



CONSTITUTIONALISING LABOUR AT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS – WITH SPECIAL REFERENCE TO THE COMMONWEALTH CARIBBEAN

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ABSTRACT -

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The issue of labour is one that concerns an international human rights body like the Inter-American Commission on Human Rights, OAS, in a variety of ways. The subject falls most directly within the framework of the San Salvador Protocol which seeks to elevate economic, social and cultural rights identified in the American Convention on Human Rights. A more concerted focus on the subject is necessary given that such rights have historically been treated as non-justiciable. The jurisprudence of the Inter-American Commission on Human Rights has sought to overcome this obstacle by aligning these rights with civil and political rights, in order to give them meaning and provide remedies for victims of rights. One of the most important avenues for doing so, is by referencing economic, social and cultural rights through the lens of non-discrimination and equality norms. This is a flexible approach which allows every person to be guaranteed 'rights' in the labour sphere.

Embracing the notion that each person is deserving of equality permits some interesting and important cross cutting issues to be examined in the labour sphere. Thus, the Commission has protected the right to work and related labour rights of groups viewed as vulnerable in the context of discrimination in broader contexts, such as the disabled, Afro-descendants, indigenous peoples, women and persons living with HIV. Important legal principles which speak to the constitutionalisation of labour law have emerged.

The Commission has also considered the issue of labour within the context of migration and human rights and there is a special Rapporteur on Migrants.

The jurisprudence is set to be enhanced even further with the advent of the OAS Working Group established to develop indicators for the economic, social and cultural rights envisaged under the Convention. Labour law indicators have already been established and Member States will be charged to implement these rights taking into account the relevant indicators. The Inter-American Commission is also represented on this body and is therefore expected to begin to expand its jurisprudential criteria to take these indicators into account, at least for those states that have ratified the San Salvador Protocol, an important philosophical shift in the Commission's thinking and protective framework and a giant step toward constitutionalising labour law. A Unit has also been established by the Commission to promote economic, social and cultural rights.

The approach of the IACHR may be seen to be reflected in the legal systems of the members of the region which make up the OAS. Common law jurisdictions which uphold a dualist approach to international law have more theoretical difficulty implementing international

human rights norms directly. Thus, while much of Latin America has moved quickly to rights within their constitutions protecting the right to work and the like, this has not been the case for the common law jurisdictions in the OAS, many of them located in the Commonwealth Caribbean. Notwithstanding, in recent times, we have witnessed a steady movement toward recognizing that rights can be identified in the labour law context and that these rights may be viewed as justiciable. At the same time, non-discrimination norms which allow the kind of cross-cutting interventions across vulnerable groups in the labour environment, are being strengthened.

The paper will examine these emerging paradigms.

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