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# Human Rights Violations in Venezuela: A Worsening Crisis

October 18, 2017  
by Andrew Johnson

Venezuela is faced with a humanitarian crisis that affects a large portion of its population. A [shortage](#) of medicines and other medical supplies have made it extremely difficult for many citizens to obtain basic health and medical care. Additionally, a [shortage in food](#) has made the purchasing of food so challenging that many Venezuelan citizens cannot obtain the basic necessities to survive. The Venezuelan government has compounded the crisis by failing to implement effective [policies](#) to address these shortages. Furthermore, the government has denied that a [humanitarian crisis exists](#), and it has violently suppressed any form of protest against the [government](#).

Although the Venezuelan government has repeatedly denied the existence of a humanitarian crisis, supply [shortages](#) have worsened in recent years. An unofficial 2016 [survey](#) conducted by more than two hundred doctors, found that seventy-six percent of public hospitals do not have basic medical supplies, which is an increase from an unofficial [survey](#) conducted in 2014, which found that fifty-five percent of hospitals lacked basic medical supplies. Not only is there a failure to provide necessary supplies, but the government fails to provide accurate or comprehensive health care statistics, which makes it difficult for NGOs and other international actors to address the situation.

The food shortage in the country has severely affected middle and low income households. [Long lines](#) form outside of supermarkets where goods are scarce, in high demand, and subject to government-set prices. A 2015 [survey](#) shows that eighty-seven percent of Venezuelans who were interviewed have difficulty buying food. Several [doctors](#) and community leaders have said that signs of malnutrition are becoming evident among citizens of Venezuela, especially children.

The government has exacerbated the humanitarian [crisis](#) by violently suppressing protestors who speak out against the government. Since the protests began, at least [125 people](#) have been killed by clashes with the police. Moreover, the government arbitrarily [arrests](#) protestors and activists who speak out, eliminating any opposition to the government.

In 1978, Venezuela ratified the [International Covenant on Economic, Social, and Cultural Rights \(ICESCR\)](#) and the [International Covenant on Civil and Political Rights \(ICCPR\)](#) legally binding it to protect its citizen's right to adequate food, health, liberty, and freedom of expression. The UN High Commissioner has called for an [investigation](#) into the Venezuelan government for possible crimes against humanity. The United Nations human rights chief stated that arbitrary detentions, excessive force, and mistreatment of detainees that in some cases amounted to torture could constitute [crimes against humanity](#). Having ratified the [Rome Statue of the International Criminal Court \(ICC\)](#) in June 7, 2000, Venezuela is legally bound by Article 7 to not commit such offenses that amount to crimes against humanity and is also subject to the [jurisdiction](#) of the ICC.

The right to health is delineated in Article 12 of the [ICESCR](#). Section 1 of [Article 12](#) states that everyone has the right to the highest attainable standard of physical and mental health. The Covenant expresses the steps that must be taken by states in order to uphold [Article 12](#). Most relevant to the situation in Venezuela is [Section 2\(d\)](#), which says states must create conditions that assure proper medical service and medical attention. The fact that hospitals lack supplies that are required simply to create sanitary conditions gives evidence that Venezuela is violation of Article 12 of the [ICESCR](#).

Article 11 of the [ICESCR](#) states that everyone has the right to adequate food. Furthermore in Section 1 it expresses that states must take all appropriate steps to ensure the realization of the right to food. With so many people unable to afford the [scarce food](#) that is available, it is clear that the right to adequate food is being violated. Moreover, the fact that the [Venezuelan government](#) has not reached out to the international community or taken the proper steps to receive aid, shows they have not taken all appropriate steps to ensure the rights of its citizens.

Everyone has the right to freedom of expression as expressed in Article 19 Section 2 of the [ICCPR](#). Police forces who arbitrarily arrest protestors with the purpose of silencing criticism directly violate the right to freedom of expression. Furthermore, it violates Article 9 Section 1 of the [ICCPR](#), which states that everyone has the right to not be arbitrarily arrested. It is clear by the violent suppression of protests that Venezuela is in violation of Article 9 and 19 of the ICCPR.

To begin [alleviating](#) the humanitarian crisis in Venezuela, there needs to be public pressure on the Venezuelan government to implement and enforce effective policies that address the shortage of medical supplies and food. It is unlikely the Venezuelan government will reach out to the international community for aid, so international aid organizations should make public offerings of food and medical aid. Finally, the UN should launch an investigation to see if the Venezuelan government has committed crimes against humanity pursuant to [Article 7 Section 1\(e\) of the Rome Statute of the ICC](#), which describes crimes against humanity as widespread imprisonment and deprivation of liberty. Pressuring the government and investigating its practices are the first steps to bringing justice to the Venezuelan people.

# Death in Detention

October 19, 2017

by Aya Badr

[U.S. Immigration and Customs Enforcement \(ICE\)](#) arrests [increased](#) by approximately 40% from 2016, 26% of which were not criminal. The startling increase of deaths in custody is particularly worrying. Of the eighteen deaths in ICE's custody from 2012-2015, sixteen were due to a lack of proper care and [found to be preventable](#). Recently, there have been more cases of preventable immigration detainee deaths and they should not go unnoticed. The continuation of this issue is two-fold. The first part stems from the new deportation priorities, and the second and main concentration is the treatment – or lack thereof – of detainees.

When President Obama was in office, he instituted deportation policies which prioritized detaining those who were [“threats to national security, border security, and public safety.”](#) Under the Obama administration, detaining those convicted of misdemeanors, for example, was low priority compared to detaining convicted gang members. However, President Trump issued an order [rescinding](#) all previous policies related to former President Obama's deportation priorities. Instead, these new policies target a [“much broader set of unauthorized persons for removal and empower individual enforcement officers with broad discretionary authority to apprehend and detain any immigrant believed to be in violation of immigration law \[...\]”](#) This change creates a shift to a much wider focus on removing all immigrants who are [“\[...\]believed to be in violation of immigration law\[...\]](#)”

According to a [report](#) by [Human Rights Watch \(HRW\)](#), “170 people have died in custody since 2003.” One [example](#) of a patient who did not receive proper care is Raul Ernesto Morales Ramos, who died of organ failure with signs of widespread cancer. Throughout his time in detention, Mr. Morales-Ramos [begged for care](#), yet did not receive any until a month before he died. According to experts, he had [symptoms of widespread cancer](#) for at least two years. Another preventable death was that of [Tiombe Carlos](#), who committed suicide after a failed previous attempt. The ICE staff was aware of her deteriorating mental health condition, but [failed to act](#). The pattern continues; just this year, [six](#) men and women reportedly died because of improper care in immigration detention.

[ICE](#) facilities are meant to abide by the [INS Detention Standard, which](#) holds that [“All detainees shall have access to medical services that promote detainee health and general well-being.”](#) The standard includes a section, [“Sick Call”](#), that outlines the opportunity detainees have to request healthcare services and the standard of care facilities are required to meet. In addition to the [INS Detention Standard](#), ICE facilities are bound by the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and [the UN Principles of Medical Ethics](#); both protect the rights of detainees and are ratified by the United States. [Article 10](#) of the [ICCPR](#) indicates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Additionally, according to the [first principle](#) of [the UN Principles of Medical Ethics](#), health personnel are required to provide prisoners “[...] with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”

Based on the data, not only are ICE facilities taking an approach that is the opposite of that outlined by the INS Detention Standard, but they also break international codes. For Morales-Ramos to reach the point of begging for treatment – and in turn his life – is depriving him of “[...]respect for the inherent dignity of the human person.” Furthermore, one can reasonably assume that a person who is not detained would not have had to beg, or wait until one month before his or her death for treatment. By both allowing Mr. Morales-Ramos to reach the point of begging for care then not providing any care until two months before his death, the facility violated both Article 10 of the [ICCPR](#) and the first principle of [the UN Principles of Medical Ethics](#). Similarly, if staff acted after Ms. Carlos’s first suicide attempt, her mental health could have improved. Instead, measures that an expert described as [“woefully inadequate”](#) were taken.

If there are not enough medical resources to safely detain the [“broader set of unauthorized persons”](#) indicated in Trump’s deportation policy, then either less people should be detained at a given time or measures to improve medical treatment of detainees should be implemented. The US government should hold facilities accountable for violating [the INS Detention Standard](#), the [ICCPR](#) and [the UN Principles of Medical Ethics](#). This would include performing more investigations to both account for cases, and to find the source of the inadequacy of medical treatment in the facilities. The question is not whether [ICE](#) facilities have a duty to prevent these deaths; rather, when will the government enforce the standards to uphold this duty.

# New Legislation to Prevent Online Sex Traffickers from Slipping Through the Electronic Cracks

October 25, 2017  
by Ridhi Shetty

The National Center for Missing and Exploited Children reported that in 2016, [one in every six of the 18,500 runaways](#) reported in the United States were likely victims of sex trafficking. In addition to using physical venues, traffickers also coerce victims through [social media and other online platforms](#). Online media has frustrated efforts to decrease sex trafficking in the United States as unsuspecting minors with greater access and needs are easily drawn by predatory use of these platforms. The Stop Enabling Sex Traffickers Act of 2017 (SESTA) offers a way to decrease immunity for traffickers' conduct online.

Articles 34 and 35 of the [Convention on the Rights of the Child](#) protects children from any form of sexual exploitation or trafficking. The [United States Department of Homeland Security](#) is among government bodies that categorize sex trafficking as a form of slavery in the United States. Thus, sex trafficking is further prohibited under the [Universal Declaration of Human Rights](#) and the [American Convention on Human Rights](#), both of which condemn cruel or degrading treatment and prohibit slavery in any form.

The [Communications Decency Act of 1996](#) (CDA) prohibits anyone from knowingly allowing use of interactive computer services to send communications that are obscene or connected to child pornography. However, Section 230 of the CDA includes a [provision to protect users and providers](#) who do not publish such content themselves from penalty. Accordingly, [the First Circuit held that the CDA protected Backpage.com](#) (hereby "Backpage") from liability for violating anti-trafficking legislation because the CDA gave providers like Backpage broad protections to preserve First Amendment rights. SESTA [may potentially fill gaps in the CDA's language](#) that courts are obligated to abide by and that allow traffickers to ensnare minors through interactive online platforms such as Backpage.

Introduced by Senator Rob Portman (R-Ohio) with twenty-eight bipartisan co-sponsors in response to an investigation of the use of Backpage's classified advertisements, SESTA amends the CDA by specifically including facilitation of child sex trafficking as a violation of the CDA. SESTA [clarifies that the CDA does not extend protection](#) to providers whose online forums help traffickers advertise sexual services to be rendered by victims. It states that nothing in the CDA bars "enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sex trafficking." Further, SESTA adds language to include facilitation within the definition of participating in a venture, so that online platforms can be legally complicit in sex trafficking.

Currently, the greatest challenge to prosecuting electronic sex trafficking practices is that courts must apply the language of the CDA and therefore must legally recognize that Backpage and

similar platforms are merely hosts not liable for their users' postings. Senator Ron Wyden, who co-authored the CDA, argued that the CDA does not allow for any violations of criminal law, including those against trafficking victims, as the law's language currently stands. However, Senator Portman has stated that the courts' rulings demonstrate that electronic practices encouraging sex trafficking cannot be prosecuted unless the law's language itself is changed so that courts are no longer bound by semantics. The First Circuit's ruling exemplifies how adjudication of sexually predatory practices on Backpage is narrowed to how protections are defined and can be interpreted under the CDA, regardless of ethical or statistical grounds.

Critics of SESTA find that it may [compromise a free Internet](#) and could wrongfully implicate other platforms whose providers willfully choose not to police the conduct on their platforms for fear of "knowing" and thus being complicit in users' activities. However, SESTA does not alter definitions of terms such as "knowingly," so the reference to anti-sex trafficking laws and liability for facilitation provides greater coverage for victims without penalizing providers who are otherwise unaware that they must report criminal conduct under existing laws. Further, [three noteworthy technology and media entities](#) have expressed support for SESTA: Oracle, 21<sup>st</sup> Century Fox, and Hewlett-Packard maintained that SESTA would help the technology industry fulfill its responsibility to specifically hold traffickers accountable.

SESTA is a necessary piece of legislation because although the government has a great interest in protecting online communications under the First Amendment, the government also has an equal if not greater interest in reducing child sex trafficking to come into compliance under both international and regional human rights treaties. Because courts are restricted in their interpretation, current laws have been insufficient to prevent traffickers from slipping through the cracks that the CDA has permitted to form online. SESTA could fill this void without compromising constitutional rights by simply reaffirming that laws protecting communications do not do so at the expense of protecting minors online.

# The Continued Struggle for Indigenous Land Rights in Brazil

October 30, 2017

by Catherine Perrone

Over the last 15 years, [Brazil](#) has seen an increase in land disputes between its indigenous populations and rural ranchers. Brazil's indigenous populations have experienced a massive amount of physical and political violence because of these conflicts. Essentially, Brazil's indigenous populations are facing a land rights crisis. Not only is the government refusing to take any concrete action to protect their indigenous populations, but the government is, in reality, causing harm.

Under both national and international law, Brazil is obliged to protect its indigenous populations from violence and to secure their land rights. Under [Brazil's Constitution](#), its indigenous populations have a right to their ancestral land. According to the [United Nations Declaration on the Rights of Indigenous Peoples](#), states must prevent any unlawful seizure of their land, territories, or resources. Under [ILO Convention 169](#), Brazil must protect its indigenous populations as well as penalize any effort to seize their land or to strip away their rights. Brazil, therefore, is legally required to protect all aspects of its indigenous territory, but they also are legally required to maintain equal rights and treatment between its indigenous population and anyone in the agro-business itself.

The National Indian Foundation (FUNAI) is Brazil's governmental body in charge of handling policies about Brazil's indigenous populations. FUNAI is the primary investigative body for indigenous rights cases as well. President Temer slashed FUNAI's budget by almost half this [past year](#). Temer, unpopular and amidst a deep corruption scandal, has attempted to enact policy that would be dangerous for indigenous peoples because he has sought support from the politically powerful agro-businesses. The Brazilian [supreme court](#) recently ruled against "marco temporal" a standard that would have likely dismissed over [90% of indigenous land dispute claims](#). The "marco temporal" [standard](#) would reject any indigenous land claims unless there is proof that indigenous communities occupied the disputed territory before October 1988, the date Brazil ratified its current constitution. This has not deterred any violence, however, nor inspired any state action. Just last month there were [reports](#) of a murder investigation into the killing of members of an uncontacted tribe in the rural area in the Amazon near Columbia. Attacks on uncontacted, remote indigenous populations could spell the end of an entire culture.

In June, the United Nations Human Rights Office of the High Commissioner (OHCHR) released a [statement](#) about how the rights of Brazil's indigenous populations are in danger. The OHCHR found that Brazil's Congressional Investigative Commission wants to strip FUNAI of their responsibility for titling and protecting indigenous lands. Further, the Congressional Investigative Commission released a report that accuses the UN of trying to influence Brazil's national policies, claiming that the ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples are at odds with Brazil's constitution. The UN is in contact with Brazil's government and is keeping a watchful eye on the situation.

As such, Brazil has been violating its duty to protect its indigenous populations. Even though Brazil has ignored violence against its citizens, they are bound by international law to protect indigenous populations for forcible seizure of their land. According to the [UN Declaration on the Rights of Indigenous Peoples](#), states must provide mechanisms to prevent any unlawful seizure of their land, territories, or resources. Further, indigenous populations cannot be expelled from their land; relocation shall not take place without consent, compensation, and (when possible) the option to return to their land. Additionally, under Article 18 of the [International Labour Organization's \(ILO\) Convention 169](#), Brazil is obliged to prevent and penalize unlawful trespass, use, or seizure of indigenous land. More importantly, under Article 19, Brazil's national agriculture policy is supposed to ensure that its indigenous populations receive the same rights as other groups. The most obvious solution is that Brazil needs to increase funding to FUNAI. With the current President in office, however, that seems to be wishful thinking. Brazil's Congress needs to try President Temer for corruption. He blatantly is pandering to the agro-businesses while ignoring Brazil's indigenous populations. Brazil's government has the means to take charge of this crisis before it gets any more out of hand.

Brazil's indigenous rights crisis is only worsening with time, and the state needs to take responsibility for its people. Not only does the government need to step up and protect its people from violence and wrongful land seizure, but Brazil needs to hold its president accountable for the suffering endured by its indigenous populations. President Temer just avoided a [second round of corruption charges](#) in late October 2017. If Brazil's congress would have voted in favor of a corruption investigation, President Temer would have lost his title to the presidency for at least six months. Additionally, securing more funding for FUNAI is essential for the protection of Brazil's indigenous populations. Brazil's current policy towards its indigenous populations has only perpetuated inequality in the region and, unless they make some changes soon, the land rights crisis will likely continue.

# Mining in Guatemala: A Threat to Life and Livelihood

November 2, 2017

by Tamara Castro Márquez

Guatemala, one of the countries of the Northern Triangle of Central America, has been struggling with economic and political troubles in recent years. Still recovering from an internal armed conflict from the 1980s, and undergoing a [broad impunity investigation](#) carried out by the International Commission Against Impunity in Guatemala (CICIG), Guatemala is also dealing with developing its economy. Like other similarly developing countries, Guatemala has turned to the mining industry as a way to create jobs and attract foreign capital. However, the permitted operation of the Escobal mine by *Mineria San Rafael*, Tahoe Resources' Guatemalan subsidiary, in majoritarian indigenous rural areas is a violation to the indigenous community's right to consultation and right to life as established by the American Convention on Human Rights.

In [July](#), Guatemala's Supreme Court of Justice issued a preliminary suspension of Tahoe Resources' mining license, including production of the Escobal mine. On appeal Guatemala's highest court, the [Constitutional Court, decided](#) to uphold the preliminary suspension until the affected indigenous communities are consulted as required by international law. [In early September](#), the Guatemalan Supreme Court of Justice allowed *Mineria San Rafael* to resume production while simultaneously conducting the required consultations with the affected indigenous communities. Local activists have constructed a [roadblock](#) in the nearby town, protesting the continued operation of the mine. Tahoe, on the other hand, claims that as one of the [largest sources of silver](#) in the world, the Escobal Mine is a benefit to the overall Guatemalan economy because [ninety-five percent of the jobs at the mine](#) are held by Guatemalans.

Under international law, Guatemala has a duty to respect the life of indigenous people and to protect their right to dignified life. [Article 29](#), the interpretation provision, of the American Convention on Human Rights (American Convention) states that the substantive provisions of the Convention are to be interpreted to the most protective standard under applicable international treaties to which the State is a party. Thus, in [Sawhoyamaxa Indigenous Community v. Paraguay](#), the Inter-American Court of Human Rights established that in matters of development of their traditional lands, the indigenous communities' protections under Article 4, the right to life provision, are those established by [Convention No. 169 of the International Labour Organization](#) (ILO). Having [ratified](#) the Convention No. 169 in 1996 as part of peace negotiations to end the armed conflict, Guatemala is a party to the treaty. Under Convention No. 169, Guatemala had a duty to consult the indigenous communities when deciding whether to grant Tahoe Resources a license to mine and a duty to protect their environment.

The Court further stated that under Article 4 of the American Convention, states have the duty to perform due diligence in the implementation of public policies or operations that could create a risk to life. The American Convention, through Article 1, further establishes that states have a duty to protect the rights of individuals within their jurisdiction. Therefore, Guatemala is responsible

not just for its actions as the State, but also for ensuring that other actors do not violate the rights of those within Guatemala's jurisdiction. In this case, the other actor is Tahoe Resources.

On the surface, the Constitutional Court's decision to require the consultation of the indigenous communities surrounding the mine seem to fulfill Guatemala's obligations. According to Convention No. 169, Article 6, consultations must be made in "good faith and in a form appropriate to the circumstances." The Supreme Court of Justice's recent approval for resumption of production at the Escobal mine before completion of the required consultation process is not in good faith. Continuing production at the mine creates foreseeable risk to life in the form of [destruction of their traditional lands and the environment](#). Recent [testimony](#) about the destruction to the surrounding land shows that by allowing the mine to continue production and to use large quantities of water, Guatemala is permitting irreparable harm to the land and the community of San Rafael. Because destruction of the lands and violence to the surrounding communities continues during the so-called consultations, these consultations are not being conducted in good faith. By allowing production to continue while the consultations are conducted, Guatemala is failing to provide sufficient protections to the indigenous communities.

The continued operation of the mine is not appropriate under the circumstances because the harm is irreversible and further fuels the [violence](#) against the protectors of human rights in Guatemala. Tahoe Resources received approval to continue production from the courts, but not as a result of the required consultations to the indigenous communities. Rather than giving in to the large corporations, Guatemala should follow El Salvador's example of [banning mining](#) as a matter of cultural and environmental protection. By doing so, Guatemala would be fulfilling its duties to ensure the right to life and the right to dignified life under the American Convention on Human Rights.

# Seeking Justice in a Patriarchy: Domestic Violence in Roraima

November 14, 2017

by Aya Badr

More [women are killed in Latin America](#) than in any other continent. In Brazil, Roraima is the [deadliest](#) state for women. From 2010-2015, [killings of women](#) rose 139 percent. Most of these deaths are attributed to [domestic violence](#). In Roraima, many women do not report domestic violence, and even when they do, they feel helpless because they face [several barriers](#), such as a lack of police response, to having their cases heard.

Brazil introduced [the Maria da Penha Law](#) in 2006 to prevent domestic violence and ensure justice when it occurs, but the legislation is not frequently enforced. International human rights treaties also obligate Brazil to protect victims of domestic violence. Brazil has ratified [the Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), which explains and calls for action against discrimination against women. Additionally, Brazil has ratified [the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para,”](#) which enables individuals and civil society organizations to file complaints at the [Inter-American Commission for Human Rights](#). However, according to a [report by Human Rights Watch](#), Brazilian authorities have systemically failed in handling and responding to cases of domestic violence.

Women find it [difficult to report](#) domestic violence because they fear that by publicizing a personal horror, it would open them up to additional embarrassment and trauma. They also have no faith in the system and believe that reporting the violence [will not change their situation](#). In [one case](#), similar to most in Roraima, the victim did not file a report until many years later. After gaining the courage to report her domestic violence, after a year and a half and more than [fifteen police reports](#) along with evidence, the statute of limitations expired on each crime she reported. Another case involved a victim whose daughter called the police during an attack. Upon arrival, the police officer told them they had to go to the [women’s police station](#) to report the beating; it was closed that day. Other cases show that even if the victim finally gets to speak with a police officer about the domestic violence, they often assume the victim plays a part. In one case a woman was asked what she did [“\[...\] to make him behave that way\[.\]”](#)

Under [CEDAW](#), state parties are bound to “modify the social and cultural patterns of conduct of men and women” to eliminate “practices which are based on the idea of the inferiority or the superiority of either of the sexes[.]” According to the [Convention of Belem Do Para](#), state parties have a duty to “condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence [.]” However, Brazil has failed to uphold its duties outlined in these treaties. According to a [report by Human Rights Watch](#), civil police officers do not receive training on how to handle domestic violence cases, and are unable to keep up with the volume of complaints they receive. Instead of receiving immediate help from police on call, the women are forced to wait until the [‘women’s police station’](#) is available to report abuse.

Brazil needs to implement many changes in order to protect victims of domestic violence and uphold human rights for its women. Brazilian authorities need to implement and enforce existing laws and allocate additional resources to police in Roraima and ensure that women are able to quickly and easily [report domestic violence](#). There should be additional trainings to educate police on how to handle these cases and improve their efficiency. The authorities should also initiate investigations and discipline police officers who neglect their duty.

While enforcement of laws is crucial, methods of prevention should also be brought to the forefront. Since most of the [killings](#) of girls and women in Roraima are a product of domestic violence, measures such as campaigns and other methods of education should be implemented to begin transforming a culture that has accepted misogyny and inequality – and domestic violence – as the social norm.

# An Attack on the Affordable Care Act is an Attack on Women's Human Rights

November 17, 2017  
by Andrew Johnson

The United States is one of the only developed countries in which the [maternal mortality rate](#) (MMR) is not decreasing. In fact, it is higher now than it was [fifteen years ago](#). Access to healthcare is the linchpin for safe pregnancies. A decrease in access to healthcare and a lack of access to contraceptives increase the problems that lead to [maternal mortality](#).

A rise in the maternal mortality rate is indicative of larger issues centered around women's rights to health care. The birth control mandate of the [Affordable Care Act](#) (ACA) requires private employers to provide women with access to birth control. President Trump's administration's recent [roll back of the provision](#) gives evidence to a failure in the health care system to adequately provide basic health services to women.

The [ACA's](#) main goals were to eliminate discriminatory disparities in the health care system. [Section 1557](#) prohibits discrimination by any federal health care program on the basis of race, sex, national origin, age, or disability. Additionally, it sought to extend health care to those who cannot afford it by [expanding Medicaid](#). In spite of the ACA, there is still systemic discrimination against women, especially against women in [minority groups](#). Women living below the poverty line or women of color are more likely to lack insurance, placing them at a [higher risk for poor maternal health](#).

Access to family planning or regular primary care, which makes birth control and other basic health care needs available, are more difficult to obtain for women in minority groups because they are less likely to have a [primary care provider](#). This raises the risk of unintended pregnancies and subsequently [the risk of complications during pregnancy](#). The attack on the birth control mandate and other provisions of the [ACA](#) will [raise costs](#) by making women pay for birth control out of pocket. This will force many women living at the poverty line to [forego birth control](#), which will only worsen the already increasing maternal mortality rate statistics.

[The Convention on the Elimination of all forms of Discrimination against Women](#) (CEDAW) delineates the fundamental human rights of women. [Article 3](#) requires that countries take all appropriate measures to ensure women can exercise and enjoy fundamental human rights. Health care is a basic human right, and President Trump's administration's attack on the very provisions protecting women's rights to health care is a serious detriment to their enjoyment of human rights. Furthermore, [Article 12](#) requires countries to take all appropriate measures to eliminate discrimination against women in health care, such as ensuring the right to health care services like family planning.

The United States [has signed](#) CEDAW, but it has not ratified it. This means that the United States generally agrees with the provisions, but it is not legally bound by them. However, President Trump's administration's recent attacks on the ACA disproportionately affect women, and makes

it difficult to infer that the administration agrees with CEDAW. If the United States is truly in agreement with CEDAW, it will ratify it and become legally bound to it. There are valuable lessons to be learned from other developed countries that have ratified the convention. It is no coincidence that Canada, Sweden, Finland, and the United Kingdom have all [ratified CEDAW](#), and also have better maternal mortality rates [than the United States](#). The lesson the United States can learn is that protecting women's rights to health care make women safer.

For the United States to truly implement policies that benefit women, there should be a push for more equal representation in the government. Women should have controlling interest in policy decisions that affect them; however, only [19.6 percent](#) of representatives in congress are women. [Article 7 subsection b](#) of CEDAW requires that countries ensure women's right to participate in the formulation and implementation of government policies. It is imperative that the United States foster inclusivity in its policies to best represent the actual interests of women.

In order to uphold its obligations to protect women's rights, the United States must ratify CEDAW, and take all appropriate measures to ensure equitable healthcare for all women. The United States must also continue to build upon the foundation laid out by the [ACA](#). If the United States government continues to undermine and dismantle women's reproductive rights and rights to healthcare, the maternal mortality rate will only continue to increase.

# Condemnation Without Condition: United Nations Draws Hard Line Between Hate Speech and Free Speech

November 23, 2017  
by Ridhi Shetty

On the morning of August 12, 2017, in Charlottesville, Virginia, an initially peaceful encounter between a gathering of [white supremacists and counter-protestors soon turned violent](#), resulting in several injuries and death. In [condemning President Trump's refusal to unequivocally denounce](#) the racist violence in Charlottesville, the United Nations Committee on Elimination of Racial Discrimination specifically cited two victims. The first, counter-protestor Heather D. Heyer, was killed when a car was intentionally driven into a crowd of counter-protestors. The second, counter-protestor Deandre Harris, was [brutalized by white supremacists](#). The Committee invoked urgent warning procedures to call attention to the violence, stating that while the United States must protect free expression, it is also obligated to take action against hate [speech that would provoke racial discrimination](#).

The Committee is [comprised of eighteen experts tasked with ensuring](#) that countries who are signatories to the Convention of the Elimination of All Forms of Racial Discrimination enforce the Convention. The Convention calls for signatories to designate as an illegal, punishable offense the promotion of [ideas and policies based on racial supremacy](#). Not only has the United States been one of the signatories since the Convention's ratification in 1994, but [the United States is also represented among the Committee's eighteen independent experts](#). The United States has, however, stipulated in its "Declarations and Reservations" to the Convention's ratification that the United States' would enforce the Convention as long as doing so [does not infringe on First Amendment rights](#).

Though the Committee's decisions tend to focus [more often on developing countries](#) faced with government-sanctioned prejudice, the Committee's response to Charlottesville is not the United Nations' first disagreement with the United States over freedom of speech. Previously, the [United States boycotted a 2009 United Nations conference](#) pursuant to the United States' stance that free speech should be restricted because criticizing Israel would incite aggression. In contrast, the United Nations has now asserted [in its decision responding to the events in Charlottesville](#) that the United States is impermissibly allowing the rights to free expression and to peaceful assembly to be used to spread racist hate speech and associated crimes.

Committee Chairwoman Anastasia Crickley has questioned whether neo-Nazi and other racist hate speech [should constitute freedom of expression](#). The fine line between free speech and incitement is constantly debated. Anthony D. Romero, Executive Director of the American Civil Liberties Union argues that there is [no distinction that pushes any speech beyond constitutional protection](#). Romero insists that all racist hate speech must be protected so as to encourage discourse and to prevent the government from subjectively imposing punitive measures for certain speech. Contrary

to the assertions of United Nations experts that the First Amendment is too often used indefensibly to justify violence, Romero denies that the First Amendment has direct bearing on racial violence.

In contrast with the United States' juxtaposition of the First Amendment with the Convention's disavowal of racist hate speech, the [European Court of Human Rights has recognized](#) that though the European Convention on Human Rights protects free expression, this freedom cannot be treated as absolute where human dignity is undermined. The Court has outlined in numerous cases that controversy exposing individuals or groups to a potential risk of violence and other physical damage is not a protected form of free expression.

While the European Convention on Human Rights is not binding on non-European nations such as the United States, it can be compelling for the latter. A binding authority, however, is found in Article 19 of the International Covenant on Civil and Political Rights, of which the United States is a signatory. This Article [identifies two legitimate grounds for restricting](#) freedom of expression: to protect the rights and reputations of others and to preserve national security and public welfare.

The decision of the United Nations Committee on Elimination of Racial Discrimination simply recommends that the United States implement measures to preserve the rights to equality and protection from discrimination. Considering the decisions of the European Court of Human Rights, the United States is in the minority of developed nations that balance protection of free speech with other rights. Yet, since the Charlottesville rally in August, the rhetoric of white supremacist Richard Spencer led to [another smaller rally in the same town in early October](#), followed by an [attempted homicide by white supremacists](#) after Spencer's speech to the University of Florida. Thus, it remains to be seen whether measures will be taken by the United States to comply with the Committee's decision or by the United Nations to enforce compliance so that the United States adopts the principles of the European Convention on Human Rights.

# Argentina's Court Decision: Taking the Right to Inclusive Education of Children with Disabilities Seriously

November 28, 2017  
by Mariela Galeazzi\*

On March 17, 2017, after two years of litigation, the Chamber of Appeals in Administrative and Tax Litigation of Buenos Aires, Argentina upheld the lower court's decision in [Rodriguez, Cesar Alan v. Government of Buenos Aires City](#). This decision required the government of Buenos Aires City to give Alan Rodriguez, a young man with Down syndrome, his high school certificate.

Alan attended the same private school in Buenos Aires City since he was three years old. He was the first student with an intellectual disability enrolled at the school, which included him in the classroom alongside all the other students. He learned, studied, and passed exams each year, building friendships with his classmates. However, when he completed his education, school authorities and the Ministry of Education denied Alan an official certificate. [They alleged](#) that he received an adapted individual curriculum during his schooling and therefore, did not meet the mandatory minimum requirements of the official general curriculum. So, Alan decided to sue his school and Buenos Aires City by alleging discrimination on the basis of disability. The case was brought by the [Civil Association for Equality and Justice \(ACIJ\)](#) and was supported by amicus curiae briefs from independent experts as well as by the [Article 24 Group for Inclusive Education](#), a coalition of more than 150 Argentinian organizations advocating for the right to inclusive education of people with disabilities.

From an international human rights law perspective, the right of children to education is universally understood as deeply connected with the principle of non-discrimination and equal access to opportunities. The [International Covenant on Economic, Social, and Cultural Rights \(ICESCR\)](#), [Convention on the Rights of the Child \(CRC\)](#), and [World Declaration on Education for All](#), all affirm this right and the protections extended by it. With regards to persons with disabilities, [the Standard Rules on the Equalization of Opportunities for Persons with Disabilities \(1993\)](#), [the Salamanca Statement and Framework for Action \(1994\)](#), [the General Comment No. 5 of the ICESCR Committee](#), and [the UNESCO Guidelines for Inclusion \(2005\)](#), advanced the discussion by stating that education for all means education for children with disabilities as well.

The [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) was the first human rights treaty that crystallized these ideas by introducing the right to inclusive education. In Article 24, it explicitly prohibits school segregation of children with disabilities and ensures their education in

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the “general education system . . . at all levels . . . without discrimination and on the basis of equal opportunity.” [The General Comment No. 4 issued by the CRPD Committee](#) (General Comment 4) explains that neither segregation in separate environments nor integration in regular classrooms are proper inclusion. Integration is not inclusion because it implies simply placing “persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions.” Inclusion requires more, as it involves “a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers.”

However, children with disabilities are [denied their right to inclusive education](#) all over the globe. Millions of them are left out of education sector plans due to poor data collection and a lack of knowledge on how to include them in education planning and implementation. Particularly, in Argentina and other Latin American countries, [regular schools reject the admission of students with disabilities](#), essentially segregating them into “special” institutions that only accept children with disabilities. Many of them do not even go to school and their lives are restricted within their homes or therapeutic settings. Even when children with disabilities are accepted into a “regular” school, mostly due to the insistence of their families, they face negative attitudes. The schools also lack general knowledge on how to ensure full participation of children with disabilities in “regular” classrooms. These circumstances prevent children with disabilities from completing high school and even primary school. Among all the barriers these students face, one of the most daunting is [standardized, rigid, and inaccessible curricula](#).

Although [Articles 2 and 4 of CRPD](#) require States to implement a “universal design” for learning for all students, Latin American schools are far from it. In Argentina, for example, when schools accept enrolling students with disabilities, they prepare an [“individualized pedagogical program”](#) for them. Under CRPD and General Comment 4, these individual curricula should not imply the reduction of content. Instead, it should involve teaching and learning methods and the consideration of students’ personality, talents, and passions, as well as their mental, physical, and communication abilities.

According to regulations of Buenos Aires City –challenged in the case at hand- children with disabilities must receive an Individual Pedagogical Project (IPP). IPPs were implemented in Buenos Aires City in 2000 by [Resolution 1274/2000](#) as a “necessary strategy to attend to the uniqueness of students.” They are pedagogical plans that contain personalized goals and a pedagogical-didactic proposal that meets the needs, interests, and development of the maximum potential of each student. Students that receive an IPP only progress from year to year alongside their same age classmates if they reach the individual and personalized objectives required by their IPP. However, when it comes to certification requirements, these regulations fall in a normalizing and segregationist approach, as they state that to receive their certificate, students with disabilities must still comply with the annual “minimum contents” required for other students (Resolutions [25/201](#) and [219/2012](#) of Buenos Aires City).

The judge of the lower court found these regulations, which impose this blanket requirement on all students regardless of whether or not they are students with disabilities, to be discriminatory, contrary to the Constitution, and in violation of the principle of equality. Therefore, the judge decided the requirement was unconstitutional and the Chamber of Appeals affirmed this ruling. In [her reasoning](#), the judge argued that the term “equal conditions” in Article 24 of the CRPD is

ambiguous. It may mean applying the standard that all high school students must demonstrate knowledge at a uniform level. Alternatively, it may mean treating the different methods of student evaluation as equal, rather than considering some methods as superior to others. By quoting Ronald Dworkin's book [\*Taking Rights Seriously\*](#), the judge concluded that it is necessary to distinguish between the right to "equal treatment" and the right to "treatment as an equal." The latter means giving people "an equal distribution of some opportunity or source or burden" and implies that each person should "be treated with the same respect and concern as anyone else." In this case, the judge found that Alan was not treated as an equal because although he accomplished the goals established for him, he was denied his certificate because he allegedly did not reach the goals established for his classmates. That led to the holding of the case: giving students with disabilities different certificates on the basis of their different achievements is discriminatory and contrary to the CRPD.

This decision challenges the broadly accepted idea that students who cannot reach standardized goals, as well as those who can only achieve these goals through *different* teaching and testing methods, must be either excluded, segregated, or considered "second-class" students. It also challenges the belief, widely found in law and practice, that educational rights are conditional and based on a child's abilities and "possibilities," with no consideration of the child's environmental barriers. An example of this pervasive belief in Argentina's laws is the constant conditioning that including children with disabilities must correspond to their "possibilities" ([Art. 42, National Education Act No. 26.206](#)). Thus, instead of focusing on removing the barriers of the educational system, regulations amount to a legal presumption of these children's inability to remain in regular schools and justify their systematic diversion into segregated settings ([Art. 28, Resolution 174/12 of the Federal Council of Education](#)).

The case also questions whether the ways by which educational systems measure their students are appropriate and if they facilitate real inclusion. The Program for International Student Assessment (PISA) is an instrument measuring children's education around the world through standardized exams, assessing them in science, mathematics, reading, collaborative problem solving, and financial literacy. However, [it does not evaluate students with disabilities](#). As its [standardized method has been itself strongly challenged](#) in its inability to measure the quality of education in general, it is even less clear how it could assess students with disabilities and inform policies to enhance their education as well.

International human rights law lays out other aims for education which would require the development of other skills rather than mathematics and sciences. It [establishes](#) that education shall "be directed to the full development of the human personality and the sense of its dignity, . . . strengthen the respect for human rights and fundamental freedoms" and "enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace." These standards and objectives cannot be realized without inclusive education. Thinking of education from a human rights perspective demands a serious review and discussion of our educational systems and goals.

Beyond the individual achievement, Alan's case gained the support of society in general and civil society organizations in particular. Due to the insistent work of the Article 24 Group, the decision in this individual case was expanded towards all children with disabilities in Argentina. On

December 2016, the Federal Council of Education issued two new and improved regulations (Res [311/16](#) and [312/16](#)) for the inclusion of children with disabilities in regular schools. The new regulations recognize the right of children with disabilities to receive the same certificate as their peers when they complete their studies at a mainstream school using an adapted curriculum. This allows them to attend universities and provides them with better opportunities when applying for jobs.

Looking forward, this case suggests that strategic litigation can be an effective tool to challenge our segregating legal and institutional frameworks contrary to the CRPD. It is true that because of multiple barriers, only a few young men and women with disabilities finish high school and even fewer have the opportunity, energy, and resources to fight for their certificates. However, many families of children with disabilities in Latin America are reluctant to sue their schools or government because of the negative impact it may have on their children's lives and education. Notwithstanding this concern, when dialogue with ministries and schools breaks down, the judiciary can play an important role in advancing the right to inclusive education not only through individual cases but also through class actions, especially in the many other Latin American countries that have ratified the CRPD.

# Water Pollution Poisons Peru's Indigenous Populations, State's Response is Equally Toxic

November 29, 2017  
by Catherine Perrone

It has been over [two years](#) since Peruvian authorities found that water in Cuninico contains toxic heavy metals and other substances. As of today, the indigenous communities still do not have access to safe, clean water. According to the [Secretary General at Amnesty International](#), “[t]he fact that the Peruvian authorities choose to do very little . . . is not only cruel, but a violation of their right to health.”

In [2014](#), Peru's Regional Health Authority, DIRESA, first reported that the water in Cuninico was contaminated with aluminum and other toxic substances. Zero health centers are operating in Cuninico. The closest one is over an hour away by a speedboat. Instead, the country has installed “[telemedicine](#)” centers: a shack with thin walls, a tin roof, and a computer where an individual may talk to a doctor located in the capital via teleconference. Without steady electricity and internet service, Peru's “telemedicine” programming is not working well.

The Peruvian government may have declared the situation a [public health emergency](#), but there has not been a [single concrete](#) step to provide adequate healthcare or to address the water contamination other than the [telemedicine](#) centers. The contamination is likely a result of [international mining companies](#). One company, [Xstrata](#), is even facing charges in London for hiring a police force to beat environmental activists protesting one of their mines. Recently, indigenous groups struck a [deal](#) with the Peruvian government that would implement emergency health care programming for communities located near the mining fields and would implement environmental cleanups as well. The ramifications of the health care deal and the environmental cleanups, however, are unclear.

This crisis is not an isolated incident. The government has historically valued the money from foreign investments over the rights of its indigenous populations. About [eight years ago](#), Peru's indigenous populations faced harsh violence for protesting against oil development, resulting in the death of over thirty people. This crisis is longstanding, and it is doubtful whether [ten days](#) of healthcare and environmental planning are going to do much to benefit the indigenous populations. Under the new agreement, President Kuczynski promised to enact an indigenous rights law before awarding any new or long-term drilling contracts. The agreement does not discuss current contracts, however.

Peru has a legal obligation to provide adequate healthcare to its indigenous populations. Under [Article 25](#) of the International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention (No. 169), Peru has a duty to provide adequate health services or the resources so that Indigenous people have the “highest attainable standard” of healthcare. Peru's [Water Resources Law](#) codifies the Convention 169 into its own law, stating in Article 64 that no law shall diminish

the rights established in the ILO Convention. Further, under [Article 12 of the International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), ratifying parties must recognize the right to attain the highest standard of physical and mental health. Under the ICESCR, the state is responsible for the “improvement of all aspects of environmental and industrial hygiene” to ensure the full realization of the right to health. [General Comment 15 to the ICESCR](#) outlines specific water protection laws and rights people have, including the freedom from water contamination on the part of third parties or corporations. Most notably, the General Comment specifies that any “violation of the obligation to protect” can come from the state’s failure to protect its citizens “from infringements of the right to water by third parties,” including, the “failure to enact or enforce laws to prevent the contamination” of water resources.

Peru has not adequately provided healthcare or clean water to its indigenous populations. Under the ILO convention and Peruvian national law, health services should be based within local communities. Health services should be planned and administered in conjunction with all of Cuninico’s geographic, economic, and social conditions. Under the General Comment to the ICESCR, states are supposed to adopt “necessary and effective legislative . . . measures to restrain” any third party from polluting water supplies. Any new legislation that Peru passes should ensure the construction of adequate health centers in the region, or at least provide the indigenous populations with the resources to provide themselves with adequate healthcare. The new law should prevent mining companies from contaminating indigenous populations’ drinking water, through strict prevention and by constructing pumping devices to purify any contaminated water.

Under national and international law, Peru’s government has a duty to protect its indigenous populations but has failed to do so. Due to a longstanding crisis between indigenous populations and mining companies, the government has put economic interests before the health of its indigenous populations. While there is some hope for a new agreement to protect its indigenous populations, it is still uncertain whether the government is going to take the necessary steps to protect its citizens.

# Santiago Maldonado: Recent Victim of Dictatorship Era Violations

December 1, 2017

Tamara Castro Márquez

On August 1, 2017, Santiago Maldonado, an activist, was [disappeared](#) from the banks of the Chabut River in Argentina. Two months later, on October 17 the Argentine government announced that Santiago's body was [discovered](#) in that same river. His forced disappearance [reignites the Argentine people's common memory](#) of living through the "Dirty War," in which some 30,000 people were forcibly disappeared. Argentina's [denial](#) of having had custody of Santiago, and reluctance in conducting an [independent investigation](#) are violations of international human rights law under the [International Convention for the Protection of All Persons from Enforced Disappearance](#) (ICPPED), the [Inter-American Convention on Forced Disappearance of Persons](#), and the [American Convention on Human Rights](#).

During the "Dirty War," the Argentine regime [disappeared thousands of people](#). This sparked [marches](#) through the streets demanding their safe return. In 1984, the National Commission on the Disappearance of Persons (Conadep) issued a [report](#), *Nunca Más*, that provided testimony of grave violations of human rights in the hopes of preventing it from happening ever again. Unfortunately, Santiago Maldonado's story is eerily similar to those presented in the report. Santiago was [last seen](#) at an occupation protest against Benetton's use of ancestral Mapuche lands. According to witnesses, during the police breakup of the occupation, Santiago was chased into the Chabut river where he surrendered to the police. The police then denied ever having Santiago in their custody. The *Nunca Más* report also [shows](#) that when bodies were found, they were often found in River Plate with the official cause of death being asphyxia by drowning. Once Santiago's body was identified, the preliminary autopsy determined that the [cause of death was drowning](#).

Under international human rights law, Argentina violated Santiago's right to life, right to be free from arbitrary detainment, right to be free from torture and other ill-treatment, and the right to due process. Under the ICPPED, Article 2, enforced disappearance is defined as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Because Article 29 of the American Convention requires that substantive rights be interpreted in light of the rights' most protective standard, the right to life should be read in light of the definition of enforced disappearances. Argentina ratified the American Convention in 1984, the Inter-American Convention on Forced Disappearance in 1995, and the ICPPED in 2007. As such, Argentina is bound to protect and ensure the right to life, the right to be free from arbitrary

detention, the right to be free from forced disappearance, and the right to due process to their most protective standard under those human rights treaties.

Furthermore, in [Abella v. Argentina](#), paragraph 196, the Inter-American Court on Human Rights, reaffirmed that the burden is on the State to show it is not responsible if an individual was last seen in the State's custody and that individual's body is found. Here, Argentina's mere denial that Santiago was in police custody does not meet that burden.

Argentina violated Santiago's right to life and right to be free of enforced disappearance. Argentina is also failing to fulfill its obligations under the American Convention Article 1, to ensure the right to life and right to be free from enforced disappearance, through investigation and accountability of direct responsibility. Under Article 24 of ICPED, the victim of an enforced disappearance is defined as both the individual disappeared and "any individual who has suffered harm as a direct result of an enforced disappearance." Additionally, under Article 24, "each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person." This creates an obligation for the State to investigate the circumstances and to take all steps to ensure the fulfillment of this right.

Although Santiago is already dead, Argentina can and should fulfill its remaining international legal duties. Argentina should conduct the necessary investigations to hold the perpetrators criminally responsible as stated in Article 6 of the ICPED. By not fulfilling this duty and by failing to give a public and transparent account of the truth, Argentina could be losing any human rights credibility that it gained since the end of the Dirty War. The impunity of those who forcibly disappear individuals and those who cover up disappearances is a black mark that will show the world that Argentina has not truly learned what *Nunca más* means.