serves as a](#) watchdog, with the imprimatur of the United Nations. It monitors instances of structural racism, and gives a voice to people of African descent enduring the vestiges of slavery and other forms of systemic oppression. One of the Working Group's seminal accomplishments is its role in the adoption of a [Resolution](#) by the UN, which launched the "International Decade for People of African Descent: recognition, justice, and development" commencing in January 2015, and ending in December 2024. The Resolution provides UN financial and institutional support for the implementation of the Programme of Action and activities during the International Decade.

The United States' relationship with the Working Group began in controversy. The U.S. and Israel backed out of the WCAR over arguments regarding the inclusion of a provision in the draft resolution of the Durban Declaration, [which allegedly equated Zionism with racism](#). Even though the final resolution omitted the controversial provisions, several European countries joined Israel and the United States in [boycotting](#) Durban I as well as subsequent conferences. Since the Working Group receives its mandate from the Durban Declaration, to which the United States is not a signatory, the U.S. is not obligated to consider recommendations generated from the Working Group or collaborate with it in any discernable way.

Despite lacking an obligation, the United States has cooperated with the Working Group by facilitating its most recent mission visit to the United States. [The U.S. government arranged](#) for members of the Working Group to stop in several cities in various regions of the country. The Working Group met with officials at all levels of government, as well as police officers, members of civil society, and scores of African Americans citizens. While the United States remains reluctant to fully commit to the mission promulgated in Durban I (and the Working Group by extension), its cooperation and collaboration with the Working Group deserves credit. Most of the challenges facing the African diaspora are not unique to the United States. Considering proposals from an international perspective can only help in addressing the complicated challenges of race as it relates to the African diaspora in the United States.

Rights of Central American Migrants in Mexico

October 20, 2016

by Chelsea Lalancette

In the summer of 2014, citizens from Central America's Northern Triangle (El Salvador, Guatemala and Honduras) arrived in great numbers at the U.S.-Mexico border. The majority were families and unaccompanied minors who were [fleeing violence](#) in their home countries and seeking asylum in the United States.

This influx of migrants became politicized as the U.S. border patrol and immigration court system struggled to process the new arrivals. In July 2014, Mexican president Enrique Peña Nieto launched [Programa Frontera Sur](#) (The Southern Border Program), a program that increases immigration enforcement in Mexico. During its first fiscal year, Mexico received tens of millions of dollars from the United States as [funds](#) for immigration enforcement. As of February 2016, the U.S. government had spent \$15 million on support for Mexico's southern border enforcement, largely through the [Merida Initiative](#), a program through which Mexico receives U.S. aid for various security programs. This program resulted in a major crackdown on immigrants in Mexico and human rights organizations were quick [to criticize](#) the treatment of vulnerable migrants.

Although Programa Frontera Sur was touted as protection for vulnerable migrants, critics saw the tactics of the program as a violation of asylum seekers' human rights. Between January 2014 and October 2015 there were [ninety](#) reported cases of Central Americans murdered in their own countries after being deported by the United States or Mexico. Critics also saw the U.S. government's monetary support as an effort to [outsource](#) its migration problem to Mexico by not allowing migrants to reach the U.S. border in the first place. *The Guardian* [reports that](#) between October 2014 and April 2015, Mexico approximately doubled its deportations of Central American migrants, while the United States cut its detention of non-Mexican migrants by more than half.

The [United Nations Convention and Protocol relating to the Status of Refugees](#), to which both the United States and Mexico are signatories, is a key source of international refugee law. Article 33 of the Convention contains the most important principle in refugee law: *non-refoulement*, or not returning a refugee to a country where the person's life or freedom would be threatened. Given the documented murders of recently deported people, it appears that current enforcement practices of the United States and Mexico violate the principle of non-refoulement. Article 31 holds that states shall not penalize migrants for their illegal entry or presence when they come from a territory where their life or freedom was threatened. Mexico's practices of prolonged detention and deportation without proper opportunities to present an asylum claim certainly violate this article.

Following the UNHCR and OAS meeting on the status of Central American Refugees, the participating organizations and governments released the San Jose Action Statement: "[Call to Action: Protection Needs in the Northern Triangle of Central America](#)." The document urges all participating states to "respect the human rights of all persons regardless of their condition . . .

[and] to abandon a security vision to address mixed migration movements.” In the Action Statement, Mexico specifically committed to increase and strengthen the capacity of the international protection system in Mexico. The United States, for its part, did not mention its funding of Mexico’s immigration enforcement, but promised through the Action Statement to expand the U.S. Refugee Admissions Program to allow refugees who meet certain requirements to initiate resettlement from El Salvador, Guatemala and Honduras.

The [tactics](#) used by Mexican immigration enforcement to address increased migration have failed to guarantee the human rights and security of migrants. By expanding enforcement, officials blocked the most common routes of migration, forcing already vulnerable people to travel through remote areas and expose themselves to increased risks of extortion, robbery, and violence. Perhaps the biggest failure of Programa Frontera Sur is that it has created new barriers to attaining asylum in Mexico. Migrants who manage to present an application for asylum in Mexico are [detained](#) in poor conditions, sometimes for up to a year, which forces many applicants to give up on the asylum process. As of October 2015, the approval rate for asylum applications in Mexico was only twenty percent. In a [recent report](#), The Washington Organization on Latin America (WOLA) posited that the number of asylum applications completed and approved in Mexico are low because the Mexican Commission for Refugee Assistance (COMAR) has disproportionately low funding within the budget of the National Migration Institute (INM).

The San Jose Action Statement demonstrates that the United States and Mexico are aware of the international community’s concerns and are willing to work with the UNHCR to improve their policies. In the Action Statement, Mexico and the United States both committed to make important changes to their immigration systems which, if enacted, will promote access to asylum and prevent needless suffering. Over the coming months, the UNHCR and the OAS should monitor on the ground immigration enforcement and asylum processing to ensure that the governments of both Mexico and the United States are complying with the San Jose Action statement and the UN Protocol Relating to the Status of Refugees.

Applying a Human Rights Based Approach to Youth Homelessness and Access to Adequate Housing

October 21, 2016

by Andrea Flynn-Schneider

“Homelessness is a form of discrimination and social exclusion,” said Leilani Farha.

On September 28, 2016 the [Canadian Observatory on Homelessness](#) hosted, via webinar, “Youth Rights! Right Now!” The webinar, moderated by Michele Biss, focused on grounding strategies to end youth homelessness in international human rights law. Many of the strategies addressed come directly from [Youth Rights! Right Now! Ending Youth Homelessness: A Human Rights Guide](#), which is aimed at bringing human rights to the forefront of decision making, with a goal of identifying the systemic causes of homelessness. The guide was developed by [Canada Without Poverty](#), in partnership with [A Way Home Canada](#), the Canadian Observatory on Homelessness, and [FEANTSA](#). The webinar panelists included [Leilani Farha](#), the Executive Director of Canada Without Poverty and United Nations Special Rapporteur on the Right to Housing, and [Naomi Nichols](#), an Assistant Professor in the Faculty of Education at McGill University and Principal Investigator for a [Social Sciences and Humanities Research Council \(SSHRC\)](#) project titled, [Schools, Safety, and the Urban Neighbourhood](#).

The rights of homeless youth can be found in the [Universal Declaration of Human Rights](#) (UDHR), and a number of other international human rights treaties. For example, article 11.1 of the [International Covenant on Economic Social and Cultural Rights](#) recognizes, “the right of everyone to an adequate standard of living...including...housing, and the continuous improvement of living conditions.” Further, the [Convention of the Rights of the Child](#), one of the most widely ratified human rights treaties, enumerates the right to housing for anyone below the age of eighteen. By using international human rights treaties, such as these, the panelists hoped to work to end youth homelessness.

Ms. Farha started the discussion by enumerating the [causes of youth homelessness](#). She argued that institutional intersectionality often plays a role in pushing youth into homelessness. While institutional mechanisms do exist to protect youth, once these protections end, youth are driven into homelessness. For example, youth aging out of the child welfare system or being released from criminal institutions are more likely to end up on the streets. Furthermore, where families are living by a thread, she explained, there is a lure for young people to take to the streets either to help their families or to escape abuse and violence.

However, Ms. Farha said that youth homelessness is not just about a lack of adequate housing. While the focus is on housing rights, homelessness revolves around a number of human rights issues such as health care and the right to life. Ms. Farha claimed that a human rights approach to youth homelessness embraces the idea that all young people have a fundamental, legal right to be

free of homelessness and to have access to adequate housing. It was her hope that by addressing homelessness through a human rights lens, government bodies will be forced to report on compliance with international human rights laws. Using a human rights framework, Ms. Farha ensured, will help stakeholders involved in this work better equip themselves to tackle homelessness.

Similarly, panelist Naomi Nichols emphasized the need to work directly with homeless youth in order to address the root causes of homelessness and the protections needed. She explained that a human rights approach to housing rights would allow homeless youth to voice their concerns and find effective and accessible remedies when violations occur. Ms. Nichols also spoke about the relations between community housing and policing, explaining that young people who live in institutional housing experience more interactions with the police than their counterparts who live in private housing. The current way community housing is organized, she explained, allows for evictions of tenants who simply engage in behavior that becomes construed as “undermining community safety.” Young people, she stressed, have a higher risk for eviction under these types of policies. However, by ensuring that everyone involved in access to housing—from policy makers to service providers to the youth themselves—are provided with human rights training, Ms. Nichols believes training will help institutionalize a rights-based approach, help rights claimants identify how rights apply to them, and open up avenues to access justice as well as ensure accountability.

At the conclusion of the webinar, Ms. Biss highlighted the need for policy makers and government officials to identify and work with those dealing with youth homelessness, particularly LGBTIQ communities and minority communities facing racial disparities. She explained that law and policies within the youth homelessness framework need to specifically site human rights obligations, produce strategies to combat the issue, and receive adequate funding from governments. She hopes that by using a human rights-based approach, states can build accountability mechanisms and provide complaint procedures for individuals who face rights violations. While Ms. Biss recognized that some aspects of implementing a human rights approach may take time, she argued that governments have immediate obligations to repeal local laws that criminalize or stigmatize homeless youth. Elimination of youth homelessness, she concluded, is a human rights imperative to be achieved without unreasonable delay.

Indian Housing in the United States

October 21, 2016
by Elizabeth Leman

[Martin Marceau](#) and his neighbors were getting sick, and they knew why.

When the Blackfeet Tribal Housing Authority, headquartered in Browning, Montana, constructed their rent-to-own homes between 1979 and 1980, with oversight and funding from the US Department of Housing and Urban Development (HUD), it had foregone concrete foundations as a cost-saving measure and instead used chemically treated wood foundations. Within a few years, this decision exposed residents to toxins like arsenic from the wood, black mold, and dried sewage residue. They began to suffer myriad health problems, including nosebleeds, asthma, kidney failure, and cancer.

Marceau's situation is unfortunately common on U.S. reservations. According to a [report](#) from the U.S. Commission on Civil Rights, approximately forty percent of reservation housing is considered inadequate, compared to six percent nationwide. One in five houses lacks complete plumbing facilities and sixteen percent are without telephone service. Furthermore, due to the chronic shortage of housing on U.S. reservations, 90,000 Indian families are homeless or inadequately housed. Many others have "doubled up" with relatives, such that thirty percent of reservation households are considered crowded, and eighteen percent severely so. In the early 2000s, HUD [estimated](#) that its currently available funding would meet only five percent of the need on reservations and that 230,000 units were needed immediately. Since then, [funding](#) has remained static or has declined.

Poverty plays a large role in this situation: [More than a quarter](#) of Native Americans live below the federal poverty line, the highest rate of any racial group. More importantly, generations of [confused and contradictory federal Indian policies](#) have resulted in over-reliance on public housing. Since *Cherokee Nation v. Georgia* in 1831, the US government has recognized its trust responsibility toward tribes, which it described as "domestic dependent nations;" however, the meaning of that responsibility has [shifted](#) over time. From relocation and the Trail of Tears (early to mid-1800s), to attempts to assimilate Indians into the prevailing culture by allotting them individual plots of land, with the federal government as trustee to prevent alienation (1887–1940s), to termination of tribal governments (1950s), to today's "self-determination" ethos, the relationship between Native Americans and the U.S. government has been historically tumultuous and unstable. Traditional ways of life and modes of self-sufficiency were forcibly ended, compelling dependence on the federal government, only to have the government abruptly decide that Indians should once again be self-reliant. This legacy is still very present in Indians' lives today, perhaps nowhere more clearly than in the housing context.

Low-income Native Americans thus face a [unique quandary](#) in finding safe, affordable housing. Because much of the land they occupy is still held in trust by the U.S. government, neither individuals nor the tribe can use it as collateral on a private loan. Thus, obtaining mortgages to build homes is very difficult, and private investment in developing Indian land is rare. There is

effectively no real estate market on most reservations. [Compounding the problem](#), construction on reservations is expensive because sites are isolated, infrastructure (water lines, plumbing, electricity, roads, etc.) must often be installed before a project can begin, and harsh climates mean a short construction season. Red tape abounds due to the involvement of several federal, as well as tribal [agencies](#). Thus, private homeownership is relatively rare, and public housing remains the major source of housing on many reservations. The U.S. Commission on Civil Rights found that only [thirty-three percent](#) of Native Americans own their own homes, compared to sixty-seven percent of all Americans.

Efforts to improve existing housing stock are stymied by a complex web of legal infrastructure, as Martin Marceau discovered when he filed a class-action lawsuit. Over the course of [nearly ten years of litigation](#) in federal and tribal courts, his legal team faced obstacles like tribal sovereign immunity, exhaustion of tribal remedies, limits on the federal government's trust responsibility, and the statute of limitations. Ultimately, although the Housing Authority argued that HUD had imposed rigorous construction requirements, the agency [was not held responsible](#) for the condition of the homes because the Ninth Circuit found that it had only provided funding. Furthermore, the court [found](#), the current federal policy was intended to "recognize[] the right of Indian self-determination and tribal self-governance" in order to promote "economic self-sufficiency and self-determination for tribes and their members." The case was then filed in the tribal court system. The Blackfeet Tribal Court [found](#) that the Housing Authority was responsible for the homes and had waived its sovereign immunity to suit in the then-effective [Tribal Ordinance No. 7](#). Whether the homes were actually repaired is unclear.

Although Circuit Judge Pregerson in a partial dissent [argued](#) that the government could not ignore its trust responsibility by merely limiting it to "financing," the end result is that there is no remedy for people like Marceau under U.S. law. Although HUD has extended mortgage loan guarantees through its [Section 184](#) program, that program [realistically](#) only helps middle-income Indians who can afford the down payment for a home.

International law may provide some respite—if it is followed. Article 11 of the [International Covenant on Economic, Social, and Cultural Rights](#), for instance, provides for the right to an adequate standard of living, including housing, and for "the continuous improvement of living conditions." It further promises that states parties (of which the US is one) will take steps to realize this right. Article 25 of the [Universal Declaration of Human Rights](#) (UDHR) echoes this right. The UDHR is not directly legally binding, but is recognized as an influential pillar of international human rights law and representative of universal values. Finally, the [UN Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), adopted by the General Assembly in 2007 over four dissenting votes (including the U.S.'s) similarly holds in Article 21 that indigenous peoples have the right "to the improvement of their economic and social conditions," including housing. It also provides that "states shall take effective measures" to ensure improvement. Like the UDHR, the UNDRIP is not legally binding, but rather reflective of shared values and thus part of the field of [customary international law](#).

The U.S. should accept its legal and moral responsibility to ensure that Native Americans have access to a standard of living commensurate with the rest of the population. If domestic law does not provide the appropriate basis for this duty, Congress and the courts should look to the clear

obligation in international human rights law to improve existing housing stock, add new units, and make homeownership more available to low-income Indians.

Canada's Detained Immigrant Children

October 31, 2016
by Arielle Chapnick

Highly renowned for many of its progressive stances on human rights, Canada falters in its detention of immigrant children.

Between 2010 and 2014, around 242 [children](#) were held in Canadian immigration detention each year. By formally detaining immigrant children in facilities that resemble medium security prisons, Canada is violating both international agreements and its own image as a global champion of human rights.

When an immigrant's status is undefined or when Canada Border Services Agency (CBSA) officers are unable to verify an immigrant's identity, immigrants can be [detained](#). According to [Canada's Immigration and Refugee Protection Act](#), an immigrant may be detained without a warrant if the CBSA believes that he or she is a flight risk, a danger to the public, or is unable to prove identity, among other reasons. These guidelines apply to child immigrants as well, though the regulations state that children should only be detained as a [last resort](#).

When children are detained in Canada, the facilities vary by location. In Ontario and Quebec, children are generally detained in one of two [Immigration Holding Centres \(IHCs\)](#), which resemble medium security prisons and are intended for long-term stays. Where long-term IHCs are unavailable, children can be housed in short-term IHCs or [juvenile correctional facilities](#). Short-term IHCs are not equipped for stays of longer than 48 hours and immigrant children sent to [correctional facilities](#) are often intermingled with juvenile offenders. When children are detained with their parents, mothers and children are [separated from fathers](#) and are only able to reunite for short visits each day.

Children in detention facilities have limited access to education, emotional and mental health services, and important [childhood development](#) elements such as free play. The CBSA has only committed to providing [education](#) to children in IHCs after seven days of detention, and all sessions are held on-site, rather than at locations outside the facilities. Additionally, education is often only available for certain age groups and there are no official guidelines that determine the quality or amount of [educational programs](#) available to detained immigrant children. In IHC facilities, children do have access to health care; however, the facilities do not provide vital [mental and emotional assistance](#). While some IHCs provide [outdoor recreation space](#) for children, this is often limited to a yard with a concrete surface and some old playground toys. Indoor stimulation is typically [limited](#) to television. Children within the facilities have difficulty [socializing](#) due to the transient nature of the immigration detention population.

Even short periods of detention have profound effects on Canada's immigrant children. [Studies](#) on immigrant detainees in Canada have found that children experience "high rates of psychiatric symptoms, including self-harm, suicidality, severe depression, regression of milestones, physical health problems, and post-traumatic presentations. Younger children in detention also experience

developmental delays and regression, separation anxiety and attachment issues, and behavioral changes, such as increased aggressiveness.” Family separation compounded with detention only [increases](#) the likelihood of harm. Even after children are released from detention, the mental and emotional [effects](#) are likely to continue.

The [United Nations Convention on the Rights of the Child](#), which Canada has both signed and ratified, states that “[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” Further, the [Convention](#) states that all children have the right to free and compulsory education and that every child has a right to “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Canada has been detaining children who pose no threat to themselves or their communities, separating them from their parents, and failing to provide substantial education as well as opportunities for emotional and mental growth and health care. As such, Canada is violating the terms of the Convention. Canada’s blatant disregard of the international guidelines regarding child detention puts many immigrant children at risk for long term mental and emotional distress.

There are alternatives to detention that should be used for immigrant children and families. Reporting requirements, financial deposits, and supervision [programs](#) all have high levels of compliance and are less costly to the government than detention. Permitting children and families to remain in their communities while their immigration statuses are being investigated will cause less disruption in children’s education, growth, and development. Although Canada has shown a [decrease](#) in detained immigrant children in recent years, the country still fails its detained immigrant children by violating the Convention on the Rights of the Child.

Labor Trafficking in the United States: Limited Victim Relief for Undocumented Immigrants

November 2, 2016

by Audrey Mulholland

Human trafficking is a global crisis that expands across continents and industries. The [U.S. State Department](#) estimates that between 14,500 and 17,500 individuals are trafficked into the United States each year. While a large percentage of human trafficking in the U.S. involves forced prostitution, it also comprises [forced labor](#) in industries such as domestic service and agriculture, where a vast [majority of trafficking victims are immigrants](#).

The United States government has recognized and attempted to address the pervasiveness of human trafficking through the adoption of victim protection laws and immigration relief. However, enforcement of these laws and implementation of these immigration schemes is inconsistent and inadequate.

Undocumented immigrants represent a community particularly vulnerable to labor trafficking. According to a [comprehensive research report](#) by the Urban Institute, 29 percent of labor trafficking victims entered the U.S. without authorization. Of the victims who were initially authorized to enter the U.S. under temporary visas, 69 percent were unauthorized to be in the U.S. at the time they escaped from trafficking. In [numerous cases](#) of labor trafficking, victims were smuggled across the U.S.-Mexico border. For example, in [June 2016](#), an Ohio man was sentenced to more than 15 years in prison for smuggling young Guatemalans into the United States and forcing them to work on egg farms in Ohio. The victims were “loaned” the transportation and smuggling fees, and were [required to work off their debt](#) at the egg farm by working twelve hour days, six to seven days a week.

Labor trafficking victims are usually recruited in their home country under false promises of better work and a better life in the United States. Some pay [recruitment and smuggling fees](#) that are higher than their home country’s per capita annual income. Once they arrive in the United States, they experience force, fraud, coercion, violence, extortion, and manipulation. Many undocumented labor trafficking victims who are able to escape are [placed in detention centers](#) or deportation proceedings because of their immigration status. In practice, there are limited opportunities for victim relief.

The United States has long recognized that human trafficking is a violation of basic human rights, and has presented itself as a global leader in the anti-human trafficking effort. The U.S. publishes an annual [Trafficking in Persons \(TIP\) Report](#), evaluating countries’ anti-human trafficking efforts in order to encourage global action. The U.S. is a party to the [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#), which supplements [the United Nations Convention against Transnational Organized Crime](#). This Trafficking Protocol requires parties to criminalize and

penalize human trafficking and implement victim protection measures, including providing housing, employment opportunities, and temporary legal status.

In 2000, Congress also adopted the [Trafficking Victims Protection Act \(TVPA\)](#), and frequently updates and reauthorizes it. This Act [establishes](#) human trafficking as a federal crime, stipulates mandatory restitution for victims, and introduces the T-visa, which provides victims of human trafficking and their family members temporary U.S. residency. Additional forms of victim relief include the U-visa and Continued Presence. The U-visa is available to immigrants who have been victims of crime or suffered abuse, while [Continued Presence](#) provides a temporary immigration status for trafficking victims to assist in the investigation of their case. In addition to temporary immigration relief, the T-visa and U-visa provide victims an opportunity to apply for lawful permanent residence and employment authorization.

While the laws set forth in the United States provide various forms of relief for victims, they are limited in scope and in practice. The United States has set statutory limits on the number of visas available to trafficking victims, providing only 5,000 T-visas and 10,000 U-visas [annually](#). These limits narrow the potential for victim relief. However, the data of immigration relief granted annually to trafficking victims demonstrates an even larger concern. In 2015, the [Department of Homeland Security](#) granted Continued Presence to 173 trafficking victims, T-visas to 610 victims and 694 family members, and U-visas to 29 victims of trafficking. These numbers are staggeringly low when compared with the estimated [14,500 to 17,500 victims](#) trafficked into the United States each year, in addition to those trafficking victims already present in the United States.

The limited number of visas and Continued Presence requests granted are a result of the many barriers to applying for these forms of relief. Continued Presence [requires](#) application by a law enforcement agent, while T-visas and U-visas require complete cooperation with criminal investigations. [NGOs report](#) that in many cases, law enforcement fails to support these applications by providing evidence of victim cooperation. This delays immigration relief and victim access to federal benefits. When the victims are undocumented, relief is even more difficult to obtain. [Law enforcement officials](#) frequently do not pursue labor trafficking cases due to lack of evidence, and are reluctant to assist victims in obtaining immigration relief. Undocumented immigrants who are victims of labor trafficking are often afraid to confront law enforcement because of their immigration status, and are often unaware of their rights and available resources. This fear is compounded by the fact that if visas are not granted, there is a high risk of deportation.

Human trafficking is an expansive problem within the United States, of which labor trafficking is a significant component. While the United States has established useful policies, they provide limited practical relief. The extent of labor trafficking in the United States exceeds the relief currently provided. Enforcement and expansion of the T-visa and U-visa programs is a necessary first step. Training of law enforcement officials to recognize labor trafficking and provide victim support would increase the efficacy of these programs. There also needs to be an effective dissemination of the resources available to victims. The expansion of relief programs would encourage more victims to seek assistance, exposing and eliminating labor trafficking and the exploitation of undocumented immigrants.

Peru Closes Investigations of Fujimori Era Forced Sterilizations

November 9, 2016

by Chelsea Lalancette

On June 28, 2016, Peru's public prosecutor [announced](#) that former president Alberto Fujimori and his health ministers bear no responsibility for the forced sterilizations of thousands of women in the 1990s, effectively closing a high profile and politically influential human rights case.

Women's rights NGOs charged the Peruvian state with human rights violations for the forced sterilizations of numerous poor, rural, Quechua-speaking women under a government [family planning program](#). The program had the reported goal of alleviating poverty, and in [total](#) it resulted in between 260,000 and 350,000 people being surgically sterilized between 1996 and 2000. To date, 2,074 women have [come forward](#) to testify that they were sterilized against their will, and eighteen women are known to have died from complications of the procedure. The [stories](#) of women who have come forward include being forcibly anesthetized and sterilized after giving birth, being lured to the hospital with food or medicine and then physically restrained, and being threatened with jail or fines for not undergoing sterilization. Despite evidence that doctors and clinics were pressured to meet government quotas for sterilization, the prosecutor [declared](#) that the forced sterilizations were not part of a state policy, but rather isolated acts by individual doctors. The verdict came as a major disappointment to Peruvian and international human rights organizations that had been organizing around the case since it was filed at the Inter-American Commission on Human Rights (IACHR) more than a [decade](#) ago. Since that time, victims and advocates have watched with frustration as the case has gone back and forth between the IACHR and the Peruvian authorities without any resolution.

In June 1999, a number of women's rights organizations [filed](#) a petition with the IACHR on behalf of Ms. Maria Mamerita Mestanza Chavez, who died in 1996 after undergoing a tubal ligation surgery. Ms. Mestanza was the mother of seven children and was under constant [pressure](#) to undergo the procedure from authorities who threatened to jail her if she had more children. She was not warned of the risks of the surgery and when she experienced complications following the surgery she was refused treatment. The petition [alleged](#) that the Peruvian state, in its treatment of Ms. Mestanza, violated rights to life, humane treatment, and equality before the law set forth in Articles 1, 4, 5, and 24 of the [American Convention on Human Rights](#) as well as rights equal protections and freedom for women, especially protections for vulnerable populations and freedom from violence set forth in Articles 3, 4, 7, 8, and 9 of the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#). The petition additionally alleged violations of states' obligations to non-discrimination and assurance of women's health rights as set forth in Articles 3 and 10 of the [Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights](#), and violation of states' obligations to provision of women's health care including family planning, and non-discrimination against rural women as set forth in Articles 12 and 14(2) of the [Convention on the Elimination of](#)

[All Forms of Discrimination Against Women](#) (CEDAW). Peru is party to all four of the named treaties.

In August 2003, Peru reached a friendly [settlement](#) with the IACHR in which it agreed to indemnify Ms. Mestanza's family, investigate all other alleged human rights violations under the family planning program, and punish all deemed to be responsible, including, if necessary, the state. In 2009, the IACHR expressed concern to Peru regarding the government's failure to investigate its involvement in human rights violations, which caused Peru to [open](#) investigations in 2011. However, the Peruvian prosecutor [closed the investigations](#) in January 2014 for lack of evidence to support the claims. Peruvian organizations filed another complaint with the IACHR within a number of days, and in April 2014 the IACHR [ordered](#) the public prosecutor of Peru to conduct an exhaustive investigation into the alleged systematic and compulsory nature of the sterilizations. The Peruvian government did reopen the investigation in July 2015, ending with the most recent closure on June 28, 2016.

Even in the absence of convictions, news and protests surrounding the case have had major political [implications](#) in Peru and forced sterilizations were a major theme in the most recent election. The accused former president, Alberto Fujimori, was [convicted](#) of crimes against humanity by a domestic tribunal in 2009. He is currently [serving jail time](#) for authorizing the use of death squads, the massacres of civilians, and the disappearances of students during a war between the government and leftist insurgents which killed 70,000 people during the 1990s. However, many Peruvians still admire him for [bringing stability](#) to the country in a violent time. Fujimori's daughter Keiko Fujimori ran for president in Peru's most recent election and narrowly [lost](#) to Pedro Pablo Kuczynski after thousands [marched](#) against her. Protesters sought to remind Peruvians of the indignities they suffered under Alberto Fujimori, holding signs which read "Fujimori never again" and chanting "we are the children of the villagers who you couldn't sterilize" as they marched.

Violence Against Land Activists in Honduras

November 10, 2016

by Haaris Pasha

The horrific assassination of acclaimed indigenous rights activist [Berta Cáceres](#) earlier this year shed a spotlight on the tragic situation that has gripped Honduras.

Land, environmental, and indigenous rights [activists continue to be killed](#) with impunity over land and resource disputes. On October 18, 2016, Jose Ángel Flores and Silmer Dionicio George, members of the Unified Peasant Movement (MUCA), joined a list of over 120 murders since the military coup d'état to overthrow President Manuel Zelaya shook the country in 2009. These murders have arisen primarily from [the intersection of business interests](#), predominantly in the extractive industries, and communities who claim their rights to the land have been taken improperly and without their consent. According to Asier Hernando, Regional Deputy Director in Latin America and the Caribbean for Oxfam: “the dynamics of extractive industries fail to respect the right to free, prior and informed consent as these businesses undertake large-scale projects without authorization from the communities, triggering widespread violence against citizens who oppose these projects in their territories.” Despite [international pressure](#), the government of Honduras remains steadfast in its unwillingness to legitimately investigate these murders.

As a UN member state and a signatory to both the UN International Covenant on Civil and Political Rights ([ICCPR](#)) and the American Convention on Human Rights ([ACHR](#)), Honduras is obligated to protect the right to life of all persons and prevent, punish, and remedy violations of such right. Thus, a significant part of Honduras’ obligation to protect the right to life, under international mechanisms including the ICCPR and the ACHR, requires the government to [conduct fair investigations](#) and to administer swift and impartial justice. The fair and expeditious administration of justice deters and disincentivizes future violations of human rights. It signals to perpetrators that their egregious conduct will not be tolerated.

However, the judicial system’s ineffectiveness in bringing perpetrators to justice has only caused the situation to metastasize. In 2014, [fewer than four percent of murder cases resulted in a conviction](#). A part of the issue seems to stem from a lack of evidence due to inadequate reporting of crimes. Although Honduras has strong [witness protection laws](#) on its books, these laws are rarely implemented. Witnesses seldom come forward for fear of reprisal from perpetrators. This issue only compounds the difficulty in bringing quick and just convictions.

Widespread corruption in the police force has also exacerbated the situation, pitting prosecutors and criminal justice administrators against corrupt police officers. The [murders](#) of security advisor Alfredo Landaverde in 2011 and top anti-drug prosecutor Orlan Chavez in 2013 were allegedly arranged by the very police officers responsible for their protection. [According to the Associated Press](#), “Chavez was known as a highly effective, professional prosecutor” and Landaverde was an “outspoken critic of corruption in Honduran law enforcement.” In 2009, a conversation between paid assassins and two police officers arranging the murder of another top anti-drug prosecutor Julian Aristides Gonzalez for \$20,000 was caught on tape.

[According to Amnesty International](#), the clear deficiency within the criminal justice system has resulted in “pervasive impunity for human rights abuses.” Honduras should ensure that it does its part to abide by obligations under both the international covenants as well as its domestic laws. The right to life is a [fundamental human right](#). The government can and should do more to protect citizens.

IACHR: Financial Crisis Averted, for Now

November 11, 2016

by Isaac Morales

Earlier in the year, the Human Rights Brief reported on the financial crisis that the Inter-American Commission on Human Rights (IACHR) was experiencing.

The financial crisis forced the Commission to cancel the hearings it holds each fall in its headquarters in Washington, DC. However, in response to the outpouring of concern for the lack of access to justice, the Commission received additional funds and it is now able to resume some of its regular activities.

In a September 30, 2016 press release, President of the Commission, James Cavallaro, stated that “the severe financial crisis [the Commission] went through in 2016 has been overcome . . . thanks to the special financial efforts done by Member States and other donors to help solve the urgent problem.” However, the Commission also expressed concern over its underlying budgetary problem, where its regular annual budget of \$5.3 million dollars is “insufficient to comply with the important and delicate mandate that the States have given us” Having overcome the financial crisis only means that the Commission is able to comply with its basic duties, such as complying with contracts and renewing staff employment.

To remedy the budget problem, the IACHR and the Inter-American Court of Human Rights (IACourtHR) agreed on a joint proposal for adequate funding to work towards a budget that “can guarantee the sustainability and predictability of the available funds for the two organs of the system” In submitting the joint proposal, the President of the Commission Cavallaro emphasized that the increased budget was not the ideal, but rather only what the Inter-American system requires to function properly to guarantee its financial sustainability and prevent another financial crisis next year.

Additionally, the Commission received a half of a million dollars from the United States on October 14, 2016, which has enabled it to hold an Extraordinary Period of Sessions on December 9 and 10, 2016, in its Washington, DC headquarters. These sessions will allow the Commission to hold activities that were postponed or temporarily suspended as a result of the financial crisis from which it recently emerged. The Extraordinary Period of Sessions will supplement the 159th Ordinary Period of Sessions, which Panama offered to host and finance during the financial crisis, but will be limited to hearings on the United States or Canada, and must be thematic in nature or at the merits stage. So, as IACHR Vice-President stated, while “[t]he financial structural deficit is still our main challenge[,] we identify a sincere disposition to . . . have a long lasting solution.”

The Path Forward: Colombia and FARC Peace Accord

November 21, 2016

by Audrey Mulholland

In Cartagena, Colombia, on September 26, 2016, Colombian President Juan Manuel Santos signed a historic [peace accord](#) with Rodrigo Lodoño (“Timochenko”), the leader of the Revolutionary Armed Forces of Columbia (FARC).

The accord was supposed to mark the end of fifty-two years of [bloody warfare](#) between the Colombian government and the guerilla rebel group. The war killed around 220,000 and displaced around seven million. However, the accord was short lived, as only a week later on October 2, 2016, Colombian voters unexpectedly rejected the peace deal in a [referendum](#). It was rejected on a narrow margin, with 50.21 percent voting “No” and 49.78 percent voting “Yes.” Many of the [voters](#) who rejected the accord were unsatisfied with its mild punishments of those who committed atrocities, including FARC leaders who confessed to war crimes. However, in many Colombian [provinces](#) hit hardest by violence and conflict, the vote was overwhelmingly “Yes.” After weeks of expeditious and determined renegotiation, President Santos announced on November 12, 2016 that a new agreement was reached. The path towards peace is still not an easy one for Colombia. As President Santos pursues ratification of the new agreement in Congress, he must convince his country and the human rights community of its merits while maintaining the fragile ceasefire and temporary peace.

Since the 1950s, Colombia has been fighting a [war](#) with paramilitary groups, drug syndicates, and left-wing guerilla groups such as FARC and the National Liberation Army (ELN). Throughout the course of this conflict, numerous atrocities have been committed by all sides. According to [Human Rights Watch](#), the guerilla groups have “killed and abducted civilians, carried out disappearances, engaged in widespread sexual violence, used child soldiers, and subjected combatants to cruel and inhumane treatment.” [Colombian armed forces](#) are also guilty of thousands of “false positive” cases, where civilians were lured to remote locations and then killed by the Colombian armed forces in order to increase the number of reported “combat deaths.” For [many](#) human rights activists and Colombian citizens, the initial peace accord did not satisfactorily hold perpetrators on both sides accountable for their crimes.

The initial [peace agreement](#) provided for the disarmament of FARC’s 6,800 troops, 8,500 militia, and their concentration into twenty-three restricted and controlled areas termed “normalization zones.” It required FARC to eradicate coca fields, the foundation of the cocaine business, and to clear landmines. The agreement also provided a path for FARC to become a recognized [political party](#) within Colombia. It would have granted ten seats in Congress, with voting rights beginning in 2018. FARC guerillas who [confessed](#) their crimes would only be sentenced to two to eight years of community service and face restricted liberties such as limited movement. The [agreement](#) also did not stipulate or pursue any measures to punish members of the Colombian armed forces for their crimes. The vote against the accord manifested the dissatisfaction of the Colombian electorate

with these provisions and made the road ahead uncertain and unsteady. However, it also provided a unique opportunity to address the impunity in the first accord.

Colombia is a party to the [Rome Statute](#) that established the International Criminal Court (ICC). While the Rome Statute applies to cases under the jurisdiction of the ICC, it also serves as a model for other justice systems and outlines the concepts and standards of international humanitarian law, as laid out in the Geneva Conventions. [Article 78](#) of the Rome Statute stipulates that the gravity of the offense should factor into the determination of criminal sentences. Within the original provisions of the Colombia-FARC peace accord, these considerations were woefully unbalanced. While total amnesty is not granted, the mild consequences for war crimes acted more like a slap on the wrist than punishment for systematic atrocities. Another significant concern with the original agreement was the vaguely defined concept of “command responsibility.” Under the agreement, many military commanders could escape responsibility for crimes committed by their subordinates if they claimed they did not know about them. This contradicts [international standards](#) of “command responsibility,” set forth in Article 28 of the Rome Statute, which dictates that a military commander is responsible for crimes committed by his or her forces when the commander had reason to know or should have known about those crimes. These inconsistencies with international law and human rights standards would have created a concerning precedent of lenient sentencing for war crimes.

Upon the rejection of the initial peace agreement, President Santos and FARC leaders remained [determined](#) to come to a renewed agreement. President Santos worked with the “No” camp, led by former Colombian President Álvaro Uribe. Uribe has been an [outspoken voice](#) against the original accord due to its minimal punishment. After six more weeks of negotiations, a modified peace accord was reached. The new peace accord addresses some of the deficiencies and criticisms of the first. While the [agreement](#) still does not require jail time for those convicted of war crimes, it tightens the restriction on movement to a smaller area. It also [clarifies](#) the ambiguous concept of “command responsibility” so that it is more consistent with international standards. The [new accord](#) also provides for the potential prosecution and punishment of those who committed “false positive” killings by harshly punishing war crimes committed for “personal enrichment.” The new accord still provides ten congressional seats for FARC and allows those found guilty of war crimes to hold office after they have served their sentence.

While this new accord does not fully satisfy all human rights concerns, it is certainly an improvement on the first. President Santos is under pressure as he seeks to approve the modified accord while temporary peace holds. Just [last week](#), two FARC guerillas were killed in combat with security forces, demonstrating the urgency of reaching an agreement and the increasing instability of the ceasefire. While this was an isolated incident, it serves as a reminder to Colombia that the alternative to a peace agreement is an impending return to war. There has not yet been much response to the new agreement from the international human rights community critical of the initial agreement or from President Uribe of the “No” movement. President Santos has decided to bypass the referendum and will have Colombia’s Congress [ratify](#) the new deal. This decision may cause controversy among Colombia’s staunch opponents of the peace accord. However, for President Santos, it is the quickest way to secure and ensure the already-fragile peace.

In the Shadow of the Games: Rio de Janeiro's Residents with Disabilities Struggle for Social Inclusion

November 23, 2016
by Arielle Chapnick

Following the 2016 Paralympic Games, Rio de Janeiro's disabled citizens saw a new hope for improvement in their daily lives due to new [legislation](#).

Unfortunately, this promise fell short. Despite the greater recognition of disabilities and laws against discrimination based on disability, few disabled citizens have seen improvements.

Traveling throughout Rio de Janeiro with any type of physical disability ranges from difficult to nearly impossible. In a country where [twenty-four percent](#) of the population has some form of physical disability, accommodations for Rio's disabled population are limited. Crumbling [sidewalks](#) pitted with holes and tree roots make travel by wheelchair nearly impossible. Additionally, while [buses](#) are required by law to have wheelchair lifts, many bus drivers will not stop for wheelchair-bound patrons to board. The city has only "one functional road crossing for the [blind](#)." Even when some areas have been made more wheelchair accessible, [lack of maintenance](#) make the improvements virtually useless.

Unable to navigate their cities and without adequate accommodations, much of Brazil's disabled population remains unemployed, unable to achieve higher education, and nearly invisible in the public sphere. Only [two percent](#) of the millions of working-age disabled Rio de Janeiro citizens are employed, and only [seven percent](#) have completed higher education. A startling "[eighty percent](#) of disabled people in Brazil didn't feel respected as citizens of the country." This is due to the inability to find employment and navigate independently.

The 2016 Paralympic Games brought some improvements to the city. However, it was mostly the areas around the Olympic and Paralympic facilities that were made more [accessible](#). Paralympic venues boasted [accommodations](#) such as wheelchair rentals, power chair charging stations, and relief areas for guide dogs. The city created new, fully accessible [bus lines](#) that served the Olympic and Paralympic arenas. While some roads and sidewalks have been refurbished for wheelchair use, they can be [too steep](#) for a disabled person to climb by themselves. Even the [access ramp](#) to the new soccer stadium was excessively steep.

Legislatively, Brazil appears to be very inclusive of people with disabilities. On July 6, 2015, Brazilian President Dilma Rousseff signed the [Disability Inclusion Act](#). The act provides "priority treatment in public services for people with [disabilities](#), and focuses on public policy in such areas as education, health, work, urban infrastructure, culture, and sports." The law mandates a [stipend](#) paid to people with disabilities entering the job market, and a ten percent [quota](#) "for

persons with disabilities to study at higher and technical education institutions.” Anyone found guilty of [discrimination](#) against persons with disabilities can face one to three years in jail.

While the Disability Inclusion Act appears to increase access for disabled persons throughout Brazil, Rio de Janeiro’s citizens have seen limited improvements. [Weak monitoring](#) and enforcement of the Act leaves citizens without their promised benefits. The country’s current [financial crisis](#) due to low oil prices has slowed its list of future projects.

In failing to enforce its Act, Brazil is violating the [United Nations Convention on the Rights of Persons with Disabilities](#), which it ratified in 2008. The Convention requires all ratifying states to make “[b]uildings, [roads](#), transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces” accessible to persons with disabilities.”

In failing to enforce the Act and ignoring the Convention’s guidelines for accessibility and inclusion, Rio de Janeiro’s government unjustly denies millions of its disabled citizens their legally-mandated benefits. New programs, such as training public bus drivers to serve disabled passengers or providing incentives for businesses to hire persons with disabilities, could increase independence and visibility. Further, partnering with nonprofit organizations that serve people with disabilities could ensure that the government provides assistance where it is needed the most. Small changes such as repairing sidewalks and improving public transportation access could mean enormous improvements for people throughout Rio de Janeiro. However, if the government continues to flaunt its Olympic and Paralympic achievements at the expense of the disabled population, it is unlikely that meaningful improvements will come quickly.