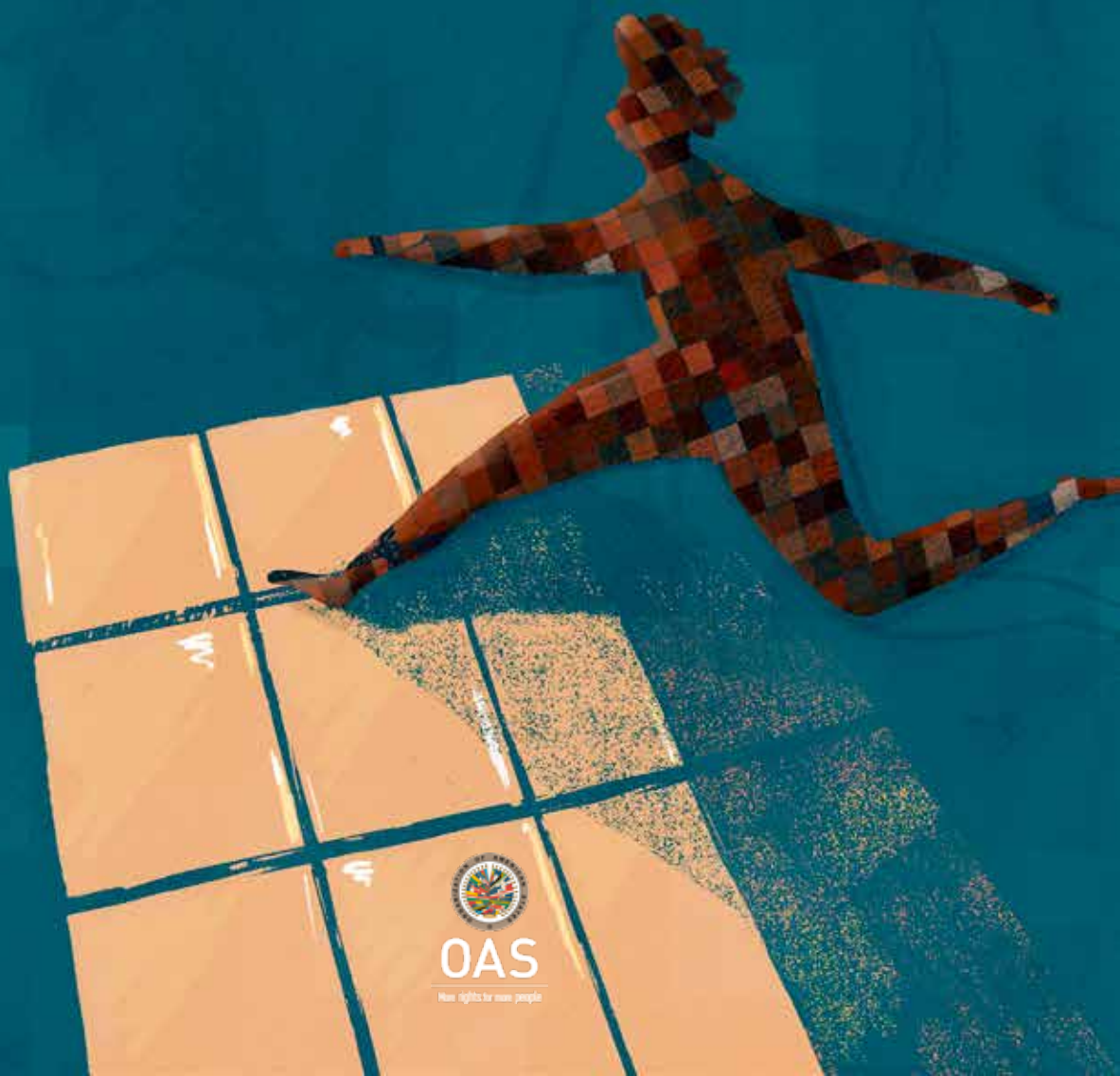


# Economic, Social, Cultural and Environmental Rights of Persons of African Descent



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Economic, Social, Cultural and Environmental Rights of Persons of African Descent

## Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. The defense of the rights of individuals or groups who have been historically discriminated against has long been a priority in the Inter-American human rights protection system (hereinafter, “Inter-American system” or “IAHRS”). As such, in an effort to promote the human rights of ethno-racial groups in the hemisphere, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “the Inter-American Commission” or “the IACHR”) created the Special Rapporteurship on the rights of Persons of African Descent and against Racial Discrimination in 2005. Along with the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, known as the REDESCA from its Spanish language acronym and created in 2012, this Rapporteurship has repeatedly voiced concern over access to and protection of the human rights of Persons of African Descent in the Americas.
2. Thus, in its report on the *Situation of Human Rights of People of African Descent in the Americas* in 2011 and, subsequently, on a number of occasions, the IACHR noted with great concern that the African Descent population in the region faces a situation of structural discrimination, which has had a disproportionately adverse impact on its economic, social, cultural and environmental rights (hereinafter, “ESCERs”). This situation widens the social inequality gap, bearing in mind the close links between poverty and ethno-racial background, and how these categories are intertwined, thereby heightening the African Descent population’s degree of vulnerability. The IACHR has also analyzed these adverse impacts through its different mechanisms, which all attest to the precarious enjoyment and realization of ESCERs in African Descent communities.<sup>1</sup>
3. Consequently, the purpose of this report is to shed light on the situation of Persons of African Descent in the Americas, using as a point of departure the progress made by the States in the subject matter, with view toward promoting progressive development of their economic, social, cultural and environmental rights. For this purpose and within the scope of its remit, the Commission sets out herein to develop new standards to combat structural racial discrimination in the region and to promote the application of such standards in order to remedy this situation. It aims to do so by identifying failures and obstacles to guaranteeing these rights for the African Descent population, thus paving the way for compliance with the obligations assumed by the States under Inter-American instruments. It also intends to help States advance in designing public policies through actions, plans, programs or specific strategies, aimed at protecting and ensuring their human rights, with a

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<sup>1</sup> IACHR, *The Situation of People of African Descent in the Americas*, OEA Ser.L/V/II. Doc.62, December 5, 2011, (hereinafter, “IACHR, The Situation of People of African Descent in the Americas, 2011”), pars. 3 and 13; IACHR, Press Release No. 216/20, [IACHR calls on the States of the region to eliminate all forms of racial discrimination, promote cultural change and adopt comprehensive reparation measures for people of Afro-descent](#), September 12, 2020.

crosscutting vision that includes an intersectional, intercultural and gender-based approach, which are key to the purpose of this report.

4. This report is part of the implementation phase of the project “Strengthening legal standards and recommendations to combat structural racial discrimination in the Americas through the mechanisms of the IACHR” (2018-2019) sponsored by the Spanish OAS Fund – Spanish Agency for International Development Cooperation (AECID), the objective of which is to promote regional debate on the standards established in the Inter-American human rights system regarding this subject, and to build on the standards to help States to take actions that address structural racial discrimination; and also to issue recommendations to the States to aid them in formulating effective public policies to address this issue.<sup>2</sup>

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<sup>2</sup> Project document. IACHR archive.

CHAPTER 1  
INTRODUCTION



# INTRODUCTION

## A. *Object, Justification and Scope of the Report*

5. The Commission understands this report to be, in and of itself, a form of reparation in invoking the collective memory of Persons of African Descent in the region; recognizing their social struggles and historical legacy, as well as shedding light on the different human rights violations endured by them.<sup>3</sup> This recognition enables the IACHR to fulfill its mandate to encourage, systematize, reinforce and consolidate respect for the rights of Persons of African Descent in the region in accordance with its mandate and the Plan of Action for the Decade for Persons of African Descent in the Americas (2016-2025) of the Organization of American States (OEA).<sup>4</sup>
6. In this regard, considering that the model of *reparative justice* is a systematic response to gross human rights violations, the Commission understands it to be based on restoring the damage caused and meeting the needs of the victims. In the specific case of Persons of African Descent in the Americas, the IACHR seeks to promote cultural and structural change, by recognizing the African Descent historical memory, through the adoption of measures of satisfaction, restitution of rights, guarantees of non-repetition, rehabilitation, and compensation, as a form of full reparation to combat all forms of racial discrimination to which Persons of African Descent have historically been subjected.<sup>5</sup>
7. The Commission notes that, according to consistent data, the African Descent population is disproportionately concentrated in the poorest residential areas and has the greatest shortage of housing, the most inadequate means of transportation and is most exposed to crime and violence. These patterns of structural inequality and economic poverty perpetuate the cycle of discrimination and invisibility to

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<sup>3</sup> UNESCO, *Del olvido a la memoria: esclavitud, resistencia y cultura*, [‘From oblivion to memory: slavery, resistance and culture’], 2008, pgs. 5-6.

<sup>4</sup> OAS, *Plan of Action for the Decade for Persons of African Descent in the Americas (2016-2025)*. AG/RES. 2891 (XLVI-O/16), second plenary session, 2016 (hereinafter, “OAS, Plan of Action for the Decade for Persons of African Descent in the Americas, 2016-2025”).

<sup>5</sup> The Commission understands that the concept of *reparative justice* is inherent to transitional justice and, based on research conducted by the *International Center for Transitional Justice (ICTJ)*, this type of justice seeks for measures to be taken to repair in some way the damage caused to the victims as a result of rights violations. Thus, the IACHR opted to use the term *reparative justice* instead of “restorative justice,” inasmuch as the latter term is used more often in the field of criminal law, the purpose of which is to resolve conflict and emphasizes prevention and the effects of crime. The IACHR recognizes this approach, but understands that for the core purposes of this report, a broad and comprehensive perspective of reparation should be used. Consequently, the IACHR reaffirms that by using the concept of *reparative justice* we are not referring to a new standard but, instead, the Inter-American system is introducing a model of effective justice focused on reparation to combat structural racial discrimination.

which Persons of African Descent have historically been subjected, because of the failure to recognize their history, thus precluding them from effectively enjoying and exercising their human rights. In this regard, the Commission notes that poverty has a differential impact on this ethno-racial group, in that it intersects with other factors of discrimination, such as gender, disability, age, sexual orientation and gender identity, migratory status, socioeconomic situation, among other ones, making this group more vulnerable.<sup>6</sup>

8. The IACHR reaffirms that economic, social, cultural and environmental rights are indivisible human rights. And it is also imperative that all States ban any arbitrary difference in treatment, in keeping with the principle of equality and non-discrimination, and honor their obligation to create conditions of actual equality for groups that have been historically excluded and are at risk of discrimination.<sup>7</sup>
9. The Commission notes that there have been significant gains since the adoption of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, which has been signed by 12 States and ratified by 6, as of the present date. While it is true that this instrument strengthened and further built upon the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, some categories, variables and indicators, which are necessary for the design of pedagogical and reparative instruments from an intersectional perspective, remain undefined. This negatively impacts the systematization and availability of information pertaining to the enjoyment of the rights of Persons of African Descent. Consequently, there has been a lack of special measures and concrete affirmative actions to uphold the principle of equality and non-discrimination by the branches of government and justice operators at all levels.<sup>8</sup>
10. Likewise, in order to raise awareness and promote measures to overcome patterns of racial discrimination, the United Nations proclaimed the International Decade for People of African Descent 2015-2024, as an international platform that issues an appeal to ensure the rights to recognition, justice and development of Persons of African Descent. This Decade is framed around a number of activities to be carried out by international organizations, States and civil society and is focused on the right

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<sup>6</sup> IACHR. [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, (hereinafter, "IACHR, Poverty and Human Rights in the Americas, 2017") par. 262; IACHR. [Situation of People of African Descent in the Americas](#), 2011.

<sup>7</sup> I/A Court H.R., Case of Cuscul Pivaral et al v. Guatemala. [Caso Cuscul Pivaral y otros vs. Guatemala](#), Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, par. 130; I/A Court H.R., Case of Furlan and Family v. Argentina [Caso Furlan y familiares Vs. Argentina](#), Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, par. 267.

<sup>8</sup> OAS, [Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance](#), adopted on June 5, 2013, came into force on November 11, 2017, (hereinafter, "OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013"); Also see. OAS [Signatures and Current Status Ratifications](#), Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; UN, International Convention on the Elimination of All Forms of Racial Discrimination, adopted and ratified on December 21, 1965, came into force on January 4, 1969 (hereinafter, "UN, International Convention on the Elimination of All Forms of Racial Discrimination, 1965").



to equality and non-discrimination, education and awareness raising on equality, information gathering, participation and inclusion, access to justice, special measures, the right to development and measures to combat poverty, health, housing, employment, and policies and programs to combat the multiple, aggravated and intersecting forms of discrimination faced by the African Descent population.<sup>9</sup>

11. In view of the foregoing, the IACHR finds it absolutely urgent to strengthen the legal framework and public policies targeting these people in the Americas, because in addition to the adverse context faced by Persons of African Descent as a result of the historic discrimination they are subjected to in its different facets, they suffer high rates of poverty and marginalization impairing the realization of their economic, social, cultural and environmental rights.<sup>10</sup> In this regard, it must be noted that the Commission understands that ethno-racial background and poverty are not codependent variables; on the contrary, it reaffirms that poverty is a context of vulnerability disproportionately affecting Persons of African Descent to a greater extent as a consequence of structural discrimination and the failure to recognize their history due to the aftereffects of racism.
12. The IAHRs has emphasized that the impact of multiple forms of discrimination may be felt at both the individual and the societal levels, inasmuch as they obstruct access to the basic rights to work, health, education and housing; and these situations can be exacerbated by contexts of poverty and deprivation of economic opportunities.<sup>11</sup> On this score, the IACHR has underscored that these conditions of vulnerability described above clearly evince, on the one hand, the interdependence and indivisibility of economic, social, cultural and environmental rights<sup>12</sup> and, on the other hand, the interdependence and intersectional nature of human rights violations.
13. Given the breadth of the rights inherent to the framework of ESCE rights, the Commission clarifies that in this report it will focus on the major challenges faced by the African Descent population in the Americas in terms of access and guarantee of the rights to education, health, housing, employment, culture, collective property, healthy environment and natural resources, clean drinking water and sanitation services.
14. In its 2019 *Human Development Report*, the United Nations Development Program (UNDP) writes that some population groups are systematically disadvantaged as a

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<sup>9</sup> UN, *Resolución No. 68/237*, Proclamation of the International Decade for People of African Descent, A/RES/68/237, December 23, 2013; See, United Nations, International Decade for People of African Descent 2015-2024, 2020

UN, *Resolución No. 19/16*, Programme of activities for the implementation of the International Decade for People of African Descent, A/RES/69/16, November 18, 2014 (hereinafter, “UN, Programme of activities for the implementation of the International Decade for People of African Descent, 2014), p. 5 and following.

<sup>10</sup> UNDP, *Actualidad afrodescendiente en Iberoamérica.*, Cuadernos SEGIB- PNED, No. 1, 2009.

<sup>11</sup> I/A Court H.R., Advisory Opinion OC-24/17 *Opinión Consultiva OC-24/17*, November 24, 2017, Gender identity, and equality and non-discrimination of same sex couples. Series A No. 24, par. 41.

<sup>12</sup> IACHR. *Progress and Challenges toward Recognition of the Rights of LGBTI Persons in the Americas*. OEA/Ser.L/V/II.170, December 7, 2018, par. 209.

result of a lack of access to opportunities and resources and, in turn, can be defined by their ethnicity, language, gender, socioeconomic status, or place of residence, which exposes them to patterns of structural inequality and multidimensional poverty.<sup>13</sup> On this score, the Commission understands that ongoing and systematic obstacles to accessing and enjoying the rights to health, employment, education, housing, food, culture, water, collective property ownership and a healthy environment expose the African Descent population and tribal communities to different opportunity gaps for their own development.

15. In view of the foregoing, international, regional and local legislation regulating these rights will be broken down in this report to explain the timely normative and advocacy instruments that provide for the promotion of standards and issue recommendations. We will also elaborate on the scope of the terms used in these instruments and specific approaches that will be addressed.
16. For the purposes of this report, the IACHR understands the terms *African Descent* or *Afro-descendant* to encompass different forms of self-identification adopted by descendants of African persons; that in the case of the Americas, this population mostly corresponds to descendants of African individuals who were enslaved in the context of the transatlantic slave trade. In this regard, the Commission is aware that recognition of the African Descent population includes different forms of self-identification of persons who have a common ancestry, as reflected in terms such as “black” “brown” “people of color” “pardo” “zambo” “preto” and “creole”, or in acceptations of words which refer to collective communities such as “quilombolas” in Brazil; “raizales”, “community councils”, “palenqueras and palenqueros” in Colombia; “garifunas” in Central America; “mascogos” in Mexico; or “maroons” in Suriname.<sup>14</sup>
17. Thus, the Inter-American Commission is aware of the shortcomings of using the term *tribal communities* as it relates to persons of African descent; but also understands it to be the technical term that, in the context of international human rights law, has enabled recognition of their rights to collective property, in keeping with the provisions of the Convention on Indigenous and Tribal Peoples (hereinafter, “ILO Convention 169”).<sup>15</sup> The IACHR further understands that given

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<sup>13</sup> UNDP, Human Development Report 2019 *Informe sobre Desarrollo Humano 2019*, 2019 Report on Human Development, Overview, p. 13; Also see UNDP, *¿Qué es el Índice de Pobreza Multidimensional?*, What is the Multidimensional Poverty Index? s.f.

<sup>14</sup> World Bank Group, *Afrodescendientes en Latinoamérica: Hacia un marco de inclusión*, Afro-descendants in Latin America: Towards a framework of inclusion, 2018, (hereinafter, “World Bank, Afro-descendants in Latin America, 2018”), pg. 2; Office of the President of the Republic [Brazil], *Lei No. 7.668 de 1988*, Law No. 7.668 of 1988, Article 2; Congress of the Republic of Colombia, *Ley No. 70*, Law No. 70, August 27, 1993, (hereinafter, Congress of Colombia, Law No. 70, 1993”), Article 45; Ministry of the Interior and of Justice, *Decreto No. 3770 de 2008*, Decree No. 3770, Article 1; National Assembly of the Republic, *Ley No. 886 de 2014*, Law No. 886 of 2014, Article 2; Government of Coahuila, *Diagnóstico situacional de las mujeres en las tribus Kikapú y Negros Mascoqos de Múzquiz* [‘Situational diagnostic assessment of women in the Kikapú and Negos Mascogos of Múzquiz tribes’], 2013, pgs. 23 and 90; Also see: Minority Rights Group International, *Maroons*, June 3, 2008.

<sup>15</sup> ILO, Convention No. 169 on Indigenous and Tribal Peoples *Convenio No. 169 Sobre Pueblos Indígenas y Tribales*, adopted on June 27, 1989, came into force on September 5, 1991, (hereinafter, “ILO, Convention 169, 1989”) Articles 1, 14 and 15.

the historical and structural discrimination to which the African Descent population has been subjected, these communities found protection of their territorial rights by accepting recognition as “tribal peoples,” without this signifying in certain cases abandoning self-identification as African Descent.

18. Consequently, the Commission reaffirms that pursuant to the principle of equality and non-discrimination, African Descent communities must enjoy the same territorial rights that have been granted to indigenous peoples, because the notion of territoriality not only addresses the element of ancestral tie but is also linked to the construct of culturally identifying with the territory and its natural resources. This also means that to African Descent communities the geographic surroundings are a space of recognition of the diaspora, which helps them preserve cultural traditions and conserve their historical legacy.
19. Under this premise, the Commission reaffirms that it resorted in this report to the concept of *tribal peoples* in keeping with the legal precedents of the Inter-American Court, which holds that the ethno-racial background communities inhabiting collective territories themselves generate their own means of development and, therefore, have specific features that require special protection. It is stressed that they are not indigenous or original peoples of the region they inhabit but, like such peoples, share their own particular traditions, worldviews and ways of life that distinguish them from other sectors of the national population. They identify themselves with their territories and self-govern under their own norms and customs.<sup>16</sup>
20. This context gives rise to a compelling need to take an intercultural approach that cuts across the topics to be addressed hereunder. The IACHR has referred in the past to an intercultural approach as the recognition of diverse cultures in society, based on respect for their different worldviews. The Commission underscores that an intercultural approach includes two dimensions: power over decision-making on specific development priorities; and recognition of cultural differences, without that being grounds for exclusion or discrimination.<sup>17</sup>
21. In this same vein, the Commission understands the African diaspora in the Americas to represent a social process of cultural resistance and assertion of rights by descendants of persons of African origin, who were brought as slaves during the transatlantic slave trade under the economic system of triangular trade.<sup>18</sup> Ripping enslaved people away from their places of origin adversely impacted their cultural

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<sup>16</sup> IACHR. [Indigenous Peoples, Communities of African Descent and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities](#) OEA/Ser.L/V/II. Doc. 47/15, December 31, 2015, (hereinafter, “IACHR, Indigenous Peoples, Communities of African Descent and Extractive Industries, 2015”), par. 7; I/A Court H.R., Case of the Saramaka People v. Suriname [Caso del Pueblo Saramaka vs. Surinam](#), Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007, Series C No. 171, par. 79.

<sup>17</sup> IACHR. [Situation of Human Rights of Indigenous and Tribal Peoples of the Pan-Amazon](#), OEA Ser. L/V/II. Doc.176, September 29, 2019, (hereinafter, “IACHR, Indigenous and Tribal Peoples of the Pan-Amazon Region, 2019”), par. 43.

<sup>18</sup> See: United Nations, International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade [Día Internacional de conmemoración de las víctimas de la esclavitud y la trata transatlántica de esclavos](#), March 25, 2008.

life but did not cause a break from their ancestral traditions. Thus, the IACHR emphasizes that recognizing the intercultural nature of African Descent communities is an essential step toward ensuring their human rights and the interconnected nature of these rights, the realization of which is challenging because Persons of African Descent continue to be subjected to conditions of poverty as a result of historical and structural discrimination.

22. Consequently, the Commission understands that the permanent cycle of multidimensional poverty hampering the realization of the economic, social, cultural and environmental rights of Persons of African Descent amounts to interconnected and intersectional violations of their human rights. Therefore, the IACHR hopes, with these findings, that the report may become a guiding tool to overcome the challenges to providing comprehensive and holistic protection, respect and guarantees of human rights, particularly, economic, social, cultural and environmental rights of Persons of African Descent in the Americas, which is a corollary duty to the instruments of the Inter-American system.

## **B. Methodology and Structure**

23. In this report, the Commission will present by theme the progress and challenges to the exercise of ESCE rights by Persons of African Descent, focusing on understanding the issue and proposing legal solutions without getting into an analysis of the situation. For this purpose, it gathered relevant information through its different mechanisms, such as the thematic and geographic monitoring system, the case and petition system, precautionary measures, thematic hearings and working visits to the States of the Americas, as well as through a consultation questionnaire which was answered by OAS States parties, civil society organizations, academia and international agencies, who provided input into the preparation of this report. The IACHR expresses its gratitude to all States and relevant actors who responded in a timely fashion to the regional consultation.<sup>19</sup>
24. This report is divided into three broad thematic sections. The first section covers the context of racism and structural discrimination in the Americas, fleshing out the

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<sup>19</sup> Registry of thematic and country monitoring. IACHR archives; IACHR, Report No. 146/2018 *Informe No. 146/2018*, Case 12.906, Merits, José Delfín Acosta Martínez and Family, Argentina, pars. 22-23; IACHR, Report No. 26/09 *Informe No. 26/09*, Case 12.440, Merits, Wallace De Almeida, Brazil, pars. 61-67; IACHR *Resolución No. 70/2018*, Precautionary Measures No. 939-18 and 1067-18, Yerling Marina Aguilera Espinoza et al, Nicaragua; IACHR, *Resolución No. 25/2014*, Precautionary Measure No. 152-14, Afro-Colombian families residing in the humanitarian space known as the barrio of “La Playita,” Colombia; IACHR, Public hearing 175<sup>th</sup> Session, *Police violence against Afro-descendant population* *Violencia policial contra Población Afrodescendiente*, Brazil, March 6, 2020; IACHR, Public hearing 173<sup>rd</sup> Session, *Reparation for slavery and structural reparation*, United States, September 2019; IACHR, *Preliminary observations from the IACHR visit to Honduras* *Observaciones Preliminares de la visita de la CIDH a Honduras*, “F. Indigenous peoples, Afro-descendants and Garifuna communities,” July 30 to August 3, 2018; IACHR, *Preliminary observations from the in situ visit to Brazil* *Observaciones Preliminares de la visita in loco a Brasil*, “Afro-descendants and traditional Afro-descendant communities (Quilombos),” November 5 to 12, 2018; As for the Consultation Questionnaire *Cuestionario de Consulta*, the States of Argentina, Brazil, Colombia, Ecuador, Uruguay and Mexico participated. IACHR archive.

scope of the principle of equality and non-discrimination with an intersectional approach. The second section discusses the major challenges to ensuring economic, social, cultural and environmental rights, as well as the intersection between ethno-racial background and access to justice, and the multiple discrimination faced by African Descent women. The third section focuses on the development and promotion of new standards regarding economic, social, cultural and environmental rights for the African Descent population in the Americas, specifically, the right to an intercultural and intersectional education, intercultural and intersectional health policies, inclusive housing plans, intersectional food security and nutrition policies, the right to employment in satisfactory conditions, the right to collective property, a healthy environment and natural resources, intersectional cultural policies, right to water and basic sanitation. And, lastly, conclusions are drawn and specific recommendations issued to the States.

### ***C. States' Obligations in Terms of the Principle of Equality and Non-Discrimination***

25. The human right to equality under the law is enshrined and protected by different instruments of the Inter-American system, the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, all treaties that establish the guarantee of the right to equality of all persons in conditions of non-discrimination. In turn, the Inter-American Democratic Charter provides for the elimination of any type of discrimination, especially ethnic and racial discrimination, as well as diverse forms of intolerance, in order to contribute to strengthening democracy and citizen participation.<sup>20</sup>
26. The IACHR reaffirms that equality and non-discrimination stand as the guiding principles of human rights and are intrinsically correlated to each other. Inter-American legal precedents have established that equality is inherent to human nature and cannot be divorced from the essential dignity of the person and, therefore, it is incompatible with this precept that one human group is regarded as superior to and worthy of privileges over other groups. Additionally, the Inter-American Court has emphatically held that, pursuant to the ACHR, there is an inseparable connection between the obligation to respect and ensure human rights and the principles of equality and non-discrimination. Consequently, the Commission reaffirms the importance of eliminating all forms of direct, indirect and

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<sup>20</sup> OAS, [American Convention on Human Rights](#), adopted on November 22, 1969, came into force on July 18, 1978, (hereinafter, "OAS, American Convention on Human Rights, 1969") Article 24; OAS, Ninth International Conference of American States, [American Declaration of the Rights and Duties of Man](#), 1948, (hereinafter, "IACHR, American Declaration of the Rights and Duties of Man, 1948") Article 2; OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013, Articles 1 and 2; OAS, [Inter-American Democratic Charter \*Carta Democrática Interamericana\*](#), adopted on September 11, 2001, (hereinafter, "OAS, Inter-American Democratic Charter, 2001"), Article 9.

multiple discrimination that disproportionately impact people who are exposed to situations of vulnerability.<sup>21</sup>

27. On this score, both the Inter-American Commission and the Court have made observations repeatedly to States regarding their obligation to adopt any and every measure necessary to confront direct and indirect discrimination, including repealing laws with discriminatory content in their domestic body of law; as well as refraining from enacting laws with discriminatory language; combating discriminatory systems and beliefs; and enacting written norms and adopting the necessary measures, such as affirmative actions, for the recognition of effective equality of all persons under the law. More recently, in Advisory Opinion No. 24/17, the IA Court reaffirmed that States must implement strategies to turn around or change existing situations of discrimination in their legal statutes and regulations that could be prejudicial to a particular group.<sup>22</sup>
28. The IACHR understands that there exist patterns of differentiated treatment based on ethno-racial background, that may amount to discrimination or, on the contrary, recognition of special privileges toward certain ethnic groups, that could be regarded as a discriminatory act. As such, the Inter-American system posits the existence of a formal notion of equality and a concept of material or structural equality. The former means objective and reasonable distinction criteria to forbid arbitrary differentiated treatment. The latter, material or structural equality, recognizes that certain sectors of the population require the adoption of affirmative action measures as a way of ensuring a level playing field, particularly those that are exposed to special conditions of vulnerability that place them at a disadvantage and hamper the exercise of their rights.<sup>23</sup>
29. The IACHR further takes note that the text of the Inter-American Convention against Racism, Racial Discrimination and Other Related Forms of Intolerance draws a distinction between indirect racial discrimination and multiple or aggravated discrimination.<sup>24</sup> It understands indirect racial discrimination to be a seemingly neutral practice that gives rise to a particular disadvantage for people belonging to a specific group based on their ethnic and racial background, without there being any reasonable justification for such practice.
30. In this regard, Advisory Opinion No. 18/03 on the Juridical Condition and Rights of Undocumented Migrants states that the main reason for justifying recognition of

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<sup>21</sup> IACHR, Compendium on Equality and Non-Discrimination, Inter-American Standards, OEA/Ser.L/V/II.171, February 12, 2019, (hereinafter, "IACHR, Equality and Non-Discrimination: Inter-American Standards, 2019") pars. 4 and 34.

<sup>22</sup> IACHR, Indigenous Women and their Human Rights in the Americas, OEA/Ser.L/V/II. Doc.44/17, approved on April 17, 2017, par. 54; I/A Court H.R., Advisory Opinion/*Opinión Consultiva OC-24/17*, November 24, 2017, Series A No. 24, par. 65; I/A Court H.R., Case of Atala Riffo and Daughters v. Chile *Caso Atala Riffo y niñas vs. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C No. 239, par. 80.

<sup>23</sup> IACHR, Equality and Non-Discrimination: Inter-American Standards, 2019, par. 25; also see IACHR, Report No. 66/06, *Informe No. 66/06*, Case 12.001, Merits, Simón André Diniz, Brazil, October 21, 2006.

<sup>24</sup> OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013, Article 1.

migrant workers in an irregular situation as a “suspect category” is that discrimination against this group is closely tied to their nationality, ethno-racial background, which is always different from that of the State where they are working. The Inter-American Court has emphasized that in compliance with the principles of equality and non-discrimination, “(...) States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.”<sup>25</sup>

31. As for multiple or aggravated discrimination, the Convention explains that it is any exclusion or distinction based on two or more grounds that are recognized in international instruments as conditions of special vulnerability, and whose purpose it is to curtail the effective enjoyment of fundamental rights and liberties.<sup>26</sup>
32. To illustrate a situation of human rights violations entailing multiple and aggravated discrimination, we need look no further than to the high rates of violence against African Descent lesbian, gay, bisexual, trans and intersex persons (LGBTI) in the region. According to information made available by civil society, it was reported that, in 2019, violent deaths of LGBTI persons in Brazil notably trended upward, with 50.2% of total number of victims being Persons of African Descent (brown or black), and 49.7% belonging to another ethno-racial group.<sup>27</sup> On this score, the IACHR has said that, in Brazil, the multidimensional nature of poverty and how groups living in a situation of vulnerability are particularly affected has been well documented by statistical data, and with Afro-Brazilians being particularly affected.<sup>28</sup>
33. Notwithstanding the high rates of inequality in the Americas, and the gradual increase of acts of discrimination and violent crimes, the Inter-American Commission recognizes that at the regional level efforts have been stepped up to combat discrimination and ensure the right to equality for Persons of African Descent; nonetheless, affirmative actions must be reinforced in a coordinated fashion and at all levels with a view toward achieving full inclusion and effectiveness of Persons of African Descent’ economic, social, cultural and environmental rights.

## 1. Duty to Prevent, Combat and Punish Racial Discrimination

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<sup>25</sup> I/A Court H.R., Advisory Opinion/*Opinión Consultiva OC-18/03*, September 17, 2003, Series A No. 18, pars. 47 and 103; OAS, *Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance*, 2013, Article 1.

<sup>26</sup> OAS, *Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance*, 2013, Article 1.

<sup>27</sup> Grupo Gay da Bahia, *Relatórios anuais de mortes LGBT+ 2019*, CDU: 316.346.2-055.34(813.7), p.16.

<sup>28</sup> IACHR, *Preliminary Observations from the IACHR’s in loco Visit to Brazil*, November 12, 2018, pg. 3.

34. The IACHR takes note of some States that have included persons of African descent in the wording of their constitutions. The political charter of Bolivia (2009) enshrines that the Afro-Bolivian people enjoys the same economic, social, and cultural rights as recognized in the Constitution for indigenous, original *campesino* nations and peoples.<sup>29</sup> Additionally, the Constitution of Brazil (1988) provides that the State shall protect Afro-Brazilian cultural manifestations.<sup>30</sup> As for the constitutional text of Ecuador (2008), it recognizes the collective rights of the Afro-Ecuadorian people as established in the Constitution, statutes, covenants, conventions and other international human rights instruments.<sup>31</sup>
35. With respect to the foundational charter of Mexico (1917), through a recent constitutional amendment (09/08/2019), Afro-Mexican communities were included as part of the pluricultural composition of the Nation, in order to ensure their self-determination, autonomy, development and social inclusion.<sup>32</sup> The Constitution of Colombia (1992), calls for the enactment of a law recognizing the territorial rights of African Descent communities and, subsequently, an amendment to an article of the Constitution echoed that appeal requiring that a certain quota of members of these communities fill seats of the legislative body.<sup>33</sup> As for Haiti's Constitution (1987), it provides that the State must protect centers of African beliefs, which belong to the cultural heritage of the nation.<sup>34</sup>
36. In response to the recognition of the structural racial discrimination to which Persons of African Descent have been subjected, the Commission is pleased that several states of the region have enacted and promoted different statutes and programs to prevent and punish all forms of discrimination and/or acts of racism. Over the past ten years, we can highlight in Panama's Law No. 7 (2018), which prohibits and punishes discriminatory acts; in Costa Rica, the "National Policy for a society free of racism, racial discrimination and xenophobia, 2014-2025" (2013); in Chile, Law No. 20609 also known as the "Ley Zamudio" ["Zamudio Law"] or "Non-discrimination Law" (2012); in Mexico, the National Program for equality and non-discrimination, 2014-2018 (2014); in Venezuela, the "Organic Law against racial discrimination" (2011); in Bolivia, Law No. 045, entitled "Law against racism and all

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<sup>29</sup> Constituent Assembly of Bolivia, Political Constitution of the Plurinational State of Bolivia *Constitución Política del Estado plurinacional de Bolivia*, 2009, Articles 3, 32 and 100.

<sup>30</sup> National Constituent Assembly, Constitution of the Federative Republic of Brazil, *Constituição da República Federativa do Brasil*, 1988, Article 215.

<sup>31</sup> National Constituent Assembly, Constitution of the Republic of Ecuador *Constitución de la República de Ecuador*, 2008, Articles 56, 58, 60 and 257.

<sup>32</sup> Senate of the Republic of Mexico, *Decree adding section C to Article 2 of the Political Constitution of the United Mexican States of 1917 Decreto por el que se adiciona un apartado C al artículo 2o. de la Constitución Política de los Estados Unidos Mexicanos de 1917*, 2019, Article 2.

<sup>33</sup> National Constituent Assembly, Political Constitution of Colombia, 1992, transitory Article 55; and Article 175 Legislative Act 02 of 2015, Article 6).

<sup>34</sup> National Constituent Assembly of the Republic of Haiti, Constitution of the Republic of Haiti, *Constitution de la République d'Haïti*, 1987, Article 215.



forms of discrimination” (2010); and in Colombia, Law No. 1482, also known as the “Anti-discrimination Law” (2011).<sup>35</sup>

37. Other States adopted laws pertaining to the subject matter prior to this past decade, such as Uruguay, with Law No. 17.817 (2004); Guatemala, with Decree No. 81 “Law on Promotion of Education against Discrimination;” Peru, through Law No. 27270, also known as the “Law against Acts of Discrimination” (2000); Guyana, by means of the Law to Prevent Discrimination (1997); Brazil, with Law No. 7.716 (1989); Argentina, through Law No. 23.592 (1988); Canada, via the Canadian Human Rights Act (1985); and Haiti with the Decree of February 4 (1981).<sup>36</sup>
38. The IACHR realizes that, in addition to the legislation and institutional policies listed above, some of the above-named States also provide for provisions in their criminal codes that make such acts a criminal offense; while, other States of the hemisphere, though they have no laws or specific programs to punish and/or prevent these acts, their criminal codes establish racism, hate crimes and/or discrimination for reasons of race, ethnicity, skin color or national origin, as a criminal offense, such as Cuba, Ecuador, El Salvador, Honduras, Nicaragua, Puerto Rico, United States and the Dominican Republic.<sup>37</sup>
39. Based on the foregoing, the Commission notes that significant progress has been made throughout the region in terms of legislation, as well as laying out plans aimed

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<sup>35</sup> National Assembly of Panama, Law No. 7/*Ley No. 7*, February 14, 2018, Article 2; Ministry of Foreign Affairs and Worship, *National Policy for a society free of racism, racial discrimination and xenophobia 2014-2025, December 2013 Política Nacional para una sociedad libre de racismo, discriminación racial y xenofobia, 2014-2025, diciembre de 2013*, p. 54 et seq; Ministry of the General Secretariat of Government of Chile, Law No. 20609 *Ley No. 20609*, July 12, 2012, Article 2; National Council to Prevent Discrimination (CONAPRED), National Program for Equality and Non-Discrimination *Programa Nacional para la Igualdad y No Discriminación 2014-2018 (PRONAIND)*, June 2014, p. 55 et seq; National Assembly of the Bolivarian Republic of Venezuela, Organic Law against Racial Discrimination *Ley Orgánica contra la Discriminación Racial*, Official Gazette No. 39. 823 of December 19, 2011, Article 1 et seqs; Plurinational Legislative Assembly, Law No. 045 *Ley No. 045*, Law against Racism and All Forms of Discrimination, October 8, 2010, Article 1 et seq; Congress of Colombia, Law No. 1482 *Ley No. 1482*, November 30, 2011, arts. 3 and 4.

<sup>36</sup> General Assembly of Uruguay, Law No. 17.817 *Ley No. 17.817*, September 6, 2004, arts. 1 et seq; Congress of the Republic of Guatemala, Decree NO. 81 *Decreto No. 81*, Law Promoting Education against Discrimination, December 17, 2002, Article 1; Congress of the Republic of Perú, Law No. 27270 *Ley No. 27270*, Law against Acts of Discrimination, May 26, 2000, arts. 1 and 2; Guyana, *Prevention of discrimination act*, 1997, part. II, 4.2; National Congress Brazil, Law No. 7.716 *Lei No. 7.716*, January 5, 1989, arts. 1 et seq; Congress of the Nation Argentina, Law No. 23.592 *Ley No. 23.592*, August 23, 1988, arts. 1 et seq.; Parliament of Canada, *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, 1977, part. I. 3.1.; President for Life of the Republic, Decree of February 4, 1981 punishing acts of racial discrimination *Décret du 4 février 1981 punissant les faits de discrimination raciale*, arts. 1 et seq, p. 110.

<sup>37</sup> National Assembly of Popular Power of the Republic of Cuba, Law No. 62 Criminal Code *Ley No. 62 Código Penal*, December 29, 1987, Article 295; National Congress of Ecuador, Organic Comprehensive Criminal Code *Código Orgánico Integral Penal*, Official Registry No. 180, 10 of February 2014, Articles 212-A et seq; Legislative Assembly of the Republic of El Salvador, Decree No. 1030 Criminal Code *Decreto No. 1030 Código Penal*, April 26, 1997, Articles 246, 292 and 361; National Congress of Honduras, Decree No. 144-83 Criminal Code *Decreto No. 144-83 Código Penal*, September 26, 1983, Article 321; National Assembly of Nicaragua, Draft Law No. 641 Criminal Code *Proyecto de Ley No. 641 Código Penal*, November 13, 2007, arts. 36. 5, 315, 427 and 428; Legislative Assembly of Puerto Rico, Law No. 146-2012 *Ley No. 146-2012 Código Penal*, September 1, 2012, Article 180; U.S. Code, *Title 18- Crimes and criminal procedure, Chapter 13 - Civil Rights*, 1994, arts. 242 (last amendment 1996) and 249 (last amendment 2009); National Congress of the Dominican Republic, Law No. 550-14 Criminal Code *Ley No. 550-14 Código Penal*, Articles 182 –185, December 19, 2014.

at combatting discrimination in all spheres, thus providing support and a framework for the protection of groups that have historically been discriminated against. Nonetheless, though it is imperative to have these frameworks of protection in place, based on available information, the IACHR understands that, in practice, patterns of racial discrimination, historical and systematic exclusion persist, adversely impacting the African Descent population in the Americas.

40. The Commission believes that, while there has been significant progress in the region, such as the recognition of the existence of Persons of African Descent and their rights in constitutions; and the criminalization of discrimination and/or acts of racism in different States, the effectiveness of any legislative measures that are enacted must be ensured. In this regard, the IACHR understands that the law is only effective to the extent its provisions are enforced on behalf or in favor of those who it aims to protect and, when it is broken, coercive means must be in place to enforce the provisions.<sup>38</sup>
41. The Commission reminds the States of their duty to review their laws and policies to ensure that they are in line with the principles of effective equality and non-discrimination. This entails assessing their potential discriminatory impact and their potential of giving rise to indirect discrimination.

## 2. Duty to Adopt Affirmative Actions

42. The Commission believes that producing statistics about groups that have historically been discriminated against is necessary for the design of targeted public policies and the implementation of affirmative actions. Furthermore, identifying the African Descent population plays an essential role in ensuring its rights to participation and representation in government. In fact, the Commission finds that it can be noted that the phenomenon of slavery and the subsequent failure to take positive actions to neutralize and undo its effects led to the perpetuation of the mechanisms of direct and indirect discrimination against the African Descent population.<sup>39</sup>
43. Consequently, the Commission understands that the eradication of all forms of racial discrimination not only entails constitutional recognition, which is a central element of shedding light on and including historically discriminated ethno-racial groups, but also encompasses establishing comprehensive and holistic guarantees of protection that include all of their rights in an interdependent way and, in an intersectional way, all of the factors that could aggravate their situation of exposure to vulnerability.
44. Thus, in light of the principle of equality and non-discrimination, the IACHR underscores that it is the duty of States to adopt affirmative actions and strategies that promote respect for and the protection of Persons of African Descent,

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<sup>38</sup> Bobbio, N., *Teoría general del derecho* [‘General theory of law’], 1992, Chapt. II Justicia, validez y eficacia.

<sup>39</sup> IACHR. *The Situation of People of African Descent in the Americas*, 2011, par. 97.

introducing development plans at all levels to specifically address the needs of this ethnic and racial group, in order to promote equal opportunity and advancement in integrating Persons of African Descent into the spheres of education, economy, employment and politics.

## **D. Intersectional Approach**

45. The Commission finds that the concept of intersectionality has been fleshed out in the academic field of Critical Race Theory (CRT), as a phenomenon where multiple categories of vulnerability, particularly gender, ethno-racial background and socioeconomic status are intertwined and have a disproportionate impact.<sup>40</sup> In this regard, the IACHR notes that the evolution of the doctrine of this approach has been written into the legal precedents of the Inter-American Court in the cases of *Ramírez Escobar et al v. Guatemala (2018)*; *I.V. v. Bolivia (2016)*; *Gonzales Lluy et al v. Ecuador (2015)*, among other ones, wherein it was ascertained that social inequality stemming from the intersection of factors such as gender, national origin, sexual orientation, migratory status and socioeconomic situation, has given rise to contexts of discrimination.<sup>41</sup>
46. Specifically, in the case of *Workers of the Fireworks Factory in Santo Antônio de Jesús and their Families v. Brazil (2020)*, the IACHR found that “[...] the intersection of factors of discrimination in this case increased the comparative disadvantage of the alleged victims (...) who share specific factors of discrimination that are suffered by persons in a situation of poverty, women and Persons of African Descent, but, additionally, suffer a specific form of discrimination on account of the convergence of all of these factors and, in some cases, because they are pregnant, girls, or because they are young girls and are pregnant.”<sup>42</sup>
47. This IACHRS-recognized method of analysis involves observing the simultaneous convergence of multiple factors of discrimination, caused by different things, which entails a synchronic convergence of different causes of discrimination. This means that two or more causes can be found that heighten vulnerability in one single event of discrimination and this has a synergistic effect, which goes beyond the simple sum of the different forms of discrimination, or which trigger a specific form of

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<sup>40</sup> Crenshaw, K., *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, Stanford Law Review, Vol. 43, No. 6, 1991, p. 1246.

<sup>41</sup> I/A Court H.R., Case of Ramirez Escobar et al v. Guatemala *Caso Ramírez Escobar y otros vs. Guatemala Corte IDH*, Merits, Reparations and Costs, Judgment of March 9, 2018, Series C No. 351, pars. 276, 277 and 304; I/A Court H.R., Case of I.V. v. Bolivia *Caso I.V. Vs. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C No. 329, pars. 318, and 321; Case of Gonzales Lluy et al v. Ecuador *Caso Gonzales Lluy y otros vs. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 1, 2015. Series C No. 298, pars. 290; Also see I/A Court H.R., Concurring Opinion *Voto concurrente* of Judge Eduardo Ferrer Mac-Gregor Poisot to the Case of Gonzales Lluy et al v. Ecuador (2015), pars. 5-12.

<sup>42</sup> I/A Court H.R., *Case of the Workers of the Fireworks Factory of Santo Antonio de Jesus and their Families v. Brazil, Caso empleados de la fábrica de fuegos en Santo Antônio de Jesus y sus familiares vs. Brasil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 15, 2020. Series C No. 407, pars. 191, 197, 198.

discrimination that only operates when several conditions of vulnerability exist in combination.<sup>43</sup>

48. The Commission takes note of the research conducted recently by the Economic Commission for Latin America and the Caribbean (ECLAC), which confirms the importance of introducing an intersectional perspective to help shine a light on gaps in the social, economic, education, health and other spheres faced by African Descent women and men as compared to non- African Descent. Consequently, an intersectional approach brings into full sight what is rendered invisible when categories such as gender and race are conceptually regarded separately from one another. In this way, States are obliged to make public policies using a human rights-based approach and an intersectional perspective, so that the ethno-racial diversity of the region is recognized and thus ensure the right to sustainable development on an equal basis and without discrimination.<sup>44</sup>
49. In light of the foregoing, the IACHR points out that the World Bank recently reported that, while the first decade of the millennium was one of Latin America's most successful ones ever in terms of both economic growth and poverty reduction, the gains were not distributed equitably and Persons of African Descent benefited less than people who identify with another ethno-racial background, thus the many social gaps and higher poverty rates than the average were perpetuated among this population. Belonging to an African Descent family can increase the likelihood that a little girl or little boy will be poor. In this regard, the IACHR notes with great concern that Persons of African Descent are overrepresented among persons living in conditions of poverty. In 2015, the population of African descent accounted for 47% of the poor and 49% of persons living in conditions of extreme poverty.<sup>45</sup>
50. Based on the foregoing, the IACHR finds it essential to shed light on the relationship between different categories of vulnerability (age, gender, migratory status, disability, sexual orientation and gender identity, socioeconomic status, *inter alia*), and how they intersect with African Descent ethno-racial background giving rise to patterns of structural racial discrimination. Under this premise, the IACHR reaffirms that analysis of intersectionality is key to comprehending human rights violations against Persons of African Descent and aids in constructing effective and timely responses for the realization and protection of their rights.

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<sup>43</sup> I/A Court H.R., Concurring Opinion *Voto concurrente* of Judge Eduardo Ferrer Mac-Gregor Poisot to the Case of Gonzales Lluy et al v. Ecuador, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015, Series C No. 298, par. 10.

<sup>44</sup> ECLAC, Afro-Descendant Women in Latin America and the Caribbean: Debts of Equality *Mujeres afrodescendientes en América Latina y el Caribe: deudas de igualdad*, LC/TS.2018/33, 2018, (hereinafter, ECLAC, Afro-Descendant Women in Latin America and the Caribbean, 2018"), pgs. 7 and 16.

<sup>45</sup> World Bank, Afro-descendants in Latin America *Afrodescendientes en Latinoamérica*, 2018, p.p. 20, 68-69.

CHAPTER 2  
CHALLENGES IN ENSURING THE  
ECONOMIC, SOCIAL, CULTURAL  
AND ENVIRONMENTAL RIGHTS  
OF PERSONS OF AFRICAN  
DESCENT IN THE AMERICAS



## CHALLENGES IN ENSURING THE ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS OF PERSONS OF AFRICAN DESCENT IN THE AMERICAS

### A. *Racial Discrimination in the Americas*

51. The Commission considers it important to recall that the States of this hemisphere emerged after declaring their independence from European colonial powers between the 15<sup>th</sup> and 19<sup>th</sup> centuries. One of the distinguishing traits of European colonialism in the Americas and its legacy was the creation of race-based colonial societies, where the colonists were clearly differentiated from the indigenous peoples and people brought over from Africa and their descendants. In addition to sustaining the colonial economies for centuries in the Americas and the Caribbean, slavery was at the source of various forms of discrimination and racism against persons of African descent. The IACHR recognizes these facts and that they are the foundation of our knowledge of history and contribute that perspective to it.<sup>46</sup>
52. The emergence of categories of ethno-racial groups helped to sustain colonialism and, thereby, established new dynamics of interaction. During this period, it was held that all African people and their descendants born in the Americas were inferior to the colonizers of European origin and, therefore, they should be subjected to multiple forms of discrimination and racial segregation, making it natural to discriminate and treat differently “racialized subjects” based on their skin color and phenotypes. This became the hallmark of the treatment of African people and their descendants and prevailed as a hereditary condition that drove processes of dehumanization throughout the hemisphere.<sup>47</sup>
53. Thus, the IACHR finds that discrimination against Africans and their descendants is a consequence of the historical cycle of exclusion to which they have been subjected as a result of enslavement. This social construct is different from the self-identity processes of African Descent communities, who understand that self-identification

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<sup>46</sup> IACHR. [Report on the Situation of Human Rights in the Dominican Republic](#). OEA/Ser.L/V/II, December 31, 2015, (hereinafter, “IACHR. [Report on the Situation of Human Rights in the Dominican Republic](#), 2015), par. 92; IACHR. [Second Progress Report of the Rapporteurship on Migrant Workers and their Families in the Hemisphere](#), OEA/Ser./L/V/II.111, April 16, 2001, par. 81.

<sup>47</sup> Cfr. Pineda, E. [Colonialismo y colorismo La revictimización de las víctimas del racismo, Economía y política](#), [‘Colonialism and colorism: the revictimization of the victims of racism, economy and politics’] May 2018.

is a dimension of recognition of the identity relating to the sense of belonging to a people that shares ethno-racial background, traditions and customs.<sup>48</sup>

54. The Commission notes that, even though several universal treaties emerged prohibiting the practice of slavery since it was abolished, the end of the enslavement of people of African origin and their descendants did not put an end to the stigmatization and the negatively differentiated treatment toward this population.<sup>49</sup> In this same vein, ECLAC has written that “the abolition of slavery did not guarantee the incorporation of freed persons as citizens, it guaranteed them formal freedom but it did not alter the socioeconomic conditions and marginality in which they lived. The lack of reintegration policies of previously enslaved persons, mainly into the labor market, relegated them to high levels of poverty and to a lack of schooling or professional skill.”<sup>50</sup>
55. Thus, the IACHR understands and recognizes that the ending of slavery did not mean the materialization of the right to equality and non-discrimination for African people and their descendants. This process only disrupted the *forced labor* to which Persons of African Descent were subjected for centuries; while it did not suspend the intention of domination to subjugate these people through discriminatory practices based on ethno-racial background, that permeated society and institutions, unleashing historical discrimination that still persists as a form of racism that disadvantages this ethno-racial group.<sup>51 52</sup>
56. Consequently, the IACHR understands racial discrimination to be rooted in the ideologically, culturally and socially based economic structure that places Persons of African Descent in a sphere of dehumanization.<sup>53</sup> In this context, the Commission finds, in keeping with the purposes of this report, that poverty and inequality are distinct conditions, which often appear in the indicators of data bases as representative of Persons of African Descent. Therefore, in addition to loom as a

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<sup>48</sup> Latin American Council of Social Sciences (CLACSO), [‘The use of ethnic/racial categories in censuses and surveys in Peru: assessment and input for discussion’], *El uso de categorías étnico/raciales en censos y encuestas en el Perú: balance y aportes para una discusión*, 2011, executive summary.

<sup>49</sup> I/A Court H.R., *Case of the Workers of Brazil Verde Hacienda v. Brazil* *Caso Trabajadores de la Hacienda Brasil Verde vs. Brasil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 20, 2016. Series C No. 318, par. 248.

<sup>50</sup> ECLAC, *Situation of Afro-descendants in Latin America and policy challenges to ensure their rights* *Situación de las personas afrodescendientes en América Latina y desafíos de políticas para la garantía de sus derechos*, LC/TS.2017/121, December 2017, (hereinafter, “ECLAC, Situation of Afro-descendants in Latin America, 2017”), pg. 18.

<sup>51</sup> The forced labor to which persons of African origin and their descendants were subjected sustained the triangular trade as an economic system of the time.

<sup>52</sup> UNESCO, *From chains to bonds. The slave trade revisited* *De la cadena al vínculo. Una visión de la trata de esclavos*, ISBN 92-3-303439-9, 2001, p. 47.

<sup>53</sup> ECLAC, *Poverty and Exclusion of Afro-descendant Peoples and Women. “The Economic Impact of Racism and Sexism on Afro-descendant Women of Latin America and the Caribbean* *Pobreza y Exclusión de los Pueblos y Mujeres Afrodescendientes. “El Impacto Económico del Racismo y Sexismo sobre las Mujeres Afrodescendientes de América Latina y el Caribe*. Meeting of Experts of ECLAC for the Construction of Gender Indicators in the Analysis of Poverty, September 23 to 25, p. 2.



social and cultural problem, racial discrimination is rooted in the economic sphere.<sup>54</sup>

57. In line with the foregoing, the Commission stresses that recognition of Persons of African Descent has not led to overcoming structural discrimination, inasmuch as the prerogatives granted to this population were construed under the race-based class system as concessions and not rights. This situation continues to place Persons of African Descent at a disadvantage, lessening their opportunities to participate and undermining their own development, reflecting the persistent obstacles to progressive realization of their economic, social, cultural and environmental rights and perpetuating the cycle of multidimensional poverty.
58. In conclusion, the Commission understands that the structural discrimination and racial inequality that disproportionately impact Persons of African Descent requires the States of the region to implement policies and affirmative action targeting this population, as well as to do away with extrinsic and intrinsic mechanisms that sustain stereotypes based on ethno-racial background, with a view toward shedding light on and overcoming the denial of persistent racial discrimination in today's society.

## ***B. Obstacles to Accessing Economic, Social, Cultural and Environmental Rights for Persons of African Descent***

59. The Commission has held that there are a variety of forms of discrimination based on ethno-racial background, which impede Persons of African Descent from gaining equal access to quality education and employment, adequate housing, decent health services and full enjoyment of their territorial rights. Consequently, the IACHR understands intersectional discrimination to directly and disproportionately impact the exercise of economic, social, cultural and environmental rights, and particularly to affect ethno-racial groups and rural communities that are at greatest risk of enduring damages to their physical integrity, because they are exposed to conditions of poverty and extreme poverty.<sup>55</sup>
60. The Commission understands that, as a consequence of that structural discrimination, patterns of institutional racism persist, as reflected in rendering invisible historically excluded groups in the processes of public policy-making and, consequently, in implicitly and explicitly denying the existence of this population as part of society. Therefore, respect for the self-identification of ethno-racial populations is the first step toward recognition of their rights and the effective guarantee thereof; failure to identify these populations widens the inequality gap and heightens exclusion.

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<sup>54</sup> Idem.

<sup>55</sup> IACHR. [Poverty and Human Rights in the Americas](#), 2017, par. 382.

61. The Commission takes note that, according to research conducted by international agencies, around 200 million *Persons of African Descent* live in the Americas. This term includes people of African origin who are living in the hemisphere and throughout the areas of the African diaspora as a consequence of slavery. This form of self-identification serves to acknowledge the cultural, economic, political and scientific contributions of African heritage and, consequently, shed light on persistent phenomena, such as racial discrimination, xenophobia and different related forms of intolerance specifically affecting them. With this frame of reference, the appropriation of the term *African Descent* is part of the process of recognition of rights, self-recognition and self-identification of the ethno-racial background.<sup>56</sup>

## 1. Statistical Visibility

62. The IACHR notes that there has been significant progress in ethno-racial self-identification and statistical visibility in the region; however, indicators and variables are still lacking an intercultural perspective in order to address the progressive development of ESCE rights. For this reason, the needs of Persons of African Descent at the regional and local level must be determined by beginning to recognize that some basic ones have gone unmet. This assessment of needs should be broken down in concrete terms as part of the census and demographic data-gathering processes, inasmuch as recognition is an essential step toward implementation of important affirmative action on this subject matter. The lack of statistical data on Persons of African Descent stands in the way of the progressive realization of their rights and inclusion in public policies.
63. The Commission understands that the availability of official statistics about persons of African descent is the first step toward recognition of their rights. Thus, censuses are a suitable tool to gauge where this population is concentrated and, at the same time, identify its living conditions. The Commission takes note of recent reports issued by ECLAC indicating that from 2010 to 2012 a total of 12 countries of the region used the term “African Descent” as a form of self-identification on their census questionnaires, namely, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, Honduras, Panama, Paraguay, Puerto Rico, Uruguay and Venezuela.<sup>57</sup>
64. The Commission also notes that, based on data from national censuses from the 2010 round, the African Descent population was significantly represented in Cuba, with 35.9%; in Puerto Rico, with 14.8%; Panama, with 8.8%; Costa Rica, with 7.8%; and Ecuador, with 7.2%. Colombia, for its part, reported 10.5% in 2005 and 9.34%

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<sup>56</sup> OAS, [Plan of Action for the Decade for People of African Descent in the Americas, 2016-2025](#), p. 2.; OAS, World Conference against Racism, Racial Discrimination and Xenophobia and Related Forms of Intolerance [Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las formas conexas de Intolerancia](#), WCR/RCONF/SANT/2000/L.1/Rev.4, 4 al December 7, 2000, pg. 28; UN, World Conference against Racism, Racial Discrimination and Xenophobia and Related Forms of Intolerance [Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia](#) (Durban Declaration and Programme of Action), August 31 to September 8, 2001.

<sup>57</sup> ECLAC, [Afro-descendant Women in Latin America and the Caribbean](#), 2018, pg. 22.

in the 2018 Census.<sup>58</sup> Brazil reported 54% in the 2010 Census, and 56.10% in the 2019 National Household Survey. As for Peru, the 2017 Census revealed that 3.6% of the population identifies as Afro-descendant. In Mexico, the 2015 Mid-Census Survey reported that 1.2% of the national population identifies as Afro-American/or Afro-descendant; however, for the 2020 Population Census, this self-identification category was included for the first time ever. Likewise, the State of Argentina included the choice of African Descent on the 2020 Census of Population, Household and Housing. In 2013, Chile carried out a survey focusing on the characterization of the African Descent population of the Region of Arica and Parinacota, which showed that 4.7% of the total population of that region self-identified as Afro-descendant.<sup>59</sup>

65. The Commission also recognizes that different tribal ethnic groups are found in several countries of the region. In Central America, the Garifuna community settlements straddle the borders of Honduras, Guatemala, Belize and Nicaragua and it is estimated that approximately 450,000 Garifuna exist worldwide. According to the 2018 Census, the Garifuna population in Guatemala numbers 19,529; in Honduras, the 2013 Census revealed that 43,111 people belonged to this community. In Belize, the 2010 National Census certified that 19,639 persons self-identified as Garifuna, accounting for 6.1% of the total population; while, in Nicaragua, the latest census of 2005 reported that 3,271 Garifuna inhabit that country.<sup>60</sup>

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<sup>58</sup> Some grassroots and civil society organizations filed a petition for constitutional relief via *tutela una acción de tutela*, which was granted on November 21, 2020 by the 21<sup>st</sup> Court for Administrative Claims of the Circuit of Bogota claiming a violation of the rights of the Afro population for the way in which the 2018 census was implemented. They claim that the methodology caused this population to be inexplicably undercounted by 30.8%. The petitioners believed that the underreporting of the Afro-descendant population violated their rights to equality and non-discrimination, as well as their economic, social, cultural rights and right to information.

<sup>58</sup> According to information that came to the attention of the Commission, the trial court ruled against the claims of the petitioners and, therefore, they filed an appeal to challenge the denial, which is pending final decision at the appeals court level.

<sup>59</sup> ECLAC, *Afro-descendant Women in Latin America and the Caribbean*, 2018, pgs. 18 and 19; DANE, *Población Negra, Afrocolombiana, Raizal y Palenquera, Resultados del Censo Nacional de Población y Vivienda 2018*, [‘Black, Afro-Colombian, Raizal and Palenquera Population, Results of the 2018 National Population and Housing Census’], November 6, 2019; IBGE, *Pesquisa Nacional por Amostra de Domicílios (PNAD) [‘National Household Sampling Survey], População, por cor ou raça*, [Population by color or race] Brazil, 4<sup>o</sup> quarter of 2019, updated in 14/02/2020; INEI, *Perfil sociodemográfico, Informe Nacional, Censos Nacionales 2017: XII de Población, VII de Vivienda*, 2018, [‘Sociodemographic Profile, National Report 2017 Censuses: 12<sup>th</sup> of Population, 7<sup>th</sup> of Housing 2018], p. 214; Government of Mexico, INMUJERES, *Datos de la Población Afrodescendiente en México*, [‘Data on Afro-descendant Population in Mexico’] 2015; See El Universal, *Censo 2020: Cuentan a los afros por primera vez*, [‘2020 Census: Counts Afros for the first time’], August 15, 2019; INDEC, *Proyecto Censo Nacional de población, hogares y viviendas, Ronda 2020*, [‘National Census Project of Population, Households and Housing, 2020 Round’], Executive Summary, Argentina, August 2019, pgs. 9 and 10; INE, *1<sup>a</sup> Encuesta de Caracterización de la Población Afrodescendiente- ENCAFRO 2013*, [1<sup>st</sup> Survey to Characterize the Afro-descendant Population 2013], Chile, January 2014, pgs. 28 and 29

<sup>60</sup> See: Indigenous Territory and Governance, *3. Garífunas*, 2019; INE, *Resultados del Censo 2018, Población total por pueblos* [‘Results of the 2018 Census, Total population by peoples’], Guatemala, 2018; INE, *Censo 2013, Tomo 6 Grupos poblacionales*, [2013 Census 6 Population Groups] Honduras, 2015; Statistical Institute of Belize, *Belize Population and Housing Census 2010*, Country Report, 2013, pg. 20; INIDE, *VIII Censo de Población y IV de Vivienda, Censo 2005, Población características generales*, [8<sup>th</sup> Census of the Population and 4<sup>th</sup> of Housing, 2005 Census, Population general characteristics’] Volume I, November 2006, pg. 184.

66. The Commission takes note of ECLAC's recent study affirming that censuses of the decades of 2000 and 2010 were limited in terms of identification of Persons of African Descent, but have made progress in gathering indicators on their living conditions, which has helped to ascertain ethno-racial inequality and intersection with inequality of territory, gender, disability status and generational process, among other types. In anticipation of the 2020 rounds of censuses, ECLAC has recommended strengthening training cycles and methodologies, supervision and conducting sensitivity campaigns; as well as establishing effective mechanisms for the participation of Persons of African Descent; establishing guidelines for validation and quality control on ethno-racial self-identification questions during and after the gathering of census data.<sup>61</sup>
67. In this context, following ECLAC's guidelines with a view toward the 2020 census and other statistics-gathering operations, the IACHR reaffirms that it is of the utmost importance for State institutions to provide national resources to carry out censuses, clearly defining what its being measured, why and what for, inasmuch as gauging the diversity of a country not only involves the purpose of demographic identification of the population and targeting particular ethno-racial groups, such as indigenous and African Descent peoples, but also is intended to spotlight the situation faced by these ethno-racial groups in order to raise awareness about coordinated proposals that aid in overcoming obstacles and promote the protection of their rights.<sup>62</sup> Additionally, the Commission emphasizes the need to introduce an intercultural approach and ethno-racial perspective into the technical teams during all phases of census implementation, such as question design, data collection, data analysis and systematization, thus ensuring that the data will be accurate and secure and that it will not be used to stigmatize or reinforce racial stereotypes.

## 2. Right to Development

68. The Commission notes that, according to World Bank studies, in most countries, regions inhabited by Persons of African Descent are usually areas with lower levels of development. Generally speaking, these regions are poorly connected to the rest of the country and to markets and have less access to public services. Some of the most notorious examples are northeastern Brazil, the Colombian Pacific coast, Esmeraldas in Ecuador, Barlovento in Venezuela and the Atlantic coasts of Costa Rica, Honduras, Nicaragua and Panama.<sup>63</sup>
69. In earlier reports, the Commission has noted that, in the case of the English-speaking Caribbean, the States with the highest rates of population living below the poverty line include Belize (41%), Granada (37.7%), Guyana (36.1%) and Saint Lucia

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<sup>61</sup> ECLAC, *Aspectos conceptuales de los censos de población y vivienda: desafíos para la definición de contenidos incluyentes en la ronda 2020*, [‘Conceptual aspects on population and housing censuses: challenges for defining inclusive content in the 2020 round’], series Seminars and Conferences, N° 94, LC/TS.2019/67, 2019, (hereinafter, “ECLAC, Conceptual aspects on population and housing censuses, 2019”), pg. 305.

<sup>62</sup> Idem.

<sup>63</sup> World Bank, *Afro-descendants in Latin America*, 2018, pg. 18.

(28.8%), which happen to be countries with a high percentage of African Descent population.<sup>64</sup> In the case of Haiti and the Dominican Republic, the Commission notes that, according to studies, both countries have a majority of Persons of African Descent. With respect to Haiti, the Commission also views with concern that its inhabitants are beset by dire problems of illiteracy and obstacles to education and meeting the minimum standards of wellbeing. Approximately one of every two Haitians age 15 or older is illiterate.<sup>65</sup>

70. In this same vein, during a country visit to the Dominican Republic in 2015, the IACHR visited 9 *bateyes*—rural community settlements that grew around the sugar industry— in different locations of the country and attested to the conditions of poverty, exclusion and discrimination under which *batey* dwellers live, who are Dominicans, Haitians and Dominican-Haitians. The Commission was able to observe that living conditions on the *bateyes* were highly precarious and, although in some instances conditions may be similar to persons living in poverty in the rest of the Dominican Republic, they are inhuman and degrading.<sup>66</sup>
71. In the case of Venezuela, the IACHR takes note that both the African Descent population and other ethno-racial groups have emigrated to different countries of Latin America and the Caribbean because of the dire socio-political crisis the country is experiencing at all levels, undermining the economic, social, cultural and environmental rights of the population. In this context, access to public services has been precarious, giving rise to high rates of poverty among the Venezuelan population and concern over the lack of essential services such as electricity.<sup>67</sup> Additionally, the IACHR notes Persons of African Descent in contexts of human mobility, such as migration<sup>68</sup> and forced displacement,<sup>69</sup> can be exposed to acts of racial discrimination and xenophobia concurrently.
72. As for the situation of Persons of African Descent in Argentina, according to the information furnished by the Argentine State in responding to the consultation questionnaire, the African Descent community has been historically rendered invisible, based on the widely held belief that there are no Persons of African Descent in the country, the origin of which is a history of denial of the existence of Persons of African Descent in shaping the nation. Thus, the National Institute against Discrimination, Xenophobia and Racism (INADI) has been driving initiatives against racism and the consequent discrimination, as well as recognition of the rights Persons of African Descent of Argentine extract and migrants.<sup>70</sup> The Commission takes note of recent INADI data indicating that 5,177 complaints were filed from

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<sup>64</sup> IACHR. Poverty and Human Rights in the Americas, 2017, par. 106.

<sup>65</sup> Cfr. Human Rights Watch, Eventos Haití, [Events of Haiti] 2016.

<sup>66</sup> IACHR. Report on the Situation of Human Rights in the Dominican Republic, 2015, par. 307.

<sup>67</sup> IACHR. Press Release No. 091/19. IACHR Observes Persistent Human Rights Issues in Venezuela, April 5, 2019.

<sup>68</sup> IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons, OEA/Ser.L/V/II.Doc. 46/15, December 31, 2015, (hereinafter, "IACHR, Human Mobility: Inter-American Standards, 2015") par. 68.

<sup>69</sup> Constitutional Court, Judgment Auto 005/09. Declared in judgment T-025/04. M.P. Manuel José Cepeda Espinosa, par. 106.

<sup>70</sup> Document of IACHR archive.

2008 to 2019, for structural racism, which accounts for 19.2% of all types of complaints. This same study revealed that among the complaints for structural racism, 32% were for the condition of Latin American migrant; 19%, for physical appearance; 16%, for economic condition; 7% for indigenous peoples; and 2% for Persons of African Descent. The most common settings for these cases to occur would be 24% at the workplace and 13% in public administration. 50% of the complaints (2589) were filed by women; 46.5%, by men (2407); and 3.5% by institutions (181).<sup>71</sup>

73. On this score, the Commission takes note of the visit of the United Nations Working Group of Experts on People of African Descent to Argentina in 2019. Its recommendations urge the Argentine State to approach inequality and invisibility of Afro-Argentines from a reparative justice perspective, based on recognition of Persons of African Descent and inclusion in development programs, with a view toward improving their quality of life and the realization of their human rights.<sup>72</sup>
74. Likewise, the IACHR takes note of the official visit of the United Nations Working Group on People of African Descent to the State of Ecuador, where it was ascertained that Persons of African Descent face difficulties relating to the lack of access to basic services such as adequate housing, health care and education, reporting disproportionately high unemployment and representation at detention facilities.<sup>73</sup> Other data confirm that, in Ecuador, Peru, Brazil and Uruguay, based on 2014 income levels, poverty and extreme poverty rates of the African Descent population were higher as compared to the non- African Descent population.<sup>74</sup> The percentage of Persons of African Descent living in poverty in comparison to non-African Descent in that situation was almost three times higher in Uruguay, more than double in Brazil and around 50% higher in Ecuador and Peru.<sup>75</sup>
75. The Commission notes that difficulties persist for Persons of African Descent to gain access to and remain in the education system while, according to public information, in countries such as Bolivia, Costa Rica, Uruguay and Venezuela, the percentage of 12- to 15-year-old Afro-descendant children and adolescents who attend an school is lower in relation to non-Afro-descendants. That same study revealed that the percentage of young Persons of African Descent age 18 to 24 years old, who attend school in Brazil (27,6%), is lower than the percentage for non-Afro-descendants (34,2%). Similarly, Colombia reports Afro-descendant school attendance at 25,2%

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<sup>71</sup> INADI, *Racismo estructural en las denuncias radicadas en INADI*, [‘Structural racism among complaints filed at INADI’], August 28, 2020. Report written by the research coordinators and Observatories on complaints filed at the agency over the period of 2008-2019.

<sup>72</sup> Cfr. OHCHR, *Declaración a los medios del Grupo de Trabajo de Expertos de las Naciones Unidas sobre Afrodescendientes*, [Statement to the media from the United Nations Working Group of Experts on People of African Descent, upon completion of its official visit to Argentina, conducted from March 11-18, 2019, March 18, 2019.

<sup>73</sup> UN, Human Rights Council 13<sup>th</sup> Session, *Informe del Grupo de Trabajo de Expertos sobre los Afrodescendientes, Visita al Ecuador*, [Report of the Working Group of Experts on People of African Descent, Visit to Ecuador], June 22-26, 2009, A/HRC/13/59, January 6, 2010, pg. 2.

<sup>74</sup> ECLAC, *Situation of People of African Descent in Latin America*, 2017, p. 76, graph 6.

<sup>75</sup> Idem.

and non-Afro-descendants, 29,1%; Ecuador, Afro-descendant attendance, 24.9%, non-Afro-descendant attendance, at 38. 5%).<sup>76</sup>

76. As for higher education, the percentage of Persons of African Descent who obtain a higher non-university degree in Bolivia is 3.5% of men and 4.47% of women; by comparison, non-Afro-descendants graduate with higher education degrees at 4.9% and 7%, respectively. With regard to access of Persons of African Descent to a university degree, the percentage for women is 17.8% and for men, 16.7%; while for non-Afro-descendants the percentage is much higher, 30% for men and 32.6% for women. In Uruguay, the context is similar, the percentage of young Persons of African Descent age 20 to 29 years old, who reach the level of higher education, in urban areas, is 5.9% among men and 11.5% among women; while for non-Afro-descendant youth the rates are 22.7% among men and 34.3% among women. In rural areas, the figures for Persons of African Descent are even lower, for men 1.5% and women, 4.6%; while for non-Afro-descendant youth in rural areas, the rates are 7.7% among men and 17% among women.<sup>77</sup>
77. The obstacles to access to education perpetuate the cycle of poverty for population groups that have historically been discriminated against. Recent studies have shown that the Afro-descendant population reports low employment rates as compared to non-Afro-descendants, such as in Cuba (36.7%), Venezuela (15.9%) and Ecuador (33.9%). While the same statistics bear out that Persons of African Descent have the highest rates of unemployment in relation to non-Afro-descendants. In Brazil, by way of example, the percentage is 9% among Persons of African Descent and 6.1% among non-Afro-descendants; in Nicaragua, 6.8% among Persons of African Descent and 4.1% among non-Afro-descendants; in Panama, 8.4% among Persons of African Descent and 6.8% among non-Afro-descendants. It has also been noted that, with respect to women in executive positions, Afro-descendant women report the lowest percentages in Panama (7.2%), Honduras (3.0%), Argentina (5.8%) and Uruguay (0.5%), in comparison to non-Afro-descendant women executives.<sup>78</sup>
78. As regards health services, ethno-racial disparities persist in different countries of the hemisphere. An investigative report indicated that 15.2% of the total population lacking health care in the United States is black. The report further noted that, as compared to the white population, 52% of blacks reported receiving less favorable treatment in terms of access and health care. This same study revealed that from 2008 to 2015, Persons of African Descent experienced a much higher rate of HIV (53.1 of every 100,000 inhabitants in 2015) as compared to whites (6.1 of every 100,000 population in 2015) and to other ethno-racial groups. In 2016, the death rate in hospitals for every 100,000 births was 3.5% among white women, 10.1%

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<sup>76</sup> ECLAC, Situation of People of African Descent in Latin America, 2017, pg. 110-114, graph 19- 24.

<sup>77</sup> Ibidem, p. 117-118, graph 17 – 18.

<sup>78</sup> ECLAC, Situation of People of African Descent in Latin America, 2017, pgs. 134-136, graph 33- 35; ECLAC, Afro-descendant Women in Latin America and the Caribbean, 2018, pg. 38, graph18.

among Afro-descendant women, 7.5% among women of Asian extract and 7.8% among Latina women.<sup>79</sup>

79. The Commission takes note that in countries such as Panama (13.8%), Costa Rica (10.1%), Colombia (26.3%), Brazil (24.2%), Ecuador (25.0%), Uruguay (16.9%) y Venezuela (18.4%), the infant mortality rate among Persons of African Descent is higher in proportion to non-Afro-descendants. The IACHR further notes that in countries such as Uruguay 78% of Afro-descendant women report receiving four prenatal check-ups, while 89.9% of non-Afro-descendant women report receiving all four check-ups. With regard to maternal mortality rates, in Ecuador the rate of 272.5 deaths for every 100,000 live births corresponded to Afro-descendant women.<sup>80</sup>
80. Through its monitoring mechanisms, the IACHR has observed that older Afro-descendant persons face permanent roadblocks to the guarantee of their rights relating to social security; specifically, in access to health services, treatment of diseases and palliative care; as well as difficulties in obtaining retirement benefits. This context is further aggravated when special situations of vulnerability are involved, such as poverty, disability and gender, as a result of the structural discrimination to which they have been subjected.<sup>81</sup>
81. In this regard, according to data from the Pan-American Health Organization, the *rate of aging*<sup>82</sup> of the Afro-descendant population in the Americas is 23.7% in Brazil; 15.9 % in Colombia; 30.9% in the United States; 20.2 in Costa Rica; 23.8 in El Salvador and 44.8% in Venezuela, all countries which have historically presented a demographic concentration of Persons of African Descent.<sup>83</sup> For its part, ECLAC reports have indicated that the countries of the region with the highest proportion of older Afro-descendent persons are Argentina, Cuba, Paraguay, Uruguay and Venezuela, where the figure surpasses 10% of the total population, while in Bolivia and Ecuador, the figure is below 7%.<sup>84</sup> As for Mexico, 10.7% of the Afro-descendant population are persons over 60 years of age.<sup>85</sup> In countries such as Honduras, Nicaragua, Panama and Venezuela, the Afro-descendant population presents a higher percentage of older persons (8.7%; 7.9%; 12.1%; and 12;9%, respectively) than of young children (7.3%; 6.1%; 11.2%, and 9.0%, respectively), which is related

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<sup>79</sup> Agency for Healthcare Research and Quality (AHRQ), *National healthcare quality and disparities report*, 2018, p. 24, 25, 72, 184.

<sup>80</sup> ECLAC, *Situation of People of African Descent in Latin America*, 2017, pg. 93-96, graph 13-16.

<sup>81</sup> IACHR. Press Release No. 152/17, *IACHR Calls on States to Combat Discrimination against Older Persons*, October 4, 2017.

<sup>82</sup> This rate corresponds to the rates of PAHO.

<sup>83</sup> PAHO, *La salud de los pueblos indígenas y afrodescendientes en América Latina*, The Health of Indigenous and Afro-descendant Peoples in Latin America, 2013, pg. 16, fig. 18.

<sup>84</sup> ECLAC, *Envejecimiento, personas mayores y agenda 2030 para el desarrollo sostenible*, Aging, older persons and the 2030 sustainable development agenda, 2018, pg. 53.

<sup>85</sup> Institute for Social Research of the UNAM, *Vejez afrodescendiente*, ['Afro-descendant old age'] 2019.



to high malnutrition and infant mortality rates among this ethno-racial group in the countries of the Caribbean.<sup>86</sup>

82. The Inter-American human rights system has emphasized ensuring the rights of older persons of African descent, in keeping with the standard of equality and non-discrimination, as provided for in the Inter-American Convention on Protecting the Human Rights of Older Persons. This instrument underscores the obligation of the States Parties to adopt specific approaches that include Afro-descendant persons, traditional peoples and rural communities in public policies on aging and old age.<sup>87</sup> In this same vein, in recent reports, the IACHR has noted that older persons face multiple challenges that heighten intersectional discrimination, such as belonging to an ethno-racial group, gender and situation of poverty, which cause certain population groups to be particularly affected in access to and realization of their rights.<sup>88</sup>

### 3. Covid-19 Pandemic Context

83. The IACHR notes that the COVID-19 pandemic has deepened and shined a light on racial disparities and has had a differential impact on Persons of African Descent, who are at high risk of infection and death from this disease because of different factors, such as place of residence and physical surroundings. The conditions of vulnerability to which Persons of African Descent have been subjected makes them increasingly exposed to contexts of poverty and extreme poverty and face hurdles in accessing quality housing, basic services such as electricity, water and sanitation, as well as barriers to accessing available public transportation. These situations increasingly expose them to conditions of overcrowding, homelessness, informal settlements, among others.<sup>89</sup>
84. Another factor is health systems and health care. On this score, the IACHR notes that there is a lack of disaggregated data by ethno-racial background in epidemiological records and, consequently, a lack of specific information about Persons of African Descent in health systems. Additionally, a third factor involves informal occupations and working conditions, because a high number of Persons of African Descent work in essential jobs that cannot be performed from home, perform unskilled labor, and often do not receive social benefits. All of these situations makes them more susceptible to contracting the virus because of frequent contact with the general

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<sup>86</sup> ECLAC, Situation of People of African Descent in Latin America, 2017, pg. 66, Table 9.

<sup>87</sup> OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, adopted on June 15, 2015, came into force on January 11, 2017 (hereinafter, "OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, 2015"), Article 5.

<sup>88</sup> IACHR [Compendium on Equality and Non-Discrimination, Inter-American Standards](#), 2019, par. 99.

<sup>89</sup> IACHR. Press Release No. 066/21, [On the International Day for the Elimination of Racial Discrimination, the IACHR and the OSRESCER Call on States to Guarantee People of African Descent's Right to Health with an Intersectional and Intercultural Approach](#), March 19, 2021; See, [COVID-19 Racial and Ethnic Health Disparities](#), December 10, 2020.

public. In such conditions, Persons of African Descent report low incomes and their levels of indebtedness grow higher and higher.<sup>90</sup>

85. According to official government sources, the Commission has learned that as of December 2020, a total of 46,953 Persons of African Descent were infected with the virus in Colombia; and 1,556 had died. The departments where the most cases have been reported are Bogota (7,472), Barranquilla (7,343), Antioquia (5,256), Cartagena (3,713), Valle del Cauca (3,658), el Chocó (3,600), Atlántico (3,306) and Nariño (3,012).<sup>91</sup>
86. In the case of Brazil, the IACHR noted with concern the disproportionate impacts of the virus on Persons of African Descent, particularly the high number of cases in geographic areas of high concentration of this ethno-racial population, such as in favelas (urban slums) and quilombolo communities, especially those who live in poverty or extreme poverty. According to available official government sources, in the city of Río de Janeiro, where around 1.5 million people call favelas their home, overcrowding and unsanitary conditions hamper measures of lockdown to contain the pandemic. In the largest favela of Río, Rocinha, one in every four people examined had been infected as of June 2020. Additionally, according to data from civil society organizations, as of February 2021, 4,897 infections and 192 deaths had been reported in Quilombola communities.<sup>92</sup>
87. The IACHR observes that even though COVID-19 has spread throughout the population indiscriminately in the United States, Afro-Americans are two times more likely to die of COVID-19 than any other group, according to studies, which reported that Persons of African Descent died from the virus at a rate of 50.3 per 100,000 population, as compared to whites at 20.7, Latinos at 22.9 and Asian Americans at 22.7 per 100,000.<sup>93</sup> The Centers for Disease Control (CDC) have reported that Afro-Americans accounted for 33% of persons hospitalized for COVID-19, even though they represent only 13% of the overall United States population. In contrast, the CDC found that white Americans accounted for 45% of hospitalizations, even though they represent 76% of the US population.<sup>94</sup>
88. The IACHR understands that not only can the disproportionate impact of the COVID-19 pandemic on Persons of African Descent be reduced to statistical analysis, as has

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<sup>90</sup> Idem.

<sup>91</sup> Caracol Radio, *1,556 afros y 251 extranjeros han fallecido por COVID-19 en Colombia*, [1,556 Afros and 251 foreigners have died from COVID-19 in Colombia], January 05, 2021. Also see New York Times, *Cómo evitar que el coronavirus profundice la desigualdad racial en Colombia*, [‘How to keep the coronavirus from deepening racial inequality in Colombia, April 29, 2020.

<sup>92</sup> IACHR. Press Release No. 092/20, *IACHR and its Special Rapporteurship on ESCER calls on the States to guarantee the rights of Afro-descendant Persons and prevent racial discrimination in the context of the COVID-19 pandemic*. April 28, 2020; NPR, *COVID-19 Infection Rate In Rio’s Favelas Far Exceeds Official Count, A New Study Says*, June 25, 2020; Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas (CONAQ), *Observatório da Covid-19 nos Quilombos*, [Covid-19 Observatory in Quilombos], February 2, 2021.

<sup>93</sup> Howard University, Thurgood Marshall Civil Rights Center, *The Contradiction of Colorblind COVID-19 Relief: Black America in the Age of Pandemic*, 2020, p. 8, para. 10.

<sup>94</sup> Cfr., Mayo Foundation for Medical Education and Research (MFMER), *Coronavirus infection by race: What’s behind the health disparities?*, Aug. 13, 2020.

been done in paragraphs 83 to 84, and not only does it infringe their right to health, but it is an interconnected and disproportionate infringement of their economic, social, cultural and environmental rights. In this same vein, the IACHR notes that “being African Descent” does not facilitate COVID-19 infection; on the contrary, it reaffirms that the structural and systematic discrimination historically faced by the African Descent population makes it more vulnerable to infection.

89. The IACHR takes note that several States of the region have issued recommendations for health care targeting the African Descent population in the context of COVID-19. Specifically, the “Guide to the Care of Indigenous and Afro-Mexican Peoples and Communities in response to the SARS-CoV-2 virus health emergency” emphasizes implementation of culturally appropriate measures; respect for free-determination and autonomy; attention to suspect cases and deaths; transfers from one place to another; language translation and interpretation; and economic and social recovery strategy.<sup>95</sup> Costa Rica issued “Recommendations for the prevention of COVID-19 among the Afro-descendant population,” explaining in detail epidemiological considerations for Costa Rica’s African Descent population and for treatment of preexisting diseases among this ethno-racial population.<sup>96</sup> The Colombian State published “Guidelines for the prevention, detection and management of cases of coronavirus (COVID-19) for the ethnic population of Colombia,” focusing on priority health care in the departments and municipalities where there is a presence of African Descent, Raizal and Palenquera communities.<sup>97</sup>
90. The IACHR and its REDESCA urge the States to implement a vaccine distribution plan to ensure equitable access to Persons of African Descent and tribal communities, taking into consideration cultural appropriateness and priority conditions, including socioeconomic status and geographic location; gender, disability, age, being head of household, condition of migrants/forcibly displaced persons, sexual orientation and gender identity/expression.<sup>98</sup>

#### 4. Situations of Violence and Armed Conflicts

91. The Commission has also observed that because of the conditions of poverty and extreme poverty to which the Persons of African Descent of the region have been subjected, they are increasingly more vulnerable to situations of armed violence.

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<sup>95</sup> Government of Mexico, *Guía para la Atención de Pueblos y Comunidades Indígenas y Afro-mexicanas ante la emergencia sanitaria generada por el virus SARS-CoV-2*, [Guide to Care of Indigenous and Afro-Mexican Peoples and Communities in response to the SARS-CoV-2 virus health emergency] May 8, 2020, pgs. 4 et seq.

<sup>96</sup> Ministry of Health, *Recommendations for the prevention of COVID-19 in the Afro-descendant population Recomendaciones para la prevención del COVID-19 en población afrodescendiente*, April 13, 2020, pg. 9.

<sup>97</sup> Ministry of Health and Social Protection, Guidelines for the prevention, detection and management of coronavirus cases (COVID-19) for the ethnic population in Colombia *Lineamientos para la prevención, detección y manejo de casos de coronavirus (COVID-19) para población étnica en Colombia*, March 25, 2020, pgs. 8 and 14.

<sup>98</sup> IACHR. *Resolution 1/2021: COVID-19 vaccines in the framework of Inter-American human rights obligations*, adopted on April 6, 2021.

Thus, the IACHR takes note of information from publicly available sources indicating that, in Colombia, more than 1 million of the 8 million people registered as victims of the armed conflict belong to black, Afro-Colombian, Raizal and Palenquera communities, with this ethno-racial group collectively reporting the highest number of victims.<sup>99</sup> The IACHR welcomes the efforts of the Colombian State in implementing collective reparation programs for ethnic individuals;<sup>100</sup> nonetheless, it urges Colombia to step up efforts to move forward on implementing all stages of the comprehensive reparation plan.

92. Additionally, the IACHR has been monitoring acts of armed violence against Persons of African Descent in the context of the COVID-19 pandemic; specifically, it has been closely following the forced disappearance of four members of the Garifuna community of Triunfo de la Cruz. On July 18, 2020, allegedly armed persons wearing uniforms and vests of the Police Investigation Directorate (DPI) encroached onto the territory of the Triunfo de la Cruz Garifuna community and took leader Alberth Sneider Centeno, president of the Garifuna Community Association of El Triunfo de la Cruz, and member of the Fraternal Black Organization of Honduras (OFRANEH), from his residence in Tela, Department of Atlántida. Subsequently, this same armed group reportedly entered the residence of Milton Joel Martínez Álvarez, Suami Aparicio Mejía and Gerardo Mizaël Rochez, also members of OFRANEH; their whereabouts continue to be unknown.<sup>101</sup> The IACHR urges the State of Honduras to continue the investigations in an expedited and diligent manner; to punish those responsible, as appropriate; and to grant full and timely reparation to the victims.
93. In connection with the foregoing, the Commission has voiced concern about the historic number of violent police actions reported over the first half of the year in Brazil, how they are linked to racial discrimination and are further aggravated in the context of COVID-19. Therefore, the IACHR has called on the State to adopt a citizen-focused security policy, as well as to combat and root out historical structural discrimination against Persons of African Descent and people exposed to poverty and extreme poverty. Moreover, the IACHR emphasizes how important it is for the country to strengthen the independence and autonomy of the operators of the justice system and the oversight bodies involved in the investigation of civilian and military police activities.<sup>102</sup>

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<sup>99</sup> Cfr., Unidad para la atención y reparación integral a las víctimas [Unit for victim assistance and comprehensive care], *Red Nacional de Información* [National information network], January 1, 2020.

<sup>100</sup> Cfr., Unidad para las víctimas [Victims' Unit], *Subdirección de reparación colectiva*, [Sub-directorate for collective reparation], ethnic peoples and communities.

<sup>101</sup> Office of the United Nations High Commissioner for Human Rights *OACNUDH condena la desaparición forzada de Alberth Sneider Centeno, presidente del Patronato de la comunidad Garifuna de El Triunfo de la Cruz, y de tres personas más pertenecientes a la comunidad*, [UNHCHR condemns forced disappearance of Alberth Sneider Centeno, president of the Garifuna Community Association of El Triunfo de la Cruz, and of three more persons belonging to the Community'] July 19, 2020; Amnesty International, *Honduras: Gobierno debe encontrar garífunas desaparecidos y garantizar protección a la comunidad*, Honduras: Government must find disappeared Garifuna persons and ensure protection of the community, July 24, 2020.

<sup>102</sup> IACHR. Press Release No. 187, *IACHR condemns violent police actions in Brazil and urges it to adopt measures to combat social and racial discrimination*, August 2, 2020.

### ***C. Intersectionality between the Ethno-Racial Background of African Descent and Access to Justice***

94. The human right of access to justice is sustained by an international legal framework that includes standards of the Inter-American and Universal Systems. The American Convention on Human Rights (hereinafter, “American Convention” or “Pact of San Jose” or “CADH”), as well as the American Declaration of the Rights and Duties of Man, enshrine that everyone has the right to effective judicial protection; to a fair trial and for it to take place within a reasonable time; the right to the presumption of innocence; prohibition of double jeopardy; right to compensation; under the principle of legality (*nullum crimen sine lege*), freedom from *ex post facto* law, and the right of respect for dignity and honor.<sup>103</sup> In the sphere of the OAS, the States of the region have reaffirmed their commitment to guarantee this right through resolutions on “Official public defenders as a guarantee of access to justice for persons in situations of vulnerability,” and “autonomy for official public defenders as a guarantee of access to justice,” which emphasize that the right of access to justice is not exhausted when a person merely enters a court of law, but extends over the entire proceeding and, therefore, States must remove obstacles that may impair or limit access to a public defender.<sup>104</sup>
95. For its part, the International Covenant on Civil and Political Rights provides that every person has the right to a fair and public hearing with guarantees of due process by a competent, independent and impartial tribunal, on an equal basis; also to be informed in a language which he or she understands and to be assisted free of charge by an interpreter; to adequate means for the preparation of his or her defense; to be tried without undue delay; to defend himself or herself in person or through legal assistance of his or her own choosing; not to be compelled to testify against himself or herself or confess guilt.<sup>105</sup> Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination establishes that States must undertake to guarantee the right of every person to receive equal treatment in court and all other bodies that administer justice, without distinction of color, nationality or ethno-racial background.<sup>106</sup>
96. Specifically, the resolution proclaiming the United Nations International Decade for People of African Descent 2014-2025 asserts that States must ensure that all Persons of African Descent have full access to protection and effective remedies before the competent institutions of the administration of justice and other entities of the State, against any act of racial discrimination, as well as the right to request

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<sup>103</sup> OAS, American Convention on Human Rights, 1969, Articles 8, 9 and 11; IACHR, American Declaration of the Rights and Duties of Man, 1948, Article 18.

<sup>104</sup> OAS, Official Public Defenders as a Guarantee of access to justice for persons in situations of vulnerability, AG/RES. 2714 (XLII-O/12), June 4, 2012; OAS, Towards Autonomy for Official Public Defenders/Criminal and Civil Legal Aid Providers as a Guarantee of Access to Justice, AG/RES. 2801 (XLIII-O/13), June 5, 2013.

<sup>105</sup> UN, Pacto Internacional de Derechos Civiles y Políticos, International Covenant on Civil and Political Rights, adopted and ratified on December 16, 1966, came into force on March 23, 1976 (hereinafter, “UN, International Covenant on Civil and Political Rights, 1966”).

<sup>106</sup> UN, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 5.

fair and adequate reparation for damages endured by them for this type of act. It also urges States to prevent and punish acts of torture and inhuman or degrading treatment against Persons of African Descent, including those perpetrated by State officials; it underscores the importance of designing, implementing and enforcing effective measures to eliminate the phenomenon of using race-based criminal profiling, popularly known as racial profiling.<sup>107</sup>

97. The Commission understands there to be a direct connection between the suitability of available judicial remedies and actual enforceability of economic, social and cultural rights. This connection is permeated with contexts of inequality and structural exclusion, which preclude certain social sectors living in situations of vulnerability from gaining access to justice.<sup>108</sup> It also emphasizes that States have the obligation to remove economic obstacles that prevent the realization of economic, social, cultural and environmental rights, which includes legal assistance and public defenders free of charge, covering the costs of the court case, accessibility to the location of courthouses or facilities of administration of justice; as well as obligations to ensure due process and the right to effective judicial protection.<sup>109</sup>
98. In this regard, the *Brasilia Regulations* recognize that persons in a situation of vulnerability based on ethno-racial background, age or gender, face particular difficulties in fully exercising before the justice system the rights recognized by the States. Additionally, the Regulations list other possible causes of vulnerability, such as migration and internal displacement, poverty, disability, and deprivation of liberty. Therefore, this compendium of norms calls for the right to information, legal assistance, security, accessibility, full participation and conditions of appearance to be guaranteed for population groups that are exposed to situations of vulnerability.<sup>110</sup>
99. The Commission takes note of recent studies on access to justice and social inequality in Argentina reporting that 28.6% of the low income population received assistance or help with procedures to solve problems, as compared to high income individuals, 37.1% of whom reported receiving such assistance. This same report indicates that 24.9% of the population, who said they were lacking in three or more social rights, received accompaniment, support or other help, while 27.3% of people who reported not to be lacking in social rights, resorted to and obtained the same assistance. This study revealed that 26% of people in a situation of poverty who are

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<sup>107</sup> UN, Programme of Activities for the Implementation of the International Decade for People of African Descent, 2014, pgs. 13 and 14.

<sup>108</sup> IACHR. [Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of Standards Adopted by the Inter-American System of Human Rights](#). OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, (Hereinafter, "IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights, 2007"), pars. 18 and 21.

<sup>109</sup> Ibidem, p. 1.

<sup>110</sup> 14<sup>th</sup> Ibero-American Judicial Summit, [Reglas de Brasilia sobre acceso a la justicia de las personas en condición de vulnerabilidad](#), [Brasilia Regulations Regarding Access to Justice for Vulnerable Persons], March 4 to 6, 2008, pgs. 5, 17- 20.

not homeless received legal counsel in a trial or administrative proceeding, while 26.6% of the homeless population received such counsel.<sup>111</sup>

100. The Commission reaffirms that the situation of poverty and extreme poverty faced by Persons of African Descent makes it difficult for them to fully and effectively gain access to justice, impairing their enjoyment of economic, social, cultural and environmental rights, placing them at a disadvantage, as compared to the rest of the population, because they are more often exposed to crime and institutional violence. World Bank statistics show that violent crime is pervasive in Latin America and the Caribbean, as the region holds the undesirable distinction of being the world's most violent, with 23.9 homicides per 100,000 inhabitants in 2012, as compared to 9.4 for Africa, 4.4 for North America, 2.9 for Europe and 2.7 for Asia.<sup>112</sup> Thus, the Commission understands criminalization and racialization of poverty to have a cause and effect relationship linking the current situation of violence to the lack of adequate education. Given this situation, States must promote public policies to combat racialized poverty so this sector of the population can overcome its condition of poverty or extreme poverty, effectively participate in decision-making processes and enjoy their economic, social, cultural and environmental rights.<sup>113</sup>
101. On this score, the IACHR notes that people in a situation of poverty are disproportionately the target of excessive policing, inasmuch as ethno-racial background, as has been noted earlier, as well as greater political, social and economic instability in some countries of the region, can be determining factors for the arbitrary use of force. In this regard, the Commission has said that race often serves as a proxy for and is deeply linked to poverty. This results in increased fines and arrests in these communities, creating a vicious cycle of poverty and criminalization.<sup>114</sup>
102. This is based on the fact that, "crime is not only an ontological quality of particular behaviors and of particular individuals, but rather is revealed as a status assigned to particular individuals."<sup>115</sup> In this regard, the Commission observes a discrepancy between the general percentage of the overall population of African descent and the rates of persons deprived of liberty from this population group. In Ecuador, for example, the Statistical Bulletin of the National Office of Social Rehabilitation (DNRS) estimates that the African Descent population of Quito accounts for 3.1% of the total population of that city; yet the percentage of Persons of African Descent in the prison system of the city is 18%; nationwide, more than 11.63% of the inmate

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<sup>111</sup> Office of the President of the Nation, *Acceso a la Justicia y condiciones de desigualdad social*, ['Access to Justice and conditions of social inequality'], ISBN: 978-987-8338-20-0, December 2019.

<sup>112</sup> World Bank, *Stop the Violence in Latin America: A Look at Prevention from Cradle to Adulthood*, 2016. p. 1.

<sup>113</sup> Cfr. Mora, M., *La criminalización de la pobreza y los efectos estatales de seguridad neoliberal: reflexiones desde la montaña*, ['Criminalization of poverty and state effects of neoliberal security: reflections from the mountain'] *Revista de Estudios Pesquisas sobre las Américas*, Vol. 7. No 2. 2013, pgs. 191 and 194.

<sup>114</sup> IACHR. *African Americans, Police Violence, and Human Rights in the United States*, OEA/Ser.L/V/II. Doc. 156, November 26, 2018, (hereinafter, "IACHR, Police violence against Afro-descendants in the United States, 2018") par. 86.

<sup>115</sup> Cfr. Baratta, A., *Criminología crítica y crítica del derecho penal: introducción a la sociología jurídico-penal*, ['Critical criminology and critique of criminal law: introduction to juridical-penal sociology'], 2004, p. 167.

population is African Descent.<sup>116</sup> As for Canada, Persons of African Descent make up 3% of the overall Canadian population, yet account for 10% of the inmate population; and experts have even pointed to an alarming surge of 71.1% in the number of Afro-Canadians held in Federal correction facilities from 2005 to 2015.<sup>117</sup>

103. Moreover, in its country report on Brazil, the IACHR wrote that the practice of racial profiling by State law enforcement agents make Persons of African Descent and residents of low income neighborhoods more susceptible to being arbitrarily arrested and enduring abuses. This is reflected at prison facilities, which often present overcrowding and come to tolerate torture and other cruel, inhuman and degrading treatment.<sup>118</sup>
104. On this score, the Commission received reports of dire overcrowding in the Haitian prison system, where scores of persons deprived of liberty live in inhuman conditions. According to this source, 11,000 inmates, who are reportedly in the national prison system, are held in less than one square meter of space and most of them are locked in the cell for 23 hours per day.<sup>119</sup>
105. In this same vein, the IACHR notes that States with the highest percentage of Persons of African Descent also have overcrowded prison systems and the greatest risk of violation of the human rights of persons deprived of liberty. This circumstance reinforces the cycle of multidimensional poverty that has disproportional impacts on areas where the most Persons of African Descent live, making this ethno-racial group more vulnerable to situations of punishment, sanction, racial profiling and excessive use of force by law enforcement.
106. As for Brazil, the Justice Study Center of the Americas (JSCA) noted that Afro-descendant men represented 43.5% of the prison population awaiting trial and 46.6% of inmates serving final sentence; while men of other ethno-racial background made up 55.1% of inmates undergoing trial and 52.4% of inmates serving their prison term. This is a rising trend for Afro-descendant men and a falling trend for men of other ethno-racial background.<sup>120</sup>
107. The IACHR also notes overrepresentation of Afro-descendant women in the Brazilian criminal justice system, as a result of the sum of several underlying factors, such as structural racism, enforcing the law with a racial bias, poverty and the consequent lack of opportunities for education and employment. Statistics show that African-American women account for 13% of the overall population of the

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<sup>116</sup> UNDP, *Derechos de la población afrodescendiente de América Latina: Desafíos para su implementación*, The Rights of Afro-descendants in Latin America: Challenges regarding their implementation. p. 145.

<sup>117</sup> Cfr. OHCHR, *Statement to the media by the United Nations' Working Group of Experts on People of African Descent*, on the conclusion of its official visit to Canada, 17-21 October 2016, 1 October 2016.

<sup>118</sup> IACHR, *Situation of Human Rights in Brazil*: Approved by the Inter-American Commission on Human Rights on February 12, 2021, OEA/Ser.L/V/II. Doc.9/21.

<sup>119</sup> Cfr. Human Rights Watch. *Haití, eventos del 2016*, 2016.

<sup>120</sup> CEJA, *Sistema judicial y racismo contra afrodescendientes. Brasil, Colombia, Perú y República Dominicana*, ['Judicial system and racism against Afro-descendants. Brazil, Colombia, Peru and Dominican Republic'], 2004, p. 28.



nation; yet they make up 40% of the prison population.<sup>121</sup> In Panama, the Working Group of Experts on African Descent noted “that African Descent women were overrepresented in prisons and that most of them had been convicted of drug-related offenses, often committed involuntarily or unconsciously, or for petty street crimes (...) it also expressed concern over cases of sexual abuse, harassment and rape endured by African Descent women in prison.”<sup>122</sup>

108. According to the most recent information from the data base mapping US police violence, in 2019, around 1,099 people died at the hands of law enforcement agents; Persons of African Descent made up 24% of the murdered persons even though they account for 13% of the overall United States population.<sup>123</sup> In this same vein, the IACHR has observed that “Afro-descendant youth are at greater risk of being searched on the street because police enforce the law with a racial bias, a phenomenon popularly known as racial profiling. They also suffer alarming levels of police violence and death in encounters with law enforcement agents.”<sup>124</sup>
109. The Commission understands, as described by the United Nations, that racial profiling refers to the process by which law enforcement or competent authorities rely on generalizations based on phenotype, race, descent or national or ethnic origin, rather than objective evidence or individual behavior to subject people to stops, detailed searches, identity checks and investigations, or for deciding that an individual was engaged in criminal activity. Thus, racial profiling violates the principles of legality, equality and non-discrimination.<sup>125</sup>
110. The IACHR notes that in the context of the COVID-19 pandemic, with a view toward mitigating the spread of the virus, the United States has imposed several restrictions, including the declaration of states of emergency and placing limits on fundamental liberties.<sup>126</sup> The IACHR has observed that some States of the region and law enforcement agencies have used racial profiling during periods of quarantine or lockdown for COVID-19, which lays bare the systematic problem of institutional racism previously described in the Commission’s reports.<sup>127</sup>
111. In this regard, the Commission has taken note of several acts of police brutality in the Americas in 2020, which coincide with the restrictions for the COVID-19

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<sup>121</sup> Cfr. Prisión Policy Initiative, [Blacks are overrepresented in United States prisons and jails](#), 2014.

<sup>122</sup> UNHCHR, [Mujeres y niñas afrodescendientes: desafíos y logros en materia de derechos humanos](#), [Afro-descendant women and girls: challenges and achievements in the area of human rights], March 9, 2018, (hereinafter, “UNHCHR, Afro-descendant women and girls, 2018”), p. 21.

<sup>123</sup> Cfr. [Mapping Police Violence, Data base](#), 2020.

<sup>124</sup> UNHCHR, [Decenio de los Pueblos Afrodescendientes 2015-2024: Reconocimiento, Justicia, Desarrollo](#), [Decade for Afro-descendant Peoples 2015-2024: Recognition, Justice, Development], 2018, (hereinafter, UNHCHR, Decade for Afro-descendant Peoples, 2018”), p. 6.

<sup>125</sup> UN, [Preventing and countering racial profiling of people of African descent good practices and challenges](#), 2019, p. 1.

<sup>126</sup> IACHR. Resolution 1/2020: Pandemic and Human Rights in the Americas, adopted on April 10, 2020.

<sup>127</sup> IACHR. Press Release 129/20. [The IACHR expresses strong condemnation for George Floyd’s murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States](#). June 8, 2020.

pandemic. On November 21, the IACHR expressed its deep concern over the death of João A. Silveira Freitas, an Afro-Brazilian man who was brutally beaten by private security officers at a supermarket in Porto Alegre, Rio Grande do Sul. The Commission reaffirms that it is not an isolated incident. Similarly, Colombia faced problems of race-based police violence, particularly as witnessed in the death of Anderson Arboleda, a 24-year-old Afro-Colombian man, on May 19, 2020. Over the last months of 2020, other deaths of young Afro-Colombian men have been documented, such as the case of Harold Morales, a 17 year-old African Descent, who was shot to death in the back by a policeman on August 24, 2020, as well as Julián Mauricio González, a 27 year-old man who was shot in the abdomen while protesting against police abuses in Bogota in September 2020.<sup>128</sup>

112. According to available public information, as of December 2020, several cases of police brutality had been reported in the United States. On October 26, in Philadelphia, the police shot Walter Wallace using disproportionate force, according to the video images posted by the press. On August 21, Trayford Pellerin was shot to death by the police as he was exiting a store in Lafayette. In Kenosha, Wisconsin, police officers shot Jacob Blake several times in the back on August 23. The IACHR also noted the murder of Deon Kay on September 2, in Washington D.C.; the murder of Dijon Kizzee, on August 31, in Los Angeles; and the murder of Daniel Prude on March 23, in New York, according to the video of September 2, released by his family. Accordingly, the Commission has expressed in the past its deepest concern over the systematic escalation of police violence during law enforcement actions in which Afro-Americans were involved, such as the violence observed in the murder of Breonna Taylor on March 13, 2020 in Louisville; and the excessive use of force that caused the murder of George Floyd on May 25, 2020 in Minneapolis. The death of Floyd triggered protests throughout the world against police brutality, institutional racism and the lack of police accountability.<sup>129</sup>
113. The IACHR further notes that, up to May 26, 2020, more than 4,700 protest demonstrations, or an average of 140 per day, took place throughout the United States, since the first protests in Minneapolis following the death of George Floyd. Participation has ranged from dozens to tens of thousands in some 2,500 small and large cities. Moreover, the IACHR highlighted the report published by Princeton University indicating that 93% of the demonstrations in the 50 states and Washington D.C. were peaceful.<sup>130</sup>
114. The Commission monitored the development of the social protests in more than 40 states and the District of Columbia and, at the same time, more than 125 incidents of excessive use of force by local and state law enforcement agents, documented up

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<sup>128</sup> IACHR. 2020 Annual Report, pars. 264 and 170.

<sup>129</sup> IACHR. 2020 Annual Report, par. 379.

<sup>130</sup> The New York Times, *George Floyd Protests: A Timeline*, March 28, 2021; The New York Times, *How Black Lives Matter Reached Every Corner of America*, June 13, 2020; ACLED and the Bridging Divides Initiative (BDI) at Princeton University, *Demonstrations & Political Violence in America, Black Lives Matter: Racism & Police Violence*, September 2020.

to June 5, 2020 in different states in the context of the *Black Lives Matter* protests, according to the data base *Mapping Police Violence across the USA*.<sup>131</sup>

115. The Commission continues to monitor acts of police brutality and other forms of violence perpetrated by law enforcement against Persons of African Descent in all countries of the region, as well as the different Black Lives Matter (BLM) social protests, that have spread to several countries of Latin America. On this score, the Commission recalls that any restriction on the rights involved in demonstrations and protests must be specifically established by law, based on legitimate interests recognized by the American Convention itself, provided that they are necessary and proportionate to protect those interests, in accordance with Inter-American human rights instruments.<sup>132</sup>
116. The Inter-American system has been emphatic in combatting racial profiling and in recognizing reparations that may arise from the perpetration of such acts. Recently, in the case of *Acosta Martínez et al v. Argentina*, the Inter-American Court convicted the State on the grounds that the arrest and detention of Mr. Acosta Martínez not only were illegal but also arbitrary. In fact, the Court stressed that the police action was prompted by racial profiling, because it was suspected that he had committed a crime. In the specific case, the police officers justified the stop of Mr. Acosta Martínez because he was allegedly intoxicated. In this way, by invoking a broad provision of law, such as edicts against public intoxication, the fact that racial profiling was the main reason for his detention was covered up and, consequently, it exposed the arbitrariness of depriving him of his identity papers. The Court upheld in its judgment that Acosta Martínez was the victim of an arbitrary detention and, as a result, lost his life, all within a context of violence against the African Descent population in Argentina. Lastly, the State recognized that the case of Acosta Martínez is not an isolated incident, but “is paradigmatic of the persecution and stigmatization of the African Descent collective in that country.” The facts of the case took place in a context of both racial discrimination and police violence against the African Descent population in Argentina at the time of these events, and this context still exists at the present time.<sup>133</sup>
117. Regarding the intersection of the situation of African Descent women and access to justice, the IACHR has highlighted how African Descent women confront serious obstacles to access justice. To analyze their right of access to justice involves considering their idiosyncrasy, particular reality, traditions, culture, and their unique history of discrimination and racism.<sup>134</sup> The Commission has also underscored that the administration of justice in Meso-American countries must consider the social and cultural diversity of the victims in hearing their cases. The

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<sup>131</sup> IACHR. Press Release No. 196/20, [The IACHR calls on the United States to implement structural reforms in the institutional systems of security and justice to counter historical racial discrimination and institutional racism](#), August 8, 2020.

<sup>132</sup> IACHR. [Protest and Human Rights](#), September 2019, par. 334.

<sup>133</sup> I/A Court H.R., [Caso Acosta Martínez Vs. Argentina](#), Case of Acosta Martínez v. Argentina, Merits, Reparations and Costs. Judgment of August 31, 2020. Series C No. 410.

<sup>134</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Meso America](#), OEA/Ser.L/V/II., December 9, 2011, par. 314.

homogenous treatment of women in justice systems renders African Descent women invisible. The IACHR notes with concern that registries and statistics are few and far between, and tend not to be disaggregated by race and ethnicity, which impedes the ability to have a comprehensive assessment of the dimensions of the problem of sexual violence that African Descent women suffer.<sup>135</sup>

118. Notwithstanding, the Commission takes note of good practices in the region regarding access to justice of the African Descent population. Thus, it welcomes the “Institutional Policy of the Judiciary of Costa Rica for Access to Justice for African Descent and its Plan of Action,” which aims to conduct studies about access to justice of Persons of African Descent. This policy takes into account the particular needs, causes and manifestations of racial discrimination, in order to obtain knowledge that positively impacts the provision of services in all areas of the judiciary, to ensure effective access to justice. The policy also suggests compiling and incorporating in disaggregated form into the records of legal precedents, decisions relating to the rights of the Afro-descendant population population; and underscores the need for all judicial bodies to coordinate with other institutions and to facilitate meeting the needs of the Afro-descendant population population comprehensively.<sup>136</sup>
119. The IACHR understands that hampering access to justice and the lack of judicial guarantees disproportionately affects the exercise of the economic, social, cultural and environmental rights of Persons of African Descent, perpetuating the cycle of poverty and deepening patterns of systematic violence against this population that has been historically exposed to situations of structural discrimination. Aware of this context, in the Case of *Simone André Diniz*, the Commission concluded that there was a transgression of the right to justice and due process by the State, because domestic remedies did not lead to the determination of the existence of the racial discrimination endured by the petitioner of Afro-descendant origin and this situation violated her rights to protection and a fair trial.<sup>137</sup>
120. The IACHR understands that access to justice is a basic principle of the rule of law<sup>138</sup> and, therefore, it is governed by the universal principles of equality and non-discrimination, and is also an essential right for the realization of other rights, such as economic, social, cultural and environmental rights. Consequently, the Commission urges the States to provide for competent and necessary judicial remedies so that the African Descent population can access justice in an effective, timely and suitable way, taking into consideration economic support for those who are in a situation of poverty and extreme poverty.

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<sup>135</sup> Ibidem, par. 316.

<sup>136</sup> Judiciary of Costa Rica, Commission on Access to Justice, *Política Institucional para el Acceso a la Justicia de Personas Afrodescendientes del Poder Judicial y su Plan de Acción*, 2015, p. 11 and 12.

<sup>137</sup> IACHR. *Access to Justice as a Guarantee of Economic, Social and Cultural Rights*, 2007, par. 83.

<sup>138</sup> Cfr. UN. The UN and the Rule of Law. *Acceso a la justicia*, Access to justice. s.f.

## ***D. Multiple Discrimination against Women of African Descent***

121. Different international instruments, in general, promote the rights of women, encourage the prevention and punishment of gender-based violence. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter, “Belem do Para Convention”) has significantly contributed to guaranteeing the rights of women in the region, as its text includes categories of intersection, such as class, race or ethnic background, income level, culture, education level, age or religion, status as a migrant, refugee or displaced person, minor age, older age, person affected by armed conflict or deprivation of liberty. Because these conditions make women more vulnerable, they can heighten contexts of discrimination.<sup>139</sup>
122. The Inter-American Commission understands that, despite the progress in implementing programs to combat racial discrimination, Afro-descendant women continue to confront major barriers to fully enjoying their rights.<sup>140</sup> The IACHR bears in mind that “the history of Afro-descendant women in Latin America and the Caribbean bears the scars of European colonization—scars that can still be seen today, long after the colonial administrations came to an end and give way to the nations that now make up the region. (...) the multiple forms of discrimination that reinforce and are interlinked with gender-based discrimination leave deep marks on the lives of Afro-descendant women in Latin America and the Caribbean. That is why (...) an analysis must start from an intersectional perspective that includes the many varied categories that make up their identity, along with the consequences of the intersection of gender with other identities that have historically been construed as inferior, such as the identity of being ‘black’ or ‘of African descent.’”<sup>141</sup>
123. The Commission notes that, in the Americas, Afro-descendant women and girls are commonly characterized by having limited access to education, employment and social security. They also often post the highest maternal mortality rates because of the precarious conditions of health care they are subjected to.<sup>142</sup> The IACHR takes note of the comments of the United Nations Committee on the Elimination of Discrimination against Women underscoring that the multiple discrimination endured by women includes, among other factors, race and ethnic background, skin color, age, maternity, HIV/AIDS, deprivation of liberty, being from urban or rural areas, illiteracy, socioeconomic status, status as head of household, seeking asylum, status as a refugee, internal displacement or statelessness, armed conflict, geographic remoteness, being a sex worker, stigmatization of women who advocate

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<sup>139</sup> OAS, [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#), adopted on June 9, 1994, came into force on March 5, 1995 (hereinafter, “OAS, Belem Do Para Convention, 1994”), Article 9.

<sup>140</sup> IACHR. Press Release No. 117/17, [IACHR Urges the States to Reaffirm Commitment to Gender Equality and Non-discrimination and to Guarantee the Rights of Afro-descendant Women](#). August 8, 2017.

<sup>141</sup> ECLAC, *Women of African Descent in Latin America and the Caribbean*, 2018, pgs. 15 and 16.

<sup>142</sup> UNHCHR, *Decade for People of African Descent*, 2018, p. 6.

for their rights, and the rights of their communities, particularly, social leaders and human rights defenders.<sup>143</sup>

124. In earlier reports, the IACHR has emphasized that women of African descent who live in marginalized, rural areas, that still preserve their languages, traditions and customs, and sometimes even their own systems of justice, will have to contend with problems of geographic accessibility, an inability to communicate with judicial authorities in their own languages, a lack of knowledge of the process, and a lack of economic means. Additionally, Afro-descendant women will have to contend with discrimination on two levels: one based on their gender and the other based on their race. The situation of Afro-descendant women living in rural areas is not unlike the situation of their counterparts living in urban areas, where the difficulties they will face in availing themselves of effective judicial remedies have to do with their economic disadvantage and skin color. In areas where the economic factor and social exclusion have been conquered, the difficulties are generally related to skin color.<sup>144</sup>

## 1. Specific Risks to Women of African Descent

125. The Commission understands that the intersection of racial and gender inequality exposes women of African descent to situations of discrimination. According to statistics available from several States, the IACHR notes that, in Peru, Afro-Peruvians account for 8.6% of the illiteracy rate, 6.7% of which corresponds to Afro-descendant women, higher than the illiteracy rate of Afro-Peruvian men.<sup>145</sup> In Uruguay, women of African descent ages 18 to 24 account for 8.1% of total attendance in the higher education system, as compared to non-Afro-descendant women, who make up 25.7%. Similar proportions can also be seen in Ecuador (Afro-descendant women 12.5% - non-Afro-descendant women 27.2%), Costa Rica (Afro-descendant women 13.7% - non-Afro-descendant women 22.4%) and Venezuela (Afro-descendant women 23.9% - non-Afro-descendant women 34.1%).<sup>146</sup> In Panama, it is reported that a high number of young girls drop out of school as a result of teen pregnancies; especially, Afro-Panamanian and indigenous girls.<sup>147</sup>

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<sup>143</sup> UN Women, *Recomendaciones Generales y Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer sobre mujeres indígenas y/o afrodescendientes realizadas a Estados de América Latina*, General Recommendations and Final Comments of the Committee on the Elimination of Discrimination against Women especially Indigenous and/or Afro-descendant Women, issued to the States of Latin America, 2017, p. 5.

<sup>144</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, January 20, 2007, (hereinafter, "IACHR, Access to Justice for Women Victims of Violence in the Americas, 2007"), pars. 213 and 214.

<sup>145</sup> UNHCHR, *Mujeres y niñas afrodescendientes: desafíos y logros en materia de derechos humanos*, Afrodescendant Women and Girls: Challenges and Achievements in Human Rights, March 9, 2018, (hereinafter, "UNHCHR, Afro-descendant Women and Girls, 2018"), pg. 12.

<sup>146</sup> ECLAC, *Women of African Descent in Latin America and the Caribbean*, 2018, pg. 30, graph 1.

<sup>147</sup> UNHCR, *Afro-descendant Women and Girls*, 2018, pg. 12.

126. The IACHR notes that statistics often place Afro-descendant women at the lowest occupational and income level, and also continue to report a high rate in care economy activities. In this regard, the Working Group of Experts on persons of African Descent noted that, in Panama, the representation of Afro-descendant women among domestic workers is disproportionate<sup>148</sup>. In Brazil, among salaried domestic workers, the percentage of Afro-descendant women (18.6%) is 8 percentage points higher than the population of non-Afro-descendant women.<sup>149</sup> In the case of Ecuador, the rate of salaried domestic workers over 15 years of age was higher among Afro-descendant women (21.0%), as was the case in Costa Rica (15.5%).<sup>150</sup>
127. The Commission takes note of recent reports indicating that Afro-descendant women who are employed often have unstable, informal jobs. In different countries of the region, a gender and ethnicity-based wage gap persists, particularly in Argentina (8.7%), Panama (10.3%), Ecuador (10.8%) and Uruguay (12.5%), where Afro-descendant women age 15 years or older in percentage terms have the highest rates of unemployment, as compared to non-Afro-descendant women, Afro-descendant and non-Afro-descendant men.<sup>151</sup> In Honduras, Afro-descendant women hold 3.0% of all executive management positions, as opposed to non-Afro-descendant women, who are reported to hold 6.1%.<sup>152</sup> The Committee on the Elimination of Discrimination against Women has expressed concern over the situation of Afro-descendant women in Canada, who face limited access to the labor market and high rates of unemployment.<sup>153</sup>
128. The IACHR concurs with the pronouncements of the United Nation High Commissioner for Human Rights, who underscored that “the exclusion of women of African descent (...) from quality sexual and reproductive health services is due to a combination of structurally discriminatory factors, such as poverty, the low availability of quality health services and a lack of culturally acceptable health services, as well as direct discrimination, stigmatization and racism within health facilities.”<sup>154</sup> In this regard, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also states that, in countries such as Honduras, the high rate of HIV infection and stigmatization of women carriers of HIV/AIDS mostly affects women of African descent.<sup>155</sup>
129. The Commission also takes note of the observations of the Working Group on the issue of discrimination against women that no universal medical insurance exists either in legislation or in practice in the United States and that this has a

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<sup>148</sup> Ibidem, pg. 18.

<sup>149</sup> IACHR. *Poverty and Human Rights in the Americas*, 2017, par. 390.

<sup>150</sup> ECLAC, *Women of African Descent in Latin America and the Caribbean*, 2018, pg. 41, graph 9.

<sup>151</sup> UNHCHR, *Afro-descendant Women and Girls*, 2018, p. 19; ECLAC, *Afro-descendant Women in Latin America and the Caribbean*, 2018, pg. 33, graph 3.

<sup>152</sup> Ibidem, pg. 38, graph 8.

<sup>153</sup> UNHCHR, *Afro-descendant Women and Girls*, 2018, pg.18.

<sup>154</sup> Ibidem, pg. 16.

<sup>155</sup> Idem.

disproportionate effect on Afro-American women and Afro-Latinas, who face obstacles to preventive care and basic treatment.<sup>156</sup> ECLAC studies show that in Ecuador the rate of maternal mortality as expressed in numbers per 100,000 live births among Afro-descendant women is 272.5, while among non-Afro-descendant women it is 69.1.<sup>157</sup> This report also reveals that in Uruguay 78.0% of Afro-descendant women had four prenatal checkups, as compared to 89.9% of non-Afro-descendant women.<sup>158</sup>

130. In this context, the IACHR notes the case of Alyne da Silva Pimentel Teixeira, who died from complications in childbirth at a public hospital in Brazil. On this score, the CEDAW found the State guilty of obstetric violence, which led to the death of Alyne, on the grounds of intersection between ethno-racial background and situation of poverty.<sup>159</sup>
131. The IACHR has noted persistent, multiple forms of discrimination and violence experienced by Afro-descendant women with diverse sexual orientations and gender identities and/or expressions, with different factors intersecting such as gender, race and extreme poverty, constituting triple historical discrimination.<sup>160</sup> The Commission has underscored the different forms of violence inflicted on Afro-descendant women with non-normative sexual orientations and gender identities. By way of example, in the United States, several different organizations have reported that Afro-descendant trans women, and in general, trans women, are frequently the targets of violence.<sup>161</sup> The IACHR has also received reports of Afro-Colombian lesbians, who have been violently targeted because of their sexual orientation, including so-called “corrective rape,” and such situations have been further exacerbated in the context of the armed conflict.<sup>162</sup>
132. The Commission has been monitoring in most countries of the region that Afro-descendant women not only endure racial discrimination, but are under-represented in decision-making processes that affect them, which impedes them from overcoming the obstacles to effective guarantee of human rights, particularly, the economic, social, cultural and environmental rights of this population.<sup>163</sup> In this context, the IACHR has noted that Afro-descendant women continue to face profound challenges in enjoying their civil and political rights and -in comparison to other women- are clearly under-represented in decision-making bodies such as senates and parliaments across the region. These problems affect women of African

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<sup>156</sup> Ibidem, pg. 15.

<sup>157</sup> ECLAC, *Afro-descendant Women in Latin America and the Caribbean*, 2018, pg. 59, graph 15.

<sup>158</sup> Ibidem, pg. 58, graph 14.

<sup>159</sup> CEDAW, *Alyne da Silva Pimentel Teixeira v. Brazil*, August 10, 2011; Center for Reproductive Rights, *Caso de Alyne da Silva Pimentel Teixeira v. Brasil*, s.f.

<sup>160</sup> IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, 2018, par. 185.

<sup>161</sup> Cfr., Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2020*, 2020.

<sup>162</sup> IACHR, *Violence against LGBTI Persons*, 2015, pars. 359, 360 and 362.

<sup>163</sup> UN Women, *Memory First Summit of Afro-descendant Women Leaders of the Americas*, August 2015, pg. 38.



descent in a heightened manner in different countries of the hemisphere and demand differential provisions and special measures in order to be overcome.<sup>164</sup>

133. On this score, the IACHR takes note of ECLAC studies bearing out that, despite the progress made in the region over the past ten years, such as the creation of institutions responsible for the coordination of policies targeting the Afro-descendant population, political participation has not been a priority objective.<sup>165</sup> In fact, political participation has been one of the main scenarios of exclusion of Afro-descendant women, where their contribution and participation in economic, political, social and cultural life continues to lack proper recognition.
134. The Commission has stressed on several occasions that Afro-descendant women are notoriously under-represented in decision-making bodies as compared to other women of other ethnic and racial backgrounds; in fact, only a handful of Afro-descendant women have achieved positions of power.<sup>166</sup> Thus, the Commission takes a positive view of Afro-descendant women being represented in senior government positions, such as Epsy Campbell in Costa Rica, the first Afro-descendant woman to reach the vice presidency in 2018; Mabel Torres, Afro-Colombian woman, first Minister of Science, Technology and Innovation 2020; María Fernanda Silva in Argentina, the first Afro-descendant Argentine appointed as Ambassador to the Holy See 2020; and Kamala Harris in the United States, the first woman, and first person of Afro-descendant and Asian extract to become Vice President in 2021.<sup>167</sup>
135. The IACHR has also made pronouncements about woman journalists of African descent, who are often disproportionately under-represented in the traditional media and in decision-making positions in those media.<sup>168</sup> Likewise, the IACHR has noted a widespread tendency for participation of Persons of African Descent in the media to be linked to the “folklorization” and “exoticization” sought by some media outlets, which contribute to perpetuating stereotypes and prejudices against them and their realities. The impact of these portrayals is aggravated by stigmatization, persecution and criminalization of these women.<sup>169</sup>
136. In this regard, the IACHR takes note of the exponential rise in the incidence of different forms of gender-based violence against women of African descent in the

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<sup>164</sup> IACHR. Press Release 117/17, [IACHR Urges States to Reaffirm Commitment to Gender Equality and Non-discrimination and to guarantee the Rights of Afro-descendant Women](#), August 8, 2017.

<sup>165</sup> ECLAC, [Afro-descendant Women in Latin America and the Caribbean](#), 2018, pg. 75.

<sup>166</sup> IACHR. [The Road to Substantive Democracy: Women’s Political Participation in the Americas](#), OEA/Ser.L/V/II., April 18, 2011, par. 90.

<sup>167</sup> IACHR. 2018 Annual Report, [Chapter IV.A. Overview of the Situation of Human Rights by Country](#), pg. 302, par.16; RTVC, [Conoce la historia de Mabel Torres, la primera ministra de Ciencia, Tecnología e Innovación](#), [‘Learn the history of Mabel Torres, the First woman minister of Science, Technology and Innovation’], December 31, 2019; Mercopress, [Afro-argentina designada embajadora ante la Santa Sede](#), [‘Afro-Argentine appointed Ambassador to the Holy See’], March 7, 2020; BBC News, [Kamala Harris becomes first female, first black and first Asian-American VP](#), January 20, 2021.

<sup>168</sup> IACHR. [Women Journalists and Freedom Of Expression. Discrimination and Gender-Based Violence Faced by Women Journalists in the Exercise Of Their Profession](#), OEA/SER.L/V/II, October 31, 2018, par. 22.

<sup>169</sup> Ibidem, par. 27.

hemisphere; particularly, those who hold leadership positions in their communities and defend human rights. In this same vein, the Commission has expressed its concern over the prevalence of murders and other forms of violence perpetrated against Garifuna women in Honduras over 2019; in the month of September alone, four murders were reported of Garifuna women, who defended the collective rights of their community.<sup>170</sup> Moreover, the Commission has observed an increase in murders that specifically impact groups in especially vulnerable situations, such as Afro-descendant women, lesbians and transexual women.<sup>171</sup> In Brazil, the IACHR has recorded, over the past years, a 15% increase in acts of lethal violence against women of African descent, while murders of non-Afro-descendant women fell by 8%.<sup>172</sup>

137. In this regard, in 2018, the IACHR condemned the murder of Marielle Franco, a lesbian, Afro-descendant human rights defender from the Maré favela, who was serving in public office as city councilwoman in Rio de Janeiro, and had been speaking out against the excessive use of force by police and institutional racism in the justice system.<sup>173</sup> In this context, the IACHR recalls that during its *in loco* visit to Brazil in 2018, it attested to gross violations of the human rights of Afro-descendant women and poor young people of the periphery of the city and favelas, who were murdered by the tens of thousands, without any investigation, prosecution, punishment or appropriate reparation.<sup>174</sup>
138. The Commission takes note of the investigations conducted by civil society organizations, who report that 15% of the total number of assaults against women social leaders in 2018 were on Afro-descendant women leaders and 9%, on indigenous women leaders.<sup>175</sup> In its 2019 Annual Report, the IACHR noted that it became aware of publicly available information regarding the murder of one woman, who staked a land claim and was a leader of Afro-descendant women victims of displacement in Santa Marta, Magdalena, Colombia and of another woman Afro-descendant land rights defender in Tierralta, Córdoba, Colombia. Likewise, the IACHR learned of the attempt on the life of an Afro-descendant woman leader of community councils of the Norte del Cauca, as well as persecution of a promotor of the Paro Cívico movement of Buenaventura, Colombia.<sup>176</sup>

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<sup>170</sup> IACHR. Press Release No. 238/19, [IACHR condemns the prevalence of murders and other forms of violence against Garifuna Women in Honduras](#), September 24, 2019.

<sup>171</sup> IACHR. [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II, November 14, 2019, par. 156.

<sup>172</sup> IACHR. Press Release No. 209/18, [IACHR Expresses Deep Concern over Growing Violence against Afro-descendants in Brazil](#). September 26, 2018.

<sup>173</sup> IACHR. Press Release No. 052/18, [IACHR Repudiates Murder of Councilor and Defender of Human Rights in Brazil](#), March 16, 2018.

<sup>174</sup> IACHR. Press Release No. 238/18, [IACHR Concludes Visit to Brazil](#), October 30, 2018.

<sup>175</sup> CODHES, [Líderesas Sociales en Colombia: el relato invisible de la crueldad](#), [‘Women Social Leaders in Colombia: Invisible Account of Cruelty’], March 2019, pg. 22, graph 4.

<sup>176</sup> IACHR. 2019 Annual Report, Chapter IV. A. Development of Human Rights in the Region, OEA/Ser.L/V/II, February 24, 2020, par. 199.

139. In earlier reports, the IACHR noted that intersectional discrimination persistently targeting Afro-descendant women in Colombia is not only based on reasons of race and gender, but this group may also confront additional factors of discrimination and vulnerability in the specific context of the armed conflict. In view of this group's high degree of vulnerability to violence and poverty, the Commission underscored the need for the Colombian State to adopt an intersectional approach to protect Afro-descendant women.<sup>177</sup> Likewise, the IACHR has emphasized that protection schemes provided to human rights defenders must take a gender-based approach and take into account the particular characteristics and specific risks faced by groups of women such as Afro-descendant women leaders.<sup>178</sup>
140. The IACHR also takes note of the pillars of the International Decade for People of African Descent, which include combatting multiple or aggravated forms of discrimination, stressing that the States must undertake to incorporate a gender perspective in public policies, taking into account the needs and specific realities of women and girls of African descent, including the sphere of maternal health, sexual and reproductive health.<sup>179</sup>
141. In this regard, the IACHR has called attention to the gaps, irregularities and deficiencies in investigation, prosecution and punishment in cases of violence against Afro-descendant women involving patterns of impunity. The Commission recalls that justice systems must meet the specific needs of Afro-descendant women, who have endured a history of discrimination, exclusion, *invisibilization* and disadvantage because of their gender and ethnic and racial background, confronting challenges to access judicial protection.<sup>180</sup>
142. The Commission understands that the situation of poverty particularly affecting Afro-descendant women in the Americas has a direct impact on their right to equality and non-discrimination, access to justice, access to and exercise of their economic, social, cultural and environmental rights. Thus, the IACHR understands that the above-referenced statistics bear out that Afro-descendant women face greater risks going forward, because of the precarious living conditions that subsist throughout the region disproportionately affecting them. The Commission calls on the States of the Hemisphere to formulate and implement policies aimed at ensuring the rights of Afro-descendant women and girls by adopting an intersectional and intercultural approach.

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<sup>177</sup> IACHR, Legal Standards Linked to Gender Equality and to Women's Rights in the Inter-American Human Rights System, OEA/Ser.L/V/II.143, November 3, 2011, par. 50.

<sup>178</sup> IACHR, Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II, December 6, 2019 (hereinafter, "IACHR, Human Rights Defenders and Social Leaders in Colombia, 2019"), par. 219.

<sup>179</sup> UN, Program of Activities for the International Decade for People of African Descent, 2014, pg. 10.

<sup>180</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, 2007, pars. 126 and 208.



CHAPTER 3  
INTER-AMERICAN STANDARDS  
TO PREVENT, COMBAT AND  
ERADICATE STRUCTURAL  
RACIAL DISCRIMINATION



## INTER-AMERICAN STANDARDS TO PREVENT, COMBAT AND ERADICATE STRUCTURAL RACIAL DISCRIMINATION

### ***A. Obligations of the States in the Area of Economic, Social, Cultural and Environmental Rights and Rights of Persons of African Descent Including an intercultural and Intersectional Perspective***

143. The IACHR and its REDESCA emphasize that the American Convention on Human Rights<sup>181</sup> recognizes the protection of economic, social, cultural and environmental rights in the Inter-American system, enshrining the obligation of the States to adopt measures with a view to achieving progressively the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States. Likewise, the American Declaration of the Rights and Duties of Man provides for, among other things, the rights to health and wellbeing; to education; the benefits of culture; social security; to work and a fair remuneration.<sup>182</sup>
144. Additionally, the States of the OAS adopted in 1988 an additional protocol in the area of economic, social and cultural rights (hereinafter, “Protocol of San Salvador”), with 19 signatory States and 16 ratifications to date.<sup>183</sup> Specifically, the Protocol of San Salvador<sup>184</sup> establishes that the States must adopt the necessary measures, especially economic and technical measures, for the purpose of achieving progressively the full observance of the rights recognized in that treaty. More recently, the Inter-American Democratic Charter<sup>185</sup> invoked the Protocol of San Salvador, highlighting the importance that these rights be reaffirmed, developed, enhanced and protected.
145. Together, both the Declaration and the American Convention with its Additional Protocol, along with the Inter-American Democratic Charter, the Social Charter of the Americas, and other specialized instruments of the Inter-American system, such

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<sup>181</sup> OAS, [American Convention on Human Rights](#), 1969, came into force 1978, Article 26.

<sup>182</sup> Ninth International Conference of American States, [American Declaration of the Rights and Duties of Man](#), 1948, Articles 11-16.

<sup>183</sup> Cfr. OAS, [Signatures and Current Status of Ratifications](#), American Convention on Human Rights.

<sup>184</sup> OAS, [Protocolo de San Salvador](#), Protocol of San Salvador, 1988, came into force 1999, Article 1.

<sup>185</sup> OAS, [Inter-American Democratic Charter](#), 2001, preamble.

as the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and the Inter-American Convention against All Forms of Discrimination and Intolerance, make it possible to protect the ESCERs of historically excluded groups, such as Persons of African Descent and tribal communities. Therefore, it is fitting to fully recognize their rights in light of self-determination and power to freely dispose of their ancestral resources, as provided for by ILO Convention 169.<sup>186</sup> These Inter-American principles in turn promote guaranteeing progressive development of the economic, social, cultural and environmental rights of Persons of African Descent in the same way that people of other ethnic and racial background enjoy these rights.

146. For its part, the IACHR notes that, as of 2017, the Court developed a specific line of legal precedents defending implementation of Article 26 of the American Convention, fleshing out a method of interpretation for the examination of the direct justiciability of the content of economic, social, cultural and environmental rights.<sup>187</sup> In this way, the IA Court of HR bestowed normative content onto Article 26 of the Pact of San Jose which, when read in light of Article 29 of the same instrument, opens up a whole new legal horizon to determine specifically the protected rights as well as the obligations demanded of the States in the subject matter. In this same vein, the IACHR has reaffirmed and exercised its competence to rule on potential violations of Article 26 of the American Convention in the framework of the system of petitions and individual cases, emphasizing the interdependence and indivisibility between economic, social, cultural and environmental rights and civil and political rights.<sup>188</sup>
147. As for the Universal System, economic, social, cultural and environmental rights emanate from the Universal Declaration of Human Rights, which provides that the satisfaction of these rights is indispensable to human dignity and to the free development of the personality. This instrument emphasizes that the foregoing rights must be recognized without any restriction for reasons of race, color or nationality.<sup>189</sup> Subsequently, the International Covenant on Economic, Social and

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<sup>186</sup> OAS, *Social Charter of the Americas*, AG/doc.5242/12 rev. 1, June 4, 2012, (hereinafter, “OAS, Social Charter of the Americas, 2012”), arts. 3-8; OAS, *Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance*, 2013, Article 4; OAS, *Inter-American Convention against All Forms of Discrimination and Intolerance*, 2013, Article 4; ILO, *Convention No. 169*, 1989, Articles 4 & 6.

<sup>187</sup> I/A Court H.R., *Case of Lagos del Campo v. Peru* *Caso Lagos del Campo Vs. Perú*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, pars. 19-20; I/A Court H.R., *Case of Cuscul Pivaral et al v. Guatemala* *Caso Cuscul Pivaral y otros Vs. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, par. 72; I/A Court H.R., *Case of Poblete Vilches et al v. Chile* *Caso Poblete Vilches y otros Vs. Chile*. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, par. 20; I/A Court H.R., *Case of Muelle Flores v. Peru* *Caso Muelle Flores Vs. Perú*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375, par. 30; I/A Court H.R., *Advisory Opinion Opinión Consultiva OC-23/17* of November 15, 2017. Series A No. 23, par. 3.

<sup>188</sup> IACHR, *Report on Poverty and Human Rights in the Americas*. OEA/Ser.L/V/II.164; Doc. 147, September 7, 2017; pars. 90 and 111; IACHR, Report No. *Informe No. 25/18*, Case 12.428. Admissibility and Merits; *Workers of the Fireworks Factory in Santo Antonio de Jesús and their Families. Brazil*. March 2, 2018, pars. 127 et seq; IACHR Report *Informe No. 110/18*, Case 12.678 Merits. Paola del Rosario Albarracín Guzmán and Family. October 5, 2018 pars. 103 et seq.

<sup>189</sup> UN, *Universal Declaration of Human Rights Declaración Universal de los Derechos Humanos*, 1948, Articles 2, 16 and 22.



Cultural Rights (hereinafter, “ICESCR”) established that by virtue of the right of self-determination, economic, social and cultural development springs forth and, consequently, the rights to it, which must be guaranteed without discrimination based on race, color, religion, national origin or social status.<sup>190</sup>

148. For its part, the principle of equality and non-discrimination for reasons of ethnic or racial background gave rise to the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, whereby the States undertook to ensure the enjoyment of economic, social and cultural rights, particularly, the rights to work, to form and join trade unions, education, housing, public health, participation and access to public spaces.<sup>191</sup> Additionally, the Durban Declaration and Programme of Action urges States, in view of the connection between racism, racial discrimination, poverty, marginalization and social exclusion of peoples and Persons of African Descent, to reinforce any measures that may be necessary to protect economic, social and cultural rights without discrimination; provisions that complement the guidelines of the International Decade for People of African Descent 2015-2024, and the activities that the Decade guidelines propose under its pillars of recognition, justice, development and multiple or aggravated forms of discrimination.<sup>192</sup>
149. The IACHR and its REDESCA also understand and deem it important, based on these international provisions, that the effective enjoyment of ESCE rights by the Afro-descendant population is one of the necessary conditions to close the existing inequality gap and eradicate the poverty that affects it. Hence, States have the obligation to adopt measures of affirmative action that specifically include Persons of African Descent in their social and economic policies.<sup>193</sup> They also underscore that, in accordance with Inter-American standards on business and human rights, the States must take into account the multiple impacts on ESCE rights, as well as incorporate the right to development in a crosscutting manner into the policies and strategies that they develop in this sphere. This last obligation is even more important with respect to Persons of African Descent, who because of their extreme situation of vulnerability can be disproportionately affected by abuses and business practices when the State fails to fulfill its obligations in these contexts.<sup>194</sup>
150. In this same vein, it is important to note that the United Nations has established the 2030 Agenda, laying out the sustainable development goals (SDGs), which are intended to guide the world toward collectively building an agenda for development and the fight against climate change, with a view toward eradicating

<sup>190</sup> UN, International Covenant on Economic, Social and Cultural Rights *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, 1966, Article 1 and 2.

<sup>191</sup> UN, International Convention on the Elimination of All Forms of Racial Discrimination, *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, 1965, Article 5.

<sup>192</sup> UN, World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, Durban Declaration and Program of Action *Declaración y Programa de Acción de Durban*, 2001, par. 207; UN, Program of Activities for the International Decade for People of African Descent, 2014, pg. 4.

<sup>193</sup> IACHR. *Report on Poverty and Human Rights in the Americas*. OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, par. 376-393, 545.11.

<sup>194</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, pars. 43, 45, 340-352.

multidimensional poverty and improve the living conditions of the population.<sup>195</sup> These goals seek to put an end to inequality and poverty in all their forms, ensuring food security and sustainable agriculture; inclusive education and learning opportunities; a wholesome life and wellbeing at all ages; proper water management and basic sanitation services; full employment and dignified work; gender equality; and safe and resilient human settlements.<sup>196</sup>

151. This international legal framework has served as the foundation for different States of the hemisphere to incorporate human rights standards with regard to the Afro-descendant population into their domestic legislation. Thus, the Commission welcomes the different initiatives of the States to enact laws focused on Persons of African Descent and tribal communities. Specifically, we can highlight Bolivia's Law No. 848, which adopts the United Nations' International Decade for People of African Descent and proclaims the "Decade of the Afro-Bolivian People 2015-2024." This law has enabled the observance of the International Decade under domestic legislation, assigning specific responsibilities to the appropriate agencies.<sup>197</sup> In Ecuador, Law No. 46 recognizes the collective rights of Afro-Ecuadorian peoples, mainly the rights to cultural identity and to education; to land and property, biodiversity and natural resources; the right to consultation, compensation for damages; natural medicine and health services; and the right to participation in government. Additionally, it creates the National Council of Afro-Ecuadorian Development.<sup>198</sup>
152. In this same vein, under Law No. 21.151, the State of Chile granted recognition to the Chilean Afro-descendant Tribal People, thus achieving that the Afro-descendant community be regarded as the intangible cultural heritage of the country; guaranteeing it the right to free, prior and informed consultation and consent as provided for under ILO Convention 169, as well as being included in the national census.<sup>199</sup> In Argentina, Law No. 26.852 instituted November 8 as the "National Day of Afro-Argentines and of Afro-descendant Culture;" and also directed the incorporation of the commemoration of that day and the promotion of Afro-descendant culture into the different levels and modalities of the curricular content of the education system. At the local level, Law 4.355 declared July 25 as the "Day of the Afro-descendant Woman" in the area of the Autonomous City of Buenos Aires.<sup>200</sup> Likewise, the IACHR noted progress in creating the Commission for the Historic Recognition of the Afro-Argentine Community, by the National Institute against Discrimination, Xenophobia and Racism (INADI). According to official information, the aim in creating this commission is to begin a process of reparation

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<sup>195</sup> United Nations, General Assembly, Report of the Secretary General on the work of the Organization, Naciones Unidas, *Asamblea General, Memoria del Secretario General sobre la labor de la Organización*, 2015, par. 17.

<sup>196</sup> United Nations, General Assembly, Transforming our world: 2030 Agenda for Sustainable Development *Transformar nuestro mundo: la Agenda 2030 para el Desarrollo Sostenible*, 2015, pg. 16.

<sup>197</sup> Plurinational Legislative Assembly of Bolivia, *Ley N° 848*, October 27, 2016.

<sup>198</sup> National Congress of Ecuador, *Ley No. 46*, May 22, 2006, Article 1 et seq.

<sup>199</sup> National Congress of Chile, *Ley No. 21.151*, April 16, 2019, arts. 1 et seq.

<sup>200</sup> Legislature of the Autonomous City of Buenos Aires, *Ley No. 4.355*, November 15, 2012, Article 1.

and to have a focal point within the national public administration, that specifically addresses the demands and proposals of Persons of African Descent in Argentina.<sup>201</sup>

153. For its part, in Decree No. 4886, Brazil establishes the “National Policy for the Promotion of Racial Equality – PNPIR”, whose purpose is to reduce racial inequality in Brazil, with an emphasis on the Afro-descendant population.<sup>202</sup> The IACHR also welcomes as a forward step Law No. 12.288, which establishes the status of racial equality and the duty of the Brazilian State to ensure equal opportunity, regardless of ethnic background or skin color, the right to participation in the community, especially in political, economic, business, education, cultural and sporting activities, to defend their dignity and religious and cultural values.<sup>203</sup> In Uruguay, Law No. 19.122 aims to foster the participation of Persons of African Descent in the areas of education and labor and, in particular, to promote and implement affirmative actions in the public and private spheres for this ethnic and racial group.<sup>204</sup>
154. The Commission recognizes that economic, social, cultural and environmental rights are directly and closely linked to civil and political rights, inasmuch as the effective enjoyment of ESCE rights enables the full exercise of political rights. In this regard, the IACHR expressed deep concern over the failure of Chile’s Chamber of Deputies to approve the measure reserving one seat for the Chilean Afro-descendant tribal people at the Constitutional Convention, the purpose of which is to reform the Constitution that has been in force since 1980. The Commission urged the Chilean State to ensure the right to political participation of the Afro-descendant tribal people in the process of shaping a new constitution, through affirmative action.<sup>205</sup>

## 1. Duty to Respect and Guarantee the Right to Intercultural Education for Persons of African Descent with an Intersectional Approach

155. States’ international obligations with respect to the right to education emanate from a vast international body of law. In the Inter-American arena, Article 26 of the American Convention, Articles 34 h, 47 and 49 of the OAS Charter, Article XII of the American Declaration,<sup>206</sup> and Article 13 of the Additional Protocol to the American

<sup>201</sup> Government of Argentina, *Comisión para el reconocimiento histórico de la Comunidad Afroargentina*, Commission for the Historic Recognition of the Afro-Argentine Community, November 9, 2020; Congress of the Argentine Nation, *Ley 26.852*, April 24, 2013, Articles 1 and 3.

<sup>202</sup> Office of the President of the Republic, *Decreto No. 4886*, November 20, 2003, Articles 1 and 2.

<sup>203</sup> Office of the President of the Republic, *Lei No. 12.288*, July 20, 2010, Article Y, 2 et seq.

<sup>204</sup> Eastern Republic of Uruguay, *Ley No. 19.122*, August 21, 2013.

<sup>205</sup> IACHR. Press Release No. 313, *Constitutional Process in Chile: IACHR and OHCHR Welcome Approval of Measures That Promote the Participation of Indigenous Peoples and People with Disabilities, and Ask to Ensure the Participation of Tribal People of African Descent*, December 30, 2020.

<sup>206</sup> Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise, every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an

Convention on Human Rights in the area of Economic, Social and Cultural Rights are important as well.<sup>207</sup>

156. As for the right to education, the American Convention lays out the obligation of the States in the progressive development of the rights that are inherent to the provisions on education, science and culture of the OAS Charter. In turn, the Convention emphasizes education as a guiding principle and one of the main fields of integral development for international cooperation, as well as the commitments of the States to eradicate illiteracy; fostering education, science and technology, through efforts that guarantee elementary, secondary and higher education for everyone. For its part, the American Declaration recognizes this right as a means for the achievement of a dignified life and includes equal opportunity and, at least, free elementary education. Under the Protocol of San Salvador, the right to education is part of the full development of the personality and the principle of human dignity, which must be directed toward a plurality where diverse racial and ethnic groups converge.<sup>208</sup>
157. Education plays an important role in the promotion of the right to equality, non-discrimination and tolerance, says the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, which also emphasizes the prohibition of denying access to public or private education for reasons of nationality or ethno-racial background. This treaty also underscores the States' obligation to formulate policies that guarantee the right to education based on equal opportunity. Both the IACHR and the IA Court have been emphatic in recognizing that education is an intrinsic and essential right for the realization of other human rights. In the sphere of personal autonomy, education is the principal means to enable adults, children and adolescents, who have been exposed to economic and social marginalization, to emerge from poverty and to fully participate in their communities.<sup>209</sup>

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education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education.

<sup>207</sup> Article 13. 1. Everyone has the right to education.

2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

<sup>208</sup> OAS, American Convention on Human Rights, 1969, Article 26; Ninth International Conference of American States, American Declaration of the Rights and Duties of Man, 1948, Article 12; OAS, Protocolo de San Salvador, Protocol of San Salvador, 1988, Article 13.

<sup>209</sup> OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013, par. 11, Article 4 and 6; IACHR, The Work, Education and Resources of Women: The Road toward Equality in Guaranteeing Economic, Social and Cultural Rights, 2011, par. 30; I/A Court H.R., Caso Gonzales Lluy y Otros vs. Ecuador, Case of Gonzales Lluy et al v. Ecuador (Preliminary Objections, Merits, Reparations and Costs), Judgment of September 1, 2015, par. 234.

158. The Committee on Economic, Social and Cultural Rights (hereinafter, “CESCR”) has held that this right must fulfill the essential standards of availability, accessibility, acceptability and adaptability. These standards are interconnected, and must always focus on the best interests of learners, inasmuch as this right is a prerequisite for the realization of other human rights, thus making it a tool of emancipation for historically marginalized communities in conditions of vulnerability.<sup>210</sup> Thus, the Commission underscores the need to step up efforts to guarantee an comprehensive education for Persons of African Descent and to promote a process of cultural change toward non-discrimination.
159. Likewise, the Universal Declaration of Human Rights establishes that the main object of education is to develop the human personality and strengthen recognition of and respect for human rights.<sup>211</sup> For its part, the International Covenant on Economic, Social and Cultural Rights (ICESCR) reaffirms that the purpose of education is to endow everyone with the capacity to achieve effective participation in a democratic society. This should be free of charge and compulsory at the elementary school level, as established in both the Universal Declaration of Human Rights and by the Committee on Economic, Social and Cultural Rights (CESCR).<sup>212</sup>
160. Teaching, education and culture are necessary to combat prejudices that lead to racial discrimination, asserts the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>213</sup> In this vein, the Committee on the Elimination of Racial Discrimination (hereinafter, “CERD”) recommends that States review terms used in texts that may contain stereotyped information about Persons of African Descent and replace them with terms connoting dignity and equality. It also urges the States to take special measures aimed at promoting the education of all Persons of African Descent, guaranteeing equitable access for them to higher education and implementing policies to reduce the school dropout rate of Afro-descendant children; in keeping with the proclamations of the Convention on the Rights of the Child, regarding the interconnection between a child continuing and completing in school and his or her ethnic, linguistic and cultural background.<sup>214</sup>
161. The Commission notes that significant practices have been developed in the region in the area of intercultural education for Persons of African Descent. In Guatemala, Decree No. 19 “Law of National Languages,” declares the Garifuna language as an official language and establishes that the national education system, both public and private, must use the Garifuna language at all levels and in all modalities. In

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<sup>210</sup> UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education*, 1999, pars. 1 and 6.

<sup>211</sup> UN, *Declaración Universal de los Derechos Humanos*, Universal Declaration of Human Rights, 1948, Article 26

<sup>212</sup> UN, *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, International Covenant on Economic, Social and Cultural Rights, 1966, Article 13; UN, *Declaración Universal de los Derechos Humanos*, Universal Declaration of Human Rights, 1948, Article 26; UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 11: Plans of action for primary education*, 1999, pars. 1, 6 and 7.

<sup>213</sup> UN, *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 7.

<sup>214</sup> UN, CERD, *General Recommendation No. 34: Racial discrimination against people of African descent*, 2011, pars. 61, 63 and 64; UN, *Convención sobre los Derechos del Niño*, Convention on the Rights of the Child, 1989, Article 20.

Honduras, Decree No. 262 “Fundamental Law of Education” enshrines as guiding principles of education a multicultural and intercultural approach and directs national curricula to incorporate the teaching of mother tongues of Afro-Hondurans in the different modalities of the National Education System. In Nicaragua, Law No. 582 “General Law of Education” creates the Regional Autonomous Education System aimed at indigenous peoples, Afro-descendant and other ethnic communities, whose teaching modality must be intercultural and bilingual.<sup>215</sup>

162. Likewise, the IACHR takes note of progress such as the Afro-Colombian studies program (“Cátedra de Estudios Afrocolombianos”), which by legal statute must be included at the different levels of education in the appropriate curricula.<sup>216</sup> As of the present date, this program has been implemented as a subject; as a crosscutting topic in Social Sciences and other areas; and also through projects and activities.<sup>217</sup> In Brazil, Law No. 12.711, known as the “Law of quotas,” provides that public universities and technical/vocational schools, even at the secondary school level, must set aside 50% of their slots for students from the public school system with a household income equal to or below 1.5 times the minimum wage *per capita*. It also establishes that, every federal institution of higher education, must include the same percentage of students of African and indigenous background and with disabilities.<sup>218</sup> This law was issued in compliance with the ruling of the Supreme Court of Justice of Brazil, which unanimously approved racial quotas in higher education, thus guaranteeing special quotas for Afro-descendant and indigenous people.<sup>219</sup>
163. The IACHR and its REDESCA underscore that education is an instrument of transformation that enables human beings to realize their multiple potentials and participate fully in all spaces on a basis of equality and non-discrimination. From this perspective, there must be an intercultural dialogue which, according to UNESCO studies, involves the interrelation between different cultural dimensions and educators who, in turn, introduce an ethnic approach to teaching and learning.<sup>220</sup> Thus, we must emphasize that the right to education encompasses policies of inclusion, universal coverage, completion and assurance, the purpose of which is for all population groups to have access to a quality education, including the most vulnerable, such as Persons of African Descent and tribal communities, who because of the structural discrimination, institutional racism and historic

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<sup>215</sup> Congress of the Republic of Guatemala, *Decreto No. 19*, May 7, 2003, arts. 1 and 13; National Congress of Honduras, *Decreto No. 262* Fundament Law of Education, February 22, 2012, Articles 13 and 60; National Assembly of the Republic of Nicaragua, *Ley No. 582* General Law of Education, March 22, 2006, arts. 4 and 38.

<sup>216</sup> Congress of Colombia, *Ley No. 70*, 1993, Article 39; Ministry of National Education, *Decreto No. 1122*, June 18, 1998, Article 1 et seq.

<sup>217</sup> Universidad del Cauca, *Cátedra de Estudios Afrocolombianos*, ISBN: 978-958-9451-74-8, May 2008, pgs. 34-41

<sup>218</sup> National Congress, *Lei No. 12.711*, August 29, 2012, Articles 1 and 3.

<sup>219</sup> Telemetro, *Corte Suprema de Brasil aprueba cuotas raciales en universidades*, [‘Brazilian Supreme Court approves racial quotas at universities’], April 27, 2012.

<sup>220</sup> UNESCO, *Educación en la diversidad: experiencias y desafíos en la educación intercultural bilingüe*, Intercultural Bilingual Education: Education and Diversity, IIE/2006/PI/H/13, 2004, p. 26.

segregation to which they have been subjected, continue to face obstacles to the realization of their rights and opportunity gaps for their own development.

164. The principle of equality and non-discrimination must govern the education and schooling of all persons and, therefore, the State must ensure that both public and private institutions do not discriminate against Persons of African Descent. To the extent that States implement guarantees for the realization of this right, this population group will be protected from discrimination, racism and hate speech or bigotry.
165. The IACHR and its REDESCA understand that inclusion of these people into the education system, at both public and private facilities, and at all levels, strengthens the system and is an asset to it, because it enriches and expands teaching and learning of all students in general and promotes and integrates the principles of diversity, respect and solidarity in society. Thus, the States must ensure that Persons of African Descent are not directly or indirectly marginalized within the education system and, whether they are provided public or private education services, it must be accessible and of good quality, as well as include training and sensitivity instruction to both teachers and administrative staff about aspects that affect Persons of African Descent, particularly at the elementary and secondary school levels.
166. The Commission stresses that it is of the utmost importance and urgency for the States of the region to implement effective strategies in the framework of the right to education, specifically targeting Persons of African Descent and tribal communities, for universal access to basic education free of charge. Additionally, they must incorporate an intersectional perspective, taking into account urban and rural settings, special conditions such as gender, disability, LGBTI groups, children and adolescents, homelessness, nationality, socioeconomic status, migration status, deprivation of liberty and the condition as rural worker.
167. Based on the foregoing, the IACHR emphasizes that in order to guarantee the right to education, the States must take affirmative actions and special measures that promote and ensure access to and completion of education at all levels for the Afro-descendant population. For these purposes, they must take into consideration their worldview, traditions and ancestral customs, with a view toward including their native languages and own knowledge in the curricula of all public and private education institutions, as a form of preservation of their cultural heritage and social empowerment. In that same vein, the Commission calls on the States to guarantee the right to Afro-descendant historical memory by implementing a specialized academic course that relates the history of the African diaspora and the processes of resistance and demands of Afro-descendant communities in the Americas, in accordance with the right to self-determination, and ensuring representation of African Descent grassroots and civil society organizations at the stages of consultation, design, monitoring and execution of ethno-educational plans, policies and projects at the local, regional and national levels.

168. Likewise, States must promote pedagogic policies that prohibit the use of direct or indirect stereotypes or stigmatization based on African Descent ethno-racial background in education settings in both support resources and curricular content.

## 2. Duty to Implement Intercultural Policies of Access to Public Health and Disease Prevention for Persons of African Descent with an Intersectional Approach

169. Numerous instruments of international human rights law recognize the right to health as autonomous or free-standing. In this regard, the right to enjoy the highest achievable standard of physical and mental health is a fundamental human right regarded as essential to the exercise of other rights and, in turn, is contingent upon other rights, such as the right to food, housing, or rights of a similar nature such as the right to water. The American Declaration underscores that this right entails the adoption of sanitary and social measures relating to food, housing and medical care; while the Protocol of San Salvador understands health to be a public good entailing the highest level of physical and mental wellbeing.<sup>221</sup>
170. The IACHR and its Special Rapporteurship on ESCE Rights recalls that the legal precedents of the Inter-American human rights system have found that Article 26 of the American Convention protects the right to health, and that this is not only understood as the absence of afflictions and diseases, but also as a comprehensive state of physical, mental and social wellbeing, based on a lifestyle that enables people to lead a holistically balanced life.<sup>222</sup> Moreover, Inter-American legal precedents have taken into account four essential and interconnected elements (availability, accessibility, adaptability and quality of health facilities, goods and services) as part of the legal content of this right, which the States must ensure in providing medical services, goods and facilities, whether public or private in nature, in function with their duty to regulate, supervise and inspect such services and facilities on a regular basis.<sup>223</sup>
171. The IACHR and its REDESCA have also emphasized that in order to fulfill the international obligations of respect, guarantee, progressivity and cooperation with

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<sup>221</sup> Ninth International Conference of American States, *Declaración Americana de los Derechos y Deberes del Hombre*, American Declaration of the Rights and Duties of Man, 1948, Article 11; OAS, *Protocolo de San Salvador*, Protocol of San Salvador, 1988, Article 10.

<sup>222</sup> I/A Court H.R., *Case of Cuscul Pivaral et al v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359. pars. 98- 107.

<sup>223</sup> I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, pars. 89, 90, 96, 99, 141; *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, pars. 130, 134 and 135; *Case of Albán Cornejo et al v. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, pars. 119 and 121; *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, pars. 171, 175, 177, 184; *Case of Poblete Vilches et al v. Chile*. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, pars. 120, 121, 124 and 152; *Case of Cuscul Pivaral et al v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, par. 106.



regard to the right to health of Persons of African Descent, it is essential for the State to place the content of that right at the center of systems and policies that define its realization, such as in the production and distribution of medicine and health technology or the provision of medical services, including when private agents or companies are involved. The States must establish regulatory frameworks and clear public policies based on the content of the right to health. They must also require full accountability of private service providers for their operations and subject them to rigorous inspection under transparent and effective oversight systems, providing for effective sanctions and adequate reparation in cases of breach of duty.<sup>224</sup>

172. The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance provides that States must undertake to pass legislation prohibiting, among other things, discrimination in the health care setting. Similarly, the Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women (hereinafter, “Convention of Belem Do Para”) recognizes that States must protect the free and full exercise of the economic, social and cultural rights of women, and specifically prevent any violence against women that may arise in health facilities.<sup>225</sup> Other regional legal instruments, such as the Social Charter of the Americas and the Inter-American Convention on Protecting the Human Rights of Older Persons,<sup>226</sup> also enshrine the right to health with the subject matter being further developed at the national and international level.
173. Additionally, the Commission and its REDESCA note that, in order to meet their international obligations in this area, States must not only guarantee the provision of health services but also properly oversee that conditions are conducive to a dignified and egalitarian life in society in terms of the right to health. In other words, the Commission emphasizes the obligation of States to address the basic social determinants to enable the effective realization of the right to health. The main determinants include the guarantee of other rights that enable the enjoyment of a healthy life such as access to safe drinking water, the prohibition of torture, healthy work conditions, a healthy environment or adequate food. Likewise, it is essential to incorporate social determinants of health in States’ actions to implement this right, such as equitable distribution of resources, perspectives of culture, ethnicity, age, migratory status, disability and gender, the effective participation of the population in health policy. They should also identify other determinants such as relationships of power, violence, discriminatory laws, institutional and social discrimination or harmful family and community settings that impede realization of the right to health. In that context, the IACHR and its Special Rapporteurship on ESCE Rights find that States must adopt measures not only with respect to the provision of adequate medical services and goods in particular, but with respect to the physical

<sup>224</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, pars. 220-232.

<sup>225</sup> OAS, *Convención Belem Do Para*, 1994, Article 2.

<sup>226</sup> OAS, Social Charter of the Americas, 2012, Article 17; OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013, Article 7; OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, 2015, Article 19.

and psychosocial settings that are required for the enjoyment of the right to both the physical and mental health of Persons of African Descent.<sup>227</sup>

174. Specifically, the IACHR and its REDESCA have called attention with concern to the differentiated impact that health crises such as the COVID-19 pandemic have on Persons of African Descent. Mainly, they noted the racial disparity in countries with a high demographic concentration of this ethno-racial population, which is more vulnerable to infection of this virus, because of the historic structural discrimination to which it has been subjected.<sup>228</sup> Therefore, they underscore the importance for States to ensure in a heightened manner the elements of the content of the right to health with respect to Persons of African Descent and tribal communities in these contexts. Likewise, they highlight the importance of designing and implementing updated registers to report the number of infections, hospitalizations and deaths among this ethno-racial group in order to tailor and implement policies to be more effective in guaranteeing the right to health of this population.
175. It is also relevant to note that, in the Universal System, the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination associate the right to health with the areas of wellbeing, medical care, social services, social security and public health. Moreover, the ICESCR recognizes that this right must be guaranteed in the most effective way in both the physical and mental spheres and, thus, the States must adopt measures to reduce stillbirth and infant mortality rates, and for the healthy development of children; promote disease prevention and treatment; provide medical care and services for the treatment of diseases; as well as improve the environment and workplace hygiene.<sup>229</sup>
176. Specifically, the CERD has explained the obligation to ensure equal access for Persons of African Descent to health care and social security, guaranteeing that this ethno-racial population participates in the development and implementation of health programs and projects.<sup>230</sup> In this regard, the IACHR welcomes initiatives such as the “National Health Plan for People of African Descent 2018-2021” of Costa Rica, which seeks to contribute to the enhancement of the quality of life and the

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<sup>227</sup> In this regard, see Committee on Economic, Social and Cultural Rights. *General Comment 14, The Right to the highest attainable standard of health*. E/C.12/2000/4, August 11, 2000, pars. 4, 11, 16 and 18; WHO, “Closing the gap in a generation: health equity through action on the social determinants of health – Final Report of the Commission on Social Determinants of Health (Geneva, 2008); UN. Report of the Special Rapporteur on the Right of Every Person to the Highest Attainable Standard of Physical and Mental Health. A/HRC/41/34, April 12, 2019.

<sup>228</sup> IACHR. Press Release No. 092/20, The IACHR and its Special Rapporteurship on ESCER call on the States to guarantee the rights of Afro-descendant Persons and Prevent racial discrimination in the context of the COVID-19 pandemic, April 28, 2020.

<sup>229</sup> UN, *Declaración Universal de los Derechos Humanos*, Universal Declaration of Human Rights, 1948, Article 25; UN, *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 5; UN, *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, International Covenant on Economic, Social and Cultural Rights, 1966, Article 12.

<sup>230</sup> UN, CERD, *General Recommendation No. 34: Racial discrimination against people of African descent*, 2011, pars. 55 and 56.

health status of the African Descent population through intersectoral and inter-institutional coordination of actions while using an intercultural approach.<sup>231</sup> The Commission also takes note of legal provisions that protect the knowledge and intellectual property of the African Descent community, such as Law No. 46 of Ecuador, which provides that access to health services must be guaranteed to African Descent peoples while respecting their own systems, knowledge and practices of traditional natural medicine, both in urban and rural areas.<sup>232</sup> Similarly, Nicaragua established under Law No. 759 respect for and the promotion of the practices and expressions of traditional ancestral medicine of peoples of African Descent.<sup>233</sup>

177. The Commission deems it necessary to underscore that the Pan-American Health Organization has noted that health cannot be understood as only the absence of diseases, nor as an idealization of the concept of wellbeing because that is not enough on its own; instead, it must be understood that health is contingent upon factors such as cultural contexts. In this vein, the content of the right to health must be understood by taking into account the intercultural guidelines that enable the coexistence of medical systems with diverse cultural schemes and the development of communication strategies that line up with the validation of traditional African Descent cultures. Consequently, the Commission calls on the States to adopt special measures to ensure access to health with an ethnic, intercultural and social approach for Persons of African Descent. For such a purpose, medical treatments, palliative care and disease prevention strategies for physical and mental wellbeing should be guaranteed, by implementing coordinated institutional strategies at all levels; involving this population in all plans and projects that affect them; and facilitating clear, accessible and inclusive information about the medical procedures that are performed on them.<sup>234</sup>
178. In this same vein, the Commission and the Special Rapporteurship call on the States of the region to respect, protect and promote practices of traditional African Descent ancestral medicine and the process of generating knowledge on this subject, in both the individual and collective spheres, the latter in the case of the African Descent tribal communities. The IACHR recalls that intercultural health and ethnic communities' own therapeutic systems are part of their cultural expressions and are rooted in their worldview and spirituality; therefore, they enjoy special protection, as well as their traditional authorities, medicine men and women. In this regard, the Commission has emphasized that the use of plants and other natural resources on ancestral territories is one of the components of the right to health of ethno-racial peoples.<sup>235</sup> Hence, it is essential to ensure intercultural dialogue between State

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<sup>231</sup> Ministry of Health, *Plan Nacional de Salud para Personas Afrodescendientes 2018-2021*, [‘National Health Plan for Afro-descendant Persons’], 2018, pg. vii.

<sup>232</sup> National Congress of Ecuador, *Ley No. 46*, May 22, 2006, Articles 17-19.

<sup>233</sup> National Assembly of the Republic of Nicaragua, *Ley No. 759* Law of Traditional Ancestral Medicine, March 29, 2011, arts. 1 et seq.

<sup>234</sup> PAHO, *Indicadores de Salud: Aspectos conceptuales y operativos*, Health Indicators: Conceptual and Operational Considerations, s.f.

<sup>235</sup> IACHR. Indigenous and Tribal Peoples of the Pan-Amazon Region, 2019, par. 304. 2019, par. 304.

institutions and African Descent and tribal communities' own health systems, in order to guarantee validation and integration of traditional ancestral medicine.

179. In this context, the Commission and its REDESCA stress the duty of the States of the region to design and implement health policies focused on the African Descent population to guarantee its access and coverage in the health system, as well as guarantee non-discrimination in the exercise and enjoyment of this right. For the design of these policies, from a human rights approach, it is crucial to take into account the intersection between this ethno-racial background, and other conditions such as gender, disability, condition as a child or adolescent or older person, deprivation of liberty, belonging to LGBTI groups, or socioeconomic background, among other factors.
180. Regarding the current context of the COVID-19 pandemic, as was explained earlier,<sup>236</sup> the Commission noted the differentiated impact of this disease on Persons of African Descent because of the racial disparity in countries with a high demographic concentration of this ethno-racial population. This disparity has been caused by the historical structural discrimination to which it has been subjected, and makes it more vulnerable to contracting this virus. Thus, building on the guidelines of *Resolution 01/2020*, the IACHR urges the States to take measures to ensure the availability of health services to Persons of African Descent and tribal communities; and to design plans for the prevention, containment and treatment of this disease, incorporating up-to-date records that report the number of infections, hospitalizations and deaths of people with this ethno-racial background.<sup>237</sup>
181. On this score, the IACHR and its REDESCA call on the other States of the region to adopt differentiated institutional measures to monitor the impact of the COVID-19 pandemic on Persons of African Descent; and, in that context, include in the registry and reporting systems of people affected by this pandemic, disaggregated data on ethnic and racial background, gender, disability, nationality and age.

### **3. Duty to Implement Strategies of Access to Decent and Quality Housing to Persons of African Descent with an Intersectional Approach**

182. The right to adequate housing has been widely enshrined into international human rights law. The American Declaration and other norms linked to human rights protection include general provisions on the right to housing, as does the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disability; the Inter-American Convention on Protecting the Rights of Older Persons; the Inter-American Convention against Racism, Racial

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<sup>236</sup> See Chapter 4.II of this document.

<sup>237</sup> IACHR, Press Release No. 092/20, [[The IACHR and its Special Rapporteurship on ESCER call on the States to guarantee the rights of Afro-descendant Persons and Prevent racial discrimination in the context of the COVID-19 pandemic](#)], April 28, 2020; IACHR, Resolution 1/2020: [Pandemic and Human Rights in the Americas](#), adopted on April 10, 2020.

- Discrimination and Related Forms of Intolerance, and several articles of the American Declaration on the Rights of Indigenous Peoples. Particularly important are Article 26 of the American Convention, which refers to realization of ESCE rights and Article 34.k of the OAS Charter, wherein the States agree to make their utmost efforts to ensure adequate housing for all sectors of the population.<sup>238</sup>
183. Generally speaking, in Inter-American case law, the right to housing has been protected indirectly by the connection with the rights to life and private property in scenarios where decent living conditions of ethnic communities have been threatened, such as encroachment without a court order and destruction of property, forced displacement, massacres, and acts of armed violence.<sup>239</sup>
184. Moreover, in the sphere of the United Nations, the right to adequate housing was first recognized as part of the right to an adequate standard of living in the Universal Declaration of Human Rights, and in the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>240</sup> The ICESCR recognizes the right of every person to have an adequate standard of living that includes housing and continual improvement of conditions.<sup>241</sup> Along these lines of thinking, the Committee on ESCER has held that availability of services, materials, facilities and infrastructure; legal certainty of ownership; habitability and affordability; cultural adequacy; tolerable expenses; and location, are all inherent factors to the right to housing. For its part, the CERD has emphasized that policies must be implemented to prevent the habitational segregation of Persons of African Descent, and to get these communities to become actively engaged in projects of maintenance and rehabilitation of traditional housing.<sup>242</sup>
185. Under this premise, the IACHR and its REDESCA find that the States must establish and target concrete efforts toward promoting and implementing special measures of access to housing paying special heed to the African Descent population. Additionally, bearing in mind that one of the substantive elements of this right is cultural adequacy and that these efforts must be particularly focused on people who face conditions of extreme poverty, such as those faced by the homeless, migrants, forcibly displaced or evicted persons.

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<sup>238</sup> Ninth International Conference of the American States, American Declaration of the Rights and Duties of Man, 1948, Article 11; OAS, Inter-American Convention on Protecting the Rights of Older Persons, 2015, Article 24; OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, 2013, Article 7; Bearing in mind the close relationship between the issue of housing and the protection of their lands or territories, Articles VI, XXV, XXVI, XXIX and XXX of the aforementioned Declaration should be taken into account; OAS, Charter of the Organization of American States, 1967, Article 34.

<sup>239</sup> I/A Court H.R., Case of Yarce et al v. Colombia *Caso Yarce y Otras vs. Colombia*, (Preliminary Objections, Merits, Reparations and Costs), Judgment of November 22, 2016, Series C No. 325, par. 41.

<sup>240</sup> UN, *Declaración Universal de los Derechos Humanos*, Universal Declaration of Human Rights, 1948, Article 11; UN, *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 5.

<sup>241</sup> UN, *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, International Covenant on Economic, Social and Cultural Rights, 1966, Article 11.

<sup>242</sup> UN, *CESCR, General Comment No. 4: The Right to Adequate Housing*, 1991, pars. 8; UN, CERD, *General Recommendation No. 34: Racial discrimination against people of African descent*, 2011, par. 60.

186. Consequently, the IACHR and its REDESCA urge the States to put in place differentiated strategies and public policies pertaining to the right to housing aimed at not only providing access to decent housing to Persons of African Descent but also to address the deficiencies and inequalities in the current systems that reinforce the discrimination, marginalization and stigmatization against these people in this sphere. Housing must be understood as a human right and States should adopt measures to protect people from business activities or actions of third parties that may adversely impact the realization of the right to housing, and take actions to aid in financing construction and purchase of housing, in the prevention of forced displacement and eviction, making housing affordable for low income groups so that Persons of African Descent are able to access decent and adequate housing with legal certainty of ownership. All of the foregoing must be carried out, while taking into consideration factors of intersectionality that could aggravate the contexts of poverty and extreme poverty among this population because of the structural discrimination to which it has been subjected, belonging to groups that have historically been the targets of discrimination, such as children and adolescents, women, older persons, persons with disability, LGBTI groups, migrants and rural communities.<sup>243</sup>

#### **4. Duty to Guarantee the Right to Food and Nutrition Security for Persons of African Descent with an Intersectional Approach**

187. The right to food is protected in the Inter-American system by several instruments. The American Declaration establishes food as a right to wellbeing and health of the person; the OAS Charter also establishes the commitment of the States to achieve the adequate nourishment of persons and guarantee them availability of food.<sup>244</sup> Moreover, the Protocol of San Salvador expressly recognizes the duty of the States to eradicate malnutrition.<sup>245</sup> The Inter-American Convention on Protecting the Rights of Older Persons stresses the right to food and nutrition security.<sup>246</sup> In this context, the IA Court of HR has also established that Article 26 of the Pact of San José is particularly important to protect the right to food in the region as one of the economic, social, cultural and environmental rights that is encompassed under that provision.<sup>247</sup>
188. The IA Court of Human Rights has also established that the deprivation of lands and lack of access to natural resources of indigenous peoples and other ethnic groups

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<sup>243</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019.

<sup>244</sup> Ninth International Conference of American States, *Declaración Americana de los Derechos y Deberes del Hombre*, American Declaration of the Rights and Duties of Man, 1948, Article 11; OAS, *Carta de la Organización de Estados Americanos*, Charter of the Organization of American States, 1967, Article 34.

<sup>245</sup> OAS, *Protocolo de San Salvador*, Protocol of San Salvador, 1988, Article 12.

<sup>246</sup> OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, 2015, Article 12.

<sup>247</sup> I/A Court H.R., *Case of the Indigenous Communities Members of the Lhaka Honhar (Our Earth) Association v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, pars. 210-221.

can cause direct obstacles to obtaining food and necessary goods for their subsistence and that the right to food should not be understood restrictively, simply as protection of mere physical subsistence, but that it also has cultural dimensions that are of importance to such groups. That Court finds that not just any food satisfies the respective right, but that the food must be acceptable to a particular culture and, therefore, values unrelated to nutrition must be taken into account. Food, in turn, is essential for the enjoyment of other rights, and the quality of “adequate” may be contingent upon environmental and cultural factors.<sup>248</sup> The IACHR draws the same conclusion from contexts of African Descent tribal peoples, inasmuch as the challenges faced by these communities in accessing territory would adversely impact their livelihood and traditional activities such as fishing, hunting or gathering, and have a direct bearing on the right to food.

189. The Commission and its REDESCA also underscore that Persons of African Descent may see their right to food limited in the context of business activities that may undermine this right, such as hoarding and concentration of ownership of land in the hands of one or few people, deforestation and changes in land use, including obstacles to accessing seeds and sources of traditional foods or impeding production of basic food staples due to lack of protection of genetic diversity of their crops or smaller size and quality of their lands. They have also noted potential risks to the right to food of the most vulnerable sectors in enforcing international investment or trade treaties, if the State does not honor its international human rights commitments in that sphere.<sup>249</sup>
190. As for this right, the ICESCR commits all States to enhance production, conservation and distribution of foodstuff, as well as to disseminate knowledge and the principles of nutrition and to develop or reform agrarian systems. At the same time, it enshrines the importance of ensuring equitable distribution and taking into account the need to combat hunger.<sup>250</sup> This right is also recognized by the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women, which concur in that everyone has the right to the supply of nutritious and adequate food as part of his or her wellbeing; particularly persons living in a situation of poverty or populations in a situation of vulnerability such as women and children.<sup>251</sup>
191. Specifically, the Committee on ESCR has affirmed that food is linked to human dignity and is ever-present for the enjoyment of other human rights. Although there

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<sup>248</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay* Caso Comunidad Indígena Yakye Axa Vs. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 167; I/A Court H.R., *Case of the Indigenous Communities Members of the Lhaka Honhar (Our Earth) Association v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, pars. 254 and 274.

<sup>249</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, pars. 344-347, 287-296.

<sup>250</sup> UN, Pacto Internacional de Derechos Económicos, Sociales y Culturales, International Covenant on Economic, Social and Cultural Rights, 1966, Article 11.

<sup>251</sup> UN, Universal Declaration of Human Rights Declaración Universal de los Derechos Humanos, 1948, Article 25; UN, Convention on the Rights of the Child Convención sobre los Derechos del Niño, 1989, Article 24; UN, Convention on the Elimination of All Forms of Discrimination against Women, Convención sobre la eliminación de todas las formas de discriminación contra la mujer, adopted in 1979 and entered into force in 1981, par. 8.

is an obligation of progressivity for the full realization of the right to adequate food, the States have the basic obligation to adopt the necessary measures to mitigate and alleviate hunger. The right to food is based on the principles of sustainability and food security, which encompass the availability of food to meet the basic nutrition needs of individuals, both present and future generations, considering ecological, climatic and cultural factors.<sup>252</sup>

192. Furthermore, the United Nations Food and Agriculture Organization (FAO) has asserted that food and nutrition security is a right that encompasses economic, social and physical access to adequate food, in both quantity and quality, based on cultural appropriateness, without discrimination of any sort; the pillars of which stand on the availability, access, consumption and biological utilization of the food. Accordingly, several international organizations have been emphatic in recognizing the right to food sovereignty of peoples or nations to define autonomously their own food and production systems, in a sustainable and ecological way, including the protection and regulation of agricultural production and the domestic market, respecting the self-determination of rural ethnic and racial communities.<sup>253</sup>
193. Therefore, the Commission and its REDESCA underscore that the African Descent population must be included in a differentiated and explicit manner in programs and public policies implemented by the States of the region in relation to the right to food. Specifically, the States must promote and implement strategies in order to guarantee the food and nutrition security of the African Descent population, including risk management pertaining to food, natural disasters and climate change. They must also focus from a differential perspective on local and regional contexts affecting this population; particularly, on African Descent tribal communities settled in rural, riparian and island settings, whose means of subsistence and obtention of food are based on the cultural connection to their territories and natural resources.
194. In this same vein, the intersection of ethnic and racial background, gender and poverty must be taken into account in order to promote plans and projects for the eradication of child malnutrition among the African Descent population. Thus, the disproportionate effects that structural poverty can have on the nourishment, health and safety of this population group must be mitigated; especially, its effects on women, children and adolescents, persons with disability, rural communities, homeless persons, migrants and forcibly displaced persons.

## **5. Duty to Implement Policies of Access to Just and Acceptable Conditions of Work, Equality and Non-Discrimination for**

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<sup>252</sup> UN, CESCR, *General comment No. 12: The right to adequate food*, 1999, pars. 1, 6 y 7.

<sup>253</sup> FAO, Special Programme for Food Security - PESA – Central America, Food and Nutrition Security, Basic Concepts, Centroamérica, *Seguridad Alimentaria Nutricional, Conceptos Básicos*, 3<sup>rd</sup> Edition, 2011, pg. 2 et seq.



## Persons of African Descent with an Intersectional Approach

195. The Inter-American Court has held that labor rights are protected by both the American Convention and the content of the OAS Charter, which establishes work as a social duty and a right, that in the framework of integral development must provide fair wages, employment opportunities and adequate conditions for all.<sup>254</sup> Moreover, the American Declaration and the Protocol of San Salvador also provide for the protection of the right to work and that it must be guaranteed in dignified and proper conditions.<sup>255</sup>
196. The IACHR also notes that with the adoption of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance in 2013, the States of the region recognized the importance of advancing binding measures to specifically fight racial discrimination, including the prevention, prohibition, investigation and punishment thereof, in both the public and private spheres.<sup>256</sup> For its part, the Inter-American Democratic Charter stresses that promoting and strengthening democracy require the full and effective exercise of the rights of workers and the enforcement of basic norms, such as those set forth in the Declaration and International Labor Organization Conventions.<sup>257</sup>
197. Furthermore, it is important to note that the American Convention enshrines the prohibition of slavery, debt bondage and forced labor. In this regard, the Inter-American Court has held that this prohibition is an absolute norm of international law, acquiring the nature of *jus cogens* and *erga omnes* and is binding on the States to enforce, making it inadmissible to enforce provisions of law that exempt responsibility.<sup>258</sup> On this score, the Inter-American Court itself has held that unwillingness to perform a job or provide a service is tantamount to a lack of consent when potential forced labor begins or continues, and such labor could amount to the illegal deprivation of liberty, deception or psychological coercion.<sup>259</sup>

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<sup>254</sup> I/A Court H.R., *Case of Lagos del Campo v. Peru* Caso Lagos del Campo Vs. Perú, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, par. 143; OAS, American Convention on Human Rights Convención Americana sobre Derechos Humanos, 1969, arts. 16 and 26; OAS, Charter of the Organization of American States Carta de la Organización de Estados Americanos, 1967, arts. 34, 45 and 50

<sup>255</sup> Ninth International Conference of American States, Declaración Americana de los Derechos y Deberes del Hombre, American Declaration of the Rights and Duties of Man, 1948, arts. 14 and 37; OAS, Protocolo de San Salvador, Protocol of San Salvador, 1988, arts. 6 and 7

<sup>256</sup> OAS. Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (2013) Article 7.

<sup>257</sup> IACHR. The Work, Education and Resources of Women: The Road toward Equality in Guaranteeing Economic, Social and Cultural Rights, 2011, par. 88.

<sup>258</sup> I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil* Caso Trabajadores de la Hacienda Brasil Verde vs. Brasil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, pars. 249, 412 and 413.

<sup>259</sup> I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil* Caso Trabajadores de la Hacienda Brasil Verde vs. Brasil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, par. 293.

198. In the framework of the universal human rights system, the right to work must be guaranteed under equitable and acceptable conditions without any discrimination, in accordance with Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the ICESCR. Thus, special protection should be provided against unemployment and States must ensure that all workers work in safe and sanitary conditions. Children are protected from economic exploitation and any employment that poses a risk to their personal development. On this issue, the CERD has directed States to adopt laws to prohibit workplace discrimination, as well as practices in the labor market that adversely impact Persons of African Descent.<sup>260</sup> In this regard, the Committee on Economic, Social and Cultural Rights has repeatedly stressed that work is an individual and collective right, the main elements of which are availability, accessibility, acceptability and quality, with human dignity always taking precedence and, therefore, it expressly prevents and prohibits situations of forced labor.<sup>261</sup>
199. Moreover, the bodies of the Inter-American system have been emphatic in prohibiting forced labor<sup>262</sup> and have developed the guarantee of job stability in connection with access to justice.<sup>263</sup> The Commission and its REDESCA recall that the basic obligations of the States, with respect to this right, include guaranteeing access to employment, especially for especially vulnerable individuals and groups. Additionally, the IACHR understands that in order to comply with the minimum content of this right, one of the essential elements is for the State to regulate and effectively enforce it, specifically by supervising, inspecting and punishing the violation thereof by public and private employers.<sup>264</sup> This is even more important when inequitable and abusive forms of labor relating to precarious work relations arise.<sup>265</sup> This means that when the State is aware that a company or employer has caused harmful effects on the enjoyment of this right, the State must take action to investigate and potentially punish such acts, as well as provide full reparation to the

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<sup>260</sup> UN, Universal Declaration of Human Rights *Declaración Universal de los Derechos Humanos*, 1948, arts. 23 and 24; UN, International Convention on the Elimination of All Forms of Racial Discrimination *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, 1965, Article 5; UN, International Covenant on Economic, Social and Cultural Rights *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, 1966, Article 7 ; UN, CERD, *General Recommendation No. 34: Racial discrimination against people of African descent*, 2011, par. 58.

<sup>261</sup> UN, *CESCR, General Comment No. 18: The right to work*, 2006, pars. 6, 7, 9 and 12.

<sup>262</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia* *Caso de las Masacres de Ituango vs. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 159.

<sup>263</sup> I/A Court H.R., *Case of Lagos del Campo v. Peru* *Caso Lagos del Campo Vs. Perú*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, par. 143; I/A Court H.R., *Case of San Miguel Sosa et al v. Venezuela* *Caso San Miguel Sosa y otras vs. Venezuela*. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348.

<sup>264</sup> IACHR, Report *Informe No. 25/18*, Case 12.428, Admissibility and Merits, Workers of the Fireworks Factory of Santo Antônio de Jesus and their Families, Brazil, par. 100, 101 and 120.

<sup>265</sup> IACHR. Report No. 64/18. Case 12.738. Merits. Opario Lemoth Morris et al (Miskitu Divers). Honduras. May 8, 2018, par. 261.

individuals affected through legitimate procedures that meet recognized standards of due process.<sup>266</sup>

200. The IACHR has underscored that one of the substantial elements of the contents of the right to work is the freedom of choice and acceptance of the work, which then leads to a person devoting his or herself to the activity that reasonably meets his or her expectations or life ambition, whether by creating opportunities that permit this free choice or by adopting measures that do not prevent anyone from pursuing his or her calling.<sup>267</sup> The IACHR and its REDESCA have also held that States must guarantee that Persons of African Descent have the possibility of accessing decent jobs in the main economic and occupational sectors without any discrimination whatsoever, which includes programs for promoting their rights within companies, whether public or private, as well as policies meant to eradicate racial discrimination and segregation in this sphere. Specifically, they have recommended that the States demand companies to practice due diligence in the area of human rights as part of their operations.<sup>268</sup>
201. The IACHR and its REDESCA considers labor inspections to be one of the essential measures that the States must take to prevent violations of this right and enforce it. Specifically, States should ensure that these inspections are independent, conducted by trained personnel, are preceded by a mapping exercise of risk sensitive areas or facilities, and inspectors should enter into work places without prior notice, that is, unannounced. Additionally, States should facilitate access to justice for the victims. States should also make sure that the punishments for private actors are adequate and proportional to the gravity of the damage, and that they include criminal, administrative and pecuniary sanctions.<sup>269</sup>
202. In this context, the IACHR emphasizes that States must put labor policies into place that benefit Persons of African Descent effectively, promoting differential measures for access to quality jobs in dignified and acceptable conditions to this population. Likewise, they must implement strategies to prevent, combat and punish racial discrimination in the labor market, using an intersectional approach to benefit groups that have been historically discriminated against and face heightened obstacles to access to work and protection of their labor rights, because of conditions of poverty and extreme poverty, such as women, LGBTI persons, persons with disability, migrants, sex workers, homeless persons and rural communities.
203. Lastly, the IACHR and its REDESCA underscore that, although the right to work and to fair and equitable conditions of work are autonomous and independent rights, their contents are essential for the realization of other human rights and are

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<sup>266</sup> IACHR. Business and Human Rights: Inter-American Standards. Report prepared by the REDESCA. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19 November 1, 2019.

<sup>267</sup> IACHR. Report No. 148/18. Case 12.997. Merits. Sandra Cecilia Pavez Pavez. Chile. December 7, 2018, par. 65

<sup>268</sup> IACHR. Business and Human Rights: Inter-American Standards. Report prepared by the REDESCA. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19 November 1, 2019, par. 352,

<sup>269</sup> Committee on Economic, Social and Cultural Rights. General Comment 23. The right to just and favorable conditions of work. April 27, 2016, pars. 54 and 59.

inseparable from and inherent to human dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family.<sup>270</sup>

## 6. Duty to Protect, Preserve and Promote the Cultural Expressions and Knowledge of Persons of African Descent

204. As for culture and the rights emanating therefrom, the Protocol of San Salvador establishes that everyone has the right to take part in the cultural and artistic life of the community.<sup>271</sup> Cultural rights have been reaffirmed by various instruments such as the American Convention, the American Declaration and the OAS Charter.<sup>272</sup> Specifically, the IACHR and its REDESCA note that the Charter mentions that the States must give primary importance to the encouragement of culture oriented toward the holistic improvement of the individual as a foundation for social justice and democracy. This instrument recognizes that Member States will consider themselves individually and jointly bound to preserve the cultural heritage of the American peoples, as well as the right of excluded and discriminated sectors to take part in the cultural life of the member countries.
205. For its part, the Inter-American Court recently said that the right to cultural identity protects the freedom of individuals, even when acting in association or as a community, to identify with one or several societies, communities, or social groups, to pursue a way of life or life style linked to the culture to which they belong and to participate in the development thereof. Thus, the right protects the distinctive traits that characterize a social group, without denying the historic, dynamic and evolutive nature of the culture.<sup>273</sup> In the context of indigenous communities, the Court has also considered cultural identity to be a fundamental right of a collective nature that deserves respect in a pluralistic and multicultural society. This means that ethnic and racial groups must be properly consulted about matters that may come to impact their cultural life. The Inter-American Court has also emphasized that the construct of cultural identity of ethnic communities is based on their own worldviews and the close relationship with their traditional lands and natural resources.<sup>274</sup>
206. The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance stresses that forms of cultural expression can be affected by

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<sup>270</sup> Cfr. UN. Committee on Economic, Social and Cultural Rights. General Comment No. 18: The right to work. E/C.12/GC/18, February 6, 2006, Approved on November 24, 2005, par. 1.

<sup>271</sup> OAS, *Protocolo de San Salvador*, Protocol of San Salvador, 1988, Article 14.

<sup>272</sup> OAS, American Convention on Human Rights *Convención Americana sobre Derechos Humanos*, 1969, arts. 16, 26 and 42; Ninth International Conference of American States, American Declaration of the Rights and Duties of Man *Declaración Americana de los Derechos y Deberes del Hombre*, 1948, Article 13; OAS, Charter of the Organization of American States *Carta de la Organización de Estados Americanos*, 1967, Articles 30, 45.f, 47 and 48.

<sup>273</sup> I/A Court H.R., Case of the Members of the Lhaka Honhat (Our Earth) Indigenous Communities Association v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, par. 240.

<sup>274</sup> I/A Court H.R., Case of Kichwa de Sarayaku Indigenous People v. Ecuador *Caso Pueblo Indígena Kichwa de Sarayaku vs. Ecuador*, Merits and reparations, Judgment of June 27, 2012. Series C No. 245, pars. 159 and 217.

the phenomenon of racism and any type of denial of access to it, restriction or limitation that may be placed on it.<sup>275</sup> Moreover, the Social Charter of the Americas asserts that culture is a key element for the socioeconomic development of peoples and, therefore, the States must foster inclusive cultural development policies, support programs for cultural and creative industries; as well as plans for the preservation and protection of cultural heritage and diversity.<sup>276</sup>

207. Several instruments of the universal system enshrine that all persons have the right to fully take part in cultural life and scientific progress on an equal basis, pursuant to the International Covenant on Economic, Social and Cultural Rights; the Universal Declaration of Human Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>277</sup> The Committee on ESCR has held that the concept of culture must not be seen as a series of isolated manifestations, but as an interactive and creative process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This Committee also has broadly developed the pillars of cultural rights, which rest on participation, access and contribution to cultural life, as well as on the elements of availability, acceptability, adaptability and appropriateness.<sup>278</sup>
208. The Declaration on Race and Racial Prejudice affirms that culture is the common heritage of humanity. It further establishes that scientific organizations and associations are called upon to undertake research on prejudices, racist behaviors and practices, in the framework of cultural studies from an interdisciplinary perspective.<sup>279</sup> Furthermore, UNESCO has been emphatic in promoting the identification, conservation, safeguarding, dissemination and protection of traditional culture and folklore of ethnic and racial peoples.<sup>280</sup> Accordingly, the CERD recognizes that the African Descent population, individually or collectively, has the right to cultural identity and to safeguard its ways of life and forms of

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<sup>275</sup> OAS, Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance *Convención Interamericana contra el Racismo, la Discriminación Racial y Formas Conexas de Intolerancia*, 2013, Articles 1 and 4.

<sup>276</sup> OAS, Social Charter of the Americas, 2012, Article 1.

<sup>277</sup> UN, International Covenant on Economic, Social and Cultural Rights *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, 1966, Article 15; UN, Universal Declaration of Human Rights *Declaración Universal de los Derechos Humanos*, 1948, Article 27; UN, Convention on the Rights of the Child *Convención sobre los Derechos del Niño*, 1989, Article 30; UN, Convention on the Elimination of All Forms of Discrimination against Women *Convención sobre la eliminación de todas las formas de discriminación contra la mujer*, 1979, Article 13; UN, International Convention on the Elimination of All Forms of Racial Discrimination *Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial*, 1965, Article 5.

<sup>278</sup> UN, CESCR, General Comment No. 21: Right of everyone to take part in cultural life *Observación general No. 21: Derecho de toda persona a participar en la vida cultural*, 2009, 12, 15 and 16.

<sup>279</sup> UNESCO, Declaration on Race and Racial Prejudice *Declaración sobre la Raza y los Prejuicios Raciales*, 1978, Articles 5 and 8.

<sup>280</sup> UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore, *Recomendación sobre la Salvaguardia de la Cultura Tradicional y Popular*, 1989, par. 1 et seq.

organization and cultural expressions; as well as the right to protection of its heritage and traditional knowledge.<sup>281</sup>

209. Specifically, the Commission and its REDESCA underscore that protection of cultural diversity is an ethical imperative that is inseparable from respect for human dignity. It entails a commitment to human rights and fundamental liberties and requires the full realization of cultural rights, including the right to take part in cultural life.<sup>282</sup> This means that the State must reinforce its actions to protect Persons of African Descent as a group living in a particular situation of vulnerability and facing historic discrimination, in light of the delicate relationship and obstacles that can arise between access to participation in cultural life and social, normative and institutional limits established under ethno-racial criteria in the dominant society.
210. In the view of the IACHR and its REDESCA, the right of Persons of African Descent, as well as other groups in a special situation of vulnerability, to take part in cultural life means that they have the right to freely express their identity in all spheres of cultural life, contribute to their development and enjoy the benefits thereof. Hence, programs and policies aimed at promoting culture must constructively engage this population and ensure their full participation without discrimination in order to preserve their distinctive forms of expression, in addition to promoting the historical memory as tolerance and respect in society. Taking into account that cultural activities, goods and services are a conduit to transmit values, identities, reflections, forms of existence, world views or ways of life in common, the Commission and its REDESCA recognize that these things transcend a form of expression and make up the elements that structure and impact economic, social and political relationships. Thus, the States have the obligation to promote a respectful cultural setting for Persons of African Descent, as well as adopt legislative, administrative and judicial measures to ensure both their right to culture and the eradication of prejudices and negative and prejudicial stereotypes against these people in this area, including prevention, regulation, oversight and access to justice in the context of business activities,<sup>283</sup> that negatively impact the right to culture.
211. Consequently, the Commission emphasizes the duty of the States of the region to implement affirmative actions to promote and preserve the cultural traditions of Persons of African Descent in the Americas; and to protect the intangible heritage of this ethnic racial community and prevent the cultural usurpation of their own ancestral practices. The IACHR and its REDESCA urge the States to put plans and projects in place so that African Descent communities benefit from cultural incentives in order to promote the conservation of their historical legacies, the creation and management of cultural initiatives, respecting their self-determination.

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<sup>281</sup> UN, CERD, General Recommendation No. 34: Racial discrimination against people of African descent, 2011, par. 4.

<sup>282</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life Observación general N° 21: Derecho de toda persona a participar en la vida cultural (artículo 15, párrafo 1 a), E/C.12/GC/21, December 21, 2009, par. 40.

<sup>283</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019.

In this same vein, the IACHR reiterates the importance for ethnic groups to receive an economic return from the marketing of their cultural products.

212. Likewise, States must ensure the participation of grassroots organizations at all stages of design, monitoring and implementation of these policies, covering both rural and urban settings. The Commission also urges promoting cultural processes of change toward the eradication of all forms of racial discrimination; including pedagogic policies to raise awareness about how it is prohibited to treat acts that exclude people on the basis of ethnic and racial background as natural and okay.

## 7. Duty to Respect Territorial Rights and Guarantee the Protection of the Right to Collective Property, a Healthy Environment and Natural Resources of African Descent Communities

213. As for the right to a healthy environment, the ICAHR and its REDESCA underscore the Protocol of San Salvador as the first binding Inter-American instrument to expressly recognize and demand the protection of this right<sup>284</sup>. Additionally, Article 26 of the ACHR and Article XI of the American Declaration are important and, cited for purposes of interpretation by the Court<sup>285</sup> and the Commission<sup>286</sup>, also include this right. Also providing for this right is the Inter-American Convention on Protecting the Human Rights of Older Persons, wherein it is established that “older persons have the right to live in a healthy environment with access to basic public services.”<sup>287</sup> Furthermore, the Inter-American Democratic Charter<sup>288</sup>, the Social Charter of the Americas<sup>289</sup> and the American Declaration on the Rights of Indigenous Peoples<sup>290</sup> also make references relating to the right to a healthy environment.
214. Additionally, the Working Group on the Protocol of San Salvador has established that the obligations of the States with respect to the right to environment are focused on guaranteeing every person, without any discrimination whatsoever, the right to a healthy environment and basic public services; promoting the protection and preservation of the environment, as well as the improvement thereof, being

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<sup>284</sup> OAS, Protocol of San Salvador, 1988, Article 11.

<sup>285</sup> I/A Court H.R., Advisory Opinion *Opinión Consultiva OC-23/17*, requested by the Republic of Colombia, Environment and Human Rights, November 15, 2017, par. 57 and 58.

<sup>286</sup> IACHR. *Business and Human Rights: Inter-American Standards*. OEA/Ser. L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, par. 239.

<sup>287</sup> OAS, Inter-American Convention on Protecting the Rights of Older Persons, 2015, Article 25.

<sup>288</sup> OAS, Inter-American Democratic Charter, 2001, Article 15.

<sup>289</sup> OAS, Social Charter of the Americas, 2012, Articles 17 and 22.

<sup>290</sup> OAS, American Declaration on the Rights of Indigenous Peoples *Declaración Americana sobre los Derechos de los Pueblos Indígenas*, AG/RES. 2888 (XLVI-O/16), approved on June 14, 2016, (hereinafter, “OAS, American Declaration on the Rights of Indigenous Peoples, 2016”) Articles 19 and 26.

guided by the criteria of availability, accessibility, sustainability, adaptability, which are common to the other economic, social and cultural rights.<sup>291</sup>

215. In this regard, the Inter-American Court has understood the human right to a healthy environment to be a right with both individual and collective connotations. Its collective dimension denotes a high universal interest for the existence of humanity; while the individual dimension involves repercussions on persons because of its connection to other human rights, such as health, physical integrity or life. Moreover, when viewed autonomously, this right protects the components of the environment as legal interests in and of themselves, not only because of their “utility” or “effects” with respect to human beings, but because of its importance to the other living organisms with whom we share the planet.<sup>292</sup> The Court also has examined the specificity of the right to a healthy environment, as an autonomous right, in relation to indigenous and tribal peoples underscoring the duty of the States to protect the rights of these peoples, which are associated with their ancestral lands and their relationship with nature, in order to prevent the extinction of their particular life style.<sup>293</sup>
216. For its part, the Commission understands the right to a healthy environment to be a prerequisite for the exercise of several fundamental rights in the case of African Descent communities and tribal peoples, inasmuch as the deterioration of their territories and natural resources can adversely affect environmental quality even at a minimum level.<sup>294</sup> The IACHR and its REDESCA have emphasized the close link between the subsistence of human beings and the preservation of a healthy environment, and note that degradation of the environment can negatively affect access to water and the enjoyment of several human rights, such as the rights to life, health, and development or to self-determination. Specifically, they have asserted that there is a link between climate change and the occurrence of environmental disasters, which are increasingly more frequent, and that these phenomena threaten the exercise of several human rights causing the forced displacement of persons and increase inequality and poverty among the most vulnerable sectors of the population. They have also noted that all public policies and normative frameworks that are implemented in relation to mitigation, adaptation and resilience to climate change, as well as addressing significant environmental damages, must be carried

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<sup>291</sup> GTPSS, Progress Indicators: Second Group of Rights *Indicadores de Progreso: Segundo Agrupamiento de Derechos*, November 5, 2013, OEA/Ser. L/XXV.2.1, GT/PSS/doc.9/13, par. 26.

<sup>292</sup> I/A Court H.R., Advisory Opinion *Opinión Consultiva OC-23/17*, requested by the Republic of Colombia, Environment and Human Rights, November 15, 2017, pars. 59 and 62.

<sup>293</sup> I/A Court H.R., Case of the Indigenous Communities Members of the Lhaka Honhat (Our Earth) Association v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Serie C No. 400, pars. 243-253.

<sup>294</sup> IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*, December 30, 2009, OEA/Ser.L/V/II. Doc. 56/09, par. 190.



out with a human rights-based approach and deal with the impacts and violations caused by companies, including agents of financing and investment.<sup>295</sup>

217. Thus, in the Inter-American system not only has the existence of an unquestionable relationship between protection of the environment and the realization of other human rights of the general population been recognized, but the system has also recognized the particular relationship of the environment to the collective territories and natural resources of indigenous and tribal peoples. In this regard, there is evidence that tribal peoples have been adversely impacted by the development of megaprojects that run counter to their cultural traditions and the protection of the environment, limiting their traditional activities and even affecting their very subsistence.<sup>296</sup>
218. Moreover, as for environmental rights in the universal system, the Convention on the Rights of the Child calls on the States to adopt measures to reduce the risks of polluting the environment and promotes environmental sanitation.<sup>297</sup> Other instruments, such as the Paris Accord, hold that States shall cooperate to implement measures to promote sustainable development and environmental integrity, as well as strategies to reduce vulnerability to climate change.<sup>298</sup> For its part, the Declaration of Rio on the Environment and Development provides that the environment and natural resources of peoples subjected to oppression and occupation must be protected; while the Regional Accord on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean involves commitments to incorporating and properly taking into account populations in a situation of vulnerability in these areas.<sup>299</sup>
219. In this regard, the CERD has stated that the rights to property, the use and conservation of territories traditionally occupied by the African Descent population must be protected, without any discrimination whatsoever, inasmuch as their cultural identity and ways of life are linked to the utilization of those territories and resources. Consequently, the obligation to guarantee their right to prior consultation on decisions that could affect them is heightened, in accordance with international standards.<sup>300</sup>

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<sup>295</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, pars. 233-253. Also see: IACHR. IACHR and its REDESCA express solidarity with the people of Bahamas over the damages caused by Hurricane Dorian and call for urgent implementation of a response based on human rights, September 23, 2019.

<sup>296</sup> IACHR. 2018 Annual Report, Chapter IV.B Nicaragua, par. 231; I/A Court H.R., *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras* Caso Comunidad Garifuna Triunfo de la Cruz y sus miembros vs. Honduras, Merits, Reparations and Costs, Judgment of October 8, 2015. Series C No. 305, par. 156.

<sup>297</sup> UN, Convention on the Rights of the Child Convención sobre los Derechos del Niño, 1989, Article 24.

<sup>298</sup> UN, Paris Agreement Acuerdo de París, 2015, Articles 6 and 7

<sup>299</sup> UN, Declaration of Rio on the Environment and Development Declaración de Río sobre el Medio Ambiente y el Desarrollo, 1992, principle 23; ECLAC. Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, 2018, Articles 4.5, 5.3, 5.4, 5.17, 6.6, 7.14, 8.5, 10.2.e,

<sup>300</sup> UN, CERD, General Recommendation No. 34: Racial discrimination against people of African descent, 2011, par. 4

220. On this score, some nations' Supreme Courts prefer to talk about the so-called biocultural rights held by African Descent peoples to administer autonomously their territories and natural resources, their collective spaces where cultural traditions and ways of life are built based on the relationship they have with the environment and the biodiversity. The rights that emanate from the recognition of the connection between territory and ethnic community cannot be understood in an isolated way, because they are interdependent on each other.<sup>301</sup>
221. The Commission takes note of national legislation that addresses the territorial rights of African Descent communities in the Americas. In Brazil several provisions of law regulate the identification, recognition, delimitation, demarcation and titling of lands occupied by Quilombola communities, specifying that the titles granted under it are of a collective nature and, therefore, statutory limitations are not applicable to them and they are inalienable.<sup>302</sup> Similarly, in Colombia, Law No. 70 of 1993 recognized the right of collective ownership for tribal African Descent communities that had been occupying and collectively using vacant lands in rural riverine areas making the rights to these territories, inalienable and not subject to statutory limitations and seizure or attachment.<sup>303</sup> Additionally, that same State recognized their right to restitution of lands, full individual and collective reparation to the African Descent, Raizal and Palenquero communities, that have been victims of collective and individual damages to their cultural integrity with collective ethnic effects, due to racism and racial, environmental and territorial discrimination, in the context of the internal armed conflict.<sup>304</sup>
222. Furthermore, the Commission notes that some countries of the region have recognized the right to prior consultation specifically of African Descent communities. In Chile, Law No. 21.151 establishes that Chilean African Descent persons have the right to be consulted as provided for in ILO Convention 169.<sup>305</sup> The Plurinational State of Bolivia establishes that the Afro-Bolivian people must be guaranteed the right to prior, free and informed consultation with respect to any mining operations or administrative mining contracts that may directly affect their collective rights and, as such, lays out guidelines to monitor processes of prior consultation of Afro-Bolivian communities in keeping with the principles of plurinationality and interculturality.<sup>306</sup>
223. In Ecuador, Law No. 46 provides that Afro-Ecuadorian peoples and communities must be consulted about plans and programs of any exploitation of non-renewable natural resources, that is located on their territory, when implementation thereof could have an adverse environmental or cultural impact on them. In Colombia, Decree No. 1320 states that, in relation to prior consultation regarding

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<sup>301</sup> Constitutional Court of Colombia. Judgment *Sentencia T-622/16*, 2016, p. 2.

<sup>302</sup> INCRA, *Instrução Normativa No. 57*, October 20, 2009, Article 24.

<sup>303</sup> Congress of Colombia, *Ley No. 70*, 1993, Articles 1 – 18.

<sup>304</sup> Ministry of the Interior, *Decreto No. 4635*, December 9, 2011, Article 1 et seq.

<sup>305</sup> National Congress of Chile, *Ley No. 21.151*, April 16, 2019, Article 5.

<sup>306</sup> Plurinational Legislative Assembly, *Ley No. 535*, May 28, 2014, Article 207; Plurinational Electoral Body of Bolivia, *Resolución No. 118*, Regulation for the observation and accompaniment in prior consultation processes, October 26, 2015, arts. 4 et seq.

environmental permits or establishing environmental management plans, African Descent and indigenous communities have the right to participate in the preparation of those environmental studies.<sup>307</sup>

224. As for the prior consultation procedure, the IACHR takes note of the legal precedents of some States on the subject matter, which have contributed to structural elements for the implementation of such procedures. Thus, the Constitutional Court of Peru has held that the right to consultation is an intercultural dialogue, the characteristics of which are good faith, flexibility, aiming to reach an agreement, transparency; and, implementation of the consultation in advance of the project. Complementarily, the World Bank has noted that, in Peru, the following stages of prior consultation could be: i) identifying the measure; ii) identifying the people to be consulted; iii) publicizing the measure; iv) information; v) internal evaluation; vi) dialogue; and, vii) decision.<sup>308</sup> In Ecuador, the Constitutional Court has ruled that, pre-legislative consultations with Afro-descendant, Montubio and indigenous peoples consist of four phases: i) preparation of pre-legislative consultation; ii) announcement of consultation; iii) information and conducting of the pre-legislative consultation; and, iv) analysis of results and close of consultation.<sup>309</sup>
225. On this score, the Commission and its REDESCA recall the obligation of the States to recognize, guarantee and protect the territorial rights to collective property of Afro-descendant communities in the region and, thus, provide for the institutional mechanisms needed to grant demarcation, titling and secure tenure of their territories. For this purpose, it must be taken into account that Afro-descendant tribal peoples in the Americas are settled in rural, riverine and coastal areas, even on lands reclaimed from the sea. In this regard, the Inter-American Court finds that a protected ethnic area consists not only of its biological dimension, but also of its sociocultural dimension and that, therefore, it requires a participatory approach.<sup>310</sup>
226. The IACHR and its REDESCA urge the States to guarantee the full exercise of the right to free, prior and informed consultation and consent of African Descent communities in keeping with the principle of self-determination. They further urge the States to conduct environmental impact studies on collective Afro-descendant territories to assess potential damages or impacts that could be caused by investment projects or business activities in the tourism, mining, energy, agriculture, urban development, construction and other sectors. It is the responsibility of States to ensure effective participation of these communities in the assessment studies prior to granting environmental permits for execution of these projects or activities.

<sup>307</sup> National Congress of Ecuador, *Ley No. 46*, May 22, 2006, Article 15.

<sup>308</sup> Constitutional Court of Peru, Judgment *Sentencia, EXP. N.° 0022-2009-PI/TC*, June 9, 2010, pars. 18 and 26; World Bank, Prior Consultation in Peru *La Consulta Previa en Perú*, July 2016, p. 30

<sup>309</sup> Constitutional Court of Ecuador, Judgment *Sentencia No. 001-10-SIN-CC*, CASES No. 0008-09-IN, and No. 0011-09-IN (Joined), March 18, 2010, pgs. 114-116.

<sup>310</sup> I/A Court H.R., *Case of the Kaliña and Lokono Peoples v. Suriname* *Caso Pueblos Kaliña y Lokono vs. Surinam. Fondo, Reparaciones y Costas*. Merits Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, par. 173

## **8. Duty to Guarantee Universal Access to Safe Drinking Water and Sanitation Services to Persons of African Descent with an Intersectional Approach**

227. As for the rights to safe drinking water and sanitation services, the IACHR and its REDESCA emphasize the importance of Article 26 of the American Convention and Article XI of the American Declaration as the normative basis for the protection of these rights in the Inter-American system. The legal foundations of these rights should also be taken into account and, when appropriate, the content of other human rights expressly reflected in these instruments, which are interdependently and indivisibly related to their realization, such as the right to life or physical integrity.
228. The Commission has also underscored the importance of Articles 3 and 45 of the OAS Charter in connection with the protection of these rights and has noted that according to several resolutions of the OAS General Assembly and, in particular, the Social Charter of the Americas, the right to water is fundamental for life and is central to environmental sustainability; and that non-discriminatory access by the population to safe drinking water and sanitation services contributes to the objective of combatting poverty.<sup>311</sup>
229. Likewise, they stress that, pursuant to the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, it is the duty of the States to prevent, eliminate, prohibit and punish the restriction or limitation on access to or sustainable use of water, natural resources and ecosystems, based on ethnic and racial background and to adopt legislation that clearly defines and prohibits racial discrimination in access to public services.<sup>312</sup> The Inter-American Convention on Protecting the Rights of Older Persons also recognizes States' obligations to ensure access of older persons on an equal basis to basic public services of safe drinking water and sanitation.<sup>313</sup>
230. For its part, the American Declaration on the Rights of Indigenous Peoples establishes that these peoples have the right to the natural resources that they have traditionally possessed, occupied, used or acquired and the right to be guaranteed the enjoyment of their own means of subsistence and development.<sup>314</sup> Both organs of the Inter-American human rights system have underscored on prior occasions the relationship between access to water and territorial rights and natural resources of indigenous and Afro-descendant tribal peoples and communities. Specifically, they have held that the preservation of the distinctive connection between indigenous and tribal peoples and the natural resources they have traditionally used is

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<sup>311</sup> IACHR, 2015 Annual, [Chapter IV.A Access to Water](#), 2015, pars. 22-25; OAS, Social Charter of the Americas, 2012, Article 20.

<sup>312</sup> OAS, [Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance](#), 2013, Articles 4 and 7.

<sup>313</sup> OAS, [Inter-American Convention on Protecting the Rights of Older Persons](#), 2015, Article 25.

<sup>314</sup> OAS, American Declaration on the Rights of Indigenous Peoples, 2016, Article 29.

fundamental to the effective realization of the human rights of the indigenous peoples more generally and therefore warrants special measures of protection.<sup>315</sup>

231. It is fitting to mention that the Inter-American Court has recently recognized the autonomous protection of the human right to water through the interpretation of Article 26 of the ACHR and has emphasized, as has the Committee on ESCR, in relation to indigenous peoples, that access by indigenous peoples to the resources of water on their ancestral lands must be protected from any transgression and unlawful pollution; and that the States must furnish resources so that the indigenous peoples are able to plan, exercise and control their access to water. It has also emphasized the elements of availability, quality and accessibility of the right to water as components to bear in mind in the analysis of legal protection.<sup>316</sup> Specifically, the IACHR and its REDESCA have underscored the importance of not leaving aside the collective and cultural dimension of the right to water in relation to indigenous and tribal peoples, which includes African Descent tribal peoples, in regard to their rights to their territories and natural resources.<sup>317</sup>
232. In view of the foregoing, the IACHR reiterates that the rights to water and sanitation are necessary elements to guarantee other rights such as the right to life, personal integrity and health, inasmuch as they are considered implicit aspects and inherent conditions to the realization of these rights.<sup>318</sup> On this opportunity, the IACHR and its REDESCA deem it to be central to this topic to note that the rights to water and sanitation fall under a category of essential guarantees to ensure an adequate standard of living, particularly because it is one of the fundamental conditions for survival, health and a decent life, among the realization of other rights. Specifically, about the human right to sanitation, it is of note that this right requires that services be available and safe, acceptable, accessible and affordable. The States must guarantee, without discrimination, that all persons have access to hygienic and safe sanitation, with privacy and dignity.<sup>319</sup>
233. In this same vein, it is important to recall that under Inter-American legal precedents, one of the ineludible obligations that the State must assume in order to protect and guarantee the right to life is the obligation to put minimum living conditions in place that are compatible with the dignity of the human person, and the obligation to not create conditions that hamper or impede such conditions, such as a situation leading to a lack of or limitation on the rights to water and to sanitation. The Inter-American Court and the Commission have also made special reference to States' obligations with respect to individuals, collectives and groups that have faced a situation of historic discrimination, such as Afro-descendant people and communities, noting that the aforementioned obligation to take concrete

<sup>315</sup> IACHR. 2015 Annual, [Chapter IV.A Access to Water](#), 2015, pars. 40-42, I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Judgment of June 17, 2005. Series C No. 125, pars. 137 and 167.

<sup>316</sup> I/A Court H.R., *Case of the Indigenous Community Members of the Lhaka Honhat (Our Earth) Association v. Argentina*. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, pars. 222-230.

<sup>317</sup> IACHR. [SRESCEP of the IACHR urges the prioritization of actions aimed at the realization of the rights to water and sanitation in the Hemisphere](#), March 23, 2018. Press Release 059/18.

<sup>318</sup> IACHR. 2015 Annual Report, [Chapter IV.A Access to Water](#), 2015, pars. 29, 30, 47, 65, 126-148.

<sup>319</sup> UN. Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, [Informe del Relator Especial sobre el derecho humano al agua potable y el saneamiento](#), July 27, 2015, par. 5.

measures to guarantee the right to a decent life, is heightened when persons are involved who face a situation of historical discrimination and risk, whose care becomes a high priority.<sup>320</sup>

234. Based on this analysis, States must adopt measures to guarantee satisfaction of an essential level of access to water in terms of quantity and of a quality fit for human consumption without any discrimination whatsoever. Moreover, they must refrain from engaging in practices or activities that impede or restrict access to safe drinking water and sanitation services on an equal basis, particularly, with respect to persons, groups and collectives that have been historically subjected to discrimination, such as Afro-descendant people and communities. They must also prevent third parties from undermining access to water, by taking domestic measures to prevent, for example, third parties from denying access to water or polluting water resources, wells and other systems of water distribution.<sup>321</sup>
235. The IACHR and its REDESCA reiterate that no international human rights framework gives rise to the specific obligations for States in relation to the rights to water and sanitation, but also that States have committed to achieving specific goals with regard to those rights in the framework of the Sustainable Development Goals (SDGs). In fact, the SDGs include the universal and equitable access to water at an affordable price; access to adequate sanitation services for all people by putting an end to open air defecation; the reduction of pollution on water; the protection of related ecosystems such as forests, wetlands and rivers; as well as cross-border cooperation and local community participation in water management. Additionally, they underscored their concern over the repeated complaints and reports of violations of these rights and the negative impacts that such violations have if a human rights-based approach is not taken in policies and legal frameworks that affect them, particularly, in contexts of cross-border water management and use, public and transnational enterprise activities, implementation of investment treaties, such as execution and financing of development projects.<sup>322</sup>
236. Moreover, in the framework of the precautionary measures mechanism, the IACHR has been emphatic in requesting States to adopt effective measures, with a comprehensive approach, so that ethnic communities facing a situation of special vulnerability have access to safe drinking water, sustainability and in sufficient quantity for the subsistence of their members.<sup>323</sup> It has also directed States to

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<sup>320</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, par.162, IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147 September 7, 2017, par. 204.

<sup>321</sup> IACHR. 2015 Annual Report, Chapter IV.A Access to Water, 2015, par. 31.

<sup>322</sup> IACHR. IACHR. SRESCER of the IACHR urges the prioritization of actions aimed at the realization of the rights to water and sanitation in the Hemisphere, March 23, 2018. Press Release 059/18.

<sup>323</sup> IACHR, Resolution No. 60/2015, Precautionary Measure No. 51/15, Children and Adolescents of Uribia, Manaure, Riohacha and Maicao Communities of the Wayúu People settled in the Department of la Guajira, Colombia.

safeguard the rights of communities affected by pollution of the waters of rivers they use to meet their basic needs.<sup>324</sup>

237. Based on the foregoing, the IACHR urges the States to design and implement policies on access to safe drinking water and sanitation services focused on Persons of African Descent with a view toward following strategies to ensure availability and management, in both urban and rural settings, so this population has access to affordable water and sanitation. For this purpose, it must be recognized that factors of intersectionality can exacerbate obstacles to the exercise and enjoyment of these rights such as socioeconomic status, gender, age, disability, migrant status and/or forced displacement, sexual orientation and gender identity and/or expression, among other factors that aggravate the situation of historic discrimination and segregation against this ethnic and racial group.
238. In this same vein, the Commission and its REDESCA emphasize that the States have the obligation to prevent infringements of the right to water and sanitation by both State and non-State actors and, consequently, stress the importance of properly fulfilling the State's obligation to regulate, supervise, and investigate and provide access to reparations, when violations and abuses of these rights are committed.<sup>325</sup> The IACHR also urges the States to promote plans for the regulation, protection of quality and optimization of the use of this resource on ethnic territories, respecting the autonomy and self-determination of their communities and, particularly, to protect water resources on the territories of Afro-descendant communities. In order to fulfill these obligations, the States must also design prevention, mitigation and accountability policies to deal with water pollution, drought, natural disasters that may impact water and sanitation, the effects of climate change on these rights or any other substantive damage to them.

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<sup>324</sup> IACHR. Resolution No. 12/18. Precautionary Measure No. 772/17. Settler consumers of water from the Mezapa River, Honduras. February 24, 2018. IACHR. Resolution No. 7/2020. Precautionary Measure No. 708/20, Settlers of the areas bordering the Santiago River, Mexico, February 5, 2020.

<sup>325</sup> IACHR. Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19, November 1, 2019, pars. 86 and 229.





CHAPTER 4  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

239. The Commission is fully aware of the historical social exclusion that has impacted Persons of African Descent since the time of slavery, perpetuating multiple and aggravated forms of discrimination. It is further aware of the concern reiterated in the Durban Declaration and Programme of Action (2001) relating to the disadvantaged situation of this population vis-à-vis the rest of the population, according to specific indicators in the areas of education, employment, health, housing, infant mortality and life expectancy of many peoples and groups, including Persons of African Descent.
240. The Commission notes that best practices benefiting the African Descent population have developed significantly in the region over the past decade; as have strategies designed to ensure their economic, social, cultural and environmental rights; and progress has been made coinciding with the promotion of the United Nations International Decade for People of African Descent 2015-2024. Notwithstanding these efforts, the IACHR finds that the contexts of poverty and extreme poverty, to which the African Descent population has been subjected as a consequence of historical discrimination, hamper the very development of these communities, and hinder access to and the realization of their human rights, holding them down in conditions of precariousness, and subjecting them to stigmatization and structural discrimination.
241. The IACHR understands that economic, social, cultural and environmental rights are autonomous and interdependent human rights, that are directly enforceable on the States of the region. In general, in accordance with international standards on the subject matter, States have the obligation of guaranteeing access and enjoyment of these rights, as an unavoidable requirement for the satisfaction of other human rights; especially for populations groups that are in a situation of vulnerability as a consequence of historical structural inequalities, as is the case of Persons of African Descent.
242. The Commission understands that the precariousness of the realization of the economic, social, cultural and environmental rights of Persons of African Descent is a consequence of this population being trapped in a cycle of multidimensional poverty and triggers interdependent and intersectional violations of its human rights and, consequently, of their own development. This context requires States to take measures of comprehensive and holistic protection at all levels and in all spheres, and must include a gender and intercultural approach.
243. The IACHR deems it essential for all States of the region and their branches of government to recognize the particular needs of Persons of African Descent; in particular, the executive branch, in charge of the whole public policy cycle, the

legislative branch, responsible for the adoption of legal measures with a human rights-based approach, and also the judicial branch, in charge of ensuring access to justice. It is imperative to create for this historically discriminated against group the necessary conditions to advance progressively in the realization of ESCE rights and counteract the socioeconomic disparities that stand in the way of the full enjoyment of the rights. For this purpose, it is the duty of the States to identify and address, with an intersectional approach, other specific subgroups of Persons of African Descent that require further protection, such as women, children, persons with disabilities, older persons, LGBTI persons, persons deprived of liberty, migrants and internally displaced persons.

## ***RECOMMENDATIONS***

244. Based on the provisions of Article 41.b of the American Convention on Human Rights, the Commission has the power to make recommendations, when it considers such action advisable, for the governments of the Member States to adopt progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions, as well as appropriate measures to further the observance of these rights.
245. In exercising that power, the IACHR will issue in this section recommendations to the States on new standards in the area of economic, social, cultural and environmental rights of Persons of African Descent. Thus, recommendations will first be made on the principle of equality and non-discrimination; then, on access to justice and the penal system; and, lastly, specifically on the right to education, health, housing, work, water and sanitation, food security, territorial rights and cultural rights, as addressed in the content of this report. These recommendations are issued in order to furnish the States with guidelines for the effective guarantee of the rights described above and for the full social inclusion of Persons of African Descent, as well as the eradication of discrimination in the region.
246. After issuing these recommendations, the IACHR and its REDESCA consider it appropriate to reiterate the recommendations issued to the States in its reports: “The Situation of People of African Descent in the Americas” (2011); “Indigenous Peoples, Afro-descendant Communities, Extractive Industries” (2016); “Poverty and Human Rights” (2017); “Police Violence against Afro-descendants in the United States” (2018); “Business and Human Rights: Inter-American Standards” (2020); to the extent that they are applicable to the protection of the economic, social, cultural and environmental rights of Persons of African Descent. The IACHR restates these recommendations because it notes that compliance with the recommendations issued in those reports continues to be essential for the full enjoyment of the rights of Persons of African Descent and a commitment to combatting racial discrimination. While several of the recommendations reappear in this report, the Commission underscores the importance for States to take them into account along with the earlier recommendations, as a complement to them and as an entire package, in fulfilling their international obligations, bearing in mind that this report lays out new standards on the subject matter.

247. In addition, the IACHR finds it necessary to reiterate the recommendations set forth in Resolution No. 1/2020 and Press Release No. 092 of April 28, 2020, inasmuch as the effects of the global COVID-19 pandemic continue to affect Afro-descendants' access and enjoyment of economic, social, cultural and environmental rights. Having provided the foregoing explanation, the IACHR issues the following recommendations to the States.

## ***A. Recommendations relating to the Principle of Equality and Non-Discrimination***

1. Identifying ethnic and racial Persons of African Descent in statistical registers
  - a) Design statistical registers (such as censuses, surveys), that count the African Descent population using disaggregated data to account for the intersection of diverse factors such as ethnic or racial background, gender, age, socioeconomic status, migratory status, disability, sexual orientation and gender identity and/or expression. Likewise, include categories to account for the living conditions of this population group in all settings and spheres, particularly the workplace, education, health, social security, access to justice and the prison system, territorial rights, collective property, environment and availability of natural resources, housing, food and nutrition security.
  - b) For these purposes, arrange in advance with African Descent grassroots and civil society organizations, through adequate and accessible channels of communication, to craft the ethno-racial categories to be used in the self-identification questions included on questionnaires and survey forms, censuses and other tools of statistical registration; guaranteeing their effective participation at the different stages of design, implementation, data processing, monitoring and evaluation. Consequently, there must be specialized technical teams for data collection and analysis who, in turn, must be trained on an intercultural perspective, rights of Persons of African Descent and racial discrimination. In this regard, it recommends providing optimal financial resources to conduct statistical studies that account for the particular situation of African Descent persons and tribal communities.
  - c) Additionally, guarantee the security and reliability of the data collected, in order to protect the right to privacy, and not become a basis for reinforcement of illegal racial stereotypes and stigmatization.
2. Legislation against racial discrimination and intolerance
  - a) Adopt legislation, at all levels of government, that defines, prohibits and punishes racism, racial discrimination and intolerance; consequently, eliminate, repeal and/or amend legal provisions of all types that promote or support systems of discrimination, exclusion and racial intolerance, as well as legislative texts and policies grounded in racism.

- b) Engage African Descent civil society organizations in the processes of drafting these laws and include them at all stages of preparation, discussion in legislative bodies, approval, enactment and follow-up.
3. Right to the African Descent historical memory and self-identification policies
    - a) Formulate intersectional and intercultural policies that promote the right to historical memory of Persons of African Descent and the African diaspora.
    - b) Consequently, implement institutional strategies, at all levels, that promote the self-identification of the ethno-racial Afro-descendant background and the defense of the rights of those of this background.
  4. Right to full reparation
    - a) Adopt measures to provide full reparation to Afro-descendant persons and tribal communities for gross human rights violations, based on discrimination and related forms of intolerance for reasons of ethno-racial background. Concurrently, provide for special mechanisms to ensure for this population access to justice, measures of satisfaction, restitution of rights, guarantees of non-repetition, and compensation.
  5. Women of African Descent
    - a) Adopt plans and public policies, with a gender and intercultural approach, that guarantee the full exercise of the economic, social, cultural and environmental rights of Afro-descendant women, taking into consideration their particular needs and realizing their right to participation.
    - b) Additionally, implement special measures to ensure for them a life free of violence and to combat the various forms of multiple aggravated discrimination that have a differentiated impact on them.
    - c) Jointly, craft and implement strategies for the elimination of gender-based stereotypes and ethnic and racial stigmatization that impacts Afro-descendant women.
  6. Children and adolescents of African Descent
    - a) Implement public policies, with a gender and intercultural approach, focused on Afro-descendant children and adolescents and access to their economic, social, cultural and environmental rights, under the principles of the best interests of the child, non-discrimination, survival and development, while promoting national and local early childhood and youth participation plans.

7. LGBTI persons of African Descent
  - a) Adopt plans and public policies, with a gender and intercultural approach, that guarantee the realization of the economic, social, cultural and environmental rights of lesbians, gays, bisexuals, transsexual and intersex Afro-descendant persons. Also, implement special measures to prevent and punish the different forms of violence and multiple discrimination against LGBTI persons of Afro-descendant ethnic and racial background.
8. Older persons of African Descent
  - a) Adopt public policies aimed at older persons of African ethnic or racial background and at access to their economic, social, cultural and environmental rights, guaranteeing them safe and adaptable settings for the wellbeing of their physical and mental integrity. Likewise, implement special social security measures that benefit this population recognizing retirement, basic old age pensions; incorporating gender and intercultural perspectives and intergenerational support.
9. Persons deprived of liberty of African Descent
  - a) Implement public policies focused on guaranteeing the economic, social, cultural and environmental rights of Persons of African Descent deprived of liberty integrating a gender and intercultural perspective.
  - b) Adopt special measures, with an intersectional approach, that ensure the full enjoyment of ESCE rights with a view toward breaking the cycle of poverty and mitigating the overrepresentation of Persons of African Descent in prison systems and in police stops.
10. Persons with disability of African Descent
  - a) Adopt public policies aimed at realizing the economic, social, cultural and environmental rights of Persons of African Descent with disabilities, incorporating a crosscutting gender, inclusion and intercultural approach. Likewise, implement special measures to guarantee the exercise of legal capacity and access to support systems for this population group.
11. Persons of African Descent in situations of migration and forced displacement
  - a) Adopt special measures, with a gender-based and intercultural approach, for access to economic, social, cultural and environmental rights, as well as to appropriate humanitarian assistance for Persons of African Descent with the need for protection in contexts of human mobility, especially for people with the status of refugee, asylum-seeker, migrants and forcibly displaced, whose plight may become worse due to sociopolitical situations, violence and armed conflicts.

12. Human rights defenders and social leaders of African Descent
  - a) Implement security measures with a gender-based, ethnic-territorial and intercultural approach, for African Descent human rights defenders and social leaders who serve in leadership positions in their communities and defend collective rights. Additionally, maintain security plans to protect this population group while these plans are in force.

## ***B. Recommendations on Access to Justice and the Penal System***

13. Right of access to justice of Persons of African Descent
  - a) Adopt special measures to guarantee the right of access to justice and due process of law for Persons of African Descent, providing effective judicial remedies, proper legal orientation, timely legal assistance, the appropriate economic support, reasoned decisions, reasonable time for proceedings, and other fair trial rights that are established by human rights standards; introducing an intercultural and intersectional perspective, that takes into account gender, migratory status, disability, sexual orientation and gender identity and/or expression, socioeconomic status, deprivation of liberty, geographic situation, and age.
14. Eliminating racial profiling
  - a) Design and implement effective measures to eliminate the stigma resulting from racial profiling, in keeping with international protocols to prevent and combat racial profiling and excessive police violence against Persons of African Descent. Consequently, conduct sensitization campaigns and training of justice operators and prison and law enforcement officers on the prohibition of the use of racial profiling and other explicit or implicit discriminatory practices for reasons of race, ethnicity, skin color, national origin.

## ***C. Recommendations relating to Economic, Social, Cultural and Environmental Rights***

15. Right to education of Persons of African Descent
  - a) Design, formulate and implement education, ethno-educational and intercultural teaching policies targeting Persons of African Descent and tribal communities, including an intersectional perspective, bearing in mind the geographic location and needs of this population, particularly stressing the special condition of women, LGBTI persons, children and adolescents,



homeless persons, socioeconomic status, migratory status, and persons deprived of liberty.

- b) Take affirmative actions that guarantee that the African Descent population has access to and continue and completes academic studies at all levels of primary, secondary and higher education, as well as plans to ensure schooling and to prevent dropping out of school; taking into consideration their worldview, traditions and ancestral customs, with a view toward including their native languages and own knowledge in the curricula of all public and private education institutions, as a way of preserving their cultural heritage.
- c) Guarantee the right to African Descent historical memory through the implementation of a specialized course of study that recounts the history of the African diaspora and of the processes of resistance and demand for rights of the Afro-descendant communities of the Americas. This course of study will cut across the curricula in the public and private school systems.
- d) Engage African Descent grassroots and civil society organizations in the stages of consultation, design, monitoring and implementation of any education plans and policies that benefit or impact them, covering the rural and urban settings, in keeping with the right to self-determination.
- e) Earmark resources for the realization of the above-referenced education plans, policies and projects.

#### 16. Right to health of Persons of African Descent

- a) Design, formulate and implement public policies that guarantee Persons of African Descent' access to and certainty in the public health system, taking into account the intersection between this ethno-racial background and the factors of gender, disability, condition as a child, adolescent or older person, deprivation of liberty, belonging to LGBTI groups, and the socioeconomic status to which this population can be subjected, mainly situations of extreme vulnerability.
- b) Adopt special measures to ensure access to medical treatment, palliative care and disease prevention strategies for the physical and mental wellbeing of Persons of African Descent. Also, facilitate clear, accessible and inclusive information about any medical procedures that may be performed on them.
- c) Respect, protect and promote African Descent traditional ancestral practices and knowledge generation processes on this subject matter, in both the individual and collective spheres; and, additionally, set up coordination and intercultural dialogue between State institutions and Afro-descendant communities' own health systems in order to ensure the validation and integration of traditional ancestral medicine.
- d) With regard to the current context of the COVID-19 pandemic, take sanitary measures to ensure availability of health services for African Descent persons

and tribal communities and, likewise, draw up plans for the prevention, containment and treatment of this disease, using up-to-date registers that account for the number of people infected, hospitalized and deceased, who are of this ethnic and racial background.

- e) Engage African Descent grassroots and civil society organizations at the stages of consultation, design, monitoring and execution of any health plans and policies that benefit or impact them, covering the rural and urban settings, in keeping with the right to self-determination.
- f) Earmark resources for the realization of the above-referenced health plans and policies.

#### 17. Right to housing of Persons of African Descent

- a) Design, formulate and implement policies of access to housing targeting the Afro-descendant population; especially for those that face conditions of vulnerability, such as persons in situations of homelessness, migration, forced displacement or eviction; taking into account that one of the substantial elements of this right is cultural adequacy.
- b) Take affirmative actions and implement differentiated policies, such as subsidies or vouchers, so that African Descent persons can access decent and adequate housing, taking into consideration factors of intersectionality that could aggravate the contexts of poverty and extreme poverty among this ethnic-racial population because of the structural discrimination to which it has been exposed, such as persons with disability, children and adolescents, gender, older persons, LGBTI persons, migrants and rural communities.
- c) Engage African Descent grassroots and civil society organizations in the stages of consultation, design, monitoring and execution of any housing plans and policies that benefit or impact them, covering the rural and urban settings, in keeping with the right to self-determination.
- d) Earmark resources for the realization of the above-referenced housing plans, policies and projects.

#### 18. Rights to food and nutrition security of Persons of African Descent

- a) Design, formulate and implement food and nutrition security policies for the African Descent population with a differential focus on regional and local settings, taking an intersectional approach.
- b) Promote plans and projects for the eradication of child malnutrition among the African Descent population, and mitigate the disproportionate effects that structural poverty can have on the nutrition, health and integrity of this population group, especially women children and adolescents, persons with disability, rural communities, homeless persons, migrants and forcibly displaced persons.

- c) Engage Afro-descendant grassroots and civil society organizations in the stages of consultation, design, monitoring and execution of any food and nutrition plans and policies that benefit or impact them, covering rural and urban settings, in keeping with the right to self-determination.
- d) Earmark resources for the realization of the above-referenced food and nutrition plans and policies.

#### 19. Right to work of Persons of African Descent

- a) Design, formulate and implement labor policies that effectively benefit Persons of African Descent, promoting differential measures for access to quality jobs in dignified and acceptable conditions targeting this population.
- b) Implement strategies to prevent, combat and punish racial discrimination in the labor market, using an intersectional approach that enables groups to benefit that have historically been discriminated against and face aggravated obstacles to access to work and labor rights protection because of conditions of poverty and extreme poverty, such as women, LGBTI persons, persons with disability, migrants, sex workers, homeless persons and rural communities.
- c) Engage Afro-descendant grass roots and civil society organizations in the stages of consultation, design, monitoring and execution of any labor plans and policies that benefit or impact them, covering rural and urban settings, in keeping with the right to self-determination.
- d) Earmark resources for the realization of the above-referenced labor plans and policies.

#### 20. Cultural rights of Persons of African Descent

- a) Design, formulate and implement affirmative actions for the promotion and preservation of cultural traditions of Persons of African Descent in the Americas; protect the intangible heritage of this ethno-racial community and prevent the cultural usurpation of their own ancestral practices; as well as respect and recognize Persons of African Descent' own systems of justice in the region.
- b) Implement plans and projects so African Descent communities benefit from cultural incentives in order to promote the conservation of their historical legacies, the creation and management of cultural enterprises and industries, while respecting their self-determination.
- c) Engage African Descent grassroots and civil society organizations at the stages of consultation, design, monitoring and execution of any cultural plans and policies that benefit or impact them, covering rural and urban settings, in keeping with the right to self-determination.

- d) Earmark resources for the realization of the above-referenced labor plans and policies.

21. Territorial rights of Persons of African Descent and tribal communities, protection of the environment and natural resources

- a) Design, formulate and implement special measures that recognize, guarantee and protect the territorial rights of collective property of the African Descent communities of the region, and likewise put in place the necessary institutional mechanisms to grant secure title and possession of their territories.
- b) Adopt proper institutional policies to ensure the full exercise of the right to free, prior and informed consultation and consent for African Descent communities in keeping with the principle of self-determination, guaranteeing their participation at all appropriate stages, which entails respecting these populations' own internal protocols when they are consulted.
- c) Conduct environmental impact studies to assess potential damages or impacts that could be caused by tourism, mining, urban development, and other investment projects on Afro-descendant collective territories; ensuring these communities' participation in pre-execution studies to grant environmental permits for execution of these projects.
- d) Engage African Descent grass roots and civil society organizations in the stages of consultation, design, monitoring and execution of any territorial and environmental plans and policies that may benefit or impact them, covering rural and urban settings, in keeping with the right to self-determination.
- e) Earmark resources for the realization of the above-referenced territorial and environmental plans and policies.

22. Human right to safe drinking water of Persons of African Descent

- a) Design, formulate and implement access to safe drinking water and sanitation service policies focused on Persons of African Descent; effectuating strategies to guarantee availability and management, in both urban and rural settings, so this population has access to affordable water at the minimum life-sustaining level; taking into account factors of intersectionality that could aggravate obstacles to the enjoyment of this right among Persons of African Descent, such as socioeconomic status, gender, age, disability, migration and forced displacement, sexual orientation and gender identity and/or expression, among other factors that worsen the situation of historical discrimination and segregation against this ethnic-racial group.
- b) Adopt measures to prevent adverse impacts on the water resources of territories of African Descent communities by both public and private actors and, consequently, impose the respective penalties in cases of pollution,

draughts or any damages caused by them, and also grant the appropriate reparations.

- c) Promote plans to regulate, protect the quality and optimization of the use of this resource on ethnic territories, respecting the autonomy and self-determination of their communities.
- d) Engage Afro-descendant grassroots and civil society organizations at the stages of consultation, design, monitoring and execution of any safe drinking water and water resource plans and policies that benefit or impact them, covering rural and urban settings, in keeping with the right to self-determination.
- e) Earmark resources for the realization of safe drinking water and water resource plans and policies African Descent communities.