

OAS/Ser.L/V/II.
Doc. 298
13 October 2020
Original: Spanish

REPORT No. 281/20

PETITION 1266-15

REPORT ON ADMISSIBILITY

LUISA DEL CARMEN ALFARO CAMPOS ET AL.
(WOMEN WORKS IN EXPORT PROCESSING PLANTS [*MAQUILAS*])
HONDURAS

Approved electronically by the Commission on October 13, 2020.

Cite as: IACHR, Report No. 281/20. Petition 1266-15 Admissibility. Luisa del Carmen Alfaro et al. Honduras. October 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Honduran Women's Collective (CODEMUH) Law Group for Human Rights (EJDH) ¹
Alleged victim:	Luisa del Carmen Alfaro Campos et al. ²
Respondent State:	Honduras
Rights invoked:	Articles 4 (life), 5 (humane treatment/personal integrity), 8 (judicial guarantees), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, ³ in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 13, 2015
Additional information received at the stage of initial review:	October 31, 2016
Notification of the petition to the State:	July 29, 2019
State's first response:	October 30, 2019
Additional observations from the petitioners:	September 17, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on September 8, 1977)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 5 (humane treatment/personal integrity), 8 (judicial guarantees), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 23, 2015
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. The petitioner complains of violations of the human rights of twenty-six persons working in garment factories known as *maquilas*. The petitioner alleges the liability of the State for failure to comply with

¹ The petitioner on September 19, 2020 required including the Law Group for Human Rights as a co-petitioner.

² The petition concerns the 26-maquila workers named in the attachment, based on information provided by the State in August 2016.

³ Hereinafter "American Convention" or "Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

its obligations to guarantee the rights of those persons to personal integrity and health. Among other grounds for its allegations, the petitioner cites the absence of effective measures to properly regulate and monitor this economic activity in such a way as to ensure appropriate working conditions for these persons, above all in order to avoid harm to their health.

2. The petitioner indicates that the alleged victims are working or have worked in a number of textile firms in the north of Honduras. The petitioner alleges that their working conditions are precarious, with excessive working hours, low wages, ill-suited workplaces and the imposition of a system under which remuneration is dependent upon reaching an output target. The petitioner maintains that the *maquilas* use a system based on daily targets to be met during eleven and half hours per day of uninterrupted labor for four to five days a week, and that those hardest hit by this regime are workers with health issues and less output as a result. The petitioner adds that in the Cortés Department companies introduced a "reduced" working day known as "4x3" or "4x4", which consists of compressing six days of work per week into four, thereby violating Article 128 of the Political Constitution, which establishes a maximum eight-hour workday.

3. The petitioner alleges that as a result of this state of affairs the alleged victims' health was permanently harmed, with musculoskeletal disorders, including back pain, neck pain, painful lower-back syndrome, sciatica, carpal tunnel syndrome, rotator cuff tendonitis, synovial cysts in their hands, and tendonitis of the forearm. The petitioner further asserts that three risk factors induced most of the musculoskeletal disorders: (i) forced postures, cargo handling, vibrations, and repetitive movements; (ii) poor working arrangements due to the demand that high output targets be met, lack of breaks, no say in how the work should be done, stress, monotonous and repetitive work; and (iii) poorly designed workplaces, high temperatures, insufficient lighting, dampness, and so on.

4. The petitioner alleges that when the alleged victims insisted that they were suffering musculoskeletal disorders, company physicians referred them to outpatient orthopedic services of the Honduran Social Security Institute (although the petitioner adds that some of them were not referred but went of their own accord). Based on the medical evaluations, the Technical Committee on Occupational Hazards of the Honduran Social Security Institute issued an opinion recommending that the alleged victims be reassigned to other jobs and that the companies take steps to reduce the risk of physical harm and mitigate musculoskeletal disorder symptoms. The petitioner maintains that the various forms of harm done to the alleged victims' health constitute occupational diseases, which in some cases led to permanent impairment of the capacity to work. According to the petitioner, File AA-332=12 of the Constitutional Chamber of the Supreme Court of Justice points to cases in which the alleged victims show between 20% and 60% loss of their functional capacity, so that for some of the alleged victims it will be difficult or impossible to return to work or perform normally in their usual environment.

5. Faced with these findings, on August 16, 2008, the petitioner filed a request to the Labor and Social Security Secretariat (hereinafter the "STSS") for an ergonomic assessment of the jobs and 4x4 regime in factories producing Gildan Activewear brand clothing. Subsequently, on February 16, 2009, the petitioner filed a request with the Hygiene and Social Insurance Office of the Departmental Directorate of Labor of the Social Security Institute for the same assessment to be carried out at *Hanesbrands INC, HB* facilities. Then, on March 16, 2009, the Office of the Director General of Social Insurance reported that it was unable to respond to the requests since it lacked the specialized equipment needed for such investigations. The petitioner states that, not having received an answer, on June 11 and 18, 2009 the petitioner asked the STSS for a reply regarding the requests that had been filed. The petitioner points out that a number of women workers requested the STSS to inspect their workplaces pursuant to the expert opinions regarding reassignment, with a view to the companies complying with the changes in working conditions recommended by the Honduran Social Security Institute. However, according to the petitioner, the STSS authorities restricted themselves during the inspection to giving notice of the reassignment opinions and placing on record the fact that those expert opinions had been delivered. It also took note of a few resignations due to the impossibility of changes being made to working conditions. Those resignations had reportedly occurred under indirect pressure from the employers, who had either told those workers that there was no place for them or had offered them jobs under even worse conditions.

6. In light of the above, on April 26, 2012, the petitioner filed an administrative appeal for protection of constitutional rights (*amparo*) on behalf of forty nine⁵ persons with the Constitutional Chamber of the Supreme Court of Justice, alleging that the STSS had not met its obligations to guarantee those workers' rights under the Constitution and under treaties and agreements (*convencionales*) in such a way as to enforce the expert opinions handed down by the Technical Committee on Occupational Hazards with respect to their reassignment and changes in their jobs and to guarantee their right to work and supervision of the outsourced medical services. The petitioner claims that it was not until the processing of the *amparo* appeal that the STSS produced inspectors' reports on working conditions, as part of the ergonomic assessments requested by the alleged victims. Thus, on January 23, 2015, the Constitutional Chamber of the Supreme Court of Justice granted the appeal and notified the petitioner of its ruling on February 13, 2015. The petitioner states that the ruling acknowledged that the involvement of the administrative institutions had not resulted in any outcome, given that the working conditions were continuing to harm workers' health and that those institutions' ineffectiveness violated the right to work of the alleged victims.

7. The petitioner further alleges that between 2006 and 2008, through regulations that did not amount to laws (*normativa infralegal*),⁶ the State created a wage gap between garment industry workers and other productive sectors. That allegedly provided incentives to implement daily working hours in excess of those allowed under the Honduran Constitution and led to a lack of concrete measures to prevent abuse and protect labor and health rights and human dignity. According to the petitioner, those incentives contravened the State's duty to adopt progressive measures to ensure the labor rights of the alleged victims.

8. The petitioner likewise maintains that the STSS was negligent and incapable of enforcing the expert opinions handed down by the Technical Commission on Occupational Hazards. The petitioner argues that the STSS was informed about working conditions and that when it issued recommendations for improvements and preventing harm to the alleged victims' health, the authorities failed to take effective steps to guarantee health and prevent and avoid impairment of it. The petitioner further argues that the *amparo* ruling handed down by the Supreme Court of Justice on April 26, 2012 exhausted domestic remedies, given that, as it states, it was the only remedy available. The petitioner stresses that the remedies were ineffective because administrative measures had no real impact, given that the alleged victims reportedly experienced no improvements in their work conditions and the companies were not obliged to bring them about, and because the *amparo* ruling did not specify what the STSS had to do nor the legal consequences for the companies of the granting of the *amparo* appeal. Thus, the petitioner alleges that so far neither the *amparo* ruling nor the administrative expert opinions have been implemented in any way, as the administrative authorities have merely carried out inspections with no legal consequences for the employer and no improvements for the alleged victims still working. Finally, the petitioner adds that the Constitutional Chamber of the Supreme Court of Justice had the obligation to execute *ex officio* the judgment (*amparo*) according to the applicable law.

9. For its part, the State argues that the petition is inadmissible owing to failure to exhaust domestic remedies. In its opinion, the alleged victims should have exhausted the appeal for reconsideration of the judgment of January 23, 2015 and an application for enforcement with the Constitutional Chamber of the Supreme Court of Justice. The State maintains that, pursuant to the Constitutional Justice Law, an appeal for reconsideration entails a review of a ruling that the appellant(s) find(s) legally unsatisfying before the same authority that handed down the ruling. Moreover, Article 64 of said Law establishes the procedure for exhausting an application for enforcement of judgment. The State stresses that those remedies are ideal and effective for establishing the State's liability for any possible violations of the American Convention.

10. On the other hand, the State maintains that when the alleged victims resorted to the Honduran Social Security Institute for a medical assessment of their working conditions, they received

⁵ According to the file, the *amparo* appeal filed by the petitioners was on behalf of 49 people. However, in the petition presented to the Commission the number of alleged victims was lowered to 26.

⁶ Executive Decision (*Acuerdo Ejecutivo*) 027-STSS-06 of March 25, 2006 and Executive Decision STSS-374-STSS-06 of December 24, 2008.

prompt attention from the Occupational Hazards Commission regarding the handling, monitoring, and information concerning the expert opinions. The State also argues that the *amparo* appeal was handled with all due diligence and access to justice was provided, along with guarantees of the right to be heard by competent, independent, and impartial authorities. The State underscores that, in May 2018, it announced its readiness to promote the drafting of a National Plan of Action on Businesses and Human Rights; and that it had drawn up a preliminary roadmap, working jointly with the United Nations Working Group on Business and Human Rights. Therefore, the State requested that the Commission consider the adoption of said National Action Plan to be a progressive measure.

11. Finally, the State points out that, with a view to complying with the *amparo* ruling handed down by the Constitutional Chamber of the Supreme Court, in June and July 2016, the technical team at the Honduran Social Security Institute had taken a number of steps, including: (i) a report reviewing and updating information on job reassignments; and (ii) re-evaluations to verify any changes in the health status of alleged victims who were still working. However, the State states that the petitioner argued that it was not appropriate to re-evaluate the workers because, in the words of the petitioner in internal communications with the State: "*expert opinions do not prescribe, so that there is no reason to re-evaluate those with insurance.*" Nevertheless, Honduras maintains that the Social Security Law requires re-evaluations of insured who are receiving some form of allowances because if their state of health improves said allowance is suspended, if it gets worse the allowance is increased, and if it persists, so does the allowance.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The petitioner argues that domestic remedies were exhausted by filing an administrative *amparo* appeal with the Supreme Court of Justice; and by engaging in a series of other administrative proceedings with the Labor and Social Security Secretariat and the Hygiene and Social Prevention Office. For its part, the State indicates that domestic remedies were not exhausted, because the alleged victims should have filed an appeal for reconsideration or request for execution of judgment. In the instant case, the Commission observes that the alleged victims resorted to the appropriate administrative and judicial bodies to have their working conditions assessed and changed given that, allegedly, they had caused serious harm to their health. For their part, the authorities reportedly failed to adopt effective measures to that end, either before or after the ruling by the Supreme Court of Justice granting the *amparo* appeal.

13. Accordingly, and after examining the information provided by the parties, the Inter-American Commission concludes that in the instant case the requirement to exhaust domestic remedies was met by the filing of the *amparo* appeal by the petitioner and the ruling handed down by the Supreme Court of Justice on January 23, 2015. Likewise, given that the petitioner was notified of said ruling on February 13, 2015 and the petition was presented to the Commission on August 13 of that year, the Commission concludes that the latter complies with Article 46.1.a and 46.1.b of the American Convention. The Commission also notes that additional proceedings and claims were filed with the administrative authorities on behalf of the alleged victims.

VII. ANALYSIS OF COLORABLE CLAIM

15. In light of the matters of fact and law adduced by the parties and the nature of the case brought to its attention, the Commission considers that, if proven, the alleged impairments of the personal integrity, health, and fair and equitable working conditions of the alleged victims due to failure to monitor and regulate the activities of the "*maquilas*"⁷ and their failure to adopt concrete measures in response to the expert opinions and rulings handed down by administrative and judicial authorities, could give rise to the international responsibility of Honduras for violations of Articles 5 (humane treatment/personal integrity), 8 (judicial guarantees), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American

⁷ IACHR/ESCR/INF.1.19. Thematic Report on Business and Human Rights: Inter-American Standards. November 1, 2019.

Convention in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof. Moreover, while the Commission notices that two of the alleged victims are males, the majority of them are women. In this regard, the petitioners have provided concrete information that shows the impact on women of the labor conditions at the *maquilas*. As a consequence, the Commission will assess in the merits stage the potential violations to the article 24 (equality before the law) of the American Convention in connection with other relevant international standards on women's rights.

They could also violate Article 24 (equal protection) of said treaty, in respect of the allegedly differential impact on women of the labor regime practiced in the "*maquilas*".

16. As to the claim concerning the alleged violation of Article 4 (right to life) of the American Convention, the Commission notes that the petitioner has not presented any arguments or sufficient grounds to suggest *prima facie* its possible violation.

17. Finally, the IACHR recalls with its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA, by its initials in Spanish) identify "four clear state duties for fulfilling the obligation to guarantee in the context of business activities: (i) the duty to regulate and adopt provisions in domestic law, (ii) the duty to prevent human rights violations in the framework of business activities, (iii) the duty to supervise such activities, and (iv) the duty to investigate, punish, and ensure access to integral reparations for victims in said contexts."

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 24, 25, and 26 of the American Convention, taken in conjunction with Articles 1(1) and (2) thereof;

2. To find this petition inadmissible in relation to Article 4 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 13th day of the month of October, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

Annex

List of alleged victims in alphabetical order

	Full names	Company	Employment status	Pathology
1	Alfaro Campos, Luisa del Carmen	Hanes Choloma INC RL	No longer employed	32% permanent partial disability due to left rotator cuff tendonitis and entrapment of the right median nerve
2	Aguilar Archaga, Kensy Gicela	San Pedro Sula, HBI	No longer employed	36% permanent partial disability due to chronic collarbone and right shoulder tendonitis and cervical myofascial syndrome
3	Caballero Padilla, Ester	Delta Apparel Honduras, S	No longer employed	22% permanent partial disability due to bilateral rotator cuff tendonitis
4	Castellanos, Melvin Francisco	Gildan Activewear San Miguel	No longer employed	21% permanent partial disability due to tendonitis in the biceps and right shoulder supraspinal calcification
5	Díaz, Yessenia Esperanza	Elcatex	Still working	29% permanent partial disability due to myofascial type of neck pain and supraspinal tendonitis of the left shoulder
6	Escalón Ramírez, Yazmín Xiomara	Delta Apparel Honduras, S	Still working	34% permanent partial disability due to f chronic lumboscialtagia mechanical backache
7	España Chinchilla, Nelsa Elena	Hanes Choloma INC RL	No longer employed	48% permanent partial disability due to chronic backache with hernia L4-L5, L5-LS1, chronic painful left shoulder syndrome related to chronic rotator cuff tendonitis and migraine
8	García García, Rosa Elena	Gildan Activewear San Miguel	Is not happy with her re-location	24% loss of functional capacity due to right should rotator cuff syndrome and supraspinal left shoulder tendonitis
9	González Arias, Orbelina	Elcatex	Still working	31% permanent partial disability due to tendonits and chronic left shoulder bursitis
10	Gutiérrez Laínez, María Candelaria	Delta Apparel Honduras, S	Still working	37% permanent partial disability due to chronic cervical brachialgia (arm pain) with cervical disc disease and multiple arthrosis of the facet joints, fibromyalgia, and postural mechanic backache

11	Hernández Bueso, Etelvina	Gildan Activewear San Miguel	Is happy with her re-location	42% permanent partial disability due to cervical brachialgia (left arm) related to cervical disc disease
12	Inestroza Bardales, Mirian Gertrudis	Gildan Activewear San Miguel	Is not happy with her re-location	29% permanent loss of functional capacity due to painful shoulder syndrome related to bilateral tendonitis of the biceps.
13	Linares García, Delmy Esperanza	Gildan Activewear San Miguel	No longer employed	29% Permanent partial disability due to myofascial cervical brachialgia
14	Linares Margarita	Delta Apparel Honduras, S	No longer employed	23% permanent partial disability due to cervical brachialgia on the left side with radiculopathy
15	Maldonado López, Blanca Lidia	Elcatex	Is happy with her re-location	23% permanent partial disability due to syndrome in operated right shoulder
16	Marín Bardales, Henry Jeovanny	Gildan Activewear San Miguel	Is happy with his re-location	37% permanent partial disability due to Chronic cervical brachialgia related to cervical hernia
17	Murillo Armador, Gloria Esperanza	Gildan Activewear San Miguel	Is happy with her re-location	44% permanent partial disability due to bilateral carpal tunnel syndrome
18	Muñoz Núñez, Edelsa	Hanes Choloma INC RL	Still working	43% permanent partial disability due to light supraspinal tendonitis on the right side
19	Mejía Ayala, Lilian Margot	Hanes Choloma INC RL	No longer employed	22% permanent partial disability due to bilateral supraspinal muscle tendonitis
20	Paz Enamorado, Blanca Lidia		No longer employed	34% permanent partial disability due to chronic calcific tendonitis from both shoulders
21	Rivas Rivera, Aida Margarita	Gildan Activewear San Miguel	Is not happy with her re-location	41% permanent partial disability due to chronic tendonitis of the operated left shoulder rotator cuff and right shoulder bursitis.
22	Sánchez Palma, Marta Yaquelin	Hanes Choloma INC RL	No longer employed	34% permanent partial disability due to chronic tendonitis from both shoulder and right cervical brachialgia
23	Urbina Flores, Paula Isabel	Gildan Activewear San Miguel	Is not happy with her re-location	21% permanent partial disability with due to calcified supraspinal tendonitis on the left side
24	Vásquez Sánchez, Carmen Aracely	Hanes Choloma INC RL	No longer employed	48% permanent partial disability with due to chronic bilateral cervical brachialgia,

				chronic backache and shoulder tendonitis
25	Zelaya López, Ana Dinora	Hanes Choloma INC RL	No longer employed	17% permanent partial disability due to left shoulder rotating cuff syndrome and rheumatic fibromyalgia
26	Zepeda, Doris Isabel	Gildan Activewear San Miguel	Is not happy with her re-location	25% permanent partial disability due to supraspinal right shoulder tendonitis