

# Poverty, Climate Change and ESCER in Central America and Mexico, in the Context of Human Mobility





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# POVERTY, CLIMATE CHANGE AND ESCKER IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY

**Office of the Special Rapporteur on Economic, Social, Cultural, and  
Environmental Rights  
REDESCA**

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## INDEX

I.	Introduction.....	<b>Error! Bookmark not defined.</b>
A.	Objective and scope of the report.....	1
B.	Methodology and Structure.....	4
II.	Overview of ESCERs in Central America and Mexico.....	6
i.	Poverty and Human Mobility.....	7
ii.	Right to Health.....	14
iii.	Labor Rights.....	23
iv.	Right to food.....	31
v.	Right to a healthy environment.....	35
vi.	Right to education.....	42
vii.	Right to housing.....	47
viii.	Business and Human Rights.....	51
III.	Poverty and inequality as causes of human mobility.....	57
A.	Poverty from a human rights approach.....	57
B.	Structural development situation of the countries of Central America and Mexico.....	59
C.	The role of fiscal policies in guaranteeing ESCER and combating poverty.....	61
IV.	The climate emergency in relation to human mobility.....	62
A.	Environmental Degradation and Climate Emergency in Central America and Mexico.....	65
B.	The differentiated effects of the climate crisis on human mobility.....	68
V.	The protection of ESCER in the context of human mobility.....	73
A.	General obligations of the States in ESCER matters.....	74
i.	Immediate.....	75
ii.	Progressive in nature.....	78
B.	Guaranteeing ESCER in situations of special consideration.....	82
i.	Sanitary and public health crises.....	82
ii.	Natural disasters.....	85
C.	Best practices in Central America and Mexico.....	86
D.	International cooperation, integration mechanisms and policies.....	88
VI.	Conclusions and recommendations.....	92

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## I. INTRODUCTION

### A. Objective and scope of the report

1. The Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (the Commission or IACHR) closely follows the situation of ESCER in the region and observes how the lack of guarantee of these rights, as well as some structural contexts that favor it, are intrinsically related to human mobility. Therefore, through this report, the Office of the Special Rapporteur seeks to address how poverty, inequality, the impacts of the climate emergency, and the limitations on access to and enjoyment of ESCER have affected migratory movements in Central America and Mexico, insofar as these characteristics are common to the countries of the sub-region.

2. Based on a broad diagnosis of the underlying reasons for large-scale mobility in the subregion from the perspective of guaranteeing ESCER, including poverty, the right to development and the impact of climate change, the report first aims to identify and systematize the main challenges faced by people in guaranteeing these rights in the countries of Central America and Mexico, and therefore begins with an overview of ESCER in the subregion, highlighting the progress and obstacles to their realization in each of the States. For the purposes of this analysis, the States comprising Central America will be Panama, Costa Rica, Nicaragua, El Salvador, Honduras, and Guatemala<sup>1</sup>. In addition, due to its geographic proximity and geopolitical importance, Mexico will also be included. Secondly, the report seeks to identify the specific obligations of the States in terms of ESCER, with a particular focus on persons in a situation of human mobility.

3. REDESCA recalls that the Inter-American Commission on Human Rights has indicated that human mobility has been an inherent characteristic of human beings throughout human history and that it is a multi-causal phenomenon, which implies that people migrate for various reasons, including economic, social, political, or environmental reasons. Thus, these movements can be associated with the search for better living conditions, the intention to populate other parts of the planet and/or the need to flee and survive threats caused by man or nature<sup>2</sup>.

4. The Commission and REDESCA have found that although the enjoyment of all human rights - indivisible and interdependent - goes hand in hand with the inherent dignity of every human being, there are situations that generally threaten the possibility of enjoying and enjoying them. Along these lines, poverty, extreme poverty, and material inequality are factors that transversally deprive the full enjoyment and exercise of rights under equal conditions<sup>3</sup>. This is aggravated by the confluence of other factors of discrimination and/or historical vulnerability that disproportionately affect certain groups of people, such as indigenous peoples, Afro-descendants, women, people in a situation of human mobility, LGBTI people, the elderly, children and adolescents, people with disabilities, among others.

5. In its report on Poverty and Human Rights, the Commission emphasized that poverty constitutes a human rights problem that translates into obstacles to the enjoyment and exercise of human rights in conditions of real equality by individuals, groups and collectives living in this condition. The report also recognizes how inequality and poverty have contributed to systematic violations of human rights, together with structural, political, and economic causes<sup>4</sup>. Given that the Americas is the most unequal hemisphere on

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<sup>1</sup> REDESCA had initially included Belize as one of the countries to be analyzed in the report. However, in none of the various activities it carried out - meetings with experts, visits to different countries, questionnaires, among others - did it receive any information in this regard. Thus, in the absence of detailed information, together with the fact that the State did not respond to the questionnaire sent by the Rapporteurship, the country will not be taken into account for the purposes of this subregional report.

<sup>2</sup> IACHR, [Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System](#), OEA/Ser.L/V/II., Doc. 46/15, 31 December 2015, para. 1.

<sup>3</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017.

<sup>4</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, paras. 89-91.

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the planet, one of the most pressing pending challenges is precisely to seek solutions to the great social disparities that exist, especially in the countries with the highest rates of inequality and poverty.

6. In the particular case of the subregion of Central America and Mexico, poverty, inequality, as well as limitations in the access to and enjoyment of ESCER are palpable and evident, triggering diverse and complex migratory phenomena. Hence, one of the main underlying reasons for the large movements of people in such countries is precisely the lack of opportunities for human development, which is also increasingly aggravated by the consequences of the pandemic and the climate crisis<sup>5</sup>. According to a recent study by MIT's Civic Data Design Law, the Food and Agriculture Organization of the United Nations (FAO), and the Migration Policy Institute on the complex motivations and costs of Central American migration, although violence, insecurity, and natural disasters have historically been complex triggers for migration, one of the main reasons for migration today would be associated with economic factors, in which poverty plays a leading role, since people in a situation of human mobility who have decided to leave their countries express that this decision is based on their need to find work, cover their essential needs, food and other ESCER<sup>6</sup>.

7. For its part, ECLAC has identified that among the various factors that give rise to these massive movements of people in the countries of northern Central America are recurrent economic crises, as well as the formation of dependent and asymmetrical development systems and styles that deepen internal and international social and productive inequalities. Added to these are the situation of political instability, armed conflicts, and civil wars, as well as the presence of authoritarian governments that promulgate an environment of harassment and repression. Similarly, there is the increase in the levels of violence and organized crime, which generate a situation of public insecurity and a generalized climate of violence, as well as aspects associated with environmental impacts related to the effects and risks caused by climate change<sup>7</sup>.

8. Considering this scenario and, according to data collected by international organizations, in 2019 - without taking into account the serious socioeconomic impacts of the pandemic- in Honduras and Guatemala 74% and 67% of the population were below the poverty income threshold, one of the highest proportions in Latin America. In El Salvador, the incidence of poverty was much lower (41.6% of the population), but it was still a cause for concern as it covered a large percentage of the population<sup>8</sup>. Specifically, the level of poverty in the countries of northern Central America was significantly higher than the Latin American average -2.5% higher<sup>9</sup>. By the end of 2022, ECLAC indicated that poverty levels in Latin America remained above pre-pandemic levels<sup>10</sup>. Among the structural reasons for the current socioeconomic situation in the subregion is the composition of the productive and labor matrix, which does not support or promote growth or the expansion of high-productivity sectors.

9. As a result, migratory flow trends have increased over the years, in which poverty, underdevelopment and slow economic growth are the structural basis for understanding the dimensions that international migration from these countries has acquired in the last two decades. Added to this is the political instability that affected the region in past decades, as well as the levels of violence and citizen insecurity that are currently being recorded. This situation, aggravated by the economic and social consequences of the COVID-

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<sup>5</sup> UNDP, USAID, [Citizen Security, Human Mobility and Development in the Northern Central American Countries](#), September 2020, p. 4.

<sup>6</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, [Charting a New Regional Course: The Complex Motivations and Costs of Central American Migration](#) November 23, 2021

<sup>7</sup> ECLAC, [Development and migration: challenges and opportunities in the countries of northern Central America](#), LC/MEX/TS.2019/7, June 2019, p. 28.

<sup>8</sup> ECLAC, [Development and migration: challenges and opportunities in the countries of northern Central America](#), LC/MEX/TS.2019/7, June 2019, p. 30.

<sup>9</sup> ECLAC, [Development and migration: challenges and opportunities in the countries of northern Central America](#), LC/MEX/TS.2019/7, June 2019, p. 70.

<sup>10</sup> ECLAC, [Poverty rates in Latin America remain above pre-pandemic levels in 2022, ECLAC warns](#), November 24, 2023.



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19 pandemic, in addition to exacerbating inequality and poverty, impacted economic growth in the long and medium term<sup>11</sup>.

10. In this scenario, although migratory movements from Central America to the United States have been in the regional landscape for decades, it is noteworthy that in recent years there has been a change in the volume and characteristics of these movements; thus, the U.S. Border Patrol recorded approximately 1.8 million encounters of migrants from El Salvador, Guatemala, and Honduras at the U.S.-Mexico border between fiscal years 2017 and 2021, and in four of these five years these encounters exceeded those with migrants from Mexico<sup>12</sup>. In this regard, it has been estimated that, on average, between 2017 and 2021, annually 378,000 people from Central America have migrated to the United States as a result of poverty, food insecurity, climate crises, and violence<sup>13</sup>. In relation to these movements, it has been indicated that food insecure people are three times more likely to make concrete plans to migrate than those who are not<sup>14</sup>.

11. Thus, in the subregion there are more and more migratory movements -mainly to Mexico and the United States-, which are characterized by being mixed, since they also include people from South America and from outside the continent, most of whom are seeking the same destination. In these routes, most of these people use irregular channels<sup>15</sup>, which generates greater challenges for the protection and guarantee of their rights - particularly ESCER - throughout their journey.

12. Given the complexity of this situation and the similarity of the challenges in guaranteeing their ESC rights experienced by migrants and other mobile persons in their journeys - albeit with some differences - for the purposes of this report, the phenomenon of human mobility will be analyzed in a comprehensive manner, that is, encompassing the different forms of mass flows of persons, whether by internal or cross-border movement, without distinguishing between the aspects that characterize each of the manifestations of mobility - migration, refuge, asylum, internal displacement, etc. - with respect to the scope and national and international protection of their human rights. with respect to the scope and national and international protection of their human rights<sup>16</sup>.

13. REDESCA considers that there is growing evidence of the close relationship between ESCER and human mobility, which is a priority strategic line of its strategic agenda 2021-2023<sup>17</sup>. It therefore considers it necessary to examine in greater depth how these inequalities and the challenges to the realization of ESCER are framed in the complex contexts of mass movements of people in the subregion. This is because it has been observed that people on the move not only face barriers to regularizing their situation before the control authorities, but also face difficulties in accessing basic rights such as food, health or education, as well as

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<sup>11</sup> ECLAC, [Growth in Latin America and the Caribbean in 2021 will fall short of reversing the adverse effects of the pandemic](#), July 8, 2021

<sup>12</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a new regional course: the complex motivations and costs of Central American migration Tracing a new regional course: the complex motivations and costs of Central American migration, November 23, 2021.

<sup>13</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a new regional course: the complex motivations and costs of Central American migration Tracing a new regional course: the complex motivations and costs of Central American migration, November 23, 2021.

<sup>14</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a new regional course: the complex motivations and costs of Central American migration Tracing a new regional course: the complex motivations and costs of Central American migration, November 23, 2021.

<sup>15</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a New Regional Course: The Complex Motivations and Costs of Central American Migration Tracing a New Regional Course: The Complex Motivations and Costs of Central American Migration November 23, 2021

<sup>16</sup> For more information on the Inter-American standards of protection for these groups, go to report: IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II., Doc. 46/15, 31 December 2015, para. 1.

<sup>17</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, paras. 60-68 See, REDESCA, IACHR, Strategic Plan 2023-2027, OEA/Ser.L/V/II.185 Doc. 310 October 31, 2022, p. 72, Program 15: Special Program on Economic, Social, Cultural and Environmental Rights.

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financial services and limited opportunities to obtain a job. Thus, the combination of all these factors, plus the existing institutional weaknesses to respond to these crises, causes people to find themselves in a situation of constant risk in their migratory experience. This is further aggravated by external factors, such as the climate crisis and health emergencies, such as the one generated by the COVID-19 pandemic<sup>18</sup>.

14. Based on the above and in response to the need to strengthen the guarantee of ESCER in Central America and Mexico, with emphasis on human mobility, REDESCA is preparing this report within the framework of an ongoing project with the Norwegian Cooperation, with the aim of contributing to the diagnosis of the situation from an innovative and proactive angle, which in addition to identifying the problems, can also contribute to the solutions from a comprehensive approach to human rights. Thus, this report, in addition to making a broad diagnosis of the situation of ESCER in Central America and Mexico, as well as the reasons underlying human mobility in the sub-region from the perspective of guaranteeing such rights - with particular emphasis on the dimensions of poverty, inequality and climate change -, will seek to provide guidance to the States in this regard, will seek to provide guidance to States, civil society and other relevant actors in the adoption of measures and public policies focused on addressing such causes, as well as to encourage coordinated, timely and effective responses that protect the most vulnerable sectors of the societies of Central America and Mexico. As a cross-cutting and priority focus of REDESCA, the entire report will be approached from a gender and intersectionality perspective.

## **B. Methodology and Structure**

15. REDESCA carried out various activities leading to the preparation of this report, ensuring a broad level of dialogue and collaboration with a wide range of stakeholders. Thus, it gathered information through its various monitoring and advocacy mechanisms. To this end, REDESCA conducted a promotional, academic, and working visit to several countries in the subregion (specifically to Mexico, Costa Rica, Honduras and Panama between April 9 and May 5, 2023) during which it organized workshops and working meetings with representatives of States and autonomous public bodies, civil society organizations, representatives of academia and specialized United Nations agencies. During these visits, REDESCA also had the opportunity to visit different significant places for the purposes of this report and to take testimonies from people in human mobility. The Rapporteurship also developed an open-ended questionnaire and consultation sessions with experts.

16. Following the approval of the table of contents and concept note of this thematic report by the plenary of the IACHR during its 183rd session, held in March 2022, the Office of the Special Rapporteur sent out a questionnaire to receive input from the States of the sub-region - Belize, Costa Rica, El Salvador, Honduras, Guatemala, Mexico, Panama, and Nicaragua - National Human Rights Institutions, academia and civil society. REDESCA is grateful to the States of Costa Rica, El Salvador, Guatemala, Honduras, and Mexico for officially responding to the questionnaire, as well as to the State entities of the region that independently sent their inputs under the same process<sup>19</sup>; and to the various civil society and academic organizations, from which, individually or in groups, 14 returns with comments and/or contributions were obtained<sup>20</sup>.

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<sup>18</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1922-1927; [V ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). 2021. OEA/SER.L/V/II Doc. 64 rev. 1](#), 26 May 2022, paras. 1667-1679.

<sup>19</sup> REDESCA is grateful for the participation of the following public institutions: the Human Rights Commission of Mexico City, the Ombudsman's Office of Costa Rica, the Office of the National Human Rights Commissioner of Honduras and the Human Rights Ombudsman of Guatemala.

<sup>20</sup> REDESCA is grateful for the broad participation of diverse civil society organizations and academia. The following is a non-exhaustive list of the organizations that individually or in groups sent their responses and/or contributions: AIDA, Cátedra en Derechos Humanos 'Dra Elizabeth Odio Benito de la Escuela de Relaciones Internacionales de la Universidad Nacional de Costa Rica, CIEDH, Colectivo de Monitoreo Frontera Sur, HIAS, Mesa Nacional Frente a la Minería Metálica de El Salvador, OXFAM, Sin fronteras and WOLA.

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17. Likewise, valuable inputs were received through the expert exchange session held on June 9, 2023, which was attended by 12 experts in the field in order to discuss how poverty, climate change and the guarantee of ESCER have impacted human mobility in Central America and Mexico, while identifying possible guidelines and recommendations to States to guarantee the ESCER of people in a situation of human mobility. REDESCA also highlights the support of the legal clinic of the International Human Rights Practicum of the Boston College Law School and the Graduate Studies Division of the UNAM Law School, who, through an ad hoc collaboration with the Special Rapporteur, contributed with the compilation of relevant information for this report and research on the main issues to be developed.

18. Based on these activities, it should be noted that the information presented in this report is based on the systematization and analysis of all these primary and secondary sources, the various dialogues in which REDESCA participated, the internal research work and specialized advice of its technical staff, together with the contributions that were sent within the framework of its monitoring functions and the contributions made by the IACHR, as well as its respective thematic Rapporteurships during the process of approval of this report. In particular, special thanks are due to the Rapporteurship on Migrants, with which there was internal coordination throughout the process of preparing this report and comments were received from various consultations<sup>21</sup>. In this regard, the information received at hearings held during IACHR sessions - such as the regional hearing on the Protection of Persons in Human Mobility in the United States, Mexico and Northern Central America held during the 181st Session and the regional hearing on Progress and challenges in coordination and international cooperation for the protection of the rights of persons in human mobility in the region held in the framework of the 187 Period of Sessions - as well as through academic, working and promotional visits by REDESCA, as well as in loco visits and press releases from the IACHR<sup>22</sup> was also taken into account.

19. The structure of the report includes, on the one hand, an analysis of the ESC rights situation in each of the countries of Central America and Mexico, based on the monitoring tasks of the mandate and, on the other hand, how this situation, together with the structural causes of mass migration of people related to poverty, inequality, and climate change, have affected human mobility. Based on this, REDESCA addresses the standards for the protection of the ESCER of people in contexts of human mobility. The report is divided into six chapters.

20. Chapter I describes the background, purpose, structure, and methodology of the report. Chapter II identifies and systematizes the main challenges faced by people in Central America and Mexico in terms of guaranteeing their ESC rights, with special attention to REDESCA's strategic lines of work, namely: right to health and pandemic, right to work, right to food, right to a healthy environment, right to education, right to housing and business and human rights. In this regard, before addressing each of these rights in detail, the Special Rapporteur provides a brief introduction and context on the phenomena of poverty and human mobility for each country. With regard to this section, it should be noted that the amount of information used varies from country to country depending on the data received and sources available to the Office of the Special Rapporteur, without the information provided presupposing the establishment of comparisons between countries, but rather reflecting the main findings of REDESCA in its documentation and systematization of information for this report.

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<sup>21</sup> In the process of internal collaboration, REDESCA coordinated with the Rapporteurship on Migrants to ensure complementarity between this report and the report being prepared simultaneously by the IACHR on "Human Mobility from Northern Central America to North America: State Protection Obligations".

<sup>22</sup> Among others, the following stand out: IACHR, Preliminary Observations In loco visit to Honduras, April 28, 2023; IACHR, [Preliminary Observations of the virtual working visit to Mexico, on persons in a situation of human mobility](#), December 2020- January 2021; IACHR, Report Situation of human rights in El Salvador, OEA/Ser.L/V/II. Doc. 278 14 October 2021; IACHR, Preliminary Observations of its on-site visit to El Salvador, 27 December 2019; IACHR, Internal Displacement in the Northern Triangle of Central America, OEA/Ser.L/V/II. Doc. 101 27 July 2018; IACHR, Press Release No. 037/19 - [IACHR Urges to Guarantee Rights of Persons in the Migrant and Refugee Caravan in Honduras and Guatemala](#), Washington, D.C., February 19, 2019.

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21. Chapter III analyzes the standards applicable to poverty and inequality, as well as their impact on the phenomenon of human mobility in the subregion. This is based on a comprehensive analysis that includes an analysis of the right to development and the role of fiscal policies in guaranteeing ESCER and combating poverty. Chapter IV develops the role of the climate emergency in this context, with special attention to environmental degradation in the subregion and its differentiated effects on certain groups of special attention and/or historical vulnerability.

22. In Chapter V, REDESCA identifies in detail the specific obligations of States with regard to ESCER, with a particular focus on persons in a situation of human mobility. Thus, it addresses the standards that States must ensure in this situation, while consolidating the obligations in contexts of special consideration, such as health crises and natural disasters. In this context, some good practices identified in Central America and Mexico are highlighted, together with the imperative need for international cooperation mechanisms and integration policies to guarantee the human rights, and particularly the ESCER, of persons in situations of human mobility in the subregion. Finally, in Chapter VI, REDESCA presents its conclusions and recommendations to the States of the sub-region, as well as to other States of the Americas and relevant actors, with the understanding that addressing this situation from a human rights perspective requires international cooperation and solidarity.

23. REDESCA is grateful for the valuable financial support of the Norwegian Cooperation, thanks to which the Office of the Special Rapporteur was able to prepare this report.

## **II. Overview of ESCERs in Central America and Mexico**

24. REDESCA reiterates that the States of the Americas have the obligation not only to ensure the progressive development of these rights, but also to respect and guarantee their realization, including through the adoption of progressive measures, such as ensuring non-discrimination in the access and enjoyment of rights, and access to an effective remedy<sup>23</sup>. In this context, the Office of the Special Rapporteur observes that the lack of guarantee of these rights is precisely at the origin of a large part of the migratory movements in Central America and Mexico, for which reason the States of the region must comply with their obligations in this area in order to generate adequate conditions so that migration is not a forced cause of migration.

25. Along these lines, in addition to the general obligations regarding ESCER, with regard to the phenomenon of human mobility, it has been established that the States of origin must observe the general obligations regarding this matter and, in particular, their duty of prevention, which requires generating and ensuring the conditions so that their nationals are not forced to migrate, as well as remedying the causes that generate migratory flows<sup>24</sup>. In this regard, it should be noted that the purpose of the Global Compact for Safe, Orderly and Regular Migration is precisely to "mitigate the adverse and structural factors that prevent people from building and maintaining sustainable livelihoods in their countries of origin, forcing them to seek a future elsewhere"<sup>25</sup>.

26. The following is a brief analysis of the challenges faced by persons in Central America and Mexico in guaranteeing their ESCER, including persons in a situation of human mobility. In this regard, the Commission has emphasized that the basic human rights protections provided for in the American Declaration constitute obligations that the States of the region must guarantee to all persons under their authority and control, without depending for their application on factors such as citizenship, nationality, or any other factor of the

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<sup>23</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 24

<sup>24</sup> IACHR Court. Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 64.

<sup>25</sup> Global Compact for Safe, Orderly and Regular Migration, shared responsibilities, para. 12.

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person, including immigration status<sup>26</sup>. For its part, the IACHR Court has indicated that Article 1(1) of the American Convention establishes the State's duty to respect and guarantee human rights for all persons subject to the jurisdiction of the State in question, that is, who are in its territory or who are in any way subject to its authority, responsibility or control, without any relevance whatsoever to the motive, cause or reason for which the person is in its territory<sup>27</sup>.

## **i. Poverty and Human Mobility**

27. The underlying causes of large-scale displacement are complex and interrelated, encompassing human rights violations, including armed conflict, poverty and economic crises, food insecurity, political conflict, ethnic and intercommunity tensions, and environmental degradation. In addition, socioeconomic factors such as widespread unemployment and growing disparities in income and economic opportunities, both within and between countries, also influence human mobility. Similarly, the lack of access to basic services such as education, health, housing, and decent employment aggravates the situation of poverty and inequality, driving people to migrate in search of a better life<sup>28</sup>. To this extent, civil society organizations have identified poverty and inequality as determining factors that contribute to forced displacement in Central America and Mexico<sup>29</sup>. In this context, the following is a brief introduction to the phenomena of poverty and human mobility in each of the countries covered in the report.

### Costa Rica

28. In terms of poverty, despite various measures (such as the National Plan to Overcome Poverty and Social Inclusion 2022-2023, the National Strategy Bridge to Development<sup>30</sup> and the differentiated water service tariff for users in poverty and extreme poverty<sup>31</sup>), 23% of the population would be living below the poverty line by 2023, which would have been exacerbated by the socioeconomic impacts of the pandemic. This situation is worsened by the fact that, despite an improvement in the economic outlook - in which the country is even considered to be upper middle income - inequality has increased considerably<sup>32</sup>.

29. With respect to people in contexts of human mobility, REDESCA notes that Costa Rica is facing increasing pressures from flows of migrants and refugees, both in transit and as a destination<sup>33</sup>. In this regard, the IOM has pointed out that, in the case of Central America, the country is one of the main destinations for intra-regional migratory movements<sup>34</sup> and the State has indicated that in fact during the last five years it was the fourth nation in the world to receive the most refugee applications per capita<sup>35</sup>. In fact, during the visit, authorities indicated to REDESCA that there are such a large number of Nicaraguans in the country that the

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<sup>26</sup> IACHR, Report on Admissibility and Merits No. 51/01, Case 9903, Rafael Ferrer-Mazorra et al. (Los Cubanos del Mariel) (United States), April 4, 2001 ("IACHR. Admissibility and Merits *Rafael Ferrer-Mazorra*"), paras. 178 and 179.

<sup>27</sup> IACHR Court. Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 61- 62.

<sup>28</sup> HIAS, HIAS input to the report on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, June 2023.

<sup>29</sup> REDESCA. Minutes of the meeting of experts. June 9, 2023

<sup>30</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>31</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 567.

<sup>32</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 564; UN, [Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor, United Nations Independent Expert on Human Rights and International Solidarity](#), March 3, 2022

<sup>33</sup> UN, [Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor, United Nations Independent Expert on Human Rights and International Solidarity](#), March 3, 2022

<sup>34</sup> IOM, [Migration Data in Central America](#), July 10, 2021.

<sup>35</sup> UN, [Costa Rica requires the support of the international community in the face of the migration challenge](#), September 2022

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institutions see their capacities exceeded in some cases<sup>36</sup>. Faced with this, the authorities have pointed out that their economic situation and fiscal constraints, together with the massive migratory flow, considerably limit their capacity for action, thus putting at risk the adequate coverage of persons seeking refuge<sup>37</sup>.

30. In view of the above, REDESCA agrees on the priority need to access resources through international solidarity in order to face these challenges and guarantee attention to the population in general, including people in contexts of human mobility. Even so, this would be increasingly difficult, as the country's new classification as an upper-middle income country has led to a decrease in access to international development assistance and other forms of international cooperation received from donors<sup>38</sup>.

### El Salvador

31. REDESCA notes with concern how the levels of poverty and inequality in the country -especially in rural areas- constitute an obstacle to the guarantee of the right to health and other ESCER-, which makes poverty one of the main underlying causes of human mobility. In this regard, it is specified that, although the State has implemented various measures, including the Development and Social Protection Plan 2019-2024 and the Poverty Eradication Strategy<sup>39</sup>, according to the Multipurpose Household Survey (EHPM), by 2021 monetary poverty would reach 24.6% of households, while extreme poverty would stand at 7.8%. In turn, it has been reported that 27% of households live in multidimensional poverty, most of which are located in rural areas<sup>40</sup>.

32. For its part, according to official information, by 2022 26% of households have been classified in multidimensional poverty (equivalent to 515,000 households in which 1,852,870 people reside); 15.8% for the urban area and 42% for the rural area - figures against which there would have been a reduction when comparing the levels since 2014<sup>41</sup> -. According to the preliminary EHPM 2022, at the national level 26.6% of households were in extreme poverty, while 18.1% were in relative poverty. In rural areas, 29.6% of households were in poverty, of which 10.8% were in extreme poverty and 18.8% in relative poverty, while in urban areas, 24.9% of households lived in poverty; 7.3% in extreme poverty and 17.6% in relative poverty<sup>42</sup>.

33. With regard to human mobility, REDESCA notes that, although the State indicated that there has been a decrease in emigration flows and in those of the returning population<sup>43</sup>, this phenomenon should continue to be a top priority for the country. This is because the State must guarantee the protection of ESCER to all persons under its jurisdiction, and thus not only comply with its international obligations in this area, but also contribute to ensuring that people are not forced to migrate. In this regard, it should be noted that, as indicated by the IACHR, the forced displacement of persons from El Salvador -as well as from Honduras and Guatemala- is one of the main human rights challenges in the region<sup>44</sup>. Likewise, El Salvador is a country of origin of

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<sup>36</sup> REDESCA. Notes of meeting with the Ministry of Foreign Affairs, April 19, 2023.

<sup>37</sup> UN, [Costa Rica requires the support of the international community in the face of the migration challenge](#), September 2022

<sup>38</sup> UN, Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor, United Nations Independent Expert on Human Rights and International Solidarity, March 3, 2022

<sup>39</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>40</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 579.

<sup>41</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>42</sup> Ibid.

<sup>43</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>44</sup> IACHR, Press Release No. 037/19 - [IACHR urges to guarantee rights of people in the caravan of migrants and refugees in Honduras and Guatemala](#), Washington, D.C., February 19, 2019.

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migrants and refugees<sup>45</sup>, as well as a transit country as it is part of the migratory route to the North due to its geographic location<sup>46</sup>.

34. According to information provided by the State, the reasons for migration in El Salvador include economic factors, family reunification and tourism<sup>47</sup>. Likewise, the Commission and REDESCA have seen the preponderant role played by the guarantee of ESCER in this context, since, as previously addressed by the Commission, together with violence, poverty, and lack of access to social rights, as well as labor opportunities, are among the determining factors of forced internal displacement and migration in the country<sup>48</sup>. Along these lines, it has been found that, in El Salvador -as in Guatemala and Honduras-, although violence, insecurity and natural disasters have been complex and historical triggers of migration, economic factors have become the main motivation for migration<sup>49</sup>. Along these lines, low wages, unemployment, and insufficient income to cover basic needs are major determinants in the decision to migrate<sup>50</sup>. It is noteworthy that, based on some surveys of the population from Northern Central America in the United States, 74% reported having made the decision to migrate for economic reasons, representing 68% of those from El Salvador<sup>51</sup>.

### Guatemala

35. REDESCA notes that the proportion of resources that the State allocates to the financing of social programs (7.9 of the gross domestic product) continues to be lower than the Central American average (9.3). In this regard, the Office of the Special Rapporteur notes that OHCHR, together with the United Nations Development Programme, the United Nations Children's Fund, and the United Nations Population Fund, provided technical assistance to design and implement a gender-sensitive social registry in households<sup>52</sup>.

36. Regarding the inequality situation in the country, the Central American Institute for Fiscal Studies (ICEFI), pointed out that the exponential increase in inequality and poverty rates would continue if the public policies implemented by the country for the time being continue to be applied. At the same time, there has been an increase in public debt and a relative increase in tax collection; however, such results do not indicate an improvement in the attention of the state apparatus<sup>53</sup>.

37. In this regard, REDESCA notes that the State's social programs have benefited 125,734 families during 2020 and 2021 and include programs such as cash transfers and social bags for families in extreme poverty, scholarships for education, social kitchens to improve the food security situation and programs for young people, women and pregnant girls<sup>54</sup>. At the same time, REDESCA is concerned about statistics on young

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<sup>45</sup> IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, para. 314. IACHR, [Situation of human rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, para. 207.

<sup>46</sup> IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, para. 314. IACHR, [Situation of human rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, para. 207.

<sup>47</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>48</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 884.

<sup>49</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a New Regional Course: The Complex Motivations and Costs of Central American Migration Tracing a New Regional Course: The Complex Motivations and Costs of Central American Migration November 23, 2021

<sup>50</sup> Ibid

<sup>51</sup> IDB, In [the Footsteps of the Migrant: Perspectives and Experiences of Migration from El Salvador, Guatemala and Honduras in the United States](#), December 2019, p. 13.

<sup>52</sup> OHCHR, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Guatemala, A/HRC/49/20, 22 March 2022, para. 42.

<sup>53</sup> Id., para. 1012

<sup>54</sup> OHCHR, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Guatemala, A/HRC/49/20, 22 March 2022, para. 44.

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people and poverty, which indicate that economic poverty reaches six out of ten young people; the figure increases when it comes to the indigenous population, as eight out of ten survive in extreme poverty<sup>55</sup>.

38. In this regard, the Special Rapporteur is concerned about the situation of unaccompanied minors migrating from Guatemala, which has increased by 33% compared to the year 2021. According to UNICEF information, Guatemalan children and adolescents move as a result of poverty, violence, and poor access to services, such as education and health, in their country of origin<sup>56</sup>. The migratory projects of children and adolescents are one of the reasons for school dropout, projecting that 60% to 70% of young people who stay out of the classroom try to migrate to another country, especially to the United States of America<sup>56</sup>.

### Honduras

39. Regarding the situation in Honduras, REDESCA notes that the country faces high levels of poverty and extreme poverty. With respect to poverty, it reaches 73% of the population, while extreme poverty reaches 54%<sup>57</sup>. According to data from the National Statistics Institute (INE), 84% of children between 0 and 17 years of age live in poverty and 65% in extreme poverty. In this context, understanding poverty as a structural problem that translates into violations of the enjoyment and exercise of human rights, it is observed that this situation has materialized, among other aspects, in the food insecurity of approximately 6.5 million people in the country<sup>58</sup>.

40. According to UNICEF data, children under 5 years of age face high rates of chronic malnutrition, which in some departments even affects up to 50% of children between 6 and 23 months. This situation is aggravated by the serious impacts of climate change, corruption, price increases and high levels of labor informality. In this regard, it is noted that 58% of the population works in the informal sector and does not receive social security<sup>59</sup>.

41. Along the same lines, the United Nations Development Program (UNDP) identified that the country faces a multifactorial crisis due to the fact that economic growth rates are insufficient to reduce inequalities and poverty, the high levels of informality and the structural inequalities faced by women, indigenous peoples, Afro-descendants, and the population with disabilities. In addition, high levels of violence and the effects of the environmental crisis make Honduras one of the countries with the lowest Human Development Index (HDI) in the region.<sup>60</sup> According to the HDI for 2021-2022, Honduras ranked 137 out of 192 countries, placing it above Haiti, but below Nicaragua, Guatemala, and El Salvador<sup>61</sup>.

42. For their part, the Commission and REDESCA take note of the public policies and measures that the State has implemented to reduce poverty and combat corruption, such as the repeal of the Law on Special Economic Development Zones and the presentation of a tax justice bill. It is a priority to ensure that these measures have a human rights and tax justice approach, along with concrete actions that allow for their prompt implementation. Likewise, it is essential that within the framework of such measures, priority be given to the fight against corruption, illicit capital flows, tax evasion and tax fraud<sup>62</sup>.

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<sup>55</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1014.

<sup>56</sup> Id., para. 1078

<sup>57</sup> Id., par. 1168

<sup>58</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

<sup>59</sup> Idem.

<sup>60</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1169.

<sup>61</sup> UNDP, [Human Development Report 2021-2022](#), 2022

<sup>62</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023



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## Mexico

43. REDESCA notes that, according to the National Council for the Evaluation of Social Development Policy (CONEVAL), in December 2022, the extreme poverty line by income (food basket) rural was \$1,630.95 and urban was \$2,124.702802 MXN. On the other hand, the income poverty line (food plus non-food) in rural areas was \$3,051.80 pesos and in urban areas it was \$4,246.062803 pesos. Likewise, the Rapporteurship notes that the income poverty line in rural areas had an increase of 9.6% compared to December 2021, while the income poverty line in urban areas had an increase of 8.4% compared to December of the previous year<sup>63</sup>.

44. Likewise, the Special Rapporteurship notes with concern the Global Inequality Report 2022 of the Global Inequality Lab, which states that Mexico is one of the most unequal countries in the world. The average national income of the adult population is 232,790 pesos, the bottom 50% of the population earns 42,700 pesos and the top 10% of the population earns 1,335,030 pesos, that is, more than 30 times more<sup>64</sup>. In terms of inequality, the average household wealth in the country is 833,660 pesos - with the poorest half of the population having negative net wealth, that is, they have on average more debts than assets in contrast to the top 10% of the population who have an average of 6,561,490 pesos. On the other hand, the Rapporteurship expresses concern about female labor participation in income, which is 33%, a percentage below the Latin American average (35%)<sup>65</sup>.

45. In this context, civil society organizations have stated that regarding the situation of people in human mobility there is a lack of official data on living conditions related to effective access to health, education, housing, work and other ESCER. Consequently, a knowledge gap is generated for the monitoring and design of public policies focused on the social integration of people in mobility and would suggest that migration policy is based on a focus on border security and not on the protection of people<sup>66</sup>.

## Nicaragua

46. Regarding the general situation, according to estimates by the United Nations Economic Commission for Latin America (ECLAC), in 2022, total poverty in Nicaragua would grow from the 45.3% observed at the end of 2021, affecting between 46.0% and 46.8% of the total population. The increase in prices of the basic food basket and the difficulty to access food and other basic inputs is another pressing factor. Between May 2021 and May 2022, there was a growth of at least 20.3% in this item. This was also seen between September 2021 and September 2022, in which there was an increase of 2,657 córdobas in the price of the basic food basket, according to the National Institute of Development Information<sup>67</sup>.

47. In that context, the World Bank has indicated that declines in employment and wages led to a reduction in total income for 28 percent of households, with inflation expected to peak in 2022 and decline thereafter, as commodity price pressures cease, and higher interest rates reduce domestic demand<sup>68</sup>. In

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<sup>63</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1263.

<sup>64</sup> World Inequality Lab, World inequality Report 2022, pg. 207.

<sup>65</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1261.

<sup>66</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 5.

<sup>67</sup> Instituto Nacionales de Información de Desarrollo (INIDE), Precio Canasta Básica September 2022 and Precio Canasta Básica September 2021, updated to November 2022.

<sup>68</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1325.

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addition, the entity also noted that, by mid-2021, 44% of households reported lower incomes, food insecurity also worsened, with poverty estimated to increase from 13.5% in 2019 to 14.6% in 2021<sup>69</sup>.

48. For its part, REDESCA notes with concern that, in this context, the State is financing most of its activities through loans from international organizations such as the International Monetary Fund (IMF), the World Bank (WB) and the Central American Bank for Economic Integration (CABEI). According to public information, 68% of the State's investment in the country has been financed by the year 2022, with public indebtedness through loans from international financial institutions<sup>70</sup>. However, the Special Rapporteur is concerned that 20 civil society organizations have protested about the loans that are not being used by the Government for their intended financing, as well as the lack of transparency in a systemic way insofar as there is no information in real time or at least in a prudential period from the borrowing entities, especially CABEI<sup>71</sup>.

### Panama

49. By 2022, REDESCA observed that poverty and inequality indices in the country would continue to be above pre-pandemic levels, as well as the differentiated impact of this situation on certain groups in situations of vulnerability and/or historical discrimination, including indigenous peoples, people of African descent, people in rural areas, and women. Although these indicators are not among the highest comparatively at the regional level, it should be noted that, according to the Panama without Poverty initiative, poverty in the country affects more than one million people, in which one person in four would be considered "poor" and one in ten in a situation of indigence or extreme poverty<sup>72</sup>. According to the World Bank, Panama was the country most affected by the pandemic in Central America<sup>73</sup>. Thus, the country went from growing at a rate four times higher than the regional average and being considered in the category of high-income countries, to a sharp contraction in its GDP -17.9% in 2020- and being classified as a middle-income country.

50. Although the economy gradually recovered in 2021, placing Panama back in the high-income category, the social impacts of the pandemic would still be felt. In fact, the considerable increase in food, medicine and fuel prices -among others- would have led to massive protests throughout the country by mid-2022, in which demands directly linked to the guarantee of ESC rights were present, including the reduction of the cost of food, fuel, energy and medicines, together with the increase in the education budget and the fight against corruption<sup>74</sup>. In this context, the measures adopted by the State to address social demands are particularly noteworthy, as well as the Panama Solidarity Plan to support people affected by COVID-19. As a result of this plan, the IDB highlighted that overall poverty would have been reduced by 5.5 points, while extreme poverty by 4.7 points. Likewise, in terms of inequality, the Plan, together with the transfer programs and the 2021 economic growth, would have led to a reduction of 4.8 points<sup>75</sup>.

51. Despite these advances, the Office of the Special Rapporteur notes that, although the Panama Solidarity Plan has benefited a significant part of the population, there are significant differences at the territorial level, as well as by social group and according to the demographic characteristics of households,

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<sup>69</sup> REDESCA, V ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), 2021, OEA/SER.L/V/II Doc. 64 rev. 1 26 May 2022, para.1235.

<sup>70</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1360.

<sup>71</sup> Id., para. 1364

<sup>72</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1388.

<sup>73</sup> World Bank, Panama: Overview, October 04, 2022

<sup>74</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1389.

<sup>75</sup> Ibid, para. 1391

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which, among other things, penalizes larger households and those with more children per adult<sup>76</sup>. In the same sense, REDESCA notes with concern that poverty is higher in indigenous regions and in some provinces of the interior, as well as the prevalence of child poverty over adult poverty<sup>77</sup>.

52. This panorama is of particular importance considering that, in the context of human mobility, indigenous communities and remote areas would be the "front line" and host communities for people in human mobility that cross the territory of the Darien National Park, where it has been reported that migrants who arrive require various services - such as water, food and health - but in most cases the receiving communities do not even have the guarantee of these rights for themselves<sup>78</sup>. In this context, it should be noted that Panama, in addition to being a transit country due to its geographical location, is one of the main destinations of intra-regional migratory movements - together with Mexico and Costa Rica - according to the IOM in the case of Central America<sup>79</sup>.

53. Regarding the Darien area, it is indicated that, in the framework of its visit to the territory, the State asked REDESCA to use the term "Darien National Park" when referring to it, and therefore this terminology is included<sup>80</sup>. In addition to taking note of the request, REDESCA takes this opportunity to emphasize that this designation in no way changes the fact that this is a de facto route that people will continue to use until the underlying causes of migration are structurally addressed, Therefore, although this recognition may imply some measures in the form of environmental responsibility for the protection of the area - especially considering the degradation and contamination that would be occurring due to migration<sup>81</sup> -, it cannot become an excuse to impose more legal or de facto barriers to migrants who are on this journey.

54. Regarding the situation of human mobility in general, REDESCA notes that in 2022 alone there was a historic flow of migrants without documentation - 248,284 migrants, according to official figures<sup>82</sup> -, which the State has indicated is an exponential increase and presents serious challenges considering that each year the historical figures previously recorded are being surpassed. Thus, by 2021 there would have been 133,726 - which for its time was a historical figure - and by 2020, 8,594 migrants<sup>83</sup>. For 2023, according to reports from the National Migration Service, it has been indicated that between January and June alone 192,261 travelers arrived in the Darien, while during the same period in 2022 there were 49,452 people, which would exceed the same period of the year by 289%<sup>84</sup>. In the case of children and adolescents, the historical figure for 2022 shows that between January and October alone, 32,448 minors crossed the border, an increase of 10% over 2021. Likewise, it was reported that around 900 unaccompanied adolescents crossed the Darien. In this regard, the Rapporteurship notes the differential effects on children and families of the risks to which they are exposed in the crossing, including multiple forms of violence, such as sexual abuse, trafficking, and exploitation; lack of safe water and food; insect bites, attacks by wild animals and the sudden rise of rivers. In addition, it should be noted that migrants under 5 years of age, who make up 50% of migrant children, are particularly vulnerable to certain conditions such as diarrhea and dehydration<sup>85</sup>.

55. In this scenario, REDESCA notes that the majority of people from the region and from outside the continent continue to be forced to migrate, which is why passage through the Darién continues to be one of the main routes. In any case, the routes of arrival to the country continue to diversify, with both the Caribbean and

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<sup>76</sup> IDB, "[Pobreza y desigualdad en Panamá tras dos años de pandemia: el papel de Panamá Solidario y los programas de transferencias monetarias condicionadas](#)", September 2022, p. 2,

<sup>77</sup> Ministry of Foreign Affairs, PANA-OEA-7-463, November 21, 2022

<sup>78</sup> REDESCA. Meeting notes with international organizations, Ombudsman's Office and CSOs in the country, May 2 and 3, 2023.

<sup>79</sup> IOM, [Migration Data in Central America](#), July 10, 2021.

<sup>80</sup> Republic of Panama. DGOCI-MIRE-2023-033403, May 4, 2023

<sup>81</sup> REDESCA. Meeting notes with international organizations, Ombudsman's Office and CSOs in the country, May 2 and 3, 2023.

<sup>82</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). 2022. OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1437.

<sup>83</sup> Ibid, para. 1438

<sup>84</sup> La Prensa, [192,261 migrants crossed the jungle in half a year](#), June 30, 2023

<sup>85</sup> Ibid, para. 1431

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the Pacific being at high risk due to the possibility of shipwrecks and the activities of armed groups<sup>86</sup>. In view of these massive and increasing flows through the country, REDESCA stresses the urgency of implementing a coordinated regional response and international cooperation to address this situation, including measures to establish regular and accessible channels for the mobility of people. Even more so considering that when these people are in Panamanian territory, they experience various deprivations in terms of DESCAs. However, during its visit, REDESCA received information on how these same deprivations - in terms of water and sanitation, health, housing, education, among others - are also experienced by the host communities themselves, which, being in remote areas, would have great challenges in terms of poverty and the guarantee of these rights. In fact, authorities indicated that internally there are complaints to the State about the investments that are being made for the migrant population and not for nationals<sup>87</sup>.

56. Likewise, REDESCA received with great concern and consternation some testimonies of how some people in the host communities are taking advantage of the vulnerable situation of the migrant population - particularly when they are crossing the jungle - either through excessive charges, extortion or abuse. In response to these reports, REDESCA urgently calls for their investigation and prevention<sup>88</sup>. In the same vein, REDESCA takes note of the differentiated impacts that this phenomenon would have on women, while the Committee on the Elimination of Discrimination against Women of the United Nations expressed its concern about the gender-based violence suffered by migrants crossing the border through the Darien in Panama, including disappearances and rapes. In this regard, it has been pointed out that women who cross the Darien plug suffer "systematic" sexual violence during the journey, and there are even reports of gang rapes that go unpunished<sup>89</sup>.

57. Regarding transit in the country, it is worth noting that in a recent survey conducted in May 2023 by UNHCR and other organizations in Panama, 79% of the people in transit through the country to the north mentioned that they left their country of origin due to lack of employment and access to economic opportunities<sup>90</sup>.

## ii. Right to Health

58. REDESCA emphasizes that, within the framework of the Inter-American system, the right to health, understood as the right of every person to the enjoyment of the highest level of physical, mental and social well-being, requires the satisfaction of its basic and social determinants, which include the right to a healthy environment and the right to water, the right to food, the level of income and social protection, access to housing, among others<sup>91</sup>. Therefore, guaranteeing them is essential to ensure the guarantee of the right to health and other ESCER. The guarantee of other rights, the satisfaction of which is a determining factor for the realization of the right to health, will be developed in greater detail in other sections of this chapter.

### Costa Rica

59. REDESCA has closely followed the guarantee of the right to health in Costa Rica and highlights that the country has a solid comprehensive public health system that would offer health coverage to the population

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<sup>86</sup> Ibid, para 1439

<sup>87</sup> REDESCA, notes meeting with authorities. Visit Panama, May 2023

<sup>88</sup> Ibid.

<sup>89</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1440.

<sup>90</sup> UNHCR, [Official Mixed Movement Data: Darien Province in April 2023](#), May 17, 2023.

<sup>91</sup> IACHR and REDESCA, [COMPENDIUM ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS Inter-American Standards](#), OEA/Ser.L/V/II Doc. 465, 31 December 2021; REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 521.

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regardless of their ability to pay through various alternatives<sup>92</sup>. The above, especially taking into account that, according to the information provided by the State, there has been a normative and jurisprudential development that allows for the protection of the right to health, there has been a normative and jurisprudential development that allows the protection of the right to health<sup>93</sup>, and according to an analysis of this information, REDESCA would evidence that -with the exception of a few years- between 2006 and 2020 there has been a sustained increase in public spending to guarantee these services, with the result that by 2020 14.24% of public spending would be allocated to this sector (compared to 10.13% in 2006)<sup>94</sup>.

60. In this line, the Working Group of the Protocol of San Salvador (GTPSS) highlighted that in 2019 the health coverage of the population would be 91.1% and urged the country to continue joining efforts to achieve universal access to health<sup>95</sup>. In addition, it should be noted that, in the context of the pandemic, the country would have guaranteed free and universal access - gradually - to COVID-19 vaccines for all people, including people in contexts of human mobility<sup>96</sup>.

61. Despite recognizing these advances, REDESCA considers that there have been reported challenges to access to health services for certain population groups, such as, for example, people with HIV/AIDS, who have been affected by the shortage of antiretroviral drugs (dolutegravir and abacavir) in the Costa Rican Social Security Fund (Caja Costarricense del Seguro Social)<sup>97</sup>. Likewise, the Rapporteurship has observed that the levels of poverty and inequality in the country, together with the rural-urban gap in the guarantee of certain rights - particularly water and sanitation - constitute a significant obstacle to the enjoyment and exercise of ESCER, and particularly the right to health.

62. With respect to the right to drinking water, as a social determinant of health, the Special Rapporteur notes that the WGPSS observed that, although in recent years the rural population with access to drinking water has increased (from 76.06% in 2010 to 84.64% in 2019), it is still far from the national average of 94.12% and the urban population of 97.1%. In the same sense, the WG observed that a similar situation occurs with respect to access to basic sanitation services, as only 82.6% of the rural population has access, while the national average is 92.9%<sup>98</sup>.

63. Regarding persons in a situation of human mobility, REDESCA is aware that shelter services with health care and food have been implemented for persons who remain in Costa Rica on a transitory basis<sup>99</sup>. However, it has also received information that migrants and refugees in the country face obstacles in accessing health services<sup>100</sup>, denouncing that, although they are normally provided with emergency care, there is no access to health services without insurance - which in many cases is too expensive for their economic capacities

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<sup>92</sup> Columbia Mailman School of Public Health, [Costa Rica](#), 2023

<sup>93</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>94</sup> Ibid

<sup>95</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021](#), para. 18.

<sup>96</sup> UN, [Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor. United Nations Independent Expert on Human Rights and International Solidarity](#), March 3, 2022

<sup>97</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 579.

<sup>98</sup> GTPSS, Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021, para. 65.

<sup>99</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 605.

<sup>100</sup> UN, [Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor. United Nations Independent Expert on Human Rights and International Solidarity](#), March 3, 2022

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given the high cost that prevails in the country <sup>-101</sup> . It should also be noted that REDESCA has received information on how in the country one of the main needs of refugees and migrants is access to health care. By way of example, according to R4V, 78% of Venezuelan refugees and migrants in Costa Rica have required some health care service. However, difficulties in enrolling in health systems and lack of information are significant barriers in all populations<sup>102</sup> .

### El Salvador

64. Regarding the right to health in the country, REDESCA emphasizes that in its legal system there are several provisions that protect its protection as a human right, including guarantees at the constitutional level through Articles 2 and 65 - which in turn have been developed by the Constitutional Chamber in various rulings <sup>-103</sup> . Likewise, that, in the context of the pandemic, the State took various measures to contain the health emergency, including timely progress in the process of immunization of the population with COVID-19, especially during 2021, given that, by the end of that year, the first dose had been administered to 70.6% of the population<sup>104</sup> . Notwithstanding the above, one of the main challenges identified by the mandate is the lack of transparency in the management of information on COVID-19 cases and deaths (which would be associated with political management of the figures) and underreporting - estimated at up to 400% <sup>-105</sup> . This situation is replicated in the lack of guaranteed access to information on the sector, including disaggregated information on the immunization process and health personnel who died as a result of the pandemic. Likewise, by way of example, by the end of 2021 there would be no information on the actual hospital capacity, the number of hospitalizations due to COVID-19, or the number of people in intensive care units<sup>106</sup> .

65. In this scenario, REDESCA has closely followed reports of the limited capacity of the health system and even the collapse in some cases when there were waves of contagion/peaks of COVID-19, in addition to the situation of health personnel in these contexts, who in addition to their physical and mental fatigue due to the increase in working hours and night shifts, in some cases have reportedly experienced persecution. In this regard, health professionals denounced dismissals for having publicly complained about the conditions in the health centers, as well as the impossibility of unionizing<sup>107</sup> .

66. In turn, REDESCA takes note of the disparities in access to health services between rural and urban areas, while noting that coverage and insurance levels are significantly low in both cases. Thus, according to the Multipurpose Household Survey 2022, in 2022, 25.7% of the country's total population reported having some health insurance, 14% in rural areas and 33% in urban areas<sup>108</sup> .

67. The Office of the Special Rapporteur is closely following reports on the health impact of toxic agrochemicals - particularly in the context of sugar cane monoculture - since the agrochemicals used in this process,

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<sup>101</sup> REDESCA. Meeting with Civil Society, April 20, 2023

<sup>102</sup> HIAS, HIAS input to the report on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, June 2023.

<sup>103</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE:

"POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023;GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador"](#) OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR.OAS/Ser.L/XXV.2.20, September 23, 2020, para. 16.

<sup>104</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 804.

<sup>105</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 804.

<sup>106</sup> Ibid, para. 807

<sup>107</sup> Ibid, 809-816

<sup>108</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

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in addition to contaminating the environment, specifically the land, water, crops, among others, are contributing to chronic renal failure - the third leading cause of death in the country<sup>109</sup>.

68. Regarding the phenomenon of human mobility, REDESCA highlights that, according to official information, the Ministry of Health would designate a team of health professionals (medical and nursing personnel, as well as psychological care) for the care of returned migrants during the reception process. In these processes, priority attention would be given to children under five years of age, pregnant women and people previously diagnosed with chronic diseases or acute morbidities<sup>110</sup>. Likewise, it was indicated that free preventive and curative health care, surgical interventions, childbirth care, pharmacological treatment and other treatments would be provided in the entire network of health facilities to foreigners within Salvadoran territory, regardless of their migratory status<sup>111</sup>.

### Guatemala

69. The right to health is provided for in articles 93, 94 and 95 of the Constitution. In addition, the State has a Health Code that provides general rules on the application of the right<sup>112</sup>. On the other hand, according to the United Nations resident coordination, by March 2021, some services related to family planning programs, prenatal care, immunizations, mental health and institutional deliveries did not reach the coverage registered before the pandemic. Childhood immunization coverage was reduced by 3.0% compared to 2019, representing a reduction that the country will be able to recover. In terms of human resources, the marked limitation of qualified personnel was a factor that restricted the capacity to respond to the pandemic. Guatemala's situation is approximately seven times lower than that suggested by the Pan American Health Organization (PAHO), which refers to 25 medical and nursing professionals per 10,000 inhabitants<sup>113</sup>.

70. Meanwhile, PAHO figures indicate that between 2002 and 2019, infant mortality in Guatemala decreased from 38.8 to 19.9 per 1000 live births, which implies a decrease of 48.7%. For its part, the percentage of births with low birth weight (less than 2500 g) decreased from 11.7% to 9.1% between 2010 and 2017<sup>114</sup>. Likewise, REDESCA notes that the country's authorities during 2016 and 2017, with the support of the United Nations System and the leadership of the National Council for Urban and Rural Development (CONADUR), carried out an exercise for the articulation of the National Development Plan K'atun: Our Guatemala 2032, aimed at contributing to efforts to achieve the country's sustainable development objectives and goals. In this regard, the Secretariat of Planning and Programming of the Presidency has estimated that there is a 90% thematic coincidence between these two instruments (Agenda 2030 and the National Development Plan)<sup>115</sup>.

71. Similarly, the Office of the Special Rapporteur notes with concern the lack of medical supplies and basic medicines in different parts of the country, which has led to the suspension of patient care at the General Hospital in Guatemala. In view of this situation, the Special Rapporteur takes note of the protest carried out by the Union of Workers of the General Hospital San Juan de Dios, who reported that, due to the lack of medical supplies, the number of COVID-19 cases within the facilities has increased. In the same line, REDESCA had

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<sup>109</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

<sup>110</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>111</sup> Ibid.

<sup>112</sup> Presidential Commission for Peace and Human Rights of Guatemala, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, Oficio. 0668-2023-DIDEH/COPADEFH/WEBS/LFDL/sf, April 25, 2023, p. 6.

<sup>113</sup> United Nations Guatemala, [Common Country Analysis](#), Update 2021, p. 3.

<sup>114</sup> PAHO, [Country Profile: Guatemala](#), 2023

<sup>115</sup> Ibidem

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reports that health centers have delivered incomplete medicine kits to people infected with COVID-19, registering cases where they are delivered without medical prescriptions or instructions for their supply<sup>116</sup>.

## Honduras

72. In relation to the right to health, REDESCA takes note of the budget increase for the sector<sup>117</sup>, which is essential to respond to the shortage of health facilities, goods and services, as well as the insufficient number of health personnel and the lack of their job stability<sup>118</sup>. They also highlight the signing of the Executive Agreement for the free use and commercialization of the emergency contraceptive pill (ECP), although they note with concern that the Ministry of Health does not yet have a protocol or guide for the implementation of the Executive Agreement<sup>119</sup>.

73. In this line, REDESCA has also followed the situation of shortage of health workers in Honduras, in which it has been pointed out that on average there are 11 permanent doctors and nurses for every 10 thousand inhabitants, which represents a figure that does not meet the minimum international standards to provide essential health services<sup>120</sup>. This is worsened by complaints from health professionals who have complained that for months their salaries have not been paid or that they have not been adequately hired<sup>121</sup>.

74. In this regard, during the visit, information was received that there are several people in the sector who have not received salaries for almost a year, that neither the Medical Statute Law nor the right to the bonus that they would have since 2019 is being respected, and that the delay in the payment of salaries has even led to several declarations of domestic calamity, which would demonstrate the lack of adequate and dignified working conditions for health personnel<sup>122</sup>.

75. Within the framework of the visit, these facts were confirmed by the DESCA Special Rapporteur, who visited the Alonso Suazo Teaching Hospital in Tegucigalpa, and in addition to verifying the extraordinary commitment of its personnel, the harsh conditions in which they work and in which the users are treated, observed a situation of shortage of medicines and supplies, hospital overload and generalized wear and tear of the basic infrastructure. At the time of the visit, there was almost 400% overcapacity<sup>123</sup>. Among the underlying causes of this situation are weak health policies, as well as insufficient budget allocation and staff shortages. In addition, it was learned that the hospital is one of the two health centers with the highest demand for services in the country -together with the Mario Catarino Rivas hospital in San Pedro Sula-, since they are the only hospitals in the public network that provide specialized services at the national level and to which people from the interior travel to receive them<sup>124</sup>.

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<sup>116</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1022.

<sup>117</sup> OHCHR, Situation of human rights in Honduras Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras, A/HRC/52/24, 1 March 2023, para. 13.

<sup>118</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

<sup>119</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, April 28, 2023

<sup>120</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), 2022, OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1174.

<sup>121</sup> Ibid.

<sup>122</sup> REDESCA, Information provided by civil society during the meeting, April 24, 2023.

<sup>123</sup> REDESCA, Meeting with medical personnel of the Hospital Escuela in Tegucigalpa, April 26, 2023

<sup>124</sup> Ibid.



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## Mexico

76. REDESCA notes that the right to health in Mexico is protected in Article 2 of the Mexican Constitution and developed in the General Health Law<sup>125</sup>, the Social Security Law<sup>126</sup> and the Law of the Institute of Security and Social Services for State Workers<sup>127</sup>. The recognition of sexual and reproductive rights is found in Article 4 of the Constitution, as well as in the Migration Law<sup>128</sup>, the General Law on the Rights of Children and Adolescents,<sup>129</sup> and the Federal Law to Prevent and Eliminate Discrimination,<sup>130</sup> in addition to the Mexican Official Standards (NOM) in force on the subject that promote these rights.

77. In this regard, the Office of the Special Rapporteur notes that the State also has the Program to Strengthen Health Care, which contributes with the Federal Entities to effectively provide access and delivery of primary health care services in towns with less than 2,500 people.<sup>131</sup> In parallel, the Welfare Sector Program 2019-2024, articulates social policy actions, which grants a universal, non-contributory pension, and facilitates access to care services<sup>132</sup>. Likewise, in the framework of addressing the social determinants of health, REDESCA notes that the State, through the Health Sector Program, promotes actions to eradicate poverty among children and adolescents by strengthening income transfer and support programs for households living in poverty and extreme poverty, in rural and urban areas of high marginalization<sup>133</sup>. Similarly, REDESCA notes that the State, through its Health Sector Program, establishes the construction of an institutional network to link international services related to health and health safety. Likewise, it promotes elements of national policy regarding health insurance, such as the implementation of the Free Health Services and Medicines Policy in the country, starting with its guarantee in health centers or clinics and general hospitals in regions with high or very high marginalization.<sup>134</sup>

78. In terms of challenges, the Office of the Special Rapporteur is concerned that, according to civil society organizations, there is a lack of official data on living conditions related to effective access to health, education, housing, work, and other economic, social and cultural rights, generating a knowledge gap for the monitoring and design of public policies focused on the social integration of people in mobility<sup>135</sup>.

79. In this regard, although access to health care is not conditioned to migratory status, civil society organizations have documented that migrants and international protection seekers often do not have access to first level health services due to the limited capacities of the institutions themselves, as well as to bad practices regarding the request for migratory or identity documents that prevail. The lack of access to specialized health services in the region means that people must travel to other parts of the state in order to have access to third

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<sup>125</sup> Chamber of Deputies of the H. Congress of the Union, [General Health Law](#), and published in the Official Gazette of the Federation on February 7, 1984. The Law also recognizes the utilization and use of indigenous traditional knowledge in the national health system.

<sup>126</sup> Chamber of Deputies of the Congress of the Union, [Social Security Law](#), published in the Official Gazette of the Federation on December 21, 1995.

<sup>127</sup> Chamber of Deputies of the Congress of the Union, [Law of the Institute of Security and Social Services of State Workers](#), published in the Official Gazette of the Federation on March 31, 2007,

<sup>128</sup> Chamber of Deputies of the Congress of the Union, [Immigration Law](#), published in the Official Gazette of the Federation on May 25, 2011.

<sup>129</sup> Chamber of Deputies of the H. Congress of the Union, [General Law on the Rights of Children and Adolescents](#), published in the Official Gazette of the Federation on December 4, 2014.

<sup>130</sup> Chamber of Deputies of the Congress of the Union, [Federal Law to Prevent and Eliminate Discrimination](#), published in the Official Gazette of the Federation on June 11, 2003.

<sup>131</sup> Chamber of Deputies of the Congress of the Union, [Institutional Program 2020-2024 of the Instituto de Salud para el Bienestar](#), published in the Official Gazette of the Federation on December 21, 2020.

<sup>132</sup> Ministry of Welfare, Government of Mexico. [Welfare Sector Program 2020-2024](#)

<sup>133</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 99.

<sup>134</sup> Comisión Federal para la Protección contra Riesgos Sanitarios, Government of Mexico, [Servicios de salud y medicamentos gratuitos, el objetivo de la política de salud 2019-2024](#), January 16, 2019.

<sup>135</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 6.

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level medical care; however, the delay in the regularization and refugee processes means that they must obtain transfer permits from the immigration authorities, which are generally not immediately approved<sup>136</sup>.

80. In this regard, the organizations brought to REDESCA's attention that people in immigration detention rarely have access to timely medical attention, in addition to reports of poor food, little or no access to water, inadequate hygiene conditions, and overcrowding. In relation to these facts, the death of Maxene André was denounced, a Haitian person who died in 2019 after complaining for 15 days of headache, chest pain and fever, and who agonized for hours without medical assistance, according to testimonies of people detained in the MS<sup>137</sup>. Regarding mental health in general, attention is limited for the entire population since, for example, there are only two psychiatrists in the border city of Tapachula. This, added to the psychosocial impacts of the practices of containment and migratory detention, generates conditions that violate or aggravate the mental health of migrants, asylum seekers and refugees<sup>138</sup>.

81. For its part, during its visit, REDESCA received several testimonies attesting to the urgent need for attention to persons in a situation of mobility. During its visit to shelters in Tapachula and Mexico City, the Office of the Special Rapporteur received several testimonies from migrants or asylum seekers, who pointed out the difficulties in receiving medical attention both at border posts and in health centers. In the Iztapalapa shelter of the Archdiocese of Mexico, they have a health care center in collaboration with UNAM where they provide primary care<sup>139</sup>.

## Nicaragua

82. Regarding the health situation in Nicaragua, REDESCA highlights that the State has not sent information to this entity, despite the persistent request in this regard by this specialized office of the IACHR<sup>140</sup>. In this regard, REDESCA and the United Nations Committee on Economic, Social and Cultural Rights (CESCR) have called on the State to take the necessary measures to reestablish spaces for participation and dialogue in an open and constructive manner with all actors at the national level, including representatives of civil society, academia and the private sector, representatives and leaders of indigenous peoples, Afro-descendants and human rights defenders. The State has also been urged to reestablish dialogue and cooperation at the international level with regional and universal mechanisms for the protection of human rights, including the exchange of information<sup>141</sup>.

83. In this regard, REDESCA has maintained close contact with civil society organizations to monitor the progress of the pandemic, as well as the health situation of the population. The Special Rapporteurship has found an increasingly difficult panorama for citizen monitoring of the right to health, as evidenced by the fact that the Citizen Observatory in its bulletin of July 15, 2022, pointed out its fear of reprisals by the Government of Nicaragua for providing information and the apparent "normalization" of the pandemic situation as a result of the insufficient, distorted and late information provided by the Government<sup>142</sup>.

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<sup>136</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 12.

<sup>137</sup> Id.

<sup>138</sup> Id.

<sup>139</sup> REDESCA, Notes from the visit to Casa Migrante de Iztapalapa and Refugios in Tapachula, April 17, 2023

<sup>140</sup> REDESCA has made requests for information from Nicaragua in the framework of its annual report, the request for information on measures taken during the COVID-19 pandemic, its report on climate emergency and human rights, and for this report as well.

<sup>141</sup> IACHR-REDESCA, [La CIDH y la REDESCA expresan su alarma por la escasez de información pública sobre la pandemia en Nicaragua, y exhortan al Estado a la implementación de medidas de prevención de la salud urgentes con sustento científico y con enfoque de derechos humanos](#), 17 November 2021; Comité DESC, Observaciones finales sobre el quinto informe periódico de Nicaragua, E/C.12/NIC/CO/5, 11 November 2021, para. 6.

<sup>142</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), 2022. OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1329.

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84. Similarly, REDESCA notes with concern that, according to public information, there are insufficiencies in the lack of allocation of sufficient and adequate resources, as well as shortages in the supply of supplies, medicines, medical and surgical materials and medical equipment and the deterioration of the infrastructure of some hospitals, especially in rural areas and in the Autonomous Regions of the Caribbean Coast<sup>143</sup>.

85. In the same vein, the Commission and REDESCA note that, in order to strengthen the State's response to the pandemic, the World Bank approved on December 8, 2020 US\$20 million, plus an additional US\$116 million in June 2022 to guarantee access to vaccines and return the health system to the pre-COVID-19 situation in terms of essential services, medicines, vaccines and medical and laboratory supplies and equipment. However, according to civil society sources, the figures offered by the State to guarantee the loan would not be consistent because data such as how many tests have been performed, how many of them were positive and from which territories these samples arrived, were only partially answered by the State<sup>144</sup>.

86. In addition, REDESCA expresses its concern for the situation of professionals and workers in the health sector. Through its contact with members of this sector, REDESCA has detected constant acts of harassment and bullying. In this context, the Office of the Special Rapporteur congratulates the commendable work carried out by health workers in Nicaragua, highlighting how the Nicaraguan Medical Unit has continued to provide medical consultations by telephone to citizens in the context of the COVID-19 pandemic<sup>145</sup>.

### Panama

87. REDESCA has closely followed the guarantee of the right to health in the country and highlights that, despite the challenges generated by the pandemic, especially during the waves experienced since March 2020, the State managed to cope with the high number of infections, as there was no reported collapse of health services despite the high demand. The report also notes the significant progress made in the immunization of the Panamanian population, which, as of the end of July 2022, the country had a vaccination rate of 72% of its population (with two doses)<sup>146</sup>.

88. Without detriment to the foregoing and in more general terms, the Office of the Special Rapporteur has received several complaints about the shortage of medicines in the country, especially for the care of chronic diseases, since it has been reported that one of the problems that most afflicts the population is the lack of medicines in the Social Security Fund (CSS) and the Ministry of Health centers, as well as the high cost of drugs in private pharmacies. In fact, in addition to this situation, the Office of the Special Rapporteur has received information on alleged acts of corruption in the country that have caused a shortage of generic medicines, with a particular impact on people with arterial hypertension. In this regard, it has been reported that several companies and public officials are involved in price control in the market, which, by generating shortages of generic drugs (in the specific case of the drug Lisinopril), forces people to purchase the drugs in private pharmacies at high prices<sup>147</sup>.

89. In view of this situation and despite the measures taken by the State - including the acquisition of this medicine and a temporary procedure for the reception, processing, evaluation and authorization of medicine imports - REDESCA has urged an exhaustive investigation of the facts indicated, given that reports of

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<sup>143</sup> Committee on ESC rights, Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5, 11 November 2021, para. 40.

<sup>144</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1330.

<sup>145</sup> *Ibid.*, para. 1335

<sup>146</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1393.

<sup>147</sup> *Ibid.*, para. 1396

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shortages of these medicines continue<sup>148</sup>. In this scenario, REDESCA has taken note of measures such as Executive Decree 26 of March 15, 2022 (which established regulations for joint or unilateral purchases of medicines by the Social Security Fund and the Ministry of Health when a critical shortage of drugs and medicines is declared), the declarations of more than 130 medicines of the CSS in critical shortage -both in 2022 and 2023- with which the CSS and the Ministry of Health could make joint or unilateral purchases or purchases abroad, through expedited mechanisms; the creation of the MedicSol program (Medicamentos Solidarios), the creation of the National Medicines Observatory of Panama and the National Plan of Guarantees of Medicine Supply<sup>149</sup>. Without detracting from their importance, some organizations have denounced that the measures adopted to face the shortage would be palliative and insufficient as they do not address the root of the problem - the disproportionate profits of some "oligopolistic groups and pharmaceutical mafias" -<sup>150</sup>.

90. With regard to human mobility, the Office of the Special Rapporteur recognizes the great challenges faced by the State due to the increasing flows of people arriving in the country across the border with Colombia and the obstacles to guaranteeing their ESCER, since in many cases they are arriving en masse and under critical circumstances, urgently requiring adequate access to basic and health services<sup>151</sup>. This situation would result in that, despite the measures implemented by Panama in this regard, in many cases people continue in a state of great vulnerability, experiencing poor nutrition and poor hygiene and sanitation conditions. In view of this situation, it should be noted that the Inter-American Court of Human Rights, through the provisional measures mechanism, ordered the State to guarantee access to health services without discrimination for irregular migrants who are treated in shelters, which also includes testing and treatment against COVID-19, as well as their inclusion in the vaccination program. In this regard, it is noted that the efforts of the Government of Panama resulted in the lifting of the provisional measures by the Court in mid-2022. In spite of this, the Court recognized that the actions taken still do not resolve the human rights challenges faced by migrants, particularly girls and women<sup>152</sup>. Likewise, various civil society organizations have insisted that migrants still do not receive the required attention, which is why it is necessary to continue reinforcing the attention services, including health services<sup>153</sup>.

91. Likewise, the Office of the Special Rapporteur notes with concern that in areas near the Darién, more and more people require mental health services - a monthly average of 1,500 consultations, most of which are for patients at risk and more than half of whom present acute stress. Although it warns of a possible deterioration of medical care for hundreds of migrants, due to insufficient conditions for the reception of migrants, it is noted that, between 2020 and 2022, the State has spent about 50 million dollars to cover the costs of food, lodging, security and health of migrants<sup>154</sup>. Likewise, REDESCA welcomes the creation of the "Technical Standard for Mental Health Care for the Migrant and Refugee Population in Panama", in conjunction with the International Organization of Migrants, and the reinforcement of primary care provided by the Ministry of Health through the National Directorate for the Provision of Health Services and the Darien Health Region<sup>155</sup>.

92. Finally, REDESCA notes that in June 2023, the Panamanian Ministry of Health reported that they will begin testing for human immunodeficiency virus (HIV) diagnosis of migrants arriving in the country through

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<sup>148</sup> TVN, [Desabastecimiento de medicinas: ¿Cómo avanzan los mecanismos para combatir este problema](#), February 01, 2023; La Estrella de Panamá, [Continúan los intentos de incentivar la producción nacional de medicamentos](#), April 10, 2023.

<sup>149</sup> Ibid., para. 1397-1401.

<sup>150</sup> Ibid.

<sup>151</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1437.

<sup>152</sup> Ibid

<sup>153</sup> REDESCA. Notes visit Panama, May 2023

<sup>154</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, paras. 1442-1443.

<sup>155</sup> Ibid.

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the Darien, which is noteworthy, since, according to the information provided, the idea is to ensure the provision of health services to these people<sup>156</sup>. Without detriment to this, the Rapporteurship takes this opportunity to point out that it is necessary to adopt all necessary measures to ensure that there is no discrimination against these people, taking into account that people with HIV are a group of special protection in the framework of the Inter-American system, so that differentiated measures are required.

### iii. Labor Rights

93. The right to work and labor rights has been widely recognized by different instruments of the inter-American system, including the American Declaration, the OAS Charter, the Protocol of San Salvador, and Article 26 of the Convention. In general terms, this right is the opportunity to obtain the means to lead a dignified and decent life through the performance of a lawful activity, freely chosen or accepted. It also implies not being forced in any way to perform or carry out work and the right of access to a system of protection that guarantees each worker access to employment<sup>157</sup>. This section also covers challenges to the guarantee of trade union rights, which are of vital importance for the realization of labor rights and other ESCER.

#### Costa Rica

94. REDESCA emphasizes that, as recognized by the WGPSS, the country has a regulatory framework that facilitates the enjoyment by workers of their labor rights<sup>158</sup>. Without detriment to this, the Rapporteurship observes some challenges for its realization.

95. In its response to the questionnaire for this report, the Ministry of Labor and Social Security addressed the profound impacts of the pandemic, the slow process of economic reactivation and the structural unemployment problems that have been experienced for several years, which, in addition to worsening, are manifested, among other forms, in low growth of formal employment. Thus, it was indicated that, although the labor market has been gradually recovering, there is significant heterogeneity, in which employment of highly skilled workers is well above pre-pandemic levels, while employment of low-skilled and medium-skilled workers has recovered more slowly. Also, informality would remain high by historical standards, hovering around 45% of employment<sup>159</sup>.

96. In the case of women, their participation in the labor force is particularly low in low-income households, with more than 90% of women in poor households outside the labor force. Thus, it was indicated that, in particular, women who assume family care responsibilities face difficulties in completing education or continuing in the labor force, affecting women of all income levels, but particularly those from low-income households<sup>160</sup>.

97. On the other hand, REDESCA is closely monitoring legislative bills that could constitute a step backwards in terms of labor rights, such as the one that would enable 12-hour workdays without the overtime

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<sup>156</sup> El Diario, [HIV tests will be carried out on migrants arriving in Panama through the Darien jungle](#), June 29, 2023.

<sup>157</sup> IACHR and REDESCA. [COMPENDIUM Economic, Social, Cultural and Environmental Rights Inter-American Standards, OEA/Ser.L/V/II Doc. 465, December 31, 2021](#), para. 91.

<sup>158</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021](#), para. 13.

<sup>159</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>160</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

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pay to which workers are currently entitled<sup>161</sup>. In the case of migrant workers, REDESCA notes that, despite the fact that the Constitution establishes in Article 68 that "no discrimination may be made with respect to salary, advantages or working conditions between Costa Ricans and foreigners, or with respect to any group of workers"<sup>162</sup>, there have been several complaints regarding the differential treatment experienced by people in contexts of human mobility when accessing the labor market<sup>163</sup>. In this context, REDESCA notes with concern that at the end of November 2022, the Refugee Regulation on the granting of work permits was modified, indicating that work permits will not be granted immediately to applicants and that those who have already been granted will only be able to obtain a renewal if they are registered with the Costa Rican Social Security Fund<sup>164</sup>. It should be noted that, as of December 2022, when a refugee applicant came to apply, he/she was issued a refugee applicant card with the work permit<sup>165</sup>. REDESCA was told that this requirement was disproportionate and imposed conditions that were difficult for an unemployed person to meet, as it required contributions to the system in order to access the right to work, ignoring the fact that it is from the resources made by workers that these payments can be made<sup>166</sup>.

98. During its visit, REDESCA also received complaints about labor exploitation of migrants and discrimination in access to employment by refugees<sup>167</sup>. By way of example, several of the testimonies indicated that employers in many cases did not affiliate migrant workers to social security and that they were paid less than the minimum wage<sup>168</sup>. In the same way, REDESCA highlighted the great situation of vulnerability experienced by recyclers in the country, who despite their work contributing greatly to the protection of the environment, would be in a serious situation of vulnerability, not only because of their work, but also because of the announcements of landfill closures of which they would have no information and about which there would be no contingency plan to ensure their right to work, and with it, their livelihoods. Although REDESCA received information that this would happen all over the country, it became aware of this situation in the municipality of Turrialba, where, based on the different testimonies it took, it was able to demonstrate the abandonment in which they find themselves and the need for the State to adopt urgent measures from a human rights perspective to address their situation<sup>169</sup>.

99. The Rapporteurship has also expressed its concern over reports regarding the situation of agribusiness workers in Costa Rica, most of whom are migrants from Nicaragua. In this regard, it has been reported that their right to safe and well-paid work is not guaranteed, and mutilations and other serious injuries to workers have been documented<sup>170</sup>. Likewise, situations of high vulnerability have been reported for

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<sup>161</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 605.

<sup>162</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>163</sup> REDESCA. Notes from visit to Costa Rica, April 2023

<sup>164</sup> REDESCA. Notes from visit to Costa Rica, April 2023; Dirección General de Migración y Extranjería, Press release. Gobierno firma dos decretos con nuevas disposiciones migratorias, 30 November 2022.

<sup>165</sup> REDESCA. Notes from visit to Costa Rica, April 2023; La Prensa, [Costa Rica makes work permit process more cumbersome for refugee claimants](#), January 28, 2023.

<sup>166</sup> REDESCA. Notes from visit to Costa Rica, April 2023

<sup>167</sup> REDESCA. Notes from visit to Costa Rica, April 2023

<sup>168</sup> Ibid.

<sup>169</sup> REDESCA. Notes from visit to Costa Rica and meeting with recyclers, April 2023.

<sup>170</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 631.

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workers in pineapple companies -many of them migrants<sup>171</sup> - and for Ngöbe-Buglé indigenous migrant workers from Panama, who suffer violations of their labor rights by coffee companies<sup>172</sup> .

100. In view of the situation of migrant workers, REDESCA urges the application of Inter-American standards on the subject and urges the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a call also made by the Ombudsman's Office, to which the State has indicated that it would not be prudent to ratify this instrument in the near future<sup>173</sup> .

### El Salvador

101. REDESCA welcomes the fact that El Salvador has a broad legal framework in terms of labor rights, in which, for example, the Constitution recognizes the right of all workers to earn a minimum wage, regular and fair working conditions, paid rest, jurisdiction in case of conflicts, among others<sup>174</sup> . It also highlights the approval by the Legislative Assembly of a law reform that obliges employers to register their employees in the social security system (without exempting from this obligation workers who complete their probationary period, or temporary workers)<sup>175</sup> and takes note of the information provided by the State, which indicated that by 2021 the employment rate would be 95%, with the rate in rural areas being 94.5% and of the urban area 95.2%, while the unemployment rate would be 5%, being that of men 5% and that of women 5.2%<sup>176</sup> .

102. Without detriment to this, the Rapporteurship has followed with concern different measures that would have affected labor rights in various sectors in 2022. Thus, on the one hand, it was observed the situation of vulnerability in which workers in the education sector would have been left in the face of the guidelines for hiring interim teachers, as well as delays in the payment of salaries of interim teachers, teachers who were elected to serve on the boards of the Carrera Docente, the Qualifying Tribunal and the Tribunal of the Carrera Docente. On the other hand, it was observed that, in mid-March and after the change in the Ministerial Cabinet, a significant number of managers (at least 50) and departmental directors were dismissed, and the Human Rights Ombudsman requested to ensure that in this type of measures, compliance with due administrative process is verified in each case in accordance with the law. In addition, there were reports of violations in state institutions, indicating that there were illegal acts or violations against labor stability, state tolerance of illegal dismissals and denial of benefits or labor rights. In this regard, the organizations denounced more than 14,000 dismissals in the public sector since the change of government<sup>177</sup> .

103. In this worrisome scenario, REDESCA also took note of the criminalization of the defense of labor and union rights that would have occurred in the framework of the commemoration of Labor Day in El Salvador in 2022, since the Government indicated that people who demonstrated outside the activity it had organized and the provisions implemented would be arrested, while those who did so would be considered

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2020 <sup>171</sup> ICHRP, [Costa Rica: High risk situation denounced for workers in pineapple companies, many of them migrants](#), August 21,

<sup>172</sup> ICHRP, [Costa Rica: Indigenous migrant workers in Panama suffer labor rights violations by coffee companies](#), 21 August 2020

<sup>173</sup> Ombudsman's Office of Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, May 8, 2023.

<sup>174</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>175</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 857.

<sup>176</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>177</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, paras. 857-871.

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"criminals and gang defenders". REDESCA found that, in line with these and other statements, during May 1, several roadblocks were set up on different highways in the country, with which the security authorities prevented the participation of dozens of people<sup>178</sup>.

104. In the context of these roadblocks, police officers reportedly searched bus passengers for tattoos, which in the context of the state of emergency were used to prove alleged gang involvement. In this regard, participants in the marches emphatically rejected the link between their mobilization and the defense of gangs. Faced with this scenario, civil society organizations in El Salvador pointed out to the Commission and REDESCA that through these statements and measures the Government would continue to instrumentalize the security regime to limit the guarantee of human rights in the country. In response, the Rapporteurship indicated that these statements of stigmatization and threats of detention would have generated risks for those who defend labor and union rights in the country, by creating a hostile and intimidating environment for the defense of these rights. Likewise, they would constitute an impediment to the free exercise of the right to freedom of expression and the right to freedom of association for labor purposes<sup>179</sup>.

105. In the same vein, the DESCA Special Rapporteur notes that the GTPSS has reiterated the need for the Salvadoran State to establish measures to increase public investment and active policies to promote the labor market insertion of vulnerable sectors, as well as to advance in actions to improve the quality of employment, seeking to reverse the high rates of precarious work and guarantee work as a right. Likewise, it has emphasized the importance of expanding programs to assist young people who suffer difficulties in educational and labor insertion, as well as identifying financing options to establish unemployment insurance, in addition to making a specific call to reduce the strong gender gaps that undermine the realization of women's rights and ensure non-discrimination of the LGBTI population<sup>180</sup>.

106. The Office of the Special Rapporteur considers that guaranteeing labor and trade union rights in the country is of particular importance, not only to comply with its international obligations in this area, but also because in the context of the economic reasons for migrating, the guarantee of labor rights plays a decisive role, as it is the way in which people can access resources to meet their most basic needs and live a decent life. In this regard, it has been indicated that among the people who indicate having migrated for economic reasons in the Northern Triangle countries, half indicate that they were motivated by unemployment in the country (49%), although with a higher proportion of Salvadorans (54%), who identify unemployment as the main economic reason for migration<sup>181</sup>.

## Guatemala

107. In this context, according to the ILO, the real minimum wage for Guatemala has varied between the second semester of 2021 and the first semester of 2022 with an upward trend<sup>182</sup>. In this regard, according to official data, the unemployment rate for 2021 in the country was observed at an average of 2.2%, being 2.9% for women<sup>183</sup>. Similarly, according to data from the Ministry of Labor, 524 people during 2022 were able to access the Temporary Work Program abroad, especially in Canada and the United States<sup>184</sup>. In this regard, it should be noted that, according to civil society organizations, although in 2022 the minimum wage

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<sup>178</sup> Ibid

<sup>179</sup> Ibid

<sup>180</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR, OAS/Ser.L/XXV.2.20, September 23, 2020](#), para. 32.

<sup>181</sup> IDB, In [the Footsteps of the Migrant: Perspectives and Experiences of Migration from El Salvador, Guatemala and Honduras in the United States](#), December 2019, p. 13.

<sup>182</sup> ILO, Labor Outlook 2022: Latin America and the Caribbean, 2022, p. 77.

<sup>183</sup> ILO, Labor Outlook 2022: Latin America and the Caribbean, 2022, p. 128.

<sup>184</sup> Ministry of Labor and Social Security of Guatemala, [Rendición de cuentas: Primer cuatrimestre de 2022](#), p. 21.



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increased by 5%, the consumer price index also increased by 7%. In this sense, according to estimates by civil society organizations, people have lost 2% of their purchasing power<sup>185</sup>.

108. Likewise, the Office of the Special Rapporteur notes that in Guatemala for 2019, 29.3% of the economically active population was in some type of salaried employment relationship, while 32.5% was in a non-salaried situation. In 2021, 50.6% of the economically active population was in a salaried relationship, while 37.7% was in a non-dependent situation; of which 43.1% of these people corresponded to women, 8.6% of whom provided domestic service and 11.9% as auxiliary family workers<sup>186</sup>.

109. In this regard, REDESCA notes that in Guatemala, labor relations are codified in the Labor Code, as are all matters relating to rules on access to social security, wages and vacations. Articles 102 and 106 of the Constitution refer to the rights of unionization and collective bargaining, and are regulated in articles 206, 218 and 36 to 56 of the Labor Code respectively<sup>187</sup>.

110. Considering the above, the Office of the Special Rapporteur notes that, according to the report of the United States Department of Labor (USDOL), Guatemala is one of the countries with the most significant progress in the eradication of child labor and its worst forms, having implemented various strengthening and inspection actions at the national level. This is an important step forward, considering that, according to the International Labor Organization, in 2002, at least 20% of Guatemala's economy, especially the agricultural export sector, depended on child labor. In this regard, more than 60 children were rescued during inspections for child labor during the year<sup>188</sup>.

111. On the other hand, regarding the guarantee of social security, REDESCA has learned that in July 2021, the Constitutional Court (CC) issued a ruling and revoked the provisional suspension of the regulation contained in Governmental Agreement 89-2019, which allows part-time work in Guatemala, establishing that there is no social security coverage for this group of workers. REDESCA takes note of the efforts of the authorities to present a solution, taking into consideration the importance of the issue, to the extent that part-time work has increased after the pandemic, registering more than 30 thousand contracts in this modality as of October<sup>189</sup>.

## Honduras

112. In relation to Honduras, the State reported that the unemployment rate for men in urban areas is 8.5% for 2022 and it takes an average of 3.3 months to get a job<sup>190</sup>. In the same sense, the National Commissioner for Human Rights of Honduras (CONADEH), reported that the dynamics of the Honduran labor market has presented a marked growth of the underemployed population, from 643,481 people in 2001 to 2,570,068 in 2018 (the underemployed population grew in that period by 299.4%)<sup>191</sup>.

113. Underemployment in the country has maintained an average annual growth rate of 8.5%, reaching its highest growth rates in the periods 2003-2004 of 31.5% and in 2014-2015 with 44.9%<sup>192</sup>.

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<sup>185</sup> SwissInfo, [Guatemala's minimum wage increased by 5% in 2022, says Oxfam](#), May 1, 2023

<sup>186</sup> ILO, Labor Outlook 2022: Latin America and the Caribbean, 2022, p.175.

<sup>187</sup> FUNDAPEM, [Toolbox of the Training Course on Trade Union Rights in Guatemala](#), 2021

<sup>188</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1052.

<sup>189</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1058.

<sup>190</sup> Secretariat for Human Rights of Honduras, Contributions of the State of Honduras to the REDESCA request, Note, 177-DPM-SRECI-2023, April 20, 2023, p. 10.

<sup>191</sup> Idem

<sup>192</sup> National Human Rights Commissioner of Honduras, Response to the questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, April 3, 2023, p. 21.

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Additionally, with respect to the occupational field, REDESCA notes that the largest proportion of the employed are self-employed (41.4% on average), followed by private salaried workers (37.2%), unpaid family workers (12.4%), public salaried workers (6.2%) and domestic workers (2.8%)<sup>193</sup>.

114. However, REDESCA takes note of the declaration of unconstitutionality of the Framework Law on Social Protection, in force since 2015, following criticism that it undermined public health and the unitary social security system. In this regard, REDESCA takes note of the delay in subsidy payments for recently unemployed workers, resulting from the blocking of deposits coming from the Private Contributions Regime (RAP), as a consequence of the declaration of unconstitutionality<sup>194</sup>.

115. Likewise, the Special Rapporteur notes the entry into force of the increase in the minimum wage for 2022, establishing payments from 30 to 60 lempiras per hour of work, which represents a percentage adjustment of up to 7.5%, without prejudice to the fact that the amounts depend on the type of work and the size of the company<sup>195</sup>. For its part, the State pointed out that by 2022, the number of people benefiting from Social Security in the areas of health and social security will reach 1,015,540 and 1,403,835, respectively. However, in both cases, the number of beneficiaries exceeds the number of contributors<sup>196</sup>.

116. Additionally, REDESCA also takes note of the repeal of the Hourly Employment Law, implemented in 2014 and intended to be a temporary rule to reduce unemployment rates in the country. In this sense, it is intended to end rules that limited the labor rights of workers who would perform in this work model, such as union organization, payment of minimum wage, among others. However, a new labor reform on these issues is pending in the country<sup>197</sup>.

## Mexico

117. Regarding labor rights, the State reported that, by January 2023, the employed population reached 58.4 million people (97 % of the economically active population): an annual increase of 2.8 million; in the same month of 2022 it was 55.5 million. Women's employment was 23.4 million, 1.7 million more than in the same comparison period<sup>198</sup>. Likewise, by January 2023, the employed population in the labor informality was 32 million people and the Labor Informality rate was 54.8 % of the employed population<sup>199</sup>.

118. In this regard, the Office of the Special Rapporteur notes that the right to work in Mexico, the Constitution guarantees non-discrimination of persons in exercising their right to work. By virtue of this, Articles 5 and 123 state that no person may be prevented from engaging in the profession, industry, trade or work that suits him/her, and that everyone has the right to decent and socially useful work, respectively<sup>200</sup>. Similarly, Article 3 of the Federal Labor Law (LFT) states that no conditions may be established that imply discrimination among workers on the basis of any condition that violates human dignity<sup>201</sup>. In this regard, REDESCA notes that in September 2021, the SCJN determined that the failure to assign an identity document

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<sup>193</sup> *Id.*, p. 26

<sup>194</sup> *Ibidem*

<sup>195</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, paras. 1201-1202.

<sup>196</sup> Secretariat for Human Rights of Honduras, Contributions of the State of Honduras to the REDESCA request, Note, 177-DPM-SRECI-2023, April 20, 2023, p. 16.

<sup>197</sup> *Ibid.*, para. 1203

<sup>198</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 39.

<sup>199</sup> *Id.*, p. 40

<sup>200</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 41.

<sup>201</sup> Chamber of Deputies of the Congress of the Union, [Federal Labor Law](#), published in the Official Gazette of the Federation on April 1, 1970.

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to migrants with humanitarian visitor status is discriminatory and violates their right to identity, health, and work<sup>202</sup>.

119. Similarly, REDESCA was able to gather information on the situation of informal recyclers in Iztapalapa, Mexico City. In this regard, the Office of the Special Rapporteur was able to learn about the precarious labor situation in which these people carry out their work. Specifically, REDESCA observed with concern that many of the people engaged in this work are known as "volunteers", without receiving any type of benefit or employment benefit, despite the fact that they are the only people engaged in the collection, separation, and classification of solid waste in the city. In this sense, REDESCA is concerned that on the one hand there is coercion by the union of workers in the sector that does not allow their formalization and on the other, a regime known as payroll 8, which in some way formalizes their labor situation. The latter would be in adherence to recommendation 7/16 made by the human rights entity of the city<sup>203</sup>.

120. At the same time, REDESCA is aware that Mexico has implemented a program to provide migrants from Guatemala and Belize with a Unique Population Registry Code (CURP) so that they can work at the border. Through this mechanism, they will be able to access social, financial, and labor services, for which the Government affirmed that now "it is assigned with inclusion criteria, in order to leave no one behind and no one out"<sup>204</sup>.

121. Regarding the challenges facing the guarantee of the right to work in the context of human mobility, civil society organizations reported that in 2021, 62.5% of people indicated working in the informal sector compared to 37.5% in the formal sector<sup>205</sup>. In turn, the Survey on Refugee Population in Mexico 2017 (ENPORE)<sup>206</sup> identified that the main sectors in which they work are services, such as: food preparation, domestic work and beauty salons, indicating an absence of labor rights and increases the risk of people being detained. Similarly, the conditions of informal work imply the impossibility of accessing financial services such as a bank account. This is noteworthy, since the people who died on March 27, 2023, in the temporary stay in Ciudad Juarez were detained by immigration authorities while selling on the street<sup>207</sup>.

## Nicaragua

122. With respect to Nicaragua, the ILO reported that the trend of the real minimum wage is downward, as an impact of the acceleration of inflation<sup>208</sup>. Similarly, according to official data, the country has a total employment rate of 64.3% of the economically active population<sup>209</sup>. On the other hand, REDESCA noted that the impact of the closure of civil society organizations would have an impact on the local economy, leaving at least a thousand people unemployed. In this sense, the scope of formal employment in the private sector would be increasingly reduced. According to the World Bank's High Frequency Survey, about 10 percent of those who were formally employed before the pandemic transitioned to informal work by the end of 2021<sup>210</sup>.

123. Additionally, REDESCA notes with concern reports of high levels of unemployment, as well as the significant number of people working in the informal sector, particularly women, indigenous peoples and

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<sup>202</sup> Mexican Supreme Court of Justice, [Amparo en revisión 114/2020](#), September 22, 2021.

<sup>203</sup> REDESCA, notes from the Meeting with waste pickers from Iztapalapa, WIEGO and representatives of the CDHCDMX, April 17, 2023.

<sup>204</sup> FORBES, [Mexico offers CURP to migrants from Guatemala and Belize for their affiliation to IMSS](#); Segob, May 8, 2022

<sup>205</sup> Asylum Access Mexico, (December 2022) Lack of access to employment as an impediment to integration into Mexican society. Asylum Access Mexico

<sup>206</sup> Government of Mexico, Survey on the refugee population in Mexico. Principales Hallazgos, COMAR-UPMRIP-ACNUR, 2017.

<sup>207</sup> Southern Border Monitoring Collective, Response to the questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, May 2023, p. 12.

<sup>208</sup> ILO, Labor Outlook 2022: Latin America and the Caribbean, 2022, p. 77.

<sup>209</sup> Id., p. 145

<sup>210</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#). OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1355.

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Afro-descendants<sup>211</sup>. Likewise, it has reported the lack of tripartite agreements regarding the adjustment of the minimum wage and also regarding the working conditions of women in some sectors, such as maquilas and domestic work, and is also concerned that working conditions in these sectors continue to be precarious and continue to expose women working in them to serious risks of abuse and exploitation<sup>212</sup>.

124. In the same vein, REDESCA has received information about the cancellation of the legal status of the organization María Elena Cuadra, dedicated for several years to the defense of the labor rights of women maquila workers in the country and in various parts of Central America. As background, given that the organization foresaw its possible cancellation by the State, in 2021 it filed a contentious-administrative lawsuit against the Ministry of the Interior to certify the directives of its organization, in order to prove that it would be complying with the regulatory requirements. The Special Rapporteur regrets the circumstances that the organization and its members are going through, and calls on the State of Nicaragua to rescind the aforementioned measures and allow it to continue providing its valuable services to women working in the maquilas<sup>213</sup>.

125. Likewise, REDESCA received information indicating that the State has eliminated from the records of the Nicaraguan Social Security Institute (INSS) all elderly persons who have been declared stateless and "traitors to the homeland". As a consequence, neither they nor their families would have access to the payment of their pensions. There would also be no way to obtain certificates that they were ever insured within the social security system<sup>214</sup>.

## Panama

126. REDESCA noted that the country was seriously impacted by the pandemic and that, although there have been improvements in the labor market, high levels of informality and self-employment persist. In particular, as of 2022, it was reported that "the level of employment continued to be 8% below pre-pandemic values, and the unemployment rate reached 11.1% (while in 2019 it was 7%)<sup>215</sup>.

127. Likewise, the Rapporteurship has closely followed reports of the massive suspension of labor contracts in Panama in the context of the pandemic, arguing that economic recovery would have been given priority over the labor rights of workers. For example, the Union of Workers of the Ministry of Health (Sintraminsa) denounced the dismissal of 1,500 administrative workers from the union, calling on the authorities to guarantee their labor rights and the agreements on the salary scale, while stating that in recent years they had experienced much anxiety and an atmosphere of job insecurity<sup>216</sup>. For its part, the National Council of Organized Workers of Panama (Conato) has indicated that, due to personnel cuts, the workload of workers has increased disproportionately<sup>217</sup>.

128. Likewise, note was taken of the various strikes in the health sector to demand better salaries and of the stoppage of work at facilities nationwide by more than 324 laboratory technicians due to the fact

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<sup>211</sup> Committee on ESC rights, Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5, 11 November 2021, para. 21.

<sup>212</sup> *Id.*, para. 23, 25

<sup>213</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1356.

<sup>214</sup> IACHR-REDESCA, [Nicaragua: IACHR and REDESCA express concern over violations of property and social security rights](#), April 14, 2023

<sup>215</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1390.

<sup>216</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1414.

<sup>217</sup> *Ibid*, para 1417

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that they had not proceeded to make salary adjustments despite meeting the conditions -although the stoppage was ended by an agreement reached with the authorities-. In this context, there have been complaints that there has been a reduction in the number of surgeries and a low average attendance of patients to medical appointments, laboratories and radiology studies, as well as the lack of cleaning and disinfection of sanitary facilities<sup>218</sup>.

129. In the context of the informal labor market and within the framework of the visit to the country, REDESCA highlighted the situation of vulnerability that waste pickers are experiencing, in which their labor rights and the enormous socioeconomic contribution they make are not being recognized<sup>219</sup>. Thus, from its visit to Cerro Patacón - one of the largest landfills in the country and which is estimated to receive more than 2 thousand tons of waste daily - it was possible to observe the urgent need to protect these people in view of the announcement of the closure of the landfill, which requires a contingency plan that allows them to continue performing their work, access to means of subsistence and their participation in the design of policies on the matter<sup>220</sup>. In this regard, it is noteworthy that, according to the characterization of recyclers conducted by the University of Panama with the National Movement of Recyclers of Panama, by 2018 about 2,000 people would depend directly on the activity of informal recycling, of which approximately 7% were people over 61 years old and had an average of 4 dependents, while 2.4% were foreigners<sup>221</sup>.

#### iv. Right to food

130. The right to food is contemplated in Article 12 of the Protocol of San Salvador, which establishes both the individual right to adequate nutrition and the obligations of States to improve methods of production, supply, and distribution of food. It is also expressly recognized by Article XI of the American Declaration of the Rights and Duties of Man, within the framework of the right to the preservation of health and well-being, as well as by Article 34 of the Charter of the Organization of American States. Similarly, the Inter-American Convention on the Protection of the Human Rights of Older Persons emphasizes the right to food and nutritional security<sup>222</sup>. In this sense, the IACHR has emphasized that adequate nutrition is essential for the psychomotor development of children and is also necessary to promote and improve the physical and mental functioning of persons<sup>223</sup>. In this context, this section will point out the general situation of access to this right, especially for those people in the most vulnerable situations.

##### Costa Rica

131. REDESCA has observed challenges in guaranteeing food security for the population. Thus, it has noted that, based on the Household Survey 2021, it has been pointed out that 16 out of every 100 households in the country presented moderate to severe food insecurity and 2 out of every 100 households severe food insecurity, being a problem that has been invisibilized and on the rise that has particularly affected women heads of household and the migrant population<sup>224</sup>. Along the same lines, FAO identified that between 2019 and 2021, the prevalence of severe food insecurity reached 2.8%, reflecting an increase of one percentage

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<sup>218</sup> Ibid, para. 1415

<sup>219</sup> REDESCA. Notes visit to Cerro Patacón.

<sup>220</sup> Ibid.

<sup>221</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1418.

<sup>222</sup> IACHR and REDESCA. [DIGEST of Economic, Social, Cultural and Environmental Rights Inter-American Standards. OEA/Ser.L/V/II Doc. 465, December 31, 2021](#)

<sup>223</sup> IACHR, Situation of Human Rights in Cuba, OEA/Ser.L/V/II.61 Doc. 29 rev. 1, October 4, 1983, para. 2.

<sup>224</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 568.

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point compared to the 2014-2016 period, while moderate or severe food insecurity reached 15.9% of the Costa Rican population, with an increase of 3.7 percentage points in the same period<sup>225</sup>.

### El Salvador

132. REDESCA takes note of the various provisions in the legal system for the protection of the right to adequate food<sup>226</sup> and the National Food and Nutrition Security Policy 2018-2028 and highlights its importance<sup>227</sup>. Despite this, it notes that the high levels of poverty in the country have resulted in a situation of hunger and food insecurity, in the face of which it has come to be estimated that in El Salvador there would be approximately 985,000 people with hunger, making it one of the five countries in the region with the greatest challenges in this area. In the same sense, it is observed that the rate of severe food insecurity reaches 14.7% of the population, while moderate or severe food insecurity reaches 46.5%<sup>228</sup>.

133. It is noteworthy that this situation is aggravated by the impacts of the climate emergency, where hunger has been reported to be a common phenomenon for many families in the Central American Dry Corridor considering the droughts, rains and floods caused by storms and hurricanes in 2020, together with the impact of the COVID-19 pandemic<sup>229</sup>.

### Guatemala

134. REDESCA notes that with regard to the right to food, Guatemala has a National Food and Nutritional Security Policy, which establishes as Food and Nutritional Security "the right of every person to have physical, economic and social access, timely and permanently, to adequate food in quantity and quality, with cultural relevance, preferably of national origin, as well as its adequate biological use, to maintain a healthy and active life, with cultural relevance, preferably of national origin, as well as to its adequate biological use, to maintain a healthy and active life<sup>230</sup>. In this regard, in March 2022, using the Integrated Food Security Phase Classification (CIF) protocol, the State analyzed the situation of acute food insecurity in the 22 departments of the country, 17.4 million inhabitants<sup>231</sup>. In 2021-2022, the baseline survey of the Great National Crusade for Nutrition (GCNN) was conducted, which is part of the impact evaluation design of this Strategy. This baseline compared the 114 municipalities of the 10 departments prioritized in the GCNN (Alta Verapaz, Chiquimula, Huehuetenango, Quiché, Sololá, Totonicapán, Chimaltenango, San Marcos, Jalapa, and Quetzaltenango) with the 226 municipalities that are not part of the GCNN<sup>232</sup>.

135. The Special Rapporteurship notes with high concern the cases of malnutrition in the country, specifically, the Ministry of Public Health and Social Assistance (MSPAS) reported that the first six weeks of 2022 there were 3,230 cases of children under 5 years of age with acute malnutrition, increasing by 0.7%

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<sup>225</sup> Ibid, para. 569

<sup>226</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>227</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR, OAS/Ser.L/XXV.2.20, September 23, 2020](#), para. 20.

<sup>228</sup> REDESCA, VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 831.

<sup>229</sup> OXFAM International, [Los Rostros del Hambre en Centroamérica Inseguridad alimentaria y nutricional en el Corredor Seco como consecuencia de la temporada ciclónica, sequías y la COVID-19](#), March 2021.

<sup>230</sup> Presidential Commission for Peace and Human Rights of Guatemala, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, Oficio. 0668-2023-DIDEH/COPADEF/WEBS/LFDL/sf, April 25, 2023, p. 13.

<sup>231</sup> Ibid.

<sup>232</sup> Presidential Commission for Peace and Human Rights of Guatemala, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, Oficio. 0668-2023-DIDEH/COPADEF/WEBS/LFDL/sf, April 25, 2023, p. 15.

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compared to the same period in 2021. This has resulted in 4.6 million people being at risk of food insecurity. It should be taken into consideration that the main causes of child mortality are pneumonia and acute diarrheal diseases and 54 percent of these diseases are associated with some degree of malnutrition. In the same sense, according to data provided by the health authority, the mortality rate due to acute malnutrition in Guatemala is 0.13 percent<sup>233</sup>. Additionally, REDESCA reiterates its concern regarding the implementation of the precautionary measures ordered by the IACHR in relation to the Laguna Larga Community, which requires the State to guarantee access to adequate food in nutritional and cultural terms, as well as drinking water for the displaced population<sup>234</sup>.

136. On the other hand, civil society organizations have denounced that in Guatemala, food assistance plans and the entities that implement them are out of context with the social, cultural and food reality of the communities. In this regard, they have mentioned that these programs are provided with processed and canned food to the affected communities, which would not be solving their food needs. This would be exacerbated by land grabbing by agribusinesses, which would be affecting the traditional agricultural practices of local communities, impacting their diets and the quality of their crops. This is a consequence of the use of agrochemicals in plantations that also end up affecting water bodies in the territories<sup>235</sup>.

### Honduras

137. REDESCA considers of great concern the situation of food insecurity in the country, which, in addition to reaching almost 6.5 million people, is the result of high levels of inequality and poverty, the increasingly evident impacts of the climate emergency, as well as the lack of effective resolution of social, agrarian and land conflicts, which significantly limits the possibilities of access to livelihoods for part of the population, especially rural populations, indigenous peoples, Afro-descendants, peasant communities and small farmers. This is aggravated by the considerable decrease in the purchasing power of households<sup>236</sup> in the face of the sustained increase in prices due to inflationary pressures resulting from the pandemic and the war in Ukraine<sup>237</sup>. In this regard, REDESCA has observed that 65.7% of households' income is not sufficient to cover the costs of the basic food basket<sup>238</sup>.

138. In this line, REDESCA has also learned of complaints from mayors and top authorities of the department of Gracias a Dios about the famine crisis resulting from natural disasters, for which they signed an agreement to strengthen the municipal system to prevent natural disasters during the 2022 hurricane season in the Mosquitia region, the most inhospitable and least populated region of the country, where rains have hit dozens of communities affecting thousands of hectares of crops, causing limited food to reach households in the six municipalities<sup>239</sup>.

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<sup>233</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1030.

<sup>234</sup> IACHR, [Resolution No. 36/2017, Precautionary Measure No. 412-17: Evicted and displaced inhabitants of the Laguna Larga Community regarding Guatemala](#), September 8, 2017.

<sup>235</sup> IACHR, Public Hearing: Human Rights Situation of the Indigenous Peoples of Guatemala, 174th Regular Session, November 12, 2019.

<sup>236</sup> OHCHR, Situation of human rights in Honduras Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras, A/HRC/52/24, 1 March 2023, para. 13.

<sup>237</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1168.

<sup>238</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1168.

<sup>239</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1187.

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139. The World Food Program (WFP) has also indicated that in the southern and western regions - which correspond to the Dry Corridor of Honduras - four years of continuous drought have reduced the population's ability to secure sufficient nutritious food throughout the year. Likewise, almost three quarters of the families that depend on agriculture own small plots of land or work as day laborers for large landowners, so that limited access to land, technology and agricultural assets also become obstacles to the potential development of the agricultural sector<sup>240</sup>. In this regard, REDESCA notes with concern that the population in the worst conditions are mainly subsistence farmers who have suffered losses of more than 50% of basic grains and are forced to use crisis and emergency coping strategies to bridge their food gaps, such as migration. In this group, food expenditure may represent more than 75% of total expenditure<sup>241</sup>.

### Mexico

140. Mexico has a federal Food Aid Law for Workers and Mexico City has a Food and Nutritional Security Law for the Federal District<sup>242</sup>. Likewise, Article 35 of the Organic Law of the Federal Public Administration empowers the Ministry of Agriculture and Development to formulate and conduct rural development policy; oversee compliance with and enforce animal and plant health regulations; promote programs and develop official animal and plant health standards; and promote fishing activities and contribute to food security by guaranteeing the supply of basic products<sup>243</sup>.

141. At the same time, the National Sustainable Development Program seeks to improve access to food for the population through actions to increase the availability and accessibility of basic foodstuffs, increase income from agricultural production activities and rebuild the social fabric. There is also the PSADR,<sup>244</sup> and the Institutional Program 2020-2024 for Mexican Food Security (PISAM)<sup>245</sup>. To ensure the right to adequate food in entities that serve specific population groups, there is the Comprehensive Strategy for Social Food Assistance and Community Development, as well as the Strategy for Healthy, Fair, Sustainable and Economic Food<sup>246</sup>.

142. With regard to human mobility, REDESCA received information about difficulties in accessing food with high nutritional value in the places of refuge or shelters where they are staying. Similarly, when people are spending the night on the streets or in public places such as seafronts, squares or parks, they do not have the means to access sufficient food<sup>247</sup>.

### Nicaragua

143. REDESCA notes that according to the Food and Agriculture Organization of the United Nations (FAO), Nicaragua was the country with the highest prevalence of undernourishment (18.6%) in the period 2019-2021, followed by Guatemala (16%) and Honduras (15.3%). Which is equivalent to almost 1.2 million

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<sup>240</sup> WFP. [Honduras](#). 2023

<sup>241</sup> National Human Rights Commissioner of Honduras, Response to the questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, April 3, 2023, p. 36.

<sup>242</sup> Mexico City Human Rights Commission, Response to questionnaire on poverty, climate change, poverty, ESCER in Central America and Mexico in the context of human mobility.

<sup>243</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 94.

<sup>244</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 96.

<sup>245</sup> Secretaría de Agricultura y Desarrollo Social y Seguridad Alimentaria Mexicana, [Programa Institucional 2020-2024 de Seguridad Alimentaria Mexicana](#).

<sup>246</sup> Secretaría de Bienestar, Government of Mexico, [Estrategia para una alimentación saludable](#), Press, July 29, 2020

<sup>247</sup> REDESCA, notes from visit to Tapachula and Mexico City, April 2023



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hungry people in the country<sup>248</sup>. Likewise, more than a third of the inhabitants cannot afford a healthy diet, even when they have one of the lowest costs to access a healthy diet<sup>249</sup>.

144. In this regard, REDESCA shares the concern of the Committee on ESC rights, noting that, according to the report, in the State party there are high levels of malnutrition and malnutrition, including overweight and obesity<sup>250</sup>. In addition, according to civil society organizations, Nicaragua is among the 45 countries worldwide that are exposed to a serious food crisis<sup>251</sup>. Consequently, REDESCA is concerned that 3% of Nicaragua's population would be in a zone of concern of very high food insecurity, and up to 37% of the population in a high zone<sup>252</sup>. In addition, spending on food is between 74% of the household budget in the most vulnerable families, and 48% in the case of the least vulnerable families<sup>253</sup>.

### Panama

145. In the framework of its visit to the territory, REDESCA received information that living costs in the country were very high, which meant that even working people could not always guarantee their access to adequate food and a balanced diet<sup>254</sup>. In this context, people living in poverty, migrants, indigenous peoples and recyclers would be seriously impacted.

146. Regarding waste pickers, the Office of the Special Rapporteur reiterates its concern about the announcement of the reduction and closure of landfills, since not being accompanied by any proposal or policy for labor reintegration or protection of waste pickers during or after the implementation of the measure would leave these people in a state of serious vulnerability in which they would be deprived not only of their workplace, but also of alternatives to address their situation of poverty and meet their most basic needs, including food<sup>255</sup>.

## **v. Right to a healthy environment**

147. The right to a healthy environment is recognized in Article 11 of the Protocol of San Salvador, and establishes both an individual right to enjoy a healthy environment and to have access to basic public services. It also establishes the State's obligation to protect, preserve and improve the environment. Likewise, the existence of a healthy environment is a fundamental requirement for the exercise of the other human rights recognized in the Inter-American system<sup>256</sup>. Similarly, the IACHR Court in its Advisory Opinion OC 23/17, pointed out that this right has two types of elements, a subjective and a procedural characterization. Regarding the former, it refers to all those rights that are directly impacted by the environmental degradation or damage that occurs (cases such as the right to health, life, integrity, food, among others); and those procedural rights that guarantee the implementation or monitoring of the former. These would be the rights of access to information, participation, and justice in environmental matters<sup>257</sup>. Likewise, the Commission, through Resolution 3/2021 on Climate Emergency: Scope of inter-American human rights obligations, highlights that

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<sup>248</sup> FAO, [Regional Overview of Food and Nutrition Security-Latin America and the Caribbean 2022: Towards Improved Affordability of Healthy Diets](#), 2023, p. 13.

<sup>249</sup> *Ibid.*, p. 44, 66

<sup>250</sup> Committee on ESC rights, Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5, 11 November 2021, para. 38.

<sup>251</sup> Action Against Hunger, Food Crisis in Latin America, Report July 2022, p. 3.

<sup>252</sup> *Id.* at 7

<sup>253</sup> *Id.* at 8

<sup>254</sup> REDESCA, notes of visit to Panama, May 2023

<sup>255</sup> REDESCA, notes of visit to Panama, May 2023

<sup>256</sup> IACHR and REDESCA, [COMPENDIUM Economic, Social, Cultural and Environmental Rights Inter-American Standards, OEA/Ser.L/V/II Doc. 465, December 31, 2021](#), para. 77.

<sup>257</sup> See: IACHR Court, Advisory Opinion OC-23/17 on State Obligations in Relation to the Environment in the Framework of the Protection and Guarantee of the Rights to Life and Personal Integrity, Series A No. 23, November 15, 2017.

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this right to a healthy, balanced and pollution-free environment is part of the set of rights that States must guarantee and protect due to their obligations at the national and regional level<sup>258</sup>.

### Costa Rica

148. REDESCA highlights that, as recognized by the GTPSS, the country has ratified an extensive set of international treaties that protect the right to a healthy environment, which adds to the constitutional and regulatory recognition of this right<sup>259</sup>. Likewise, REDESCA takes note of the progress on climate change in the country, which is reflected in the policies to address the climate emergency developed by the State, including the National Policy for Adaptation to Climate Change of Costa Rica 2018-2030, the National Plan for Adaptation to Climate Change, the National Risk Management Policy 2016-2030 and the National Risk Management Plan 2021-2025 - which would have follow-up mechanisms<sup>260</sup> -, as well as the adoption by Costa Rica's socioeconomic regions, with the support of the Ministry of National Planning and Economic Policy, the Ministry of Environment and Energy and UNEP, of action plans that prioritize the adoption of measures and actions to adapt to the climate crisis, thus promoting climate-resilient regional planning and development<sup>261</sup>.

149. Despite this, REDESCA stresses the importance of continuing to make progress in this area, especially considering the serious impacts of the phenomena associated with the climate emergency in the country. For example, at the beginning of 2022, high temperatures, dryness and winds, facilitated the occurrence of forest fires that would have affected about 10,000 hectares of land and led to the declaration of yellow and orange alerts in the cantons of Guanacaste. Likewise, in July, the intense rains associated with tropical storm Bonnie led to the declaration of a national state of emergency, affecting homes and public infrastructure<sup>262</sup>.

150. In this context, the DESCA Special Rapporteur once again urges the State to ratify the Escazú Agreement, emphasizing that this instrument contributes to consolidate the recognition and effective protection of environmental rights and those who defend the environment in the region<sup>263</sup>. The latter is especially relevant for the country given the reports of attacks and criminalization of environmental defenders, which the GTPSS in its last report noted the lack of information on the number of cases related to attacks or threats to environmental defenders and those who are under state protection<sup>264</sup>.

### El Salvador

151. REDESCA notes that the country would have various provisions to protect the environment - including Article 117 of the Political Constitution - and access to water, the latter particularly through the General Law on Water Resources<sup>265</sup>. It also welcomes the inclusion in El Salvador's National Climate Change

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<sup>258</sup> IACHR-REDESCA, [Resolution 3/2021: Scope of inter-American human rights obligations](#), adopted December 31, 2021, para. 8.

<sup>259</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021](#), para. 20.

<sup>260</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>261</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 587.

<sup>262</sup> Ibid, para. 595-596.

<sup>263</sup> Ibid, 594

<sup>264</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021](#), para. 93.

<sup>265</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

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Plan and Nationally Determined Contribution of climate adaptation and mitigation measures concerning companies in the agriculture, livestock, forestry, tourism and energy sectors, as well as the inclusion of measures on the proper use of water, wastewater treatment and discharge, sanitation and integrated waste management for the entire business sector<sup>266</sup>.

152. On the other hand, it should be noted that REDESCA has received complaints indicating that El Salvador has a weak regulatory and institutional design to guarantee environmental rights, while the regulations -which would be scarce- would be weighted for its application due to economic interests over natural assets<sup>267</sup>. Likewise, it has been pointed out that, as in other sectors, there are limitations in the access to information, so that important figures, such as the current state of water resources, affectations in the flow of surface water, marine-coastal line, are not easily found in the portals of the institutions<sup>268</sup>.

153. As part of its monitoring activities in 2022, REDESCA observed that the impacts of climate change in the country are becoming increasingly evident. For example, the proliferation of forest fires at the beginning of the year was noted; according to the Ministry of Environment and Natural Resources (MARN), between January 1 and February 20, 2022, fires affected 3,489 hectares throughout the country, representing an increase of 238.9% over the previous year. In view of this, the Government of El Salvador issued a red alert - the maximum risk level - and called for extreme measures to avoid a possible fire. Although the red alert was modified to yellow in April, due to the reduction of fire emergencies, by September, more than 2,300 fires were recorded, affecting more than 16,000 hectares of land<sup>269</sup>.

154. In June and July, the Office of the Special Rapporteur also followed up on the emergency situation resulting from the rainy season, which would increase the danger for 1.37 million people living in areas of vulnerability, that is, 21% of the population, with floods and landslides being the most significant risks. With the passage of Hurricane Bonnie, during that season, two deaths were reported, at least 100 people were affected and 188 homes were damaged. The infrastructure of hospitals and streets was also damaged, as well as a gully reopened in Las Brisas de San Francisco. This led to the decree of a national state of emergency as of July 4, 2022. The Office of the Special Rapporteur also closely followed the serious impacts of Tropical Storm Julia, which in October generated heavy rains, landslides and floods, and caused the death of ten people. In the city of Guatajiagua, the overflowing of rivers led authorities to declare a state of emergency; in addition, eighty storm shelters were opened for those affected. By November, the National Civil Protection System reported that, in one month, 1,066 incidents related to the heavy rains had been registered, including 12 deaths, 175 affected homes, 352 landslides, 45 river overflows and 423 obstructed roads. It was also reported that 39 people were evacuated and remained in a shelter in Panchimalco, San Salvador, having lost all of their homes<sup>270</sup>.

155. In addition, REDESCA has learned that human rights defenders have faced criminalization and assassinations since the arrival of extractive and energy companies, reporting that in the last thirteen years, seven environmental defenders have been murdered in El Salvador. The lack of a legal framework that recognizes environmental defenders has been denounced, as well as the criminalization and prosecution of defenders, both alive and dead, by the State, using public security programs such as the Territorial Control Plan

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<sup>266</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 856.

<sup>267</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

on Economic, Social, Cultural and Environmental Rights-IACHR

<sup>268</sup> Ibid.

<sup>269</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, paras. 832-833.

<sup>270</sup> Ibid

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as an instrument. Thus, it has been denounced that there is a context of lack of protection, persecution, criminalization and prosecution against hundreds of environmental defenders in El Salvador, who, among others, carry out actions to protect water, denounce logging and urbanization of water recharge areas, denounce drought and contamination of water sources, and maintain control of water boards that self-manage the service from the communities<sup>271</sup>. In this context, REDESCA reiterates that the State must act forcefully and decisively to prevent attacks, threats, intimidation and/or homicides against environmental defenders, and effectively investigate and punish those responsible, including those who are directly or indirectly related to the companies.

156. On the other hand, taking into account that, according to the Germanwatch Climate Risk Index, El Salvador was the second most affected country in the region between 2009 and 2019 -after Guatemala-, ranking 25th on the list<sup>272</sup>, REDESCA welcomes the measures taken by the authorities to provide assistance and protection to people affected by these climate events; while reiterating the need to adopt decisive actions in the face of climate change and its impacts, emphasizing that the increase in climate mitigation and adaptation efforts contributes to greater development and social equity, inspired by values such as dignity, equality, solidarity and justice. To this effect and in order to guarantee access to information and the protection of environmental defenders, REDESCA urges the State to ratify the Escazú Agreement.

157. Regarding the relationship between the climate emergency and the phenomenon of human mobility, REDESCA notes that migration in the country is mainly related to landslide and drought events<sup>273</sup>. In this way, it has been pointed out that extreme drought events have caused internal migration, which, although it would remain at this level, is not ruled out as an intermediate step for international migration.<sup>274</sup>

158. Finally, in the context of the right to water, the Special Rapporteur notes that the country is suffering one of the worst water crises in the Central American region, in which it has been indicated that poor water management, coupled with climate change, has caused 80% of the Salvadoran land to be in a situation of "water stress". Although REDESCA notes that the government issued the General Law on Water Resources, which recognizes the human right to water, several organizations have indicated that it does not guarantee water as a public good, the right to participation, or sustainable management, but on the contrary, it would facilitate the commodification of the resource<sup>275</sup>.

159. Likewise, it was reported that the Environmental Fund of El Salvador (FONAES) will be closed to provide financing to the Salvadoran Water Authority (ASA), as of the entry into force of the new law. In this regard, civil organizations expressed concern that the new water authority would not be able to assume the tasks and commitments of FONAES, specifically in terms of carrying out projects related to improving the conditions of communities and managing funds to implement plans, programs, and projects for the conservation of natural resources and the environment, according to the National Environmental Strategy of El Salvador. Given this situation, REDESCA recognizes that it is a priority to adopt measures focused on solving the problem of water stress at the national level, because in the framework of the Inter-American System, the human right to water imposes the obligation on States to guarantee access to safe and sufficient water as an unavoidable condition for the satisfaction and exercise of several human rights, such as the right to life, personal integrity, and health, among others. Without detriment to this, it is necessary to emphasize that these

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<sup>271</sup> Ibid

<sup>272</sup> OXFAM International, [Los Rostros del Hambre en Centroamérica Inseguridad alimentaria y nutricional en el Corredor Seco como consecuencia de la temporada ciclónica, sequías y la COVID-19](#), March 2021, p. 6.

<sup>273</sup> World Bank, [A snapshot of migration in Central America](#), July 26, 2022.

<sup>274</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

<sup>275</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#). OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 836.

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measures should not imply setbacks in terms of environmental protection; on the contrary, it is necessary to adopt comprehensive policies and strategies to address the various impacts of the climate emergency<sup>276</sup>.

### Guatemala

160. With respect to the right to a healthy environment, REDESCA observes the momentum of legal initiatives that seek to transfer to the Ministry of Environment and Natural Resources (MARN) the steering role in environmental issues of independent institutions. Civil society organizations denounce that this measure would concentrate environmental licensing processes in a single entity, reducing independence in the approval of environmental licenses in protected areas and community lands. For its part, the State has indicated that this measure would strengthen environmental management processes, since the Ministry is the governing entity for environmental policy at the national level. Civil society emphasized that environmental permits are now granted by entities where civil society is represented on the board of directors, which guarantees their independence<sup>277</sup>.

161. In addition, within the framework of the 174th Regular Session of the IACHR, REDESCA was able to receive information on the situation of environmental rights defenders in the country. In particular, it received information on the repression against people who defend the territory and the environment by industries, with the possible consent or support of the State. REDESCA highlights its statement of November 4, 2021, in which, together with the IACHR, it condemned the excessive use of force and repression against Q'eqchi Mayan indigenous peoples, journalists and media<sup>278</sup>. Likewise, REDESCA has closely followed the situation of Mr. Bernardo Caal Xól, who served a sentence of 7 years and 4 months handed down in 2018, despite the fact that there is a lack of evidence against him, according to United Nations experts<sup>279</sup>.

162. On the other hand, the OHCHR office in the country reported that indigenous peoples are frequently displaced or evicted from their ancestral lands and territories by extractive projects and monocultures, which, in the absence of responses from the State, give rise to conflicts<sup>280</sup>. In this sense, internal migration in Guatemala is generally related to climate risk<sup>281</sup>. Additionally, civil society organizations have established that there are barriers to the implementation of the National Climate Change Action Plan due to poor collaboration between government groups at the national and local levels, insufficient science-based climate information to inform adaptation plans, and scarce funding, among other issues<sup>282</sup>.

### Honduras

163. Regarding the environmental situation in Honduras, REDESCA highlights that the Honduran economy is strongly linked to manufacturing, privatized extractive industries and large-scale agriculture, such as banana and African palm cultivation. These sectors are characterized by high socio-environmental impacts and have export as their main objective. This land use has denied the historical territorial claims of peasant communities, indigenous peoples, Afro-descendants and Garifunas. It has also led to the concentration of wealth for a minority of the population and has affected the State's ability to advance redistributive justice to

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<sup>276</sup> Ibid, para. 838

<sup>277</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para.

<sup>278</sup> IACHR-REDESCA, [The IACHR condemns the excessive use of force and repression against Q'eqchi' Mayan indigenous peoples, journalists and media outlets in El Estor](#), Guatemala, November 4, 2021.

<sup>279</sup> REDESCA, [V ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 64 rev. 1](#), 26 May 2022, para. 937; See UN, Guatemala: Stop treating indigenous human rights defenders as criminals - UN experts, 27 July 2021.

<sup>280</sup> United Nations Human Rights Council, Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/42/GTM/2, 21 November 2022, para. 58.

<sup>281</sup> World Bank, [A snapshot of migration in Central America](#), July 26, 2022.

<sup>282</sup> Amnesty International, [Follow-up to Guatemala's 2017 Review Recommendation](#), June 2022.

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improve the lives of the affected communities. This has generated social discontent and conflict in many communities in Honduras.<sup>283</sup>

164. Despite this, REDESCA welcomes the declaration of Honduras as a country free of open-pit mining<sup>284</sup>. However, REDESCA is concerned that numerous concessions, such as mining and water, have been granted without the necessary attention to international and Inter-American standards on the matter. Although there is an intention to make progress on reparation guides and manuals, civil society organizations indicated that in practice there is no effective application of standards related to business and human rights in Honduras, in part due to the disconnect between the current and previous administrations in terms of the continuity of the issue, despite the investment made by international cooperation in recent years.<sup>285</sup>

165. In this regard, the Special Rapporteur highlights the high vulnerability experienced by the country due to adverse natural events and climate change, with long periods of drought and recurrent tropical storms with extensive rainfall that affect food and nutritional security, mainly of poor people living in rural areas. Adverse conditions force people to migrate both within and outside the country in conditions of insecurity<sup>286</sup>.

166. Longer droughts in certain areas of the country, related to the El Niño weather phenomenon and increasingly heavy rains from tropical depressions or storms and the La Niña phenomenon in other parts, have had a devastating effect and incurred high costs of living. In the last six years, storms and hurricanes have increased in number and degree of destruction<sup>287</sup>.

### Mexico

167. In environmental matters, the State has proposed that through the actions proposed within the five priority objectives of the Sectoral Program for the Environment and Natural Resources 2020-2024 (PROMARNAT), the twelve guiding principles outlined in the National Development Plan (PND) have been taken into account to establish the new national consensus on which it intends to build a viable model of economic development, political organization and coexistence between social sectors<sup>288</sup>.

168. In November 2020, Mexico ratified the "Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean" (Escazú Agreement). The SRE assumed the responsibility of leading the efforts towards the full implementation of the commitments acquired through the adoption of this instrument in Mexico. To this end, it created an inter-institutional group in the federal public administration whose work is organized into three working subgroups, one for each access right of the Agreement. In December 2022, Mexico made the first contribution to the Voluntary Contributions Fund, in order to support the regional implementation of the Agreement, in the amount of US\$150,000.00<sup>289</sup>.

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283 United Nations Office for the Coordination of Humanitarian Assistance (OCHA), Humanitarian Needs Overview: Honduras, 2022.

284 IACHR, Preliminary Observations In Loco Visit to Honduras, April 28, 2023

285 IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

286 United Nations, Honduras Country Office, [Common Country Analysis: November 2021](#), p. 5.

287 United Nations Office for the Coordination of Humanitarian Assistance (OCHA), Humanitarian Needs Overview: Honduras, 2022.

288 Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023.

289 Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023.

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169. Likewise, the State mentioned that through the Sembrando Vida Program, a monthly monetary support of \$6,000 is offered to people who are part of the agricultural labor sector and who are located in rural areas, primarily in municipalities that are recognized with high levels of social backwardness and/or are owners of 2.5 hectares available for agro reforestation projects<sup>290</sup>.

170. Nevertheless, the Office of the Special Rapporteur reiterates its grave concern for the situation of land and environmental defenders in the country. According to Global Witness, Mexico is the country with the most murders of land and environmental defenders with 54 murders in 2021. Furthermore, REDESCA is concerned that more than 40% of the people murdered were indigenous<sup>291</sup>.

171. With regard to human mobility and the environment, REDESCA notes that Mexico is aware that environmental degradation and climate change lead to human mobility. In this regard, the National Population Council (CONAPO) concluded that the correlation observed between the degree of migratory intensity and extreme drought conditions, as a result of increased global warming, depends on multifactorial conditions that require a coordinated, orderly and systematic analysis by institutions and social actors<sup>292</sup>.

### Nicaragua

172. With respect to Nicaragua, in the context of guaranteeing procedural rights derived from the right to a healthy environment, the Commission and REDESCA expressed their concern over the cancellation of the legal status of the Alexander von Humboldt Center (Centro Humboldt) and the Nicaraguan Foundation for Economic and Social Development (FUNIDES) dedicated to the defense of the environment and territories in the face of climate change and the eradication of poverty, respectively<sup>293</sup>. In particular, REDESCA highlighted that the Humboldt Center also serves as the regional coordinator of the Climate Action Network for Latin America (CANLA), which encompasses a broad network of civil society organizations that brings together efforts to promote and defend climate action from a rights-based approach in the region. REDESCA especially regrets that such closures affect civil society's defense of the right to a healthy environment.

173. Similarly, REDESCA is concerned about the impact of extractive, agro-industrial and infrastructure projects on the natural resources found in the lands and territories of indigenous and Afro-descendant peoples, which seriously affects their livelihoods and ways of life, generating food crises, forced displacement and health problems for the affected communities<sup>294</sup>.

174. Nicaragua is the country with the most mining concessions in indigenous and Afro-descendant territories in Central America. There are four peoples that are being impacted by such concessions: Chorotegas, Matagalpas, Miskitus and Mayangnas, having mining concessions in 21 indigenous territories affecting 5 Chorotegas territories, 1 Matagalpa territory, 6 Mayangna territories, 7 Miskitu and 2 multi-ethnic territories (Mayangna and Miskitu). REDESCA notes that there are 229 metallic mining concessions in the country for the year 2021, covering 2.8 million hectares and representing 23% of the country's land area. According to the information analyzed, according to civil society organizations, the current government has

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<sup>290</sup> Mexico City Human Rights Commission, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, p. 19.

<sup>291</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1280.

<sup>292</sup> National Population Council, Government of Mexico [Migratory Signals](#)

<sup>293</sup> IACHR, IACHR, [RELE and REDESCA reject conviction against Cristiana Chamorro and the cancellation of legal status of organizations in Nicaragua](#), March 30, 2022

<sup>294</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1351.

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been the one that has granted the most concessions in the country's territory for metallic mining, of which 146 concessions were granted in 2021 and 114 in general during the current political process<sup>295</sup>.

### Panama

175. REDESCA highlights the various measures that the State has been implementing in the face of the climate emergency and the right to a healthy environment, especially the adoption of the National Climate Action Plan - which would allow the country to have a roadmap for the implementation of its climate commitments - through Executive Decree No. 10 of June 16, 2022. The Rapporteurship also takes note of the 2022 indicative version plan "which provides an initial approximation of the costs associated with the short-term implementation (2025) of the actions of Panama's National Climate Action Plan (PNAC)<sup>296</sup>. REDESCA also welcomes the launch of the National Climate Transparency Platform to manage and report on sustainable development initiatives, which would guarantee access to information on climate change mitigation actions, as well as Resolution No. MIPRE-2022-0010543 of March 22, 2022, which adopted the Women and Energy Nexus Roadmap with the objective of building a quantitative database and gender indicators, along with their systematic collection for the energy sector<sup>297</sup>.

176. In the same vein, REDESCA takes note of Law No. 287, February 24, 2022, which recognizes nature as a subject of rights in the country and the Draft Framework Law on Climate Change that "is structured in 215 articles focused on the establishment of a new institutional architecture for climate governance in Panama, as well as the determination of specific mandates for the sectors prioritized by the country to maintain the Republic of Panama as a carbon negative state". Likewise, it is noted that in March 2022, the Development Bank of Latin America approved a credit of US\$320 million to support a national program aimed at addressing climate change and promoting sustainable development. The above, considering that the country, despite being one of the "carbon negative" countries, would face significant challenges due to the upward trend in emissions and deforestation<sup>298</sup>.

177. Regarding the human right to water, REDESCA notes with concern that it has been reported that the water and sanitation sector in the country has the widest gaps between the indigenous and non-indigenous populations in Latin America and the Caribbean. Thus, it has been reported that 93% of the communities do not know the quality of the water supplied. Given this worrying panorama, the DESCA Rapporteur's Office reiterates its emphatic call to guarantee the right to water in conditions of equality and non-discrimination<sup>299</sup>.

## **vi. Right to education**

178. The right to education is widely addressed in various instruments of the inter-American system. Covered by Article 26 of the American Convention, and enshrined in Article 13 of the Protocol of San Salvador, it establishes the individual nature of the right, on the one hand, and various obligations for the States, including the objectives that education must pursue and the progressiveness of free access to education. It is also recognized in Article XII of the American Declaration on the Rights and Duties of Man, and in Articles 34, 47, 48, 49, 50 and 51 of the Charter of the Organization of American States<sup>300</sup>. In addition, it has been developed

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<sup>295</sup> Id., par. 1352

<sup>296</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#). OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1404.

<sup>297</sup> Ibid, para 1405-1406.

<sup>298</sup> Ibid, para 1407

<sup>299</sup> Ibid, para 1410

<sup>300</sup> IACHR and REDESCA. [DIGEST of Economic, Social, Cultural and Environmental Rights Inter-American Standards](#). OEA/Ser.L/V/II. Doc. 465, December 31, 2021



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through the different mechanisms of the Commission, through a multifaceted interpretation with respect to different groups in vulnerable situations and the corresponding State obligations for their respect and guarantee. In the framework of this report, REDESCA sought to identify the main obstacles to education in the countries of the sub-region, including the challenges of access for people in contexts of human mobility.

### Costa Rica

179. REDESCA emphasizes that the country's legal system guarantees the right to education through the ratification of various international treaties, as well as at the constitutional and regulatory level. In this framework, since 2011, as of the constitutional reform of Article 78, education in Costa Rica is free and compulsory until the completion of diversified education<sup>301</sup>. These advances have been recognized by the GTPSS, which has also taken note of the existence of programs that contribute to ensuring access and permanence in the education system for groups in vulnerable situations, such as those aimed at providing food and nutrition, student transportation, technical aids for students with functional diversity and scholarship programs of the National Scholarship Fund (Fonabe) and Avancemos<sup>302</sup>.

180. Additionally, based on an analysis of official information, REDESCA notes that between 2006 and 2020 there has been a sustained increase in public spending to guarantee educational services, so that by 2020 14.34% of public spending would be allocated to this sector (compared to 10.43% in 2006)<sup>303</sup>. Despite these measures, REDESCA is aware that in 2022 a 23% cut in the budget for public universities was announced, a measure that the government subsequently abandoned<sup>304</sup>.

181. Without detracting from the above, the State indicated that, although the country would have achieved almost universal attendance in primary education, there would still be too many young Costa Ricans who do not complete secondary education, which reduces their likelihood of finding a well-paid formal job and thus perpetuates social and economic inequalities<sup>305</sup>.

182. REDESCA notes that migrants and refugees face obstacles in accessing education<sup>306</sup> and, in fact, received information on how the lack of recognition of their educational trajectories in their countries of origin would subject them to a situation of vulnerability, since not knowing their degrees -especially those in medicine and law- would prevent them from accessing adequate jobs to lead a decent life and meet their basic needs. Likewise, in the framework of its visit, REDESCA received very worrying information about how in some cases, in order to access public universities and scholarships, the refugee resolution has been requested, which would generate that people would be forced to share personal information, which in many cases can lead to revictimization and would have no purpose or relation with the purpose of admission<sup>307</sup>. In one of the testimonies collected by the Rapporteurship, a young woman shared how she had felt very vulnerable having

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<sup>301</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>302</sup> GTPSS, Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021, para. 23.

<sup>303</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>304</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 623.

<sup>305</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>306</sup> UN, [Preliminary findings and recommendations at the end of its visit to Costa Rica. Mr. Obiora C. Okafor, United Nations Independent Expert on Human Rights and International Solidarity](#), March 3, 2022

<sup>307</sup> REDESCA. Meeting with Civil Society, April 20, 2023

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to share this document exposing the acts of torture she had been subjected to in her country of origin and which had ultimately forced her to migrate to Costa Rica<sup>308</sup>.

### El Salvador

183. REDESCA welcomes the fact that El Salvador has ratified the vast majority of treaties that recognize the right to education, as well as the policies it has implemented focused on improving access to quality education, such as health and school nutrition programs, literacy, provision of scholarships, school supplies, technological and pedagogical resources<sup>309</sup>. Thus, the country has several provisions in its legal system for the recognition and guarantee of rights such as education at all levels<sup>310</sup>. In this line, the Special Rapporteur also highlights the implementation of the reform of the first level education system, called "My New School", starting in September and emphasizes that the program aims to provide quality teaching tools, decent infrastructure, early childhood care, health and nutrition; and provides for a curricular reform focused on learning based on strengthening the qualities of each student<sup>311</sup>. Without detracting from the importance of these measures, REDESCA notes that the GTPSS has called for expanding the coverage of programs in the education sector, especially among groups in special situations of vulnerability, including indigenous peoples, people in contexts of human mobility, women, and children and adolescents<sup>312</sup>.

184. For its part, the mandate has followed closely that, based on official figures on enrollment in 2021, it is estimated that around 30.2% of Salvadoran children and adolescents of school age would not have been studying. This situation would have been particularly serious at the early education level, where only 8.8% of three-year-old children would have been enrolled; while, at the kindergarten level, a coverage of 21.4% and 49.8% was recorded for ages 4 and 5, respectively. Furthermore, although coverage would have increased to 88% between the first and third grades, it would begin to drop from the fourth grade, reaching 38.6% in the third year of baccalaureate<sup>313</sup>. On the other hand, REDESCA is concerned about reports of several months of delays in the disbursement of funds budgeted annually to schools, which are used to repair roofs, fix bathrooms or even buy stationery and other educational supplies. In this regard, it was noted that since 2021, under an unknown criterion, some schools began to receive US\$3,000 and others US\$1,500<sup>314</sup>.

### Guatemala

185. Regarding the situation of education in Nicaragua, the Office of the Special Rapporteur expressed its concern about school dropout rates in Guatemala. According to data from the Statistical Yearbook of Education in Guatemala of the Ministry of Education (Mineduc), approximately 187,000 children and adolescents who enrolled in an educational center in 2021 did not complete the school cycle, figures that represent an increase of 71.6% compared to the previous year. These figures could be explained by the lack of

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<sup>308</sup> Ibid

<sup>309</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR.OAS/Ser.L/XXV.2.20, September 23, 2020](#), para. 21.

<sup>310</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023;GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR.OAS/Ser.L/XXV.2.20, September 23, 2020](#), para. 16.

<sup>311</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 882.

<sup>312</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF EL SALVADOR.OAS/Ser.L/XXV.2.20, September 23, 2020](#), para. 21.

<sup>313</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 880.

<sup>314</sup> Ibid, para. 881

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access to didactic materials provided for the remote education format, which would disproportionately affect people living in rural areas of the country<sup>315</sup>.

186. Similarly, UNESCO noted that the high dropout rate could be a consequence of the low minimum working age, which under Guatemalan law is 14. It recommended that Guatemala consider raising the minimum working age to 15 and bring it in line with the end of compulsory education<sup>316</sup>. In this regard, ECLAC has pointed out that the possibility of finishing school is increasingly narrower as one moves up the educational ladder. In this sense, 25% fail to finish primary school, and only 8.5% pass some year of university<sup>317</sup>.

### Honduras

187. REDESCA notes that the country continues to face serious challenges in guaranteeing the right to education, given that factors such as gender, socioeconomic status, ethnicity and geographic area have a significant influence on access to quality educational services<sup>318</sup>. This situation is even more worrying when considering that, although the exercise of the right to education facilitates the exit from intergenerational poverty, multidimensional child poverty affects 79.4% of children and adolescents<sup>319</sup> and that, according to INE data, 84% of children aged 0 to 17 are in poverty and 65% in extreme poverty<sup>320</sup>.

188. The Office of the Special Rapporteur takes note of the measures adopted by the State to advance in guaranteeing this right, among which the increase in the budget for the sector<sup>321</sup> - from 34 billion lempiras in 2022 to a little more than 38 billion lempiras in 2023 - stands out, in order to address various components, including school infrastructure, the equipment of technological classrooms in educational centers and the ongoing training of teachers<sup>322</sup>.

189. Similarly, REDESCA is concerned about the information revealed in reports from the Specialized Prosecutor's Unit Against Corruption Networks (UNERCO), which follows up on the resources destined for education. In this sense, it is denounced that, despite the fact that non-governmental organizations have contributed funds for the reconstruction of 300 schools, only 22 properties have been effectively attended, calling for follow-up, supervision, and liquidation of funds<sup>323</sup>.

### Mexico

190. Article 3 of Mexico's Constitution establishes that everyone has the right to education; it also states that education provided by the State shall be universal, inclusive, public, free, and secular, and shall promote respect for human rights. The State will provide and guarantee initial, preschool, primary, secondary, middle, high school, and higher education. Higher education is compulsory for the State. The federal and local

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<sup>315</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1070.

<sup>316</sup> United Nations Human Rights Council, Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/42/GTM/2, 21 November 2022, para. 55.

<sup>317</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1072.

<sup>318</sup> IACHR, Situation of Human Rights in Honduras, OEA/Ser.L/V/II. Doc. 146, 27 August 2019, para. 128.

<sup>319</sup> UNICEF Budget Report-Submitted to ECOSOC, E/ICEF/2022/P/L.10, December 2021, para. 1.

<sup>320</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

<sup>321</sup> OHCHR. Situation of human rights in Honduras Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras, A/HRC/52/24, 1 March 2023, para. 13.

<sup>322</sup> Channel 8, Education Budget to increase L4 billion for fiscal year 2023, October 6, 2022

<sup>323</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1215.

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authorities will establish policies to promote inclusion, permanence and continuity, under the terms established by law. Likewise, they will provide means of access to this type of education for those who meet the requirements set forth by public institutions<sup>324</sup>.

191. For its part, the General Education Law reiterates that the right to education corresponds to all persons equally and will extend its benefits without any discrimination (Articles 5 and 7). It establishes that every inhabitant of the country has equal opportunities of access, transit, and permanence in the Education System. The LGE establishes that the educational authorities must promote inclusive, cross-cutting and gender-sensitive policies to grant scholarships and other economic support that prioritize students who face socioeconomic conditions that prevent them from exercising their right to education (article 9)<sup>325</sup>. Similarly, the State has an Education Sector Program 2019-2024 (PSE), whose priority objective is to guarantee the right of the Mexican population to an equitable, inclusive, intercultural, and comprehensive education, with the best interests of children, adolescents and young people as its main focus. Its priority strategy is to expand educational opportunities to close social gaps and reduce regional inequalities<sup>326</sup>.

192. However, civil society organizations reported that despite the regulatory provisions, the lack of standardized criteria for access to education means that most people require guidance and accompaniment from an organization in order to enter the educational system<sup>327</sup>. In the case of asylum seekers, the situation becomes more complex when identity documents or proof of the country of origin are requested. However, the Law for Asylum, Refuge and Complementary Protection and its regulations establish the obligation of COMAR to issue a formal communication to educational institutions in order to dispense with this type of requirements and facilitate the incorporation of people into formal education<sup>328</sup>.

193. At the same time, the organizations mentioned that when people in mobility gain access to the educational system, particularly children and adolescents, they are generally enrolled in peripheral schools, and experience segregation due to their condition as migrants. Only 18% of migrant children have access to education and few complete primary education. The lack of information on admission requirements, the high cost of enrollment fees or admission supplies such as uniforms and school supplies, and even the fact that their admission is conditioned by the presentation of documents, make it difficult for them to enter school, particularly if they are in transit<sup>329</sup>.

### Nicaragua

194. The Commission and REDESCA have received repeated information about the closure of private universities and constant limitations for people to continue their studies in the country. Likewise, there have also been reports of arrests of teachers, as well as of leaders of student and academic organizations. Despite the fact that the State allegedly stated that the cancelled universities had not completed the regularization processes before the public entities, civil society pointed out that in reality the competent authorities had refused to receive the documentation that in general terms the now cancelled entities had tried to submit to the Ministry of the Interior. This fact became public in the case of the Paulo Freire University through publications in the media. The Special Rapporteurship also noted that the legislature passed laws

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<sup>324</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 65.

<sup>325</sup> Ibid.

<sup>326</sup> Id., p. 114

<sup>327</sup> Southern Border Monitoring Collective, Response to the questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, May 2023, p. 15.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

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creating new universities, replacing the defunct ones and transferring all their assets to these new institutions.<sup>330</sup>

195. In that line, REDESCA is aware that the Paulo Freire University implemented the Program for the Continuation of Higher Studies (PROCES), for students who have been unjustly expelled from public universities, in order to continue their studies at that institution. Similarly, REDESCA recalls that students from the Polytechnic University of Nicaragua (Upoli), also cancelled, played a leading role in the 2018 protests and oppose the Government<sup>331</sup>.

196. At the moment, at least 12 universities have been closed or have had their legal status cancelled by the State authorities. In this sense, this raises concern, when in March 2022 the National Assembly approved the reform of Law 89 on the Autonomy of Higher Education Institutions, which regulates a new conformation of the Higher Council of Universities (CNU). This will be integrated by state universities and universities that were stripped of their legal status, which excludes the Central American University (UCA) from the CNU and also strips it of the benefit of the 6% budget funds established in the constitution for this center of study.<sup>332</sup>

### Panama

197. REDESCA notes with concern the profound impact that the pandemic has had on the guarantee of the right to education of children and adolescents (NNA), especially considering that the country was one of the countries in the world with the highest number of days without face-to-face or semi-presential education. Likewise, it has closely followed the constant complaints about the poor state of educational institutions, in which it has been reported lack of teaching staff, lack of cleaning staff, deficient conditions or in poor condition of the structures, overcrowding and water. In fact, in 2022 the Ombudsman's Office made several calls for attention in this regard, since after inspecting educational centers nationwide, it found that most of the schools had structural deficiencies, lack of drinking water and electrical problems<sup>333</sup>. In this context, REDESCA welcomed the construction, remodeling and rehabilitation of 352 classrooms in 22 schools in the country, but continues to call for further progress in this matter.

## **vii. Right to housing**

198. The right to housing is protected by the American Convention on Human Rights and, similarly to the right to water, is not expressly provided for in the Protocol of San Salvador. However, the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man do, as well as other regional instruments. The former refers in Article 34 to the dedication of efforts to achieve adequate housing for all sectors of the population; the latter refers to it in Article XI, where the right to housing (among others) is also considered from a progressive realization perspective. The Inter-American Commission has addressed the right to housing with respect to persons in a situation of mobility and with respect to the measures to be adopted in the context of forced evictions<sup>334</sup>. REDESCA, for its part, has drawn attention to the need to provide special protection for the rights of the homeless.

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<sup>330</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1372.

<sup>331</sup> Id., para. 1374

<sup>332</sup> Id., 1375

<sup>333</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1428.

<sup>334</sup> IACHR and REDESCA, [COMPENDIUM Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021, paras. 93-94.

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## Costa Rica

199. REDESCA notes that the right to housing is enshrined at the constitutional level through Article 65<sup>335</sup>. Likewise, it highlights that in recent years there would have been an increase to the population living in housing with optimal services, reaching at the national level 92.9% in 2018. Despite this progress, it notes with concern that, as in other rights, there is a significant urban rural gap, in which, according to what was observed by the WGPSS, the population of rural areas and the Huetar Caribe region present proportions well below the referred average: 82.6% and 81.7%, respectively<sup>336</sup>. Likewise, refugees and migrants face serious difficulties in accessing this right. Thus, 64% of the people surveyed by HIAS and other partners reported the impossibility of paying rent, which affects their ability to find a safe and adequate place to live<sup>337</sup>.

## El Salvador

200. Regarding the right to housing in the country, according to the information provided by the State, the country has a broad framework for the recognition and guarantee of rights such as housing, including not only constitutional protection - through Article 119 - but also the Social Housing Fund Law, the National Popular Housing Fund Law, the National Housing and Urban Development Policy, the Sustainable Families Program, among others<sup>338</sup>. Without detriment to this, poverty, climate emergency and forced displacement constitute unavoidable phenomena to be addressed from a human rights approach to ensure the effective realization of this right.

201. Regarding the impacts of the climatic emergency - previously addressed in the right to a healthy environment - REDESCA notes that the State has informed that when people are temporarily evacuated from their homes to a shelter, the Civil Protection Commissions ensure that, once the impact of the emergency is over, people return to their homes. In addition, assistance for early recovery is provided according to the damages suffered<sup>339</sup>.

202. For its part, the IACHR has observed that forced internal displacement generates plurioffensive and sustained impacts on human rights as a whole, generating a serious impact on social rights, including housing<sup>340</sup>. In this regard, it should be noted that this situation implies for people to leave behind their life projects and, in most cases, the loss of land, housing and other assets and components of their patrimony. This situation is worsened because many of the victims of forced displacement in the country are at constant risk of remaining on the streets<sup>341</sup>.

## Guatemala

203. Regarding the right to housing, REDESCA notes with concern that with regard to internal displacement in the country, civil society organizations have pointed out the lack of official statistics or a clear

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<sup>335</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>336</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF COSTA RICA, OAS/Ser.L/XXV.2.1 GT/PSS/doc.51/20, April 2021](#), para. 85.

<sup>337</sup> HIAS, HIAS input to the report on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, June 2023.

<sup>338</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>339</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>340</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, 14 October 2021, paras. 256-259.

<sup>341</sup>

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record of the total number of internally displaced persons in Guatemala. According to the Instituto de Investigación y Proyección sobre Dinámicas Globales y Territoriales (IDGT) of the Universidad Rafael Landívar, they have documented that the main structural causes that motivate internal displacement in Guatemala are based on risk factors produced by different types of violence, such as homicides, extortion, and gender-based violence<sup>342</sup>.

204. In this context, REDESCA expresses its concern about the impacts of climate change on the enjoyment of this right. In this regard, the United Nations indicated that the consequences of Eta and Iota affected housing, which accumulated 85.0% of the total effects in the social sector. This subsector accounted for 85.0% of damages, 56.0% of losses and 85.0% of additional costs<sup>343</sup>.

### Honduras

205. The right to housing in Honduras is broadly codified in its regulatory framework. Specifically in articles 178 to 181 of the Constitution, and through the Law of the Social Fund for Housing, the Law of Benefits for Social Housing Construction Projects, the Law of Territorial Planning, and the Executive Decree PCM-024-2014, which creates the National Commission of Housing and Human Settlements<sup>344</sup>.

206. Despite this, REDESCA notes that as of 2018, 9.6% of homes do not have adequate sanitation, with an even higher rate in rural areas - 13.7%. Likewise, according to the IACHR, more than 500,000 children in the country do not have access to safe drinking water and about 1.1 million do not have access to basic sanitation, with a disproportionate impact on those living in rural areas<sup>345</sup>.

207. Similarly, in 2019, according to CEPALSTAT (ECLAC databank), the percentage of households with water availability<sup>60</sup> was 87.8% nationwide (94.6% urban and 78.8% rural), dropping to 50.3% in the case of sewage availability<sup>61</sup> (65.5 urban and 30.5 rural). According to the same data source, the proportion of the population with risk-free managed services coverage is much lower: in 2017, only 18.5% of the Honduran rural population had access to drinking water services<sup>63</sup> and 34.5% of the urban population used sanitation services<sup>346</sup>.

### Mexico

208. In relation to the right to housing, the Office of the Special Rapporteur notes that the National Housing Commission of Mexico has implemented since 2019 the Social Housing Program, whose objective is to reduce the lack of adequate housing due to socio-demographic conditions, risk or precariousness of housing, in order to contribute to the reduction of inequality of population and territories<sup>347</sup>. CONAVI also implements the National Reconstruction Program, whose objective is to contribute to guarantee the realization of the right to enjoy adequate housing for the people and communities affected by the earthquakes, which have not yet been attended or were partially attended, through actions of reconstruction, rehabilitation and relocation of housing<sup>348</sup>. Likewise, CONAVI has the Institutional Program 2020-2024, which points out as a priority the

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<sup>342</sup> CEJIL, Cristosal et al. [Contribution for the Third Cycle of the Universal Periodic Review of the 28th Session of the United Nations Human Rights Council on Guatemala](#), July 13, 2022, p. 2-3.

<sup>343</sup> United Nations Guatemala, [Common Country Analysis](#), Update 2021, p. 6.

<sup>344</sup> Honduran Human Rights Secretariat, Contributions of the State of Honduras to the REDESCA request, Note, 177-DPM-SRECI-2023, April 20, 2023,

<sup>345</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF HONDURAS](#), OAS/Ser.L/XXV.2.1 GT/PSS/doc.50/21, April 2021, para. 86.

<sup>346</sup> GTPSS, [Review of the Reports submitted by the States Parties to the Additional Protocol to the American Convention on Economic, Social and Cultural Rights "Protocol of San Salvador" OBSERVATIONS AND FINAL RECOMMENDATIONS TO THE REPUBLIC OF HONDURAS](#), OAS/Ser.L/XXV.2.1 GT/PSS/doc.50/21, April 2021, para. 106.

<sup>347</sup> National Housing Commission, Government of Mexico, [Social Housing Program, PVS](#), January 21, 2019.

<sup>348</sup> National Housing Commission, Government of Mexico, [National Reconstruction Program, Housing Component](#), April 22, 2019.

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production of social housing and recognizes the guarantee of the right to adequate housing<sup>349</sup>. In addition, the State, through the Program for the Integral Wellbeing of Indigenous Peoples, promotes emergency support for family survival with emphasis on support for indigenous and Afro-Mexican women in situations of forced internal displacement, which consists of economic support for food, clothing, personal hygiene products and the acquisition of supplies to ensure decent housing, as well as counseling and referrals<sup>350</sup>.

209. In this context, the Colectivo de Monitoreo de la Frontera Sur de México, pointed out that migrants are forced to wait increasingly longer periods for the resolution of their migratory procedures (between 6 and 12 months) in border cities such as Tapachula and Tenosique, which do not have a sufficient supply of housing and where there are no conditions for them to have a well-paid job, with the result that, on many occasions, they tend to live on the streets or, as a strategy to cope with price speculation, some people group together with others with whom they do not necessarily have a bond, in order to rent space<sup>351</sup>. For their part, these organizations have documented that the main obstacles for people in mobility contexts in accessing housing are: discrimination, denial of rental service, non-admission of children in the accommodation, request for documents proving the regular stay as a requirement, even the stripping of these documents as a guarantee for the payment of rent, high costs charged per person and not per physical space and when access to it, they do not have all the basic services and often they are forced to rent the spaces among several people, which puts them in overcrowded conditions<sup>352</sup>.

### Nicaragua

210. In Nicaragua, the Commission and REDESCA expressed their concern about the impact on the right to property and access to DESCAs, especially the right to social security of Nicaraguans arbitrarily deprived of their nationality, many of them elderly persons whose subsistence and dignified old age would be affected. In this regard, information was received on the cancellation of bank accounts, police occupation, confiscation and removal of property records of persons who have been affected by the deprivation of their nationality. In some cases, their relatives or third parties who live in these properties have reported siege, the charging of rent by the Attorney General's Office of the Republic (PGR) as a condition to remain in the property and have received summons from the same institution to formalize "their occupational status", which keeps them in a climate of fear and anxiety of being evicted. The loss of housing and land for cultivation and work would leave the people who were declared stateless and their family members in a more vulnerable situation<sup>353</sup>.

211. REDESCA notes that the country has made important achievements in the expansion of potable water and electricity services: 89% of households nationwide have water service and 85% of urban households have household energy. However, on average, only four out of every ten Nicaraguan households have sewerage services, so there is an urgent need to expand coverage through greater government investment, as well as to improve the quality and quantity of water received<sup>354</sup>.

### Panama

212. REDESCA notes that the country's legal system includes the protection of this right. In fact, at the constitutional level it is established that people have the right to have access to decent housing. In the

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<sup>349</sup> Secretaría de Desarrollo Agrario, Territorial y Urbano, Government of Mexico, [Programa Institucional 2020-2024 de la Comisión Nacional de Vivienda \(Institutional Program 2020-2024 of the National Housing Commission\)](#).

<sup>350</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCAs in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023.

<sup>351</sup> Southern Border Monitoring Collective, Response to the questionnaire on poverty, climate change, poverty, DESCAs in Central America and Mexico in the context of human mobility, May 2023, p. 16.

<sup>352</sup> *Id.*, p. 9

<sup>353</sup> IACHR, [Nicaragua: IACHR and REDESCA express concern over violations of property and social security rights](#), April 14, 2023

<sup>354</sup> Habitat Nicaragua, [Housing Situation in Nicaragua](#), 2022



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context of persons in contexts of human mobility, it has been established that refugees and applicants for refugee status may rent or purchase housing in the country<sup>355</sup>.

### viii. Business and Human Rights

213. As REDESCA has established, corporations play a fundamental role in the economic development of the hemisphere<sup>356</sup>. Their contribution occurs not only through compliance with their fiscal obligations -which allow States to adopt measures for the progressive realization of economic, social, cultural and environmental rights-, but also through direct contributions, often as part of their social responsibility programs, in addition to those established in the domestic legal system of the States. The call for their participation in the fulfillment of the UN Sustainable Development Goals has reinforced the focus on corporate actions as an important element in contributing to the achievement of the different goals set forth therein. This, of course, implies the adoption of actions that have a direct impact on the realization of economic, social, cultural and environmental rights<sup>357</sup>. This section will address the impact of business activities, particularly on the ESCER of the population of the countries of the subregion, highlighting the progress and challenges in addressing the rights of people in a situation of human mobility in this context.

#### Costa Rica

214. In 2022, the Office of the Special Rapporteur took note of the processing of a new bill to declare Costa Rica a territory free of oil and natural gas exploration and exploitation, as well as the bill presented to regulate artisanal and small-scale mining activity, in order to provide a comprehensive solution and benefit those who carry out this activity with due safety for human health and the environment<sup>358</sup>.

215. Although these advances are important in terms of the State's obligations for prevention, oversight, investigation and sanction in the area of business and human rights, REDESCA has received information on some worrisome situations. Thus, a high level of non-compliance with fundamental labor rights of workers in the Costa Rican private sector has been reported, where, for example, in the agricultural sector, more than half of the salaried workers in private establishments earn wages below the minimum wage. In these situations, it has been indicated that the groups most vulnerable to non-compliance with rights are migrants, especially people from Nicaragua, young people, women, people with disabilities and unskilled workers, and this is even more serious in the case of small and informal enterprises<sup>359</sup>.

216. In fact, in its 2022 annual report, REDESCA took note of the situation of agribusiness workers in Costa Rica - mostly migrants from Nicaragua - who would not be guaranteed their labor rights, as they would work in a context of outsourcing of services through the modality of "contractors", in which companies are responsible for subcontracting people to work in the fields<sup>360</sup>.

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<sup>355</sup> Republic of Panama. [Ministry of Government, Housing, Land and Property](#), June 2023.

<sup>356</sup> SEE IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 November 1, 2019,

<sup>357</sup> IACHR and REDESCA. [COMPENDIUM Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II Doc. 465, December 31, 2021, para. 102.

<sup>358</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, paras. 587-588.

<sup>359</sup> ICHRP, [Costa Rica: University of Costa Rica research identifies 'serious level of non-compliance with fundamental labor rights' in the country](#), May 5, 2021

<sup>360</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 631.

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## El Salvador

217. REDESCA has received information on how a large part of the megaprojects promoted in the name of economic development are sustained by the deterioration of natural resources in the country, which is reflected in an "exorbitant number of environmental permits granted"<sup>361</sup>. Additionally, although the Rapporteurship welcomes the approval in 2017 of the Law for the Prohibition of Metallic Mining, which prohibits any form of metallic mining throughout the national territory, it notes with concern the allegations that, despite its approval, it has not been duly complied with in terms of the technical closure of mines that operated in the past; the remediation of the environmental impact of damage caused by mining and the prohibition of artisanal mining<sup>362</sup>.

218. In this scenario, REDESCA has followed with particular concern the impacts that the progress of the Cerro Blanco mine project, located in Asunción Mita, some 14 kilometers from Lake Güija in Metapán, El Salvador, would have on the project, since in December 2021, the company Elevar Resources, a subsidiary of the Canadian company Bluestone Resource, submitted an updated environmental impact study to the Guatemalan authorities, requesting the transformation of the subway mine to an open-pit mine, which, according to several environmental organizations, is a much more aggressive/polluting form of mining for the environment and dangerous for human health, and therefore a new environmental impact study would be required. It was also learned that, although the government authorities of El Salvador have repeatedly requested the sharing of the technical environmental impact studies developed by Guatemala as part of the mining concession in the area, as well as the technical reports on the levels of contamination of the rivers and streams that feed Lake Güija, there has been no response from the neighboring country. In this regard, the Special Rapporteur notes that the project could pose threats such as: the deforestation of 461 hectares for the Cerro Blanco sweep, the use of 38 million cubic meters of water, drilling 300 meters deep and 1,200 meters long for the open pit mine, as well as transboundary impacts by affecting the Lempa River and approximately three million people on Salvadoran soil<sup>363</sup>.

219. This situation is even more worrisome considering that the country is the most populated Central American country with the lowest water availability<sup>364</sup>, so the impacts of metallic mining must be urgently addressed. With respect to the human right to water in the context of business activities, it should be noted that the Special Rapporteur on the human rights to safe drinking water and sanitation, and the Special Rapporteur on the issue of human rights obligations related to the enjoyment of an environment expressed to the State the unequal treatment that would be given in the law to the community water boards that supply drinking water to the population and to the private company that exploits water for profit<sup>365</sup>. This situation is especially worrisome considering that community water systems have contributed to providing drinking water for the population when the State would not have been able to do so in some cases and/or is absent<sup>366</sup>.

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<sup>361</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

<sup>362</sup> Ibid.

<sup>363</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, paras. 848-850.

<sup>364</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

<sup>365</sup> Mesa Nacional Frente a la Minería Metálica en El Salvador, Contribución de la Mesa Nacional Frente a la Minería Metálica en El Salvador al Cuestionario - Pobreza, Cambio Climático y DESCA en Centro América y México, en el Contexto de Movilidad Humana para La Relatoría Especial.

<sup>366</sup> Ibid.

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## Guatemala

220. In relation to activities and companies, REDESCA is aware that the country is in the process of implementing its National Action Plan on business and human rights. In this regard, REDESCA reports that in July of this year it held a meeting with the Guatemalan Mission to the OAS and with representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), in order to convey the importance of including the standards of the Inter-American system in this area<sup>367</sup>.

221. However, REDESCA notes that there have been several complaints from indigenous peoples' and peasant organizations and civil society in general about the actions of extractive industry companies in relation to the rights of individuals and communities. During the 174th session, the Commission and REDESCA received troubling information on the management of natural resources and land use changes by these entities, to the detriment of the rights of peasants and indigenous peoples. In particular, it was reported that monocultures affect the rights to food, health and water. Specifically, it was denounced that the use of agrochemicals and other chemical elements drastically infringe on the wellbeing of these populations<sup>368</sup>.

222. In this context, REDESCA has identified other more recent acts of resistance by indigenous peoples to the activities of extractive industries. For example, there is the situation of the inhabitants of Chiquimula in the face of the establishment of extractive projects by transnational mining companies. It is worth mentioning that this is framed in the Guatemalan territory called "Dry Corridor" due to droughts and loss of soil fertility affecting the area, which translates into a situation of poverty or extreme poverty for its inhabitants<sup>369</sup>.

223. In addition, the OHCHR recommended guaranteeing the participation of all stakeholders in the effort to implement the National Action Plan on Business and Human Rights. Similarly, the Committee on the Rights of the Child recommended strengthening the normative framework in relation to children's rights and business, establishing child-sensitive mechanisms to investigate and provide redress for violations of children's rights committed in business activities, and requiring companies to observe due diligence in relation to children's rights<sup>370</sup>.

## Honduras

224. In Honduras, REDESCA welcomes the efforts to advance in the area of Business and Human Rights, including the incorporation of this issue in the New Public Policy for the period 2023-2024, as well as the willingness to adopt a National Plan on the subject<sup>371</sup>. In this regard, it was reported that during 2022 the SEDH set up a preliminary working group to lay the groundwork for an eventual National Action Plan, with the support of the Danish Institute for Human Rights<sup>372</sup>.

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<sup>367</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1043.

<sup>368</sup> IACHR, Public Hearing: Human Rights Situation of the Indigenous Peoples of Guatemala, 174th Regular Session, November 12, 2019.

<sup>369</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPporteur ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1047.

<sup>370</sup> OHCHR, Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Guatemala, A/HRC/49/20, 22 March 2022, paras. 59, 60.

<sup>371</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

<sup>372</sup> IACHR, Information provided by the SEDH during meeting, April 23, 2023.

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225. Given the context of the existing conflict over land tenure, REDESCA takes note of the installation of a National Inter-Institutional Roundtable for the Prevention and Addressing of Social Conflicts since 2022. This is a State proposal to initiate actions and strategies to address social conflicts with a human rights approach at the national level. In this context, during 2023, the Commission notes that the State installed a technical roundtable, specifically for the prevention and addressing of social conflicts in the energy sector<sup>373</sup>.

226. However, the Commission and REDESCA received multiple testimonies from individuals and communities that are in conflict with different companies because of the way they are carrying out their activities. During its visit, the Commission heard firsthand the realities faced by defenders and noted the alarming rates of murders of defenders of land, territory and the environment, some of whom had protection measures from the Honduran State. During the first four months of 2023, the OHCHR recorded 66 attacks against defenders and journalists for a total of 86 victims, of which 67 were engaged in defense work<sup>374</sup>.

227. In light of the above, REDESCA highlights the situation of the communities of Bajo Aguán. In this regard, it notes that civil society reported how traditional forms of agricultural production have been displaced by the African palm industry. The land conflict has historically been most visible in the Aguán area in Colón, but in 2022 it spread to five more departments, including: Choluteca, Cortés, Francisco Morazán, Islas de la Bahía and Lempira<sup>375</sup>.

228. It is worth noting the disproportionality of what is requested of the communities regarding the impact of the projects on their territories, as was the case with the Guapinol defenders who, at the request of the Ministry of Natural Resources and Environment, provided documentary evidence of the illegality and environmental damage caused by the Los Pinares mining company<sup>376</sup>. In this regard, with respect to Guapinol, Prados, Gilamato, Reitoca and San Pedro sector, the Commission and REDESCA listened to water defenders who emphasized that they have been defending the territory against extractivism in Honduras for years, a situation that has exposed them (as indicated above) to a spiral of criminalization, threats, imprisonment and murder<sup>377</sup>.

## Mexico

229. Regarding business and human rights issues, REDESCA notes that the State has the "Diagnosis on the state of the legal framework and public policies on business and human rights at the federal level in Mexico from 2019-2022", which analyzes the constitutional obligations on human rights in the context of business, public and mixed activity<sup>378</sup>. In this regard, the Ministry of the Interior of the country is in the process of drafting the national policy on business and human rights, which will establish strategies and lines of action to be developed from a participatory, plural and inclusive approach.

230. However, REDESCA reiterates its concerns regarding the project known as "Tren Maya" (Mayan Train), against which there are various complaints from the affected population and civil society. Despite suspensions and other jurisdictional measures imposed, the President of the Republic has indicated that the construction will continue, as well as its inauguration in December 2023. In 2022, the following injunctions were filed: 820/2022, 821/2022, 884/2022, 923/2022 and 1003/2022 before the First District Court in Yucatan in response to the damages caused by construction works and the lack of information on the

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<sup>373</sup> Energy Secretariat of Honduras, [Government installs roundtable to prevent and address social conflicts in the energy sector](#), March 16, 2023

<sup>374</sup> IACHR, Preliminary Observations In Loco Visit to Honduras, 28 April 2023

<sup>375</sup> Association for a More Just Society (ASJ), [From Transition to Action: 2022 Conflict Analysis](#), February 23, 2023, p. 13.

<sup>376</sup> Criterio, [Serna asks Guapinol defenders for proof of illegality and environmental damage](#), February 6, 2023

<sup>377</sup> CEJIL, Ante Ante visita de la CIDH a Honduras: organizaciones de DDHH esperan recomendaciones contundentes, May 5, 2023

<sup>378</sup> Secretaría de Gobernación, Government of Mexico, [Diagnóstico Derechos Humanos y Empresas. Sobre el estado del marco jurídico y de políticas públicas sobre empresas y derechos humanos a nivel federal en México de 2019-2022.](#)

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environmental impact<sup>379</sup> . Additionally, the Special Rapporteurship highlights that the Supreme Court of Justice declared unconstitutional the decree that classified large government works as part of national security for violating the right of access to information<sup>380</sup> .

231. The above is framed in a context of extreme concern for the contamination of water flows that are impacted by pollutants caused by industries. In this regard, REDESCA is aware that according to a study by the National Network of Water Quality Measurement, which reported that 59.1% of rivers, streams, lakes, lagoons, dams and coastal areas are polluted, having found a greater presence of chemical pollutants caused by industries<sup>381</sup> . In this regard, REDESCA recalls that in its precautionary measure concerning the residents of the Santiago River in the State of Jalisco in Mexico, it urged federal and state entities to take appropriate actions to protect the rights of the population, threatened by pollution caused by companies<sup>382</sup> .

### Nicaragua

232. REDESCA warns that, in the context of the cancellation of civil society organizations and the closure of civic space, unions and their leaders have been the target of acts of aggression, harassment and harassment by authorities of the regime. The State detained leaders of the Superior Council of Private Enterprise (COSEP) since 2021. At the moment we know of the detention of José Adán Aguerrí (former president of COSEP), Michael Healy (current president) and Álvaro Vargas, who in addition to being vice president of COSEP is also the president of the Union of Agricultural Producers of Nicaragua (Unión de Productores Agropecuarios de Nicaragua)<sup>383</sup> .

233. In this regard, the Special Rapporteur notes that the U.S. Treasury Department issued sanctions against entities in the mining sector in the country; in particular, the General Directorate of Mines (DGM) was sanctioned by prohibiting any transaction in the United States, if the operations are under the control of the designated entity. Consequently, the Nicaraguan government reported that the mining company Calibre Mining had withdrawn an application to obtain 3 concessions in the Northern Caribbean before the DGM. For its part, the company did not confirm this situation, however, it was informed that it is reviewing the provisions issued by the U.S. government to ensure full compliance<sup>384</sup> .

234. In the same vein, representatives of the Government of Canada indicated that they expect to take similar actions so that Canadian companies work in compliance with the standards of responsible business conduct in the same manner as they would in their country. To that extent, he noted that the State has so far sanctioned at least 35 Nicaraguan individuals in response to the repression in the country, replicating those carried out by the United States<sup>385</sup> . The above occurs within a context where reports indicate the negative impact of the development of natural resource exploitation projects by some companies, which cause

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<sup>379</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1282.

<sup>380</sup> El País, [The Supreme Court invalidates the agreement that declares the works of López Obrador's government as national security](#), May 18, 2023.

<sup>381</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1288.

<sup>382</sup> IACHR, [Resolution 7/2020: Precautionary Measure No. 708-19 Inhabitants of the Zones Surrounding the Santiago River with respect to Mexico](#), February 5, 2020.

<sup>383</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1346.

<sup>384</sup> Id., para. 1349

<sup>385</sup> Id., para. 1350

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irreparable damage to the environment and undermine the right to health and the right to an adequate standard of living of the affected communities, particularly indigenous and Afro-descendant peoples<sup>386</sup>.

### Panama

235. With regard to the impact of business activities on human rights, REDESCA takes note of the draft law on front-of-package nutrition warning labeling, which seeks to implement and regulate front-of-package nutrition warning labeling on the containers and/or packaging of pre-packaged processed food products for human consumption, with the objective of protecting the health and welfare of the population in Panama. In this regard, REDESCA notes that various organizations, including some of the United Nations, have indicated that the front nutritional warning label would be a simple, practical and effective tool to inform consumers about products that can damage health and help guide purchasing decisions<sup>387</sup>. In this regard, the Office of the Special Rapporteur considers that this initiative would constitute an effective preventive measure to protect the public health of the population, and reiterates that in order to ensure the protection of human rights by States and respect for these rights by business actors, it is essential to ensure the highest levels of transparency in those relationships that link companies and economic sectors with States. The above, taking into special consideration that in general terms a strong opposition of companies to policies or initiatives that seek to address problems of obesity, malnutrition and climate change has been identified due to their commercial interests, opposing, among others, measures such as label warnings on processed foods<sup>388</sup>.

236. On the other hand, REDESCA notes with concern the allegations that indicate that the International Finance Corporation, a member of the World Bank Group, has not complied with its sustainability policy, because one of its electricity transmission projects would cross the lands of the Ngäbe and Buglé indigenous communities, which, despite the ancestral occupation of these territories, still do not have legal recognition of their collective right to the land. It should be noted that this situation was investigated and the accountability mechanism of the International Finance Corporation (IFC) of the World Bank has decided that the FIC had not acted in accordance with its own sustainability policy when assisting with the structuring and bidding of a public-private partnership for the financing, construction and operation of the Fourth Electricity Transmission Line project in Panama. Therefore, it was concluded that the processes of free, prior and informed consent with indigenous peoples were not properly carried out. In this context, REDESCA reiterates that States have the obligation to guarantee the effective participation of indigenous peoples in decisions regarding any measure that affects them, including those of a corporate or private nature, by respecting the right to consultation and free, prior and informed consent; the carrying out of environmental and social impact studies by independent entities to protect the special relationship of these groups with their territories<sup>389</sup>.

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<sup>386</sup> Committee on ESC rights, Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5, 11 November 2021, para. 36.

<sup>387</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 1411.

<sup>388</sup> Ibid, para. 1412

<sup>389</sup> Ibid., para. 1413

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### III. POVERTY AND INEQUALITY AS CAUSES OF HUMAN MOBILITY

237. REDESCA notes that poverty, inequality, and economic factors play a significant role in the phenomenon of human mobility, which is why addressing inter-American standards in this regard is fundamental for the design of policies, programs, and measures, not only so that States can fulfill their obligations in this area, but also to respond to one of the main underlying causes of migratory movements in the sub-region.

238. It should be noted that, as previously mentioned, human mobility is a complex and multi-causal phenomenon, which means that the recognition of any of these causes does not affect the validity of other reasons that may motivate or force people to migrate. In this regard, it should be noted that the OHCHR has pointed out that discrimination, inequality, and violence are important factors that stimulate large-scale migratory movements under precarious conditions<sup>390</sup>. A more detailed analysis of these issues is presented below, including an analysis of the right to development and the role of fiscal policies in guaranteeing ESCER and combating poverty.

#### A. Poverty from a human rights approach

239. The IACHR has established that poverty is a human rights problem that translates into obstacles to the enjoyment and exercise of human rights in conditions of real equality by individuals, groups and communities living in such a situation. Therefore, in certain cases, it also implies violations of human rights that can be attributed to the international responsibility of the State<sup>391</sup>. For its part, the Commission has indicated that the general principles of non-discrimination and equality enshrined in Articles 1 and 24 of the American Convention require the adoption of measures aimed at overcoming inequalities in the internal distribution and opportunities<sup>392</sup>, while the Inter-American Court has indicated that States must adopt the necessary affirmative measures to ensure effective equality before the law for all persons<sup>393</sup>.

240. In turn, the Commission has pointed out that people living in poverty and extreme poverty often suffer disadvantages and discrimination based on race, gender, age, ethnicity, cultural practices, language, and other conditions. Thus, persons and groups historically discriminated against, such as women; children and adolescents; older persons; persons with disabilities; migrants, refugees, asylum seekers and internally displaced persons; indigenous peoples, among others, who live in poverty and extreme poverty in the Americas have been and continue to be victims of intersectional and structural discrimination on numerous occasions<sup>394</sup>.

241. In this framework, the Inter-American system has included poverty as a prohibited category of discrimination. Thus, the Commission has indicated that, in accordance with the express provisions of Article 1(1) of the American Convention - which states that it is prohibited to discriminate on the grounds of "economic position" or "any other social condition" - and the advances in the jurisprudence of the inter-American system, the situation of poverty or extreme poverty of a person, group or community may be considered a prohibited category of discrimination. This evolving interpretation is consistent with the general rules of interpretation

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<sup>390</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights, [Effects of multiple and intersectional forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment by women and girls of all human rights](#), A/HRC/35/10, 21 April 2017, para. 35.

<sup>391</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, para. 2.

<sup>392</sup> IACHR, Report on the Situation of Human Rights in Ecuador 1997, Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador.

<sup>393</sup> IACHR Court. Case of the Yean and Bosico girls v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgments of September 8, 2005, Series C. No. 130, para. 141.

<sup>394</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, para. 167.

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enshrined in Article 29 of the Convention<sup>395</sup>. Along the same lines, in various rulings, the IACHR Court has addressed economic status as a suspect category when analyzing the prohibition of discrimination<sup>396</sup>.

242. In addition, the IACHR has established that when addressing poverty, it is necessary to include a gender perspective in order to consider the historical discrimination and gender stereotypes that have affected women, girls and adolescents, and that have severely limited the exercise of their civil, political, economic, social and cultural rights in all spheres<sup>397</sup>.

243. In light of these developments, REDESCA is extremely concerned that the Americas, in addition to experiencing deep setbacks in terms of combating poverty and extreme poverty, continue to be the most unequal hemisphere on the planet, especially when the economic inequality gap reinforces social and gender inequalities<sup>398</sup>. In practical terms, it should be noted that the Rapporteurship has observed a sharp increase in poverty and extreme poverty rates at the regional level, since according to ECLAC data, by 2021, poverty would have reached 32.1% of the Latin American population -approximately 201 million people- and extreme poverty would have reached 13.8% -86 million people-, reaching levels that had not been seen for at least a decade, which have gone hand in hand with a consequent increase in inequality. According to Oxfam, in the last two years the richest 1% of the world's richest people have accumulated almost twice as much wealth as the rest of the world<sup>399</sup>.

244. This situation has had a particular impact on human mobility in the subregion. Thus, although it has been shown that violence, insecurity and natural disasters have historically been complex triggers of Central American migration, currently one of the main reasons for migration is associated with economic factors, in which poverty plays a leading role, since people in a situation of human mobility who have decided to leave their countries express that this decision is based on their need to find work, cover their essential needs, food and other ESCER<sup>400</sup>.

245. Thus, among the main findings of the survey conducted by the United Nations World Food Program, international partners and civil society to address the causes of human mobility from El Salvador, Guatemala and Honduras, it was found that the desire of people to migrate would be increased, being that four out of ten households (43%) had a desire to migrate in 2021 compared to 8% in 2019. This is due to the economy (aggravated by violence, insecurity, and natural disasters), which translates into the need to meet their basic needs<sup>401</sup>.

246. Along the same lines, it has been estimated that, on average, between 2017 and 2021, annually 378,000 people from Central America have migrated to the United States as a result of poverty, food insecurity, climate crises and violence<sup>402</sup>. Additionally, it is worth noting that a recent IOM survey in May 2023 in Costa Rica found that, of the total number of people surveyed in transit sites, 92% indicated that their main reason for migrating was the search for socioeconomic conditions, followed by the search for favorable conditions to

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<sup>395</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, para. 152.

<sup>396</sup> I/A Court H.R., Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 22 : Derechos Económicos, Sociales, Culturales y Ambientales / Corte Interamericana de Derechos Humanos. -- San José, C.R. : Inter-American Court of Human Rights, 2021.

<sup>397</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, para. 10.

<sup>398</sup> IACHR, [Poverty and Human Rights](#), OEA/Ser.L/V/II.164, September 7, 2017, para. 105.

<sup>399</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\). OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1880.

<sup>400</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a New Regional Course: The Complex Motivations and Costs of Central American Migration Tracing a New Regional Course: The Complex Motivations and Costs of Central American Migration November 23, 2021

<sup>401</sup> Ibid

<sup>402</sup> MIT Civic Data Design Law, UN World Food Programme (WFP) and the Migration Policy Institute, Charting a new regional course: the complex motivations and costs of Central American migration Tracing a new regional course: the complex motivations and costs of Central American migration, November 23, 2021.



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obtain employment (75%), political stability (35%), access to refugee processes (37%) and family reunification (23%)<sup>403</sup>.

247. In this scenario, given the growing and diverse flow of people in the subregion, the DESCAs Special Rapporteur believes it is of utmost importance that States recognize the multiple factors of vulnerability and risk of discrimination faced by people in contexts of human mobility. To this end, in addition to a differentiated and intersectional human rights approach, a gender approach is needed.

248. In this regard, and by way of example, the Commission has recognized that migrant women with limited economic resources are in a particularly vulnerable situation as they are often forced to use public health services that are not suitable to meet their needs, given the limited care options available to them. Thus, in the case of *I.V. v. Bolivia - I.V.* a migrant woman with few economic resources - the Commission evidenced that women suffer discrimination throughout their lives based on more than one factor combined with their sex, which increases their risk of suffering acts of violence and other violations of their human rights. In this particular case, the intersection of various factors such as gender, migrant status and economic position was analyzed<sup>404</sup>.

## **B. Structural development situation of the countries of Central America and Mexico**

249. REDESCA notes that the failure to guarantee the right to development is at the heart of the deprivations of ESCER, which has consequently subjected much of the region to a situation of vulnerability and forced many people to migrate. Thus, the United Nations General Assembly has stated that: "among other factors, the process of globalization and liberalization, including the growing economic and social disparity between many countries and the marginalization of some from the world economy, has contributed to large population movements between countries and to the intensification of the complex phenomenon of international migration"<sup>405</sup>.

250. Regarding the right to development, it should be noted that, under the standards of the inter-American system and as established by REDESCA-IACHR, this must be sustainable; for which it is essential to focus on the welfare and rights of individuals and communities rather than on economic statistics and merchandise, taking into account that the definition of the right to development includes the right to a particular process in which all human rights and fundamental freedoms can be fully realized<sup>406</sup>. In this understanding, economic growth is not an end in itself, but a further component for the realization of the right to development and human rights in general<sup>407</sup>.

251. REDESCA notes that in the countries of northern Central America, a pattern of development has been identified with little physical and human investment, coupled with limited personal and social security, resulting in modest labor productivity. Thus, low productivity would prevent the generation of higher wages to reduce the income gap that exists in relation to other countries, such as the United States, generating a significant gap that leads to migration -which in turn has been growing due to factors such as violence and environmental deterioration-<sup>408</sup>. Thus, ECLAC has shown that, as of 2019, fifteen million people have followed the path between Mexico, the northern countries of Central America and the United States, stimulated by the

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<sup>403</sup> IOM, [Matriz de Seguimiento de Desplazamiento DTM Costa Rica](#), Monitoring the migratory flow of people in a situation of mobility through the Americas in specific sites of high mobility and concentration of migrants in Costa Rica, April 2023.

<sup>404</sup> IACHR, *I.V. Case 12.655, v. Bolivia*, August 15, 2014.

<sup>405</sup> United Nations General Assembly, Resolution A/RES/54/212 on "International Migration and Development" of February 1, 2000.

<sup>406</sup> IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 Nov. 1, 2019, para. 45.

<sup>407</sup> *Ibid.*

<sup>408</sup> Alejandro I. Canales, Juan Alberto Fuentes, and Carmen Rosa de León ESCERibano, *Desarrollo y migración: desafíos y oportunidades en los países del norte de Centroamérica (LC/MEX/TS.2019/7)*, Mexico City, Economic Commission for Latin America and the Caribbean (ECLAC), 2019, p. 121.

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enormous productivity and wage gaps that exist between the countries<sup>409</sup>. In this sense, in order to respond to this phenomenon, there has been a call to make decisive progress in terms of investments in order to "generate decent employment opportunities, of increasing productivity, with the objective of moderating the migratory flow expelled by the existence of precarious socioeconomic conditions, reflected in very low labor productivity"<sup>410</sup>.

252. In light of this information, REDESCA stresses the importance of moving towards articulated and comprehensive multi-country development plans that, based on a human rights approach, respond to the underlying and structural causes of migration. Within this framework, the initiative promoted by ECLAC called "Integral Development Plan for El Salvador, Guatemala, Honduras and the south-southeast of Mexico" stands out, which aims to generate a space for sustainable development, increase well-being and allow migration not to be an obligation, but an option<sup>411</sup>. Recognizing the importance of this o, the Rapporteurship received information on how the Sembrando Vida and Jóvenes Construyendo el Futuro projects - as priority programs for the implementation of the Plan - would not be sufficient to meet the needs of people in countries of origin, as people would continue to leave their countries in a forced manner<sup>412</sup>.

253. Thus, on the one hand, with respect to the Jóvenes Construyendo Futuro program, it has been indicated that, although it has benefited young people between 18 and 29 years of age, this would only be temporary, since the Work Centers at the end of the program would only have hired 41.2% of the scholarship recipients in El Salvador and 48.1% in Honduras, which means that more than half of the beneficiaries would be unemployed once the eight months of training are over. On the other hand, although the Sembrando Vida program would have benefited 20,000 people (10,000 in Honduras and 10,000 in El Salvador), these would be implemented in rural areas, with people who have land to plant, or money to rent lots and plant, generating that the beneficiaries of the program are supported by the family, without hiring them or looking for people to work the land. However, in this framework, these contracts would lack labor rights, so that people who do not have land to plant or are hired under precarious working conditions, would migrate to the city or outside the country<sup>413</sup>.

254. For its part, within the framework of business activities, in addition to what was evidenced in the section on business and human rights in the first chapter of this report, REDESCA received information on how in the sub-region the implementation of certain projects that would seek to favor development would be carried out without an adequate and participatory risk analysis, This phenomenon occurs when people are dispossessed or find themselves in a situation of extreme need to leave their lands due to the implementation of supposed development programs or projects<sup>414</sup>. In this context, the projects that are most likely to result in this type of situation are those that generate changes in land and water use, including infrastructure projects, mining and energy projects, industrial and urban development projects, among others<sup>415</sup>. Likewise, it has been indicated that the extractivist economic model in Central America, which has continued to be used in the period of economic recovery, has had an impact on migration to the United States, since in the framework of non-consulted processes and socio-environmental conflicts, communities and inhabitants have been dispossessed of their places<sup>416</sup>.

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<sup>409</sup> ECLAC, Development and migration: challenges and opportunities in the countries of northern Central America, June 2019.

<sup>410</sup> Alejandro I. Canales, Juan Alberto Fuentes, and Carmen Rosa de León ESCERibano, Desarrollo y migración: desafíos y oportunidades en los países del norte de Centroamérica (LC/MEX/TS.2019/7), Mexico City, Economic Commission for Latin America and the Caribbean (ECLAC), 2019, p. 122.

<sup>411</sup> ECLAC, About the Integral Development Plan, 2023

<sup>412</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 20.

<sup>413</sup> Ibid.

<sup>414</sup> Interamerican Association for Environmental Defense (AIDA), Questionnaire Response - Poverty, Climate Change and DESCA in Central America and Mexico, in the Context of Human Mobility, April 30, 2023.

<sup>415</sup> Ibid

<sup>416</sup> ICHRP, Central America: Researcher says causes of migration to the U.S. are due to an extractivist economic model, which continues to be used in the period of economic recovery, July 5, 2021

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255. In light of this information, REDESCA reiterates that adequately addressing the realization of human rights, including the right to development, within the framework of development processes and business activity will require, fundamentally, empowering people and communities as rights holders, putting them at the center of how development is conceived and implemented, ensuring their free participation, applying the principle of non-discrimination, as well as equitably distributing the benefits of development<sup>417</sup>.

256. Similarly, for the Office of the Special Rapporteur it is crucial that the countries of the subregion also recognize the contributions made by people in contexts of human mobility to the development situation of the countries, since the current narrative would be focused on the economic burdens to respond to the phenomenon, mainly for the receiving countries<sup>418</sup>. In this regard, it has been indicated that the challenges of migration can become a development<sup>419</sup> opportunity and that migration represents social, economic, and cultural benefits for countries, such as opportunities to have more labor in strategic sectors, cover the labor deficit and contributions to economic growth<sup>420</sup>. In this line, IOM has highlighted that migrants are agents of sustainable development, as they contribute to the growth of Latin American economies through different roles and functions, such as workers; entrepreneurs and investors; Consumers; taxpayers - through their contributions to the public budget - and as savers<sup>421</sup>. Thus, decisive steps are required to value the contributions of migrants to development and "create the necessary conditions so that migrants and diasporas can fully contribute to sustainable development in all countries", as established in goal 19 of the Global Compact for Safe, Orderly and Regular Migration<sup>422</sup>.

### **C. The role of fiscal policies in guaranteeing ESCER and combating poverty**

257. The IACHR has established that public expenditure planning should promote equality at the regional level and that an appropriate fiscal policy can contribute to the redistribution of wealth to reduce inequality gaps, to correct market failures, to the investment necessary for the fulfillment of human rights, particularly economic and social rights, and to accountability between the State and the citizenry. In this sense, from a human rights perspective, the following principles and obligations are particularly relevant for fiscal policy: ensuring minimum essential levels; mobilization of the maximum available resources for the progressive realization of economic, social, cultural, and environmental rights; compliance with the principle of progressivity and non-regression; and the application of the principle of equality and non-discrimination<sup>423</sup>.

258. In this framework, fiscal policies are a necessary and powerful tool for combating poverty, inequality, and structural violations of human rights<sup>424</sup>, and in the words of the Commission, "it is not possible to analyze the efforts of States to eliminate poverty without taking into account their fiscal policy, understood as the policy for collecting and allocating public resources"<sup>425</sup>. This is due to the role that fiscal policies play

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<sup>417</sup> IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 Nov. 1, 2019, para. 45.

<sup>418</sup> IACHR, Hearing on Progress and Challenges in International Coordination and Cooperation for the Protection of the Rights of Persons on Human Mobility in the Region, 187th Regular Period of Sessions, July 12, 2023; Martínez Pizarro, J., Contributions of migration to sustainable development: conceptual perspective in the framework of the Regional Seminar "Contribution of international migration to sustainable development in Latin America and the Caribbean" ECLAC, Santiago, Chile, June 14 and 15, 2023, June 2023; IOM, [5 CONTRIBUTIONS OF MIGRANTS TO THE GROWTH OF ECONOMIES IN LATIN AMERICA](#), 20 February 2023

<sup>419</sup> IDB, [Migration Initiative](#), June 2023

<sup>420</sup> Martínez Pizarro, J., Contributions of migration to sustainable development: conceptual perspective in the framework of the Regional Seminar "Contribution of international migration to sustainable development in Latin America and the Caribbean" ECLAC, Santiago, Chile, June 14-15, 2023, June 2023

<sup>421</sup> IOM, [5 CONTRIBUTIONS OF MIGRANTS TO THE GROWTH OF ECONOMIES IN LATIN AMERICA](#), 20 February 2023

<sup>422</sup> Global Compact for Safe, Orderly and Regular Migration, shared responsibilities, goal 19

<sup>423</sup> IACHR, Public Policies with a Human Rights Approach. OEA/Ser.L/V/II. Doc. 191, September 15, 2018,

<sup>424</sup> Center for Economic and Social Rights (CESR), Fiscal Policy and Human Rights in the Americas Mobilizing Resources to Guarantee Rights, October 2015.

<sup>425</sup> IACHR, Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147, 7 September 2017, paras. 494.

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in mobilizing resources to guarantee human rights and reduce economic, social and gender inequalities<sup>426</sup>. In this framework, the IACHR and REDESCA have reiterated that the principles of participation, accountability, transparency, and access to information are fundamental for the design, operation and evaluation of fiscal systems<sup>427</sup>.

259. At the regional level, REDESCA has noted that the economic contraction generated by the COVID-19 pandemic forced the region's States to make great fiscal efforts to contain and mitigate its effects and move towards an equitable recovery. In this regard, according to ECLAC, public spending reached historically high levels given the public expenditures derived from fiscal plans, which on average were equivalent to 4.6% of GDP in the region in 2020. However, the agency noted that from 2021 onwards, economic activity rebounded significantly, generating a decrease in the fiscal deficit. REDESCA noted that during 2022 the regional macroeconomic context became more complex as a result of a marked slowdown in economic growth and higher inflation of raw materials, mainly oil and food, as a consequence of the war in Ukraine. This will generate greater challenges for the management of fiscal policy in the region, mainly due to the increase in poverty, extreme poverty, food insecurity and inequality indexes<sup>428</sup>.

260. In this context, in the case of Central America, it has been identified that the challenge for the coming years would be to "increase tax collection levels and improve the tax structure to provide fiscal sustainability in a context of pro-growth policies and advance in the universalization of social protection"<sup>429</sup>. To this end, it will be necessary to ensure that the resources collected include a prioritization of expenditures to guarantee the ESCER of the population. This is particularly important considering that, in the case of Central America - particularly in Honduras and El Salvador - it has been reported that part of the public recovery funds to face the pandemic were mainly used to provide incentives to companies, instead of ensuring social protection; thus, in El Salvador only 15% was allocated to this item, while in Honduras only 23% was used for this purpose<sup>430</sup>.

#### **IV. THE CLIMATE EMERGENCY IN RELATION TO HUMAN MOBILITY**

261. REDESCA understands that, as with any major crisis, the impacts of climate emergencies are differentiated and require timely decision-making through the inclusion of all affected people and

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<sup>426</sup> IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 Nov. 1, 2019, para. 254.

<sup>427</sup> Ibid, para. 262

<sup>428</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, paras. 1913-1917.

<sup>429</sup> R. Padilla Pérez (ed.), Balance preliminar de las economías de Centroamérica y la República Dominicana en 2021 y perspectivas para 2022: febrero de 2022: febrero de 2022 (LC/MEX/TS.2022/2), Mexico City, Economic Commission for Latin America and the Caribbean (ECLAC), 2022.

<sup>430</sup> Financial Transparency Coalition, [FTC Reveals New "Covid Bailout Tracker."](#) April 22, 2021.

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communities. In that sense, climate stressors interfere with many of the factors that facilitate a safe, dignified and sustainable life. Extreme events, changes in weather patterns, melting glaciers, coastal flooding and desertification interact with other factors that affect the quality and place of people's lives. Such stressors contribute to insecure livelihoods, food systems, health and social stability, among others, which are often considered drivers of migration, displacement and planned relocation.<sup>431</sup>

262. Consequently, REDESCA warns that the increasingly uncontrollable atmospheric conditions make it difficult to make decisions on the changes and adjustments in economic, social, productive and migratory dynamics that must be implemented to address the phenomenon. Hence, the asymmetries in the size of the economies and the condition of Island States account for the contribution to climate change, the degree of exposure to it and the vulnerabilities inherent to the countries<sup>432</sup>.

263. In this regard, the Office of the Special Rapporteur has observed that, in the context of the climate emergency, one of the population groups that are primarily affected by this crisis are the so-called frontline communities. These are defined as those groups of people who are first and directly affected by climate change and inequity in society at higher rates than the rest of the population<sup>433</sup>. Therefore, they experience the consequences of climate change more severely than the rest of society<sup>434</sup>. For example, rural communities that depend on their agricultural labor, people living in small island developing states and least developed countries, communities surrounded by extractive energy production, indigenous peoples in high-risk areas, homeless people, low-income people, people of color, workers in climate-vulnerable industries (such as fishermen), people with disabilities, people with medical conditions (respiratory, for example), small business owners, immigrants, youth, children<sup>435</sup>.

264. In light of this situation, REDESCA warns that the people who are part of these communities are also those who, due to various events, may become mobile for climatic reasons. This is relevant, given that the Special Rapporteur notes that, according to international organizations, it is estimated that climate change could force around 216 million people in six regions of the world to move internally<sup>436</sup>. According to the Global Internal Displacement Report 2021 of the Internal Displacement Monitoring Center (IDCM), around 1.7 million people were internally displaced in the Americas in 2021, with climate disasters being the leading cause of such displacement; and more than half of this mobility was due to storms and floods<sup>437</sup>. As for Mexico and Central America, the population that will migrate between 2020 and 2050 due to environmental issues is estimated to be between 1.4 and 2.1 million people, depending on the scenario<sup>438</sup>. It is considered that about 1% of the

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<sup>431</sup> International Institute on Sustainable Development-SDG Knowledge Hub, [Human Mobility in the Context of SIDS and Climate Change: Pre-empting, Planning, and Contingency Arrangements for Adverse Climate Change Impacts](#), July 13, 2022.

<sup>432</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 53.

<sup>433</sup> See: Initiative for Energy Justice, [The Energy Justice Workbook](#); Georgetown University Climate Center, [Adaptation Clearing House, Adaptation Equity Portal: Frontline Communities](#).

<sup>434</sup> REDESCA, V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), OEA/SER.L/V/II Doc. 64 rev. 1, 26 May 2022.

<sup>435</sup> Human Rights Council, [Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: The effects of climate change on the human rights of persons in vulnerable situations](#), A/HRC/50/57, 6 May 2022.

<sup>436</sup> World Bank, [Groundswell Report](#), September 13, 2021; UN General Assembly, [Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation](#) A/77/226, July 26, 2022.

<sup>437</sup> Internal Displacement Monitoring Centre, [Global Internal Displacement Report 2021](#). See also World Meteorological Organization, [State of the Climate in Latin America and the Caribbean](#) 2021.

<sup>438</sup> Kumari Rigaud, Kanta, Alex de Sherbinin, Bryan Jones, Jonas Bergmann, Viviane Clement, Kayly Ober, Jacob Schewe, Susana Adamo, Brent McCusker, Silke Heuser, and Amelia Midgley, [Groundswell: Preparing for Internal Climate Migration](#), The World Bank, 2018, p. 109.

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population will be climate migrants by 2050<sup>439</sup>. According to the World Bank, Latin America could have up to 17.1 million climate displaced people<sup>440</sup>.

265. Similarly, among the region's most sensitive to climate-related migration and displacement are the Andes, northeastern Brazil and the northern countries of Central America.<sup>441</sup> This phenomenon, in turn, has increased in the last eight years compared to the data described in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in 2014 and climate-related migration is also expected to increase in small islands, especially those in the Caribbean<sup>442</sup>.

266. Additionally, in 2018, 19.2 million people had been displaced as a result of disasters linked to natural hazards, most of them weather- and climate-related. That figure would likely be much higher if people displaced due to slow-onset events were taken into account. By 2019, 24.9 million people had been displaced in 140 countries and territories, and by 2020, 30 million people had been displaced as a result of extreme weather events exacerbated by climate change<sup>443</sup>.

267. However, REDESCA notes with concern the difficulty in obtaining concrete figures on people who are displaced due to climate-related issues, a cause that is usually interrelated with other situations (for example, violence), which prevents people themselves from identifying climate and environmental factors as the cause of displacement, particularly when they are impacts of prolonged duration. As an example, people usually name job loss as a cause, and do not relate it to a natural disaster in their testimonies.<sup>444</sup>

268. In this regard, REDESCA takes note of the survey conducted by the Coalition for Humane Immigrant Rights (CHIRLA), which found in its "Migration Experience Survey"<sup>445</sup>, conducted among 316 people in mobility, between October 2022 and April 2023, in Tapachula, Mexico, that 67% of people in mobility experienced natural disasters such as hurricanes (49.4% of all reported an experience, floods (23.4%), earthquakes (9.8%), droughts (6.3%), and changes in agricultural markets (5.4%) in the last 15 years.4% of all reported an experience), floods (23.4%), earthquakes (9.8%), droughts (6.3%), and changes in agricultural markets (5.4%) in the last 15 years.<sup>446</sup>

269. The same study revealed that more than 42% of people reported that they have been "personally impacted by climate change" and just under 26% said they consider climate change a "reason to migrate". According to the study, people from Guatemala, Honduras, El Salvador and Nicaragua are the ones who most reported having an experience with natural disasters, almost 75% compared to 51% from other countries, and they are also the ones who stated that climate change was a reason to migrate (34%).<sup>447</sup>

270. REDESCA emphasizes that, according to the information received, it can be inferred that a considerable number of people are moving for reasons associated with environmental degradation and climate change. In the same sense, the United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change has pointed out that, in order to better understand this situation, it can be determined that in the context of this situation we are talking about "people displaced across international borders due to climate change". However, this term does not adequately describe the hardships faced by

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<sup>439</sup> Ibidem

<sup>440</sup> Ibidem

<sup>441</sup> World Meteorological Organization, [State of the Climate in Latin America and the Caribbean 2021](#), p. 3.

<sup>442</sup> IPCC, [Climate Change 2014: AR5 Synthesis Report](#) 2014, and IPCC, [Climate Change 2022 Impacts, Adaptations and Vulnerabilities: Central and South America](#), April 2022, paras. 1506-1513.

<sup>443</sup> Human Rights Council, Panel discussion on the adverse effects of climate change on the full and effective enjoyment of human rights by persons in vulnerable situations, A/HRC/52/48, 27 December 2022, para. 17.

<sup>444</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 7.

<sup>445</sup> CHIRLA, Survey: Migration Experience Survey. *Coalition for Humane Immigrant Rights*, April 2023.

<sup>446</sup> Southern Border Monitoring Collective, Response to REDESCA questionnaire, May 2023, p. 8.

<sup>447</sup> Id.

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displaced persons and the circumstances that have driven them to cross international borders and even within their own territory<sup>448</sup>.

## A. Environmental Degradation and Climate Emergency in Central America and Mexico

271. The Office of the Special Rapporteur notes that, according to specialized organizations, the predominant style of economic development in the region leads to the exacerbation of the impacts of environmental degradation and climate change. In this regard, ECLAC has explained it as a development model marked by an orientation towards the consumption of natural goods, which puts the conservation of its great natural heritage at risk due to the predatory characteristics imposed by economic growth.<sup>449</sup> Along these lines, the FAO indicated in its report on the state of forests 2022, that human-induced degradation affects 34% of agricultural land, with South America in particular contributing 17% of land degraded by human activities, to global degradation<sup>450</sup>.

272. In the same vein, it is important to note that developing countries are more exposed to the effects of climate change and suffer disproportionately negative impacts, whether due to limitations in their institutional response capacities and/or factors associated with their geography<sup>451</sup>. In this sense, it is recognized that natural or human-induced disasters, such as famines, earthquakes, or the adverse impact of large-scale development projects, can uproot entire communities and force them to abandon their communities.

273. REDESCA is concerned that the region is under high anthropogenic pressure. Deforestation as a result of the expansion of the agricultural frontier and cattle ranching is the main cause of soil degradation, mainly caused by water erosion. According to FAO, agricultural land in Central America, with 125.1 million hectares, has increased by 12 % between 1961 and 2017, at an annual rate of 0.2 %. Forest land (86.3 million hectares today) has decreased by 10.8 % between 1990 and 2017, at an annual rate of -0.2 %. The cattle herd, the largest in Central America with 50.8 million head today, increased by 115 % between 1961 and 2018, at an annual rate of 1.36 %<sup>452</sup>.

274. Thus, human-induced climate change affects the dynamics of forest ecosystems and their resilience to invasive species and diseases, which could have major ecological and economic repercussions.<sup>453</sup> In this regard, the Office of the Special Rapporteur warns that both the causes and effects of climate change and environmental degradation are related to human rights violations, and that the responses designed may also affect human rights. As already stated by the IACHR and REDESCA, the use of fossil fuels, extractive or exploitative activities and deforestation are the main causes of this crisis, compromising the possibility of life and enjoyment of rights of future generations with disproportionate effects on vulnerable populations<sup>454</sup>.

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<sup>448</sup> Special Rapporteur on the promotion and protection of human rights in the context of climate change, Providing legal options to protect the human rights of persons displaced across international borders due to climate change, A/HRC/53/34, 18 April 2023, para. 9.

<sup>449</sup> N. Gligo et al., *The Environmental Tragedy of Latin America and the Caribbean*, Libros de la CEPAL, No. 161 (LC/PUB.2020/11-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2020, p. 27.

<sup>450</sup> FAO, [The State of the World's Forests 2022. Forest pathways towards green recovery and building inclusive, resilient and sustainable economies](#), 2022, p. 9.

<sup>451</sup> Office of the United Nations High Commissioner for Human Rights. "Five UN human rights treaty bodies issue a joint statement on human rights and climate change: Joint Statement on "Human Rights and Climate Change", September 16, 2019.

<sup>452</sup> FAO, [The State of the World's Forests 2022. Forest pathways towards green recovery and building inclusive, resilient and sustainable economies](#), 2022, p. 10.

<sup>453</sup> FAO, [The State of the World's Forests 2022. Forest pathways towards green recovery and building inclusive, resilient and sustainable economies](#), 2022, p. 9.

<sup>454</sup> IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 November 1, 2019, para. 235. The Commission and REDESCA have received extensive information on this topic at various thematic hearings at the 168th, 169th, 171st, 173rd, 181st, 182nd, 183rd, 184th, and 185th Regular Sessions of the IACHR over the past 5 years.

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275. To that extent, REDESCA emphasizes that the irrational use of natural resources and their negative effects on the environment trigger processes such as air, water and soil pollution; ocean acidification and loss of marine biodiversity; deforestation and loss of terrestrial biodiversity; land degradation which, with the exacerbation of droughts, leads to desertification; global warming and associated climate change; and, finally, the increased vulnerability of human settlements and the risk of natural and technological disasters. All these realities, which have serious productive, economic, and social impacts, are associated with the different policies that each country adopts for its development<sup>455</sup>.

276. In this context, REDESCA notes with concern the number of reports, studies and reports on the various threats in the region that have been reported by other international organizations, such as droughts (52), hurricanes (41), floods (20), sea level rise (15), rainfall variation (14), deforestation (10), volcanic eruptions (10), earthquakes (10), temperature increase (7) and landslides (5), among others. It has also been identified as the tropical region most sensitive to climate change. The persistent occurrence of these phenomena in the region and their combination with social, economic, political and cultural factors have configured various risk scenarios due to its conditions of social vulnerability, food insecurity, incidence of socio-environmental phenomena, economic crises and increased violence<sup>456</sup>.

277. Similarly, the Office of the Special Rapporteur recalls that the Commission has previously pointed out that the monopolization and overexploitation of water, for example in the case of the construction of mega hydroelectric dams, also compromises the productive bases of indigenous peoples and endangers ecosystems through habitat degradation and water and soil contamination. This situation has generated the displacement of these peoples from their ancestral territories, causing a rural exodus to the cities or to other countries, which has submerged them in a situation of poverty<sup>457</sup>.

278. In this regard, civil society organizations pointed out that the current economic model allows this type of development projects to be executed without an adequate and participatory risk analysis. This, in turn, generates processes of forced displacement. This has been referred to as a "phenomenon in which people are dispossessed or find themselves in a situation of extreme need to leave their lands due to the implementation of development programs or projects"<sup>458</sup>. Similarly, the OHCHR has also pointed out that the development projects that most frequently cause displacement are to a large extent those that generate changes in land and water use. Among the projects that cause this phenomenon are infrastructure projects, mining-energy projects, industrial and urban development projects, among others<sup>459</sup>.

279. In this regard, the Commission and REDESCA are also aware of the situation of violence against those who defend the environment, territory and natural resources in northern Central America. This has its origins largely in the struggle for land and territory marked by the inequitable distribution and territorial dispossession of indigenous, Afro-descendant and peasant peoples and communities dating back to the time of the conquest and colonialism. The Inter-American Commission has observed that in the countries of northern Central America, an extractivist economic and development model has expanded, characterized by the installation of agro-industrial, mining, energy, forestry, urban development and tourism projects, among

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<sup>455</sup> N. Gligo et al., *The Environmental Tragedy of Latin America and the Caribbean*, Libros de la CEPAL, No. 161 (LC/PUB.2020/11-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2020, p. 26.

<sup>456</sup> International Organization for Migration (IOM), [Human mobility resulting from disasters and climate change in Central America](#), 2021, p. 17.

<sup>457</sup> IACHR. Report on Indigenous Peoples, Afro-descendant Communities 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, para. 294.

<sup>458</sup> Interamerican Association for Environmental Defense (AIDA), Questionnaire Response - Poverty, Climate Change and DESCA in Central America and Mexico, in the Context of Human Mobility, April 30, 2023, par. 7

<sup>459</sup> OHCHR-Mexico, *Human Rights, Development Projects and Evictions: A Practical Guide*. 2009, p. 16



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others. Civil society organizations indicate that this economic model has aggravated the situation for those who defend the environment<sup>460</sup>.

280. In this regard, REDESCA notes that in the framework of the third periodic report of the Committee on Economic, Social and Cultural Rights and the fourth periodic report of the Human Rights Committee, regarding Panama, concern was expressed about the lack of adequate and sufficiently participatory consultation procedures to obtain free, prior and informed consent in relation to projects with negative impact on the lands or way of life of indigenous peoples, such as the Barro Blanco hydroelectric project and the Fourth Electricity Transmission Line<sup>461</sup>. In this context, REDESCA shares the concern about the lack of sufficient information on the process of demarcation and titling of indigenous peoples' collective lands, as well as the allegations regarding the slow progress of this process. While noting the Plan for the Integral Development of Indigenous Peoples, there are concerns about the levels of poverty in these communities and the difficulties in accessing education and health facilities, goods and services<sup>462</sup>.

281. Consequently, REDESCA observes with attention that events that generate processes of transformation of land use encourage the mobility of people. In this sense, according to the IOM, migration is generating cyclical deforestation processes that can have serious impacts on ecosystems. Degradation processes such as forest deforestation, desertification and soil degradation could be alleviated to a great extent through appropriate government policies. Public policies, particularly those regulating access to and exploitation of fragile lands, play a fundamental role for this purpose, even in the short term<sup>463</sup>.

282. Faced with this situation, the States have sought to take specific measures to mitigate and prevent situations such as those described above. In the case of Honduras, the State reported that in order to implement policies to address the climate emergency and combat its causes and effects; in February 2022 it was instructed to review, suspend and cancel environmental licenses, permits and concessions; as well as to cancel the approval of permits for extractive exploitation for being harmful to the State as they threaten natural resources, public health and limit access to water as human rights; and, that natural areas of high ecological value be intervened<sup>464</sup>.

283. Considering these actions, REDESCA emphasizes that the processes of pollution, destruction and environmental degradation generate the conditions for people to leave their territories. In this sense, it is also taken into account that some of these actions can also be caused by infrastructure projects that can be destined to mitigate or adapt to climate change. Therefore, the Office of the Special Rapporteur emphasizes that, since it is necessary to mitigate the impacts of the climate emergency, such activities that exacerbate it should be reduced, based on policies promoted by the State. These may even be part of its Nationally Determined Contributions (NDCs). In this sense, based on the comprehensive protection of the right to a healthy environment, the Office of the Special Rapporteur considers that exposure to greater risks that induce people's mobility can be reduced. This also includes the protection of both the substantive and procedural aspects of this right.

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<sup>460</sup> IACHR-REDESCA, North Central America: Environmental Defenders, OEA/Ser.L/V/II. Doc. 400/22 December 16, 2022, para. 40.

<sup>461</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of Panama, E/C.12/PAN/CO/3, 31 March 2023, para. 10. Human Rights Committee, Concluding Observations on the fourth periodic report of Panama, CCPR/C/PAN/CO/4, 12 April 2023, para. 39.

<sup>462</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Panama, CCPR/C/PAN/CO/4, 12 April 2023, para. 39.

<sup>463</sup> International Organization for Migration (IOM), [Human mobility resulting from disasters and climate change in Central America](#), 2021, p. 27.

<sup>464</sup> Government of Honduras, Report in response to REDESCA's request, Note No. 177-DPM-SRECI-2023, April 20, 2023, p. 32.

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## B. The differentiated effects of the climate crisis on human mobility

284. REDESCA is concerned that the effects of climate change and environmental degradation are particularly severe for historically excluded and discriminated populations, such as women, children, indigenous peoples, people with disabilities, and people living in rural areas or in poverty, despite the fact that they have contributed marginally to greenhouse gas emissions, the main cause of this phenomenon<sup>465</sup>.

285. Considering the above, the Special Rapporteur warns that the nexus between climate change and human rights is increasingly evident and its recognition at the international level has reached significant levels of consensus, even in the legal regime. This is because there is "a directly proportional relationship between the increase in greenhouse gas emissions in the atmosphere and the frequency and intensity of weather changes"<sup>466</sup>. This poses a serious risk to society, people and the environment in general, confirming that the climate emergency requires a global response, based on human rights and the best scientific evidence<sup>467</sup>.

286. REDESCA has identified that the natural phenomena that give rise to massive movements of people are characterized by the fact that they can be sudden events (such as earthquakes) or gradual processes (such as desertification). Thus, human mobility can be voluntary or forced, occur within the same national territory or from one country to another, be caused by sudden disasters or by slow-evolving processes, and manifest its different forms independently, consecutively or superimposed<sup>468</sup>.

287. On the other hand, the impact of the climate crisis has resulted in the progressive deterioration of the food situation in large sectors of the population, a scenario to which must be added the socioeconomic consequences of the COVID-19 pandemic, the impact of earthquakes and hurricanes, the various political crises and the deterioration of democracy, especially in Haiti, Cuba, Venezuela, Guatemala, Nicaragua, Honduras and El Salvador<sup>469</sup>.

288. Considering the above, REDESCA, in the framework of the development of this report, received information on movements of people that are already occurring as a result of climate change and generating violations of people's rights. For example, civil society organizations called attention to the situation of the "dry corridor" which is an area of dry tropical forest that covers much of the territory of Guatemala, El Salvador, and Honduras, and which is particularly vulnerable to changes in rainfall. Since 2014, Central American farmers have faced several deep droughts, often in consecutive harvest seasons, which has decreased their production by 70%<sup>470</sup>.

289. These atmospheric disturbances are compounded by other events such as high rainfall, floods, and hurricanes. Thus, the combination of droughts and heavy rains has created a food crisis in Central America. In 2019, the World Food Program estimated that 2.2 million people in El Salvador, Guatemala, Honduras, and

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<sup>465</sup> IACHR-REDESCA, Report on Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 November 1, 2019, para. 236.

<sup>466</sup> IACHR-REDESCA, In [the framework of COP 26 of the Framework Convention on Climate Change, the IACHR and REDESCA call on OAS Member States to put the protection of human rights at the center of their climate policies and actions](#), November 4, 2021.

<sup>467</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 53.

<sup>468</sup> International Organization for Migration (IOM), [Human mobility resulting from disasters and climate change in Central America](#), 2021, p. 13.

<sup>469</sup> OXFAM, Latin American Observatory on Forced Displacement: a proposal to help identify and close protection and humanitarian assistance gaps in the forced displacement crisis in the Latin American migration corridor, November 2021, p. 4.

<sup>470</sup> World Food Programme USA, [Erratic Weather Patterns in the Central American Dry Corridor Leave 1.4 Million People in Urgent Need of Food Assistance](#), April 25, 2019.

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Nicaragua lost their crops, with 1.4 million in need of immediate food assistance. In 2021, the number of people facing food insecurity grew to 8 million<sup>471</sup>.

290. In Honduras, communities that have been stretched to the limit by gang violence may face one disaster after another, with no time or resources to recover. Some 247,000 people have been internally displaced, and another 183,000 have sought international protection elsewhere. While it is not possible to determine the extent to which extreme weather events - such as hurricanes Iota and Eta - have played a role in the decisions of people choosing to flee, it is clear that climate change has become another factor forcing Hondurans to leave their homes and communities<sup>472</sup>.

291. In addition, the Office of the Special Rapporteur notes with concern that with the risk to harvests and with the massive unemployment in the countryside due to the affectation of agriculture, there is a movement of rural populations to urban centers. These internal displacements typically take place in informal urban areas, without access to basic public services and with little State presence<sup>473</sup>.

292. In this sense, REDESCA observes that, given the absence of the State in some places, gangs and organized crime organizations would have control of the peripheral and poor areas of the cities in the sub-region, putting internal migrants at direct risk of threats, violence, and murder. In this way, it has been characterized by civil society organizations that the inability to confront the actions of organized crime and armed groups, as well as the lack of an effective response to climate emergency, pushes vulnerable people to join these groups or move to places under their control resulting in a violation of their duty to guarantee the right to life and integrity<sup>474</sup>.

293. In light of the above, REDESCA notes that within the framework of the Regional Integrated Framework for Protection and Solutions (MIRPS) for people in a situation of human mobility, an Agenda for the protection of people displaced across borders in the context of disasters and climate change in 2015 has been proposed. In this regard, a consultation was held to address this specific issue with the National Technical Teams of the MIRPS, together with representatives of the Ministries of Environment, institutions and civil protection services, risk management and emergency response and academia. During the session, the States exchanged their perspectives on this issue, which has become particularly relevant in recent years, and also discussed the progress made in the implementation of the agenda<sup>475</sup>.

294. Similarly, the States Parties to the Regional Conference on Migration published a practical guide for the protection of persons moving across borders in the context of disasters. The objective of this guide is to support the more effective and consistent use of existing laws, policies, and practices to ensure that the needs of persons displaced across borders in the context of disasters and foreign migrants affected by disasters are adequately addressed. Within the principles of application of this guide, it is indicated that, in order to apply these protection mechanisms, it is necessary to reinforce the notion that discrimination based on migratory status, or any other grounds is prohibited, as expressly prescribed in applicable national and international laws<sup>476</sup>.

295. In this context, it should be noted that the IACHR and REDESCA issued the only document to date that generates a series of recommendations for the formulation of climate policies and decisions in the

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<sup>471</sup> See Sarah Bermeo; Mary Speck, *How Climate Change Catalyzes More Migration in Central America*, United States Institute of Peace, September 21, 2022 and Paul J. Angelo, [Climate Change and Regional Instability in Central America Prospects for Internal Disorder, Human Mobility, and Interstate Tensions](#), Council on Foreign Nations, September 2022, p. 15.

<sup>472</sup> Interamerican Association for Environmental Defense (AIDA), Response to REDESCA questionnaire, April 2023, p. 13.

<sup>473</sup> See Paul J. Angelo, *Climate Change and Regional Instability in Central America Prospects for Internal Disorder, Human Mobility, and Interstate Tensions*, Council on Foreign Nations, September 2022, p. 15.

<sup>474</sup> Ibid.

<sup>475</sup> Regional Integrated Framework for Protection and Solutions (MIRPS), [Annual Report 2022](#), p. 20.

<sup>476</sup> SEE Regional Conference on Migration, [Practical Guide on Protection for People Moving across Borders in the Context of Disasters](#), 2017, p. 4, 8.

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American hemisphere, from a rights-based approach. Through Resolution 3/2021, entitled "Climate Emergency: Scope and Inter-American Human Rights Obligations, a series of recommendations are presented so that OAS States can have a practical guide for the development of ambitious climate action from a rights-based approach. Thus, it begins by stating that "all persons in the territories or within the jurisdictions of the Member States of the OAS are subject to all the rights contained in the American Declaration of Rights and Duties, as well as all other inter-American and international instruments to which these States are party"<sup>477</sup> .

296. In this regard, REDESCA recalls that the climate emergency poses a real human rights emergency, which requires that the principles and standards governing International and Inter-American Human Rights Law vis a vis those of International Environmental Law guide all solutions, policies and actions proposed in this area<sup>478</sup> .

297. To this end, the Special Rapporteur notes that the right to a healthy, balanced and pollution-free environment is centered as the axis of action, under which States must develop, in accordance with their obligations at the national and regional levels, their climate actions<sup>479</sup> . In addition, this also includes the obligation to protect, in accordance with Advisory Opinion 23/17 of the IACHR Court, all components of nature, which also have a legal interest in itself, even if there is no certainty or evidence of risk to individual persons. Therefore, it is not only about how the rights of individual persons are affected by nature or the environment, but also about the importance of nature for other living beings that also deserve protection<sup>480</sup> .

298. However, in the context of human mobility, the Office of the Special Rapporteur emphasizes that this phenomenon associated with climate factors has caused a great deal of debate around terms such as "climate refugees" and "climate migrants" when identifying the correct way to refer to these people. At the same time, in most cases, these people are not legally recognized as "refugees"<sup>481</sup> . In Resolution 3/2021, the IACHR and REDESCA recognized that "States must guarantee due process during the procedure leading to the recognition of their migratory status" and guarantee the human rights of displaced persons in the context of climate change"<sup>482</sup> . They must also recognize "access to justice, reparation measures and guarantees of non-repetition for persons forced to be displaced by the expansion of development projects that aggravate the adverse consequences of climate change"<sup>483</sup> .

299. The protection of the rights of refugees-those who qualify as refugees under the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol or the 1984 Cartagena Declaration on Refugees<sup>484</sup> -has been developed through specific international instruments such as the 1951 Convention Relating to the Status of Refugees, which has been considered the cornerstone in this area. In this regard, the Commission has pointed out that, although the 1951 Convention does not establish the right to receive and

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<sup>477</sup> REDESCA, REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 57 and See IACHR-REDESCA, Resolution 3/2021: Scope of Inter-American Human Rights Obligations, adopted on December 31, 2021.

<sup>478</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 58.

<sup>479</sup> IACHR-REDESCA, Resolution 3/2021: Scope of inter-American human rights obligations, adopted December 31, 2021, p. 13.

<sup>480</sup> REDESCA, VI Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), [Chapter IV Special Report: Climate Emergency and Human Rights in the Americas](#), OEA/SER.L/V/II Doc. 50, 6 March 2023, para. 59.

<sup>481</sup> United Nations University: [Institute for Environment and Human Security, 5 facts on climate migrants](#).

<sup>482</sup> IACHR-REDESCA, Resolution 3/2021: Scope of inter-American human rights obligations, adopted December 31, 2021, p. 16.

<sup>483</sup> *Id.*

<sup>484</sup> IACHR, Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, December 7, 2019.

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enjoy asylum as a human right, this is considered to be implicitly incorporated in its text by establishing the definition of a refugee, the protection against refoulement and the catalog of rights it includes<sup>485</sup>.

300. According to Article 1 of the 1951 Convention Relating to the Status of Refugees, refugees are considered to be persons who have crossed an international border owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>486</sup> According to the 1984 Cartagena Declaration, in some contexts, the definition extends to persons fleeing "events seriously disturbing public order"<sup>487</sup>. Thus, there may be situations where the broader criteria of the 1951 Convention or regional refugee legal frameworks apply. However, the term "climate refugee" is not yet endorsed by UNHCR and the more accepted way to refer to these persons would be "persons displaced in the context of disasters and climate change" or "climate migrants"<sup>488</sup>.

301. For its part, since 2013, the Commission has recognized the existence of environmental migrants. In its report entitled Human Rights of Migrants and Other Persons in the Context of Mobility in Mexico, it recognized that multiple factors cause migration in the Central American region and explained why the flow of migrants transiting through Mexico is a combination of economic migrants, asylum seekers, refugees, environmental (climate) migrants, victims of human trafficking, unaccompanied or separated children or adolescents, and others<sup>489</sup>. The IACHR also recognized environmental migrants in its Resolution 04/19 entitled Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons<sup>490</sup>.

302. Climate migrants, therefore, are those people who decide or are forced to move due to climatic factors or disasters such as storms, floods, droughts, earthquakes, among others<sup>491</sup>. Members of frontline communities or vulnerable people may feel more pressure to migrate than others who are not as affected by these phenomena<sup>492</sup>. In turn, some of these people do not have the economic resources or capacity to migrate to another country and therefore move to other areas within their own country<sup>493</sup>.

303. From the foregoing, it is worth considering that the protection of asylum seekers and beneficiaries of complementary protection is also framed within the aforementioned international instruments and the general obligations of the States that derive from the American Convention. In the opinion of the IACHR, granting lesser protection (i.e. not granting them refugee status) could lead to greater risk situations or human rights violations because, as noted above, these persons are displaced due to risks to their life, personal liberty or integrity<sup>494</sup>.

304. In addition, REDESCA takes note of the decision of the Human Rights Committee, which states that when environmental damage threatens to disrupt private life, family and home, States must prevent serious interference with the private life, family and home of persons under their jurisdiction.<sup>495</sup> In this sense,

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<sup>485</sup> IACHR, Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection, OEA/Ser.L/V/II. Doc. 255, August 5, 2020, paras. 43 and 44.

<sup>486</sup> United Nations, [Convention Relating to the Status of Refugees \(adopted July 28, 1951\)](#).

<sup>487</sup> United Nations High Commissioner for Refugees (UNHCR), [Climate change and disaster displacement; Cartagena Declaration on Refugees \(1984\)](#).

<sup>488</sup> UNHCR, [Climate change and disaster displacement; Dina Ionesco, Let's Talk About Climate Migrants, Not Climate Refugees](#), June 6, 2019.

<sup>489</sup> IACHR, Human Rights of Migrants and Other Persons in the Context of Mobility in Mexico, OEA/Ser.L/V/II. Doc. 48/13 Dec. 30, 2013 para. 73; IACHR, [IACHR Expresses Concern over Mexico's Southern Border Plan](#), June 10, 2015.

<sup>490</sup> IACHR, [Resolution 04/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), adopted December 7, 2019.

<sup>491</sup> United Nations University, [Institute for Environment and Human Security, 5 facts on climate migrants](#), 2015.

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> IACHR, [Resolution 04/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), adopted December 7, 2019.

<sup>495</sup> UN Human Rights Committee, Daniel Billy et al. v. Australia, Communication No. 3624/2019, CCPR/C/135/D/3624/2019, September 2022, para. 8.9. Australia, Communication No. 3624/2019, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.9.

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when the impacts of climate change, including environmental degradation on ancestral lands, in communities where subsistence depends largely on available natural resources and where alternative means of subsistence and humanitarian aid are not available, have a direct impact on the right to housing, and the adverse consequences of these impacts are severe because of their intensity or duration and the physical or mental harm they cause. Thus, environmental degradation can adversely affect people's well-being and constitute foreseeable and serious violations of other rights such as the right to life<sup>496</sup>.

305. As discussed above, the impacts caused by the climate emergency and environmental degradation on various human rights, especially ESCER, are evident. In addition, forced displacement affects the mental health of communities due to the trauma of losing their homes and livelihoods.<sup>497</sup> Some studies indicate that these people suffer from economic vulnerability, social exclusion, and limited support to maintain their cultural identity.<sup>498</sup>

306. Relocation can lead to loss of nationality of origin and forced displacement due to climate change can also cause statelessness, as there may be situations where people are unable to prove their nationality because they have lost their documentation or because it is impossible for them to obtain replacement documents.<sup>499</sup> Prolonged or permanent movement outside one's own country can also sometimes cause passive loss of citizenship. If this happens, these people may then face challenges to the guarantee of their ESC rights, such as access to food, water, medical services, and subsidies or assistance provided by the State<sup>500</sup>.

307. REDESCA notes that the impacts of the climate emergency, exacerbated by the environmental degradation accelerated by the current development model, are increasingly promoting massive movements of people. Although there are strategies that are designed at the intergovernmental level, these do not reach the true impacts generated by this phenomenon, nor is the structural situation of inequality and violations associated with extractive industries observed.

308. Additionally, the depredation of vegetation, the lack of protocols for holistic environmental protection (which includes the protection of land and territory defenders), have resulted in a crisis that can increase the vulnerability indexes of people and communities affected by poverty, inequality and natural disasters associated with the climate emergency. In this sense, when fulfilling their human rights obligations in relation to the climate emergency, States should try to do so taking into account the interdependence and indivisibility of all rights, understood integrally and as a whole, without hierarchy among them and enforceable in all cases before those authorities that are competent to do so<sup>501</sup>.

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<sup>496</sup> Id., para. 8.12

<sup>497</sup> UN, [Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation](#) A/77/226, 26 July 2022.

<sup>498</sup> Id.

<sup>499</sup> Id.

<sup>500</sup> UN, [Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change: Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation](#) A/77/226, 26 July 2022.

<sup>501</sup> IACHR-REDESCA, Resolution 3/2021 Climate Emergency: Scope of Inter-American Human Rights Obligations, December 31, 2021, para. 1.

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## V. THE PROTECTION OF ESCER IN THE CONTEXT OF HUMAN MOBILITY

309. The obligation of States to respect and guarantee human rights within the framework of the Inter-American system entails a series of immediate and progressive obligations in relation to economic, social, cultural and environmental rights (ESCER). In this scenario, although the enjoyment of all human rights - indivisible and interdependent - goes hand in hand with the inherent dignity of every human being, as previously addressed, there are situations that generally threaten the possibility of enjoying and enjoying them, including poverty, inequality, the lack of guarantee of ESCER and the impacts of the climate emergency.

310. These limitations in guaranteeing the ESCER are even more evident for persons or groups in situations of vulnerability or historical discrimination. In keeping with the purpose of the report, REDESCA will address the main standards for the protection of the ESCER of persons in contexts of human mobility - although it should be noted that these standards are applicable to all persons subject to the jurisdiction of the respective States. To this end, it will first address the general obligations of States with regard to ESCER, differentiating between those of an immediate nature and those of a progressive nature. Subsequently, it will delve into the criteria applicable in the context of situations of special consideration: health crises and natural disasters.

311. In any case, prior to this analysis, it is important to consider that in the framework of the Inter-American Human Rights System, progress has been made towards the direct justiciability of ESCER, in the understanding that they have gone through a phase of recognition<sup>502</sup> and consolidation, from which, both through the contentious and consultative sphere of the IACHR Court and the various mechanisms of the Commission, the consideration and access to international justice of ESCER in the ISHR has been achieved in a direct and autonomous manner.

312. In this process of consolidation, the IACHR Court -through its contentious function- began by examining these rights indirectly, under the analysis of violations of civil and political rights -such as the right to life, personal integrity, and property- and then went on to recognize them autonomously by declaring a direct violation of Article 26 of the Convention, reiterating its enforceability and the applicability of the obligations to

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<sup>502</sup> ESCER have been widely recognized through different instruments of the Inter-American System. In general terms, the Charter of the Organization of American States (1948 - amended in 1967), as the founding instrument of the regional organization, included since 1948 various references to economic, social, cultural and environmental rights (see Articles 34, 45, 46, 47, 48, 49, 50, 51 and 52). For its part, the American Declaration, adopted that same year, recognizes them in Articles XI, XII, XIII, XIV, XV and XVI. Similarly, the American Convention on Human Rights enshrines them in general terms in Article 26, while they are developed in greater detail in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural and Environmental Rights (Protocol of San Salvador).

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respect and guarantee<sup>503</sup>. In this way, the IACHR Court has continued to deepen and develop with increasing clarity its interpretation of the application of Article 26 of the Convention<sup>504</sup>.

313. This process has also been carried out by the Commission, which through its various mechanisms has reaffirmed and exercised its competence to rule on possible violations of Article 26 of the American Convention and the ESCER contained in the American Declaration within the framework of the system of individual petitions and cases<sup>505</sup>, in addition to emphasizing the interdependence and indivisibility of economic, social, cultural and environmental rights with respect to civil and political rights<sup>506</sup>.

314. On this last point, it should be noted that the organs of the Inter-American system have pointed out that interdependence, indivisibility, and progressivity are human rights principles directly linked to the ESCER<sup>507</sup>. Thus, the "progressivity" characteristic of ESCER should in no way be an excuse to consider that ESCER are rights that are less rooted in human dignity or in the Inter-American instruments themselves than civil or political rights. On the contrary, REDESCA has established that the universality, indivisibility, interdependence, and interrelatedness of all human rights increasingly appear as central elements in ensuring their effective protection, as well as the preservation of democracy and the rule of law in States that are truly committed to the development of their peoples and, therefore, to the fulfillment of the 2030 Agenda<sup>508</sup>.

#### **A. General obligations of the States in ESCER matters.**

315. In general terms, the Commission has emphasized that Article 26 of the ACHR establishes obligations on the States Parties to achieve the progressive development of the social rights derived from the

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<sup>503</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American](#) Standards, OEA/Ser.L/V/II. Doc. 465, December 31, 2021. Note: This process can be seen in the fact that the Court in the Suárez Peralta v. Ecuador case, although it did not directly apply the provision of Article 26 to the specific case, recognized, inter alia, that health is a fundamental human right and indispensable for the adequate exercise of other human rights. Subsequently, in the case of Gonzales Lluy v. Ecuador, the Inter-American Court determined how the State had discriminated against and inhibited the enjoyment of the right to education of the victim in the case by not guaranteeing her access to the educational system because she was a person living with HIV. In this case, the IACHR Court applied for the first time the Protocol of San Salvador, which empowers it to supervise compliance with the obligations of States with respect to this specific right. The Court also found in the Duque v. Colombia case that the existence of a regulation that did not allow the payment of pensions, and therefore the enjoyment of the right to social security, to same-sex couples violated the right to equality and non-discrimination. Subsequently, the Court advanced the autonomy of these rights by declaring a direct violation of Article 26 of the ACHR in the case of Lagos del Campo v. Peru. In this judgment, the Court derived the protection of the right to work within the framework of the Inter-American System, particularly with respect to labor stability and the right not to be unjustly deprived of employment; materializing the access to international justice of ESCER in the IAHRs in a direct and autonomous manner. The IACHR Court continued to deepen and develop with increasing clarity its interpretation of the application of Article 26 of the ACHR and the obligations of the States for the realization of ESCER, applying this provision in subsequent decisions to rights such as health (Case of Poblete Vilches et al. v. Chile; Case of Cuscul Pivar, et al. v. Chile; Case of Cuscul Pivar, et al. v. Chile). Chile; Case of Cuscul Pivar et al. v. Guatemala), social security (Case of Muelle Flores v. Peru; Case of Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración Tributaria (ANCEJUB-SUNAT) v. Peru) and healthy environment (Advisory Opinion OC-23/17 of November 15, 2017).

<sup>504</sup> As an example, see: I/A Court H.R., Case of Suárez Peralta v. Ecuador. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 132; IACHR Court. Case of Gonzales Lluy et al. v. Ecuador Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 252, 256, 265, 274, and 291; I/A Court H.R., Case of Lagos del Campo v. Peru. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 34.

<sup>505</sup> As an example, see: IACHR. Resolution No. 12/85, Case No. 7615 (Yanomami Community). Brazil. March 5, 1985; IACHR. Report No. 110/18, Merits. Case of Paola del Rosario Albarracín Guzmán and family members. Ecuador. October 5, 2018; IACHR. Report No. 107/18, Merits. Case of Martina Rebeca Vera Rojas. Chile. October 5, 2018, *inter alia*.

<sup>506</sup> IACHR. Resolution No. 12/85, Case No. 7615 (Yanomami Community), Brazil, March 5, 1985; IACHR. Merits Report No. 50/16. Undocumented Workers (United States) November 30, 2016; IACHR. Merits Report No. 25/18. Employees of the Fire Factory in Santo Antonio de Jesus and their family members (Brazil), March 2, 2018; IACHR. Merits Report No. 64/18. Opario Lemoth Morris et al. (Buzos Miskitos) (Honduras), May 8, 2018; IACHR. Merits Report No. 110/18. Paola del Rosario Albarracín Guzmán and family members (Ecuador), October 5, 2018; IACHR. Merits Report No. 107/18, Martina Rebeca Vera Rojas (Chile), October 5, 2018, *inter alia*.

<sup>507</sup> IACHR COURT, [JURISPRUDENCE NOTEBOOK OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS No. 22: ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS](#), 2021, p. 22.

<sup>508</sup> REDESCA. [III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights \(REDESCA\)](#), OEA/Ser.L/V/II. February 24, 2020, para. 62.



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OAS Charter. Thus, the Commission has indicated that it is first necessary to establish whether the right at issue in the case is derived "from the economic, social, educational, scientific and cultural norms contained in the Charter of the Organization of American States", as referred to in the text of Article 26. In other words, Article 26 of the ACHR is the one that attributes to the OAS Charter as a direct source of rights, assigning the character of human rights to the provisions that may derive from said treaty.

316. Given that the purpose of the OAS Charter was not to individualize rights but to constitute an international organization, the IACHR has indicated that it is necessary to resort to auxiliary texts to identify the rights that arise from the provisions of that instrument. Once this has been established, it is necessary to determine whether the State in question failed to comply with the obligation to "progressively achieve" the full realization of such right, or with those general obligations to respect and guarantee it. In this second level of analysis, it is necessary to take into consideration the nature and scope of the obligations required of the State, both progressive and immediate, under Articles 1(1), 2 and 26 of the Convention, as well as the contents of the right in question<sup>509</sup>.

317. As has been established by the Commission and REDESCA, Article 1.1 of the American Convention on Human Rights highlights the obligation of the States Parties to respect and guarantee the rights established therein. On the other hand, Article 2 establishes the obligation of the States to adopt provisions of domestic law, both legislative and otherwise. Such provisions certainly reach the provisions of Article 26 of the Convention, included in Part I of the instrument<sup>510</sup>. In this sense, States have the obligation not only to ensure the progressive development of the right, but also to respect and guarantee its realization, including through the adoption of measures, non-discrimination in the exercise of rights and access to an effective remedy<sup>511</sup>.

318. With regard to guaranteeing the ESCER of persons in situations of human mobility, it is necessary to determine the scope of the obligations of immediate compliance through which the States must adopt effective measures to guarantee access without discrimination to the benefits recognized for the right in question, as well as those obligations of a progressive nature that must be satisfied to the maximum extent of the available resources of each State.

## **i. Immediate**

319. Immediate ESCER obligations are those that do not depend on the existence of resources or the State's capacity to fulfill the right in question. In general terms, this implies: adopting measures, so that a programmatic approach is used for the realization of economic, social and cultural rights; and non-discrimination, as a principle that must govern the exercise of the State's functions in this regard<sup>512</sup>. In this context, the Committee on ESC rights has pointed out that the adoption of measures in and of themselves are not limited or conditioned by other considerations; therefore, although the effective realization of rights may be gradual, the adoption of measures or measures for such purposes must be deliberate, concrete and aimed as clearly as possible at their fulfillment. The State also has basic obligations that must satisfy essential levels of such rights, which are not subject to progressive development, but are of an immediate nature<sup>513</sup>.

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<sup>509</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#)v, OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 22; IACHR. Report No. 110/18. Case 12.678. Merits. Paola del Rosario Albarracín Guzmán and next of kin. October 5, 2018, paras. 107.

<sup>510</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#)v, OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 24

<sup>511</sup> Ibid.

<sup>512</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#)v, OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 28

<sup>513</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States Parties' obligations (Article 2, paragraph 1 of the Covenant), 1990. In this sense, see: IACHR. Report on Poverty and Human Rights in the Americas OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

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320. For its part, the Commission has indicated that Article 26 of the Convention is not limited to the prohibition of retrogression -as a correlate of the obligation of progressivity-, but also implies, from the interpretative framework of Article 29 of the Convention and in light of Articles 1.1 and 2 of the same instrument, at least the following immediate and enforceable obligations: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination to economic, social, cultural and environmental rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of the rights incorporated in said article and iv) offer suitable and effective remedies for their protection<sup>514</sup>.

321. In light of the above, REDESCA reiterates that the inter-American instruments on ESCER generate obligations to meet the basic needs of human development, based on the principles of equality and non-discrimination, whose respect and guarantee are as enforceable as those relating to civil and political rights, including the right to effective individual or collective judicial protection of those rights. Thus, ESCER must be ensured by all States in the region, with special attention to the most vulnerable groups<sup>515</sup>.

322. In this regard, the Inter-American Court and the Commission have developed the principle of equality and non-discrimination<sup>516</sup> as a basic and general principle of human rights protection with the character of *jus cogens* - constituting an absolute limit for the will of the States<sup>517</sup> - and which has an indissoluble link with the obligation to respect and guarantee human rights. In the opinion of the IACHR, this principle is one of the pillars of any democratic system and one of the fundamental bases of the human rights protection system established by the OAS<sup>518</sup>. In addition, the IACHR Court has indicated that this principle must always be respected, so that States cannot subordinate or condition the observance of the principle of equality before the law and non-discrimination to the achievement of the objectives of their public policies, whatever these may be, including those of a migratory nature<sup>519</sup>.

323. Along these lines, reaffirming the universal, indivisible, and interdependent nature of all human rights, the Commission has established that civil and political rights, as well as ESCER, are part of the plexus of rights that must be interpreted in light of the principle of equality and non-discrimination<sup>520</sup>. In the area of economic, social, cultural, and environmental rights, it has emphasized that the first obligation of immediate effect derived from this group of rights consists of guaranteeing their exercise in conditions of equality and without discrimination<sup>521</sup>.

324. This is because this principle stems directly from human nature and is inseparable from the essential dignity of the person, which is why it is incompatible with any situation that, by considering a certain group superior, leads to treating it with privilege; or that, conversely, by considering it inferior, treats it with

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<sup>514</sup> IACHR. Report No. 25/18. Case 12.428. Admissibility and Merits. Employees of the Fire Factory in Santo Antonio de Jesus and their next of kin. Brazil. March 2, 2018, paras. 127 et seq. and IACHR. Report No. 110/18; IACHR. Report No. 110/18. Case 12.678. Merits. Paola del Rosario Albarracín Guzmán and next of kin. October 5, 2018, paras. 103 et seq.

<sup>515</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American](#) Standards, OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 17

<sup>516</sup> In the Inter-American sphere, it is recognized in Articles 34 and 35 of the OAS Charter, Articles II and XII of the Declaration of the Rights and Duties of Man (hereinafter American Declaration) and Preamble and Articles 1 (1), 17 (4) (5), 23 (1) (b) (c) and 24 of the American Convention on Human Rights (hereinafter the Convention or ACHR) OAS, American Convention on Human Rights, OAS No. 36, Reg. UN 27/08/1979, No. 17955, San José, Costa Rica, 1969, among others.

<sup>517</sup> The *jus cogens* nature of the principle of non-discrimination implies that, because of its peremptory nature, these fundamental rules must be observed by all States, whether or not they have ratified the conventions containing it, since it constitutes an ineluctable principle of customary international law.

<sup>518</sup> IACHR. Report No. 40/04. Case 12.053. Merits. Mayan Indigenous Communities of the Toledo District, Belize. October 12, 2004, para. 163.

<sup>519</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, para. 172.

<sup>520</sup> IACHR, [Compendium Equality and non-discrimination, OEA/Ser.L/V/II.171 Doc. 31](#), 12 February 2019, p. 41.

<sup>521</sup> *Ibid*

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hostility or in any way discriminates against it from the enjoyment of rights that are recognized to those who are not considered to be in such a situation of inferiority<sup>522</sup>.

325. Consequently, in the framework of the Inter-American System, it has been recognized that this general obligation to respect and guarantee human rights without any discrimination and on a basis of equality derives in two specific obligations, one of a negative type that obliges to abstain from actions that in any way are directed, directly or indirectly, to create situations of de jure or de facto discrimination, and another of a positive type, which by moving towards a concept of material or structural equality, implies adopting measures to reverse or change existing discriminatory situations in their societies, to the detriment of a certain group of people (affirmative measures of equality)<sup>523</sup>. The latter especially considering that, in light of the principle of equality and non-discrimination and in the context of the protection of the rights of all persons under the jurisdiction of the States, it is essential to pay attention to persons, communities and groups historically subject to discrimination and exclusion<sup>524</sup>.

326. In this context, States have the obligation to pay special attention to social sectors and individuals who have suffered forms of historical exclusion or are victims of persistent prejudice, in order to adopt the necessary measures to prevent, reduce and eliminate the conditions and attitudes that perpetuate discrimination in practice<sup>525</sup>. These include migrants, women, the elderly, indigenous peoples, Afro-descendants, LGBTI people, among others. Despite the recognition of these groups, it should be noted that the identification of people in vulnerable situations may vary in each society and/or historical moment<sup>526</sup>.

327. Without detriment to the foregoing, REDESCA emphasizes that within the framework of the inter-American system, not every distinction may be considered contrary to human dignity, but rather only discriminatory acts and practices<sup>527</sup>. In this understanding, States may only establish objective and reasonable distinctions when they are made with due respect for human rights and in accordance with the principle of the application of the norm that best protects the human person<sup>528</sup>. These criteria must be analyzed in each specific case, according to their level of intensity, depending on the grounds under which there is a difference in treatment<sup>529</sup>. In any case, as the IACHR has established, distinctions based on gender, race, religion, national origin, are specifically prohibited with respect to the enjoyment and exercise of the substantive rights enshrined in international instruments. This is because any distinction based on any of the assumptions set forth in Article 1 of the American Convention<sup>530</sup> carries "a strong presumption of incompatibility with the treaty.

328. Therefore, with respect to these categories, any distinction made by States in the application of benefits or privileges must be carefully justified by virtue of a legitimate interest of the State and society, which, moreover, cannot be satisfied by non-discriminatory means<sup>531</sup>. This is because any discriminatory

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<sup>522</sup> IACHR, [Compendium Equality and non-discrimination, OEA/Ser.L/V/II.171 Doc. 31](#), 12 February 2019, p. 12.

<sup>523</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, para. 102-104.

<sup>524</sup> IACHR, [Compendium Equality and non-discrimination, OEA/Ser.L/V/II.171 Doc. 31](#), 12 February 2019, p. 21.

<sup>525</sup> IACHR. *Indigenous women and their human rights in the Americas*. OEA/Ser.L/V/II. Doc. 44/17. 17 April 2017, para. 46.

<sup>526</sup> IACHR, [Compendium Equality and non-discrimination, OEA/Ser.L/V/II.171 Doc. 31](#), 12 February 2019, p. 13.

<sup>527</sup> A discriminatory act is understood as any exclusion, restriction or privilege that lacks objectivity and reasonableness, which results in the detriment of human rights. See: I/A Court H.R., OC-18/03 of September 17, 2003; IACHR, [Compendium Equality and Non-Discrimination, OEA/Ser.L/V/II.171 Doc. 31](#), February 12, 2019, p. 41.

<sup>528</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, para. 105.

<sup>529</sup> IACHR Court. *Case I.V. v. Bolivia*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2017. Series C No. 336 ("I/A Court H.R. I.V. Judgment"), para. 241.

<sup>530</sup> Article 1 of the Convention establishes that "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for **reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.**" [Emphasis outside the text]

<sup>531</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, written and oral observations of the Inter-American Commission on Human Rights.

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treatment with respect to the protection and exercise of human rights generates the international responsibility of States.

329. In the case of persons in a situation of human mobility, the Inter-American Court has pointed out that the international community has recognized the need to adopt special measures to guarantee the protection of their human rights<sup>532</sup>, since they are generally in a situation of vulnerability as subjects of human rights, in an individual condition of absence or difference of power with respect to non-migrants (nationals or residents). In the Court's opinion, this condition of vulnerability has an ideological dimension and is presented in a historical context that is different for each State and is maintained by de jure situations (inequalities between nationals and foreigners in the laws) and de facto (structural inequalities). In this context, this situation results in the establishment of differences in access to public resources administered by the State<sup>533</sup>.

330. Thus, in Advisory Opinion OC-18/03, the Court indicated that States may not discriminate or tolerate discriminatory situations to the detriment of migrants and pointed out that the regular status of a person in a State is not a necessary condition for that State to respect and guarantee the principle of equality and non-discrimination, since this principle is fundamental and all States must guarantee it to their citizens and to any foreign person who is in their territory<sup>534</sup>. Without detriment to this, the Court recognized that this does not mean that States may not initiate actions against migrants who do not comply with the State legal system, so that, in this sense, they may grant different treatment to documented migrants with respect to undocumented migrants, or between migrants and nationals, as long as this differential treatment is reasonable, objective, proportional, and does not harm human rights<sup>535</sup>.

331. In line with the above, the IACHR has also pointed out that, although distinctions in the treatment of migrants are permissible - including in the regulation of admission and exclusion - this only occurs when they are made in pursuit of a legitimate objective, with an objective justification and reasonable proportionality between the means employed and the ends pursued<sup>536</sup>. Thus, the conceptual construction regarding equality and non-discrimination, developed in its Resolution 4/19 containing the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, is based on four elements: (i) guaranteeing equal access to rights, (ii) preventing forms of differential treatment that result in violations of migrants' rights and fundamental freedoms, (iii) highlighting the need for a parameter for actions or procedures that result in differential treatment, accompanying their application in an objective manner, and (iv) preventing and punishing discriminatory actions and resulting violence<sup>537</sup>.

## ii. Progressive in nature

332. The obligations of progressive realization of ESCER imply that States have an obligation of means to ensure the gradual development of their obligations in this area, to the maximum of their available resources. This assumption takes into account the structural and budgetary differences between countries, as

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<sup>532</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 117.

<sup>533</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 112.

<sup>534</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 118-119.

<sup>535</sup> *Ibid.*

<sup>536</sup> IACHR, [Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), December 7, 2019.

<sup>537</sup> IACHR, [Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection](#), OEA/Ser.L/V/II. Doc. 255, August 5, 2020, para. 97.

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well as the fact that they must take steps towards the effective realization of economic, social and cultural rights<sup>538</sup>.

333. In this context, REDESCA agrees with what the United Nations Committee on Economic, Social and Cultural Rights (CESCR) establishes in its General Comment No. 3 that measures related to the implementation of Economic, Social, Cultural and Environmental Rights, also in the light of Inter-American standards, are called to progressively achieve the full realization of rights. Thus, the expression "progressive realization" constitutes a recognition of the fact that the full realization of all economic, social, cultural and environmental rights in general cannot be achieved in a short period of time<sup>539</sup>.

334. Without detriment to this, based on international and inter-American obligations in this area, the effective implementation of actions is required to achieve the full enjoyment of these rights. In this logic, the Inter-American Court has established that the obligation of progressive realization of ESCER prohibits the inactivity of the State in its task of implementing actions for the effective protection of these rights, especially in those matters where the total absence of state protection places people before the imminence of suffering harm to their life or personal integrity<sup>540</sup>.

335. On the understanding that the State is obliged to act to advance towards the realization of ESCER through deliberate and concrete measures, the progressive implementation of such measures may be subject to accountability and, if necessary, demanded before the instances called upon to resolve possible human rights violations. However, as the Inter-American Court has established, regressive measures are not always incompatible with the American Convention, as long as they are justified by reasons of sufficient weight<sup>541</sup>. Therefore, according to the Commission, the State is prohibited from adopting policies and measures and/or sanctioning legal norms that, without adequate and convincing justification, worsen the situation of economic, social, and cultural rights of the population. The State has the duty to account for how it has mobilized, to the maximum extent possible, the available resources to progressively achieve the full realization of these rights<sup>542</sup>.

336. In light of these obligations and standards, as well as the disproportionate impact that people in a situation of human mobility suffer in terms of their DESCA<sup>543</sup>, REDESCA highlights some of the pronouncements or standards developed by the Inter-American System that specifically address the obligations of States in this area - some of which have been included in the DESCA Compendium prepared by REDESCA of the IACHR and in other pronouncements by the organs of the IAHR.

337. In general terms, as developed by the Commission, the institutions that provide public services cannot require regularity of migratory status or recognized refugee status in order to provide the respective services to persons requesting them, since access to ESCER should not be subject to conditions in relation to administrative status or level of protection (regular migrant, person recognized as a refugee or under another status). Thus, the mere fact of "being a person" is sufficient for the effective enjoyment of ESC

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<sup>538</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 28

<sup>539</sup> REDESCA. [III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights \(REDESCA\)](#), OEA/Ser.L/V/II. February 24, 2020, para. 60.

<sup>540</sup> REDESCA. [III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights \(REDESCA\)](#), OEA/Ser.L/V/II. February 24, 2020, para. 61; Inter-American Court of Human Rights, Case of Cuscul Pivaral et al. v. Guatemala, Judgment of August 23, 2018, para. 140 et seq.

<sup>541</sup> IACHR COURT, [JURISPRUDENCE NOTEBOOK OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS No. 22: ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS](#), 2021, p. 22; IACHR COURT. Case of Acevedo Buendía et al. ("Cesantes y Jubilados de la Contraloría") v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 103.

<sup>542</sup> IACHR, Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017.

<sup>543</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021. P. 210.

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rights to be guaranteed. Thus, all applicants for international protection must have access to health, education, housing, security and others, on equal terms with nationals<sup>544</sup>.

338. In this thread, in the Inter-American Principles on the Human Rights of Migrants, Refugees, Stateless Persons and Victims of Trafficking, the Commission points out, in Section IX (on the adequate standard of living), the need to guarantee certain rights, access to which should be facilitated for all migrants, refugees, asylum seekers and other persons in need of international protection. Such protection includes access to the full range of economic, social, cultural and environmental rights, such as to health (principle 35), to work (principle 36), to education (principle 37), to housing (principle 38), to culture (principle 39)<sup>545</sup>.

339. Regarding some of these rights, in the report on the human rights of migrants and other persons in the context of human mobility in Mexico, the IACHR established that, in relation to the right to education, Article 13 of the Protocol of San Salvador established it as a right of all persons and that among the various measures to be adopted by the States to achieve its full exercise is that primary education be compulsory and available to all persons free of charge. It also indicated that, in more detail, Article 30 of the International Convention for the Protection of All Migrant Workers and Members of Their Families established that all children of migrant workers shall enjoy the fundamental right of access to education on an equal footing with nationals of the State concerned<sup>546</sup>.

340. Thus, the right to education must be guaranteed to all migrants, especially children and adolescents, regardless of their nationality, migratory status or employment status of their parents, lack of identity documents or lack of schooling<sup>547</sup>, which requires, among other things, progress in the normalization and relaxation of the requirements for their access and permanence in the educational system until they can complete their studies.

341. With regard to labor rights, the IACHR Court has indicated that the migratory status of a person can in no way constitute a justification for depriving him/her of the enjoyment and exercise of his/her human rights, including labor rights. This is so because the migrant, upon assuming an employment relationship, acquires rights as a worker, which must be recognized and guaranteed, regardless of his or her regular or irregular status in the State of employment. Thus, these rights are a consequence of their employment relationship and are not linked to their migratory status<sup>548</sup>.

342. Consequently, the Commission has established that migrants have the right to work, which implies the possibility of obtaining the means to lead a dignified life by performing a freely chosen or accepted lawful activity. In this framework, on an equal footing, they should have fair and favorable working conditions and all labor rights, including the right to form and join trade unions, the right to social security, and the right to just and favorable working conditions, including fair and equitable remuneration, maximum working hours, health and safety standards, protection against unjustified dismissal, discrimination and reprisal, freedom to change employers and collective bargaining, among others<sup>549</sup>. In this regard, the OHCHR Principles and Guidelines call on States to develop appropriate gender-sensitive policies and interventions to provide

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<sup>544</sup> IACHR, [Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection](#), OEA/Ser.L/V/II. Doc. 255, August 5, 2020, para. 279.

<sup>545</sup> Ibid. 284

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IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 607.

<sup>547</sup> IACHR, [Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in](#) Persons, December 7, 2019, principle 37.

<sup>548</sup> IACHR Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 134.

<sup>549</sup> IACHR, [Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in](#) Persons, December 7, 2019, Principle 36.

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protection for migrants in the labor market, including those who are not yet employed and are seeking work<sup>550</sup>.

343. Regarding the right to health, it should be noted that migrants face serious difficulties in accessing health services simply because they are migrants, in addition to other factors such as discrimination, language and cultural barriers, or their legal situation, which is more burdensome for those without documentation<sup>551</sup>. In this context, it should be reiterated that the Commission has established that every migrant has the right to the enjoyment of the highest attainable standard of physical and mental health and the underlying determinants of health, so that a migrant cannot be denied medical care on the basis of his or her migratory status, nor can he or she be denied health services for lack of identity documents. Thus, they have the right, regardless of their migratory status or origin, to receive the same health care as nationals, including sexual, reproductive and mental health services<sup>552</sup>.

344. In addition to the above, the Inter-American Court, even though no progress had been made in the direct justiciability of ESCER, established that States have the obligation to provide medical care in cases of emergencies at all times to migrants in an irregular situation, and therefore must provide comprehensive health care taking into account the needs of vulnerable groups. Along these lines, the duty to ensure that health goods and services are accessible, with special consideration for the most vulnerable and marginalized sectors of the population, without discrimination, was indicated<sup>553</sup>.

345. In this context, it should be noted that the standards of the Inter-American system on the right to health establish that in order to guarantee this right, States must also address the basic and social determinants of this right, understood as the set of factors that condition its effective exercise and enjoyment and that are related to the content of other human rights, such as life and personal integrity and other ESCER, such as income and social protection, employment and working conditions, access to drinking water and sanitation, adequate food, a healthy environment, and the right to housing, among others<sup>554</sup>.

346. Regarding the right to housing, it is necessary to highlight that the IACHR has established that migrants have the right to adequate housing, which includes the following elements: (i) availability of services, materials, facilities and infrastructure, such as permanent access to natural and common resources, potable water, energy for cooking, heating and lighting, sanitary and toilet services; and (ii) habitability<sup>555</sup>.

347. With regard to these points, REDESCA considers it a priority to highlight that the Commission has established that in order to guarantee ESCER during the processing of procedures, it is essential to consider the so-called "firewall barriers", which consist of a real and strict separation between immigration control and other public services, implying that the immigration authorities cannot access information about the immigration status of people who use public services and that the institutions responsible for providing these services are not obliged to inquire or share information about the immigration status of users<sup>556</sup>.

348. In conclusion, States are obliged to guarantee the ESCER in their respective jurisdictions, including those of persons in a situation of human mobility, which always presupposes respect for and guarantee of the negative and positive dimensions of the right to equality and non-discrimination, in addition

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<sup>550</sup> OHCHR, Principles and Guidelines on the Protection of the Human Rights of Migrants in Vulnerable Situations, Principle 14.

<sup>551</sup> OHCHR, Fact Sheet No. 31-The Right to Health, No. 31, June 2008, p.19.

<sup>552</sup> IACHR, [Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), December 7, 2019, principle 35.

<sup>553</sup> I/A Court H.R., Case of Nadege Dorzema et al. Case of Nadege Dorzema et al. v. Dominican Republic, cit. 108 et seq.

<sup>554</sup> IACHR and REDESCA. [COMPENDIUM on Economic, Social, Cultural and Environmental Rights Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021.

<sup>555</sup> IACHR, [Resolution 04/19 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), December 7, 2019, principle 38.

<sup>556</sup> IACHR, [Due Process in Procedures for the Determination of Refugee and Stateless Status and the Granting of Complementary Protection](#), OEA/Ser.L/V/II. Doc. 255, August 5, 2020, para. 277.

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to the observance of a differentiated and intersectional approach. In this regard, in addition to the differentiated approach that must be implemented in response to the situation of vulnerability of these people, it is necessary to include a gender and intersectional approach in the framework of policies, measures and efforts, which will make it possible to respond to possible overlapping factors of discrimination that may be experienced by people in conditions of human mobility.

349. On this criterion, the IACHR has pointed out that intersectionality is a basic concept for understanding the ways in which the different levels of discrimination overlap, the impact of their concurrence on the enjoyment and exercise of human rights, and the scope of States' obligations in the adequacy of their responses to them<sup>557</sup>. This recognizing that migrants often face interrelated forms of discrimination, whereby they are discriminated against not only because of their national origin, their migratory status, or more broadly because they are foreigners, but also due to factors such as their age, gender, sexual orientation, gender identity, ethno-racial affiliation, disability status, poverty, or extreme poverty, among others. This situation of vulnerability is aggravated when they are in an irregular situation<sup>558</sup>.

## **B. Guaranteeing ESCER in situations of special consideration**

350. With respect to the situations described above, the Office of the Special Rapporteur also considers it important to identify how the obligations to respect and guarantee ESCER apply in situations of emergency and public calamity. In this regard, as the international community studies how to deal with the situation of persons fleeing situations of armed conflict, as well as how to deal with the difficulties posed by migratory flows, special consideration must be given to the economic, social, cultural and environmental rights that must be guaranteed to these persons in the countries of transit or where they are seeking shelter and a place to settle<sup>559</sup>.

351. Therefore, REDESCA recalls that, in the framework of the fulfillment of their international obligations, States have a minimum duty to ensure the satisfaction of at least essential levels of each of the ESCER and are not extinguished in situations of conflict, emergency or natural disaster<sup>560</sup>. Thus, the obligations undertaken by States with regard to the basic rights to food, health, housing, social protection, water and sanitation, education and an adequate standard of living must remain in force even in emergency situations<sup>561</sup>.

352. Therefore, in the next two sections, REDESCA will seek to approach the guarantees that States should provide to persons who are displaced in the context of public emergencies. In this order of ideas, first from the perspective of sanitary and public health crises (with a particular focus on the right to health), to then address the guarantee of ESCER in the context of emergencies caused by natural disasters.

### **i. Sanitary and public health crises**

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<sup>557</sup> IACHR, [Violence and Discrimination against Women, Girls and Adolescents: Good practices and challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, para. 92.

<sup>558</sup> IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 46/15 31 December 2015, para. 9.

<sup>559</sup> Committee on Economic, Social, Cultural and Environmental Rights, Obligations of States with regard to refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, para. 2.

<sup>560</sup> Committee on Economic, Social, Cultural and Environmental Rights, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2001/10, 10 May 2001, paras. 15 and 18.

<sup>561</sup> OHCHR, [Emergency Measures and COVID-19: Guidance](#), 27 April 2020.



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353. As indicated above, essential ESCER obligations are not suspended in times of emergency. In the case of public health emergencies, they may even have greater significance in times of health emergencies or public health crises declared by the authorities. In this regard, the Commission and REDESCA have pointed out that the right to health must be guaranteed to all persons within their jurisdiction, without any type of discrimination, in accordance with inter-American and international human rights standards and instruments. Thus, they emphasize that in order to make the right to health effective, the following elements are essential and interrelated: availability, accessibility, acceptability, and quality<sup>562</sup>.

354. By virtue of guaranteeing this right, REDESCA reiterates that States must provide timely and appropriate health care and treatment; stressing that all health facilities, goods, and services must be accessible without discrimination, and adapted to circumstances such as those posed by a health emergency in accordance with the "pro-person" principle, so that the due and timely care of the population prevails over any other public or private guideline or interest. Given the nature of a pandemic and the containment measures, particular attention should also be given to the mental health of individuals<sup>563</sup>, especially those who are in a more vulnerable situation.

355. Similarly, it is important to note that in these contexts, although there are impacts on all human rights, especially in relation to the right to life, health and personal integrity, the right to work, social security, education, food, water, and housing, among other ESCER, are seriously affected<sup>564</sup>. In this regard, the Office of the Special Rapporteur reiterates that health is a public good that must be protected by all States and that the human right to health is an inclusive right that corresponds to the enjoyment of other rights, which includes its basic and social determinants as the set of factors that condition its effective exercise and enjoyment<sup>565</sup>.

356. With respect to persons in a situation of human mobility, the Commission and REDESCA emphasize that migratory phenomena, whether for economic reasons or in search of protection, require a priority approach by States based on the principles of solidarity, cooperation, and shared responsibility in the context of a pandemic, with a focus on guaranteeing access to protection mechanisms and ensuring non-refoulement to persons whose lives and integrity are at risk. In this sense, events such as a pandemic can not only aggravate the situation of previously displaced persons but can also become the cause of new migratory movements, internal or international, with forced characteristics, and notes that non-discriminatory inclusion in host countries is the most effective prevention mechanism<sup>566</sup>.

357. In light of this situation, the Commission and REDESCA observed that even in the context of the COVID-19 pandemic, there were situations in which access to certain ESC rights was limited for persons in a situation of mobility. For example, in their preliminary observations of the virtual working visit to Mexico, they noted that the restrictions imposed to prevent infection by COVID-19 resulted in i) limitations on access to rights such as housing, food, drinking water and health care under equal conditions; and ii) reports of overcrowding and lack of adequate hygiene within immigration stations, temporary stays or spaces set aside for this purpose, where people await the resolution of their procedures in a situation analogous to detention<sup>567</sup>.

358. Similarly, with respect to the southern border of Panama, the Ombudsman's Office reported that, in the context of the pandemic, the lack of medical protocols created for migrants in migrant reception

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<sup>562</sup> IACHR-REDESCA, [IACHR and its REDESCA urge to ensure comprehensive human rights and public health protection perspectives in the face of the COVID-19 pandemic](#), March 20, 2020.

<sup>563</sup> Ibid.

<sup>564</sup> IACHR, Resolution 1/20: Pandemic and Human Rights in the Americas, April 10, 2020, p. 5.

<sup>565</sup> Ibidem

<sup>566</sup> IACHR, IACHR Urges States to Protect the Human Rights of Migrants, Refugees and Displaced Persons in the Face of the COVID-19 Pandemic, April 17, 2020.

<sup>567</sup> IACHR, Preliminary Observations of the virtual working visit to Mexico, on persons in a situation of human mobility, December 2020-January 2021, p. 1.

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stations (ERM), to prevent the spread of COVID-19 in these centers under the control of the State<sup>568</sup>. Similarly, for the year 2020, it was indicated that there were no specific protocols to attend to the population of the migrant centers, the performance of diagnostic controls on persons entering, the criteria for classifying cases as suspicious, nor the availability of specialized teams<sup>569</sup>.

359. Considering the above, the Commission has pointed out that States should invest in improving the resilience of people on the move, including their families, by ensuring their access to health, particularly for those in precarious socioeconomic conditions<sup>570</sup>. This also means that they should take specific measures to include people in situations of human mobility in policies and services for prevention and response to pandemics or health emergencies, including ensuring equitable access to information, diagnostic tests and medical care, regardless of their migratory status<sup>571</sup>.

360. Similarly, in such contexts, the Commission has pointed out that it is necessary to overcome social stigma and possible discriminatory behavior towards persons who are perceived to have been in contact with sources of contagion, for which reason immediate measures must be adopted that take into account the perspectives of gender equality and intersectionality, as well as differentiated approaches, which make visible the aggravated risks to human rights against persons, groups and collectivities in a special situation of vulnerability and historical exclusion in the hemisphere, such as persons in a situation of human mobility<sup>572</sup>. This also refers to the inclusion of conditions for the return of mortal remains of persons in a situation of mobility, as well as the right to information by consulates on the nationality of deceased persons and their relatives<sup>573</sup>.

361. In summary, REDESCA considers that States must address this type of situation "within the framework of the rule of law, with full respect for the inter-American instruments for the protection of human rights and the standards developed in the jurisprudence of this Court"<sup>574</sup>, in particular with regard to the principle of non-refoulement and the right to health<sup>575</sup>. Thus, all persons, including those in a situation of human mobility, regardless of their migratory status, must be taken into account in the responses to the current crisis and to the pre-existing inequalities exacerbated by the spread of the virus, in order to protect life, health and integrity<sup>576</sup>.

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<sup>568</sup> Defensoría del Pueblo de Panamá, Informe Especial "La situación de derechos humanos de las personas migrantes irregulares en las provincias de Darién y Chiriquí en el contexto de la pandemia de COVID-19", January 2021, p. 33.

<sup>569</sup> I/A Court H.R., Resolution of the Inter-American Court of Human Rights, Adoption of Provisional Measures, Case of Vélez Loo v. Panama, July 29, 2020, para. 8. In this regard, it is important to mention that in 2021 the Inter-American Court decided to lift the provisional measures since it found that the State had taken measures to meet the requirements of the court in the framework of the protection of persons in a situation of mobility. Regarding the right to health, the Court points out the actions taken by the State in paragraphs 41 and 42. Regarding other ESCER such as water, food and hygiene implements, it is addressed in paragraphs 43, 44, 45 and 46. SEE IACHR Court, Resolution of the Inter-American Court of Human Rights, Case Vélez Loo v. Panama Provisional Measures, May 25, 2022

<sup>570</sup> IACHR, Preliminary Observations of the virtual working visit to Mexico, on persons in a situation of human mobility, December 2020-January 2021, p. 8.

<sup>571</sup> IACHR, IACHR Urges States to Protect the Human Rights of Migrants, Refugees and Displaced Persons in the Face of the COVID-19 Pandemic, April 17, 2020.

<sup>572</sup> IACHR, Resolution 4/2020: Rights of persons with COVID-19, July 27, 2020, para. 24.

<sup>573</sup> *Id.*, para. 50

<sup>574</sup> IACHR Court, [Declaration No. 1/20. "COVID-19 and Human Rights: problems and challenges must be addressed with a human rights perspective and respecting international obligations"](#), April 9, 2020,

<sup>575</sup> I/A Court H.R., Case of the Pacheco Tineo Family v. Plurinational State of Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 272, para. 153; Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14, supra note 35, para. 215, and The institution of asylum and its recognition as a human right in the inter-American protection system. Advisory Opinion OC-25/18 of May 30, 2018. Series A, No. 25, paras. 186 and 187.

<sup>576</sup> I/A Court H.R., Resolution of the Inter-American Court of Human Rights, Adoption of Provisional Measures, Case of Vélez Loo v. Panama, July 29, 2020, para. 24.

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## ii. Natural disasters

362. For its part, in relation to natural disasters, REDESCA is aware that this represents several challenges with respect to the guarantee of human rights in the context of such contexts. In this regard, the Commission and REDESCA have noted that ESCER rights such as food, drinking water and sanitation, housing or health, are generally threatened and severely limited in these cases of humanitarian emergency, which also affect the right to development<sup>577</sup>.

363. Along these lines, in accordance with the Social Charter of the Americas, the States commit to improve regional cooperation and strengthen their national technical and institutional capacity for prevention, preparedness, response, assessment, risk reduction, and mitigation of the impact and evaluation of these phenomena<sup>578</sup>. In this regard, REDESCA notes that within the framework of the OAS, there are several entities that have competence with respect to the coordination of natural disaster response management. For example, there is the Inter-American Committee on Natural Disaster Reduction<sup>579</sup> and the implementation of the Inter-American Plan for Disaster Prevention, Response and Coordination of Humanitarian Assistance<sup>580</sup>, whose purpose is to support the strengthening of disaster risk reduction measures in the Member States.

364. Considering the above, REDESCA notes the need for such actions to be implemented under a human rights approach, in order to address the most immediate needs. In this regard, the United Nations International Law Commission (ILC) has identified that international disaster response law (IDRL) has a considerable number of fundamental principles in common with international humanitarian law. In addition, it embraces rules in international human rights law and in the international law of refugees and internally displaced persons<sup>581</sup>. In this regard, in disaster situations, a number of human rights are of particular importance. Among the rights that are relevant in such cases are the right to life, the right to food, the right to health, the right to water, the right to housing and the right not to be discriminated against<sup>582</sup>.

365. Thus, REDESCA agrees with the ILC that when addressing this situation, the need for protection is equally imperative in all disaster situations. Therefore, the concept of disaster should include recognition of the complexity of categorizing disasters according to their cause, duration and context. Categories may overlap. It is not always possible to clearly differentiate between causes, as may happen with desertification and global warming. Therefore, given the high degree of arbitrariness that exists in the categorization of disasters, it is necessary to adopt a more holistic approach to this situation<sup>583</sup>.

366. Therefore, REDESCA considers that, in the context of disasters, protection should be understood as an inclusive concept that encompasses other more specific concepts of response, relief or assistance, with which it is often related. However, a distinction must be made between protection in the broad sense and protection in the narrow sense. This can be explained as follows: there is a broad and general concept of protection that includes protection in the narrow sense and is related to a rights-based approach, and other concepts, especially assistance. The protection of persons in the event of disasters is also governed by other principles, such as humanity, impartiality, neutrality, and non-discrimination, as well as sovereignty and non-intervention<sup>584</sup>.

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<sup>577</sup> IACHR-REDESCA, [IACHR and its REDESCA express solidarity to the people of the Bahamas for the damage caused by Hurricane Dorian and call for urgent implementation of human rights-based response](#), September 23, 2019.

<sup>578</sup> OAS, Social Charter of the Americas, OEA/Ser.P, AG/doc.5242/12 rev. 2, Sept. 20, 2012, Art. 22.

<sup>579</sup> Established by Resolution AG/RES. 2955 (L-O/20) of October 20, 2020.

<sup>580</sup> OAS-CIDI, Inter-American Plan for Disaster Prevention, Response and Coordination of Humanitarian Assistance, OEA/Ser.W/IV CEPCIDI/1053/12 rev. 1, May 10, 2012.

<sup>581</sup> United Nations International Commission on Human Rights, Preliminary report on the protection of persons in the event of disasters, A/CN.4/598, 5 May 2008, para. 20.

<sup>582</sup> *Id.*, para. 26

<sup>583</sup> *Id.*, para. 49

<sup>584</sup> *Id.*, para. 52

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367. Considering this, the Special Rapporteur notes that the human rights-based approach provides a necessary normative framework for humanitarian assistance activities. In particular, the manner in which assistance is provided, used and adjudicated, as well as the context in which assistance is being provided, has important implications as to whether or not the human rights of affected persons are respected. This lays the foundation for humanitarian action on universal principles such as human dignity and non-discrimination. People affected by disasters become rights-holders themselves and can claim those rights from duty-bearers, rather than simply becoming passive beneficiaries of assistance<sup>585</sup>.

368. Along these lines, Resolution 3/2021 of the IACHR and REDESCA has identified the need to take some differentiated measures with respect to certain groups in situations of vulnerability or historical discrimination. For example, with respect to women and girls, the Commission notes that States must adopt differentiated measures to address all women in their different roles, to prevent and eradicate all forms of violence when they are exposed to natural disasters, such as floods, storms, avalanches, and landslides, caused by climate change<sup>586</sup>. Similarly, in the case of the elderly and people with disabilities, the Resolution states that States should develop preventive health care plans and policies specifically for this type of risk and should create training programs for their caregivers or family members in the event of emergencies or disasters caused by climate change<sup>587</sup>.

369. In this regard, given the magnitude of the humanitarian crises caused by natural disasters (including those resulting from the effects of climate change), which may continue to worsen in the future, the IACHR and REDESCA remind States and the international community of the importance of offering an immediate response in terms of humanitarian assistance, which is essential to respond to the crisis affecting the survivors of these events<sup>588</sup>.

370. For this reason, the Commission has emphasized that it is not enough to provide humanitarian assistance, but that the human rights obligations of persons displaced as a result of environmental factors must be addressed. This requires that in addition to the humanitarian assistance provided after each natural disaster, it is necessary for States to have more sustainable recovery and prevention systems in place<sup>589</sup>.

### **C. Best practices in Central America and Mexico**

371. In this section, REDESCA highlights some initiatives that contribute to guaranteeing human rights and particularly the ESCER of people in contexts of human mobility, and urges their analysis in order to coordinate efforts, advance in their implementation and/or design policies that allow progress in this area. It should be noted that some of these have already been mentioned in the analyses prepared by country and that only those developed internally in the countries - whether at the local or national level - are addressed, while those resulting from international cooperation will be considered in the following section.

372. Regarding policies that seek to address challenges such as the impact of climate emergencies on human mobility, REDESCA notes that Mexico, in its General Law on Climate Change - Chapter II on adaptation policy - indicates that its scope of action includes internal displacement caused by phenomena

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<sup>585</sup> Inter-Agency Standing Committee, [IASC Operational Guidelines on the Protection of People in Natural Disaster Situations](#), May 2011, p. 2.

<sup>586</sup> IACHR-REDESCA, Resolution 3/2021 Climate Emergency: Scope of Inter-American Human Rights Obligations, December 31, 2021, para. 19.

<sup>587</sup> *Id.*, para. 22

<sup>588</sup> IACHR, [IACHR expresses solidarity with people affected by hurricanes and earthquake in countries of the region and urges States and the international community to adopt measures to address the situation of affected people](#), September 12, 2017.

<sup>589</sup> *Id.*

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related to climate change<sup>590</sup>. Likewise, Panama, through Executive Decree No. 135 of April 30, 2021, recognizes the duty to protect the human rights, property, and culture of persons displaced by climate change<sup>591</sup>.

373. In the case of Costa Rica, it is noted that, through Executive Decree No. 41969-MAG- MGP of September 27, 2019, a special category was adopted under the exception regime for the migratory regularization of foreign persons working in the agricultural sector<sup>592</sup>. Likewise, through Decree No. 43527-MGPS-MAG-MRREE-MTSS of May 2022 "Special Category for the migratory regularization of foreign persons to work temporarily in the agricultural sector", the procedure for the entry, stay and return to their country of origin of Nicaraguan and indigenous Panamanian workers who enter during the agricultural harvest periods is given the rank of Migratory Category. According to official information, by means of its operationalization through the application of the "General Protocol for the attention of labor migration for the agricultural harvest season", it seeks to guarantee compliance with benefits such as entry into the country with an established contract, medical attention, medicines and the right to incapacitation; occupational risk and accident policy, as well as free lodging<sup>593</sup>.

374. In El Salvador, CONMIGRANTES designed and implemented a pilot phase of the "Strategy for the provision of services to migrants, returnees and their families in municipalities and associations of municipalities in El Salvador", whose main objective is to contribute to comprehensive local development and the strengthening of the community fabric, so that the population finds in its territory an incentive to stay, thus avoiding irregular migration<sup>594</sup>. Likewise, according to official information, the Ministry of Health of El Salvador would designate a team of health professionals (medical and nursing personnel, as well as psychological care) for the attention of returned migrants during the reception process. In these processes, priority attention would be given to children under five years of age, pregnant women and people previously diagnosed with chronic diseases or acute morbidities<sup>595</sup>. Additionally, REDESCA takes note of the Comprehensive Care Center for Migrants (CAIPEM), which would be a shelter that offers care to migrants in an irregular situation, where medical check-ups, food and hygiene kits are provided<sup>596</sup>, as well as the project "My First Job", which in coordination with UNHCR and World Vision, seeks to promote formal employment for internally displaced persons, refugees, refugee status applicants, stateless persons, returnees and those in need of protection in the country<sup>597</sup>.

375. In the case of Panama, the Rapporteurship highlights the importance of recognizing the identity of children in transit, in that every child born in Panama during transit receives an identity document<sup>598</sup>. In addition, and in the context of the health services to be provided to the migrant population, the Technical Standard for Mental Health Care for Migrant and Refugee Population is welcomed, which aims to provide specialized medical assistance and differentiated treatment for migrants and refugees who are affected by the appearance of mental disorders as a result of the major changes and losses involved in leaving behind family

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<sup>590</sup> Government of Mexico, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, OAS Note 1999, May 31, 2023, p. 84.

<sup>591</sup> Government of Panama, Panama's Response to REDESCA, August 10, 2022

<sup>592</sup> Ministerio de Relaciones Exteriores y Culto - Dirección General de Política Exterior de Costa Rica, Response to Questionnaire on poverty, climate change, poverty, DESCA in Central America and Mexico in the context of human mobility, CROEA-ASC-834-2023, April 28, 2023.

<sup>593</sup> Ibid

<sup>594</sup> Republic of El Salvador, Response of the Salvadoran State to the request for information from the Inter-American Commission on Human Rights in light of Article 41 of the American Convention on Human Rights on the regional protection of persons in human mobility, October 20, 2021, p. 8, IACHR file.

<sup>595</sup> State of El Salvador, CONTRIBUTIONS OF THE REPUBLIC OF EL SALVADOR TO THE QUESTIONNAIRE: "POVERTY, CLIMATE CHANGE AND DESCA IN CENTRAL AMERICA AND MEXICO, IN THE CONTEXT OF HUMAN MOBILITY", May 22, 2023.

<sup>596</sup> Ibid

<sup>597</sup> El Salvador, Informe del Estado sobre el cumplimiento de las recomendaciones del Informe país de 2019, July 28, 2019, p. 65 and 66.

<sup>598</sup> REDESCA, minutes of visit to Panama, May 3, 2023; City of Knowledge, [Contribuyendo a garantizar los Derechos Universales de los niños, niñas y adolescentes en Panamá](#), July 29, 2022.

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groups, the cultural environment and the place of belonging<sup>599</sup>. Regarding the latter, during the visit, information was received that it is still pending as a challenge to be implemented<sup>600</sup>.

376. Regarding access to education, REDESCA notes that Mexico would have a favorable framework to ensure access to educational services for migrants, as it is compulsory for children under 18 years of age, including foreigners who arrive in the country and who can enroll at any time during the school cycle<sup>601</sup>. Without detriment to this, it was noted that, although in regulatory terms this is a great advance, in the framework of the visit it was reported that in practice there are localities that have fewer places than required and that sometimes, due to lack of knowledge of the regulations, barriers are imposed such as the revalidation of studies<sup>602</sup>.

377. With respect to Honduras, on December 22, 2022, the National Congress approved the Law for the Prevention, Attention and Protection of Persons Internally Displaced by Violence, which establishes the basis for preventing, attending, and protecting persons who have been forced to leave their homes due to violence, and also includes the creation of an observatory so that the country has current figures and disaggregated information. International organizations, including the International Committee of the Red Cross and the Norwegian Refugee Council<sup>603</sup> were consulted in its preparation. In this measure, the State indicated that in order to seek its implementation, a National Dialogue is being held, which brings together key actors from state institutions, civil society, academia and international cooperation<sup>604</sup>. Additionally, the State reported that the Secretariat for Human Rights, through the Directorate for the Protection of Internally Displaced Persons since 2021 has provided assistance to 455 displaced persons, consisting of material humanitarian assistance, legal guidance, accompaniment for access to rights and provision of seed capital for the generation of livelihoods<sup>605</sup>.

378. With respect to Guatemala, REDESCA notes the creation of the "Quédate" Training Center in Sololá, Quetzaltenango and Huehuetenango, departments bordering Mexico and with a high indigenous migrant population. This center focuses on the reintegration of adults into the labor market, providing them with access to information services on scholarships and certifications<sup>606</sup>. Likewise, through the Migration Code, a coordination process is established between the Guatemalan Migration Institute and the Ministry of Labor and Social Security and the Ministry of Foreign Affairs for the management, approval and type of work offered in temporary worker programs.<sup>607</sup>

#### **D. International cooperation, integration mechanisms and policies**

379. In relation to the implementation mechanisms to make the ESCER of persons in a situation of mobility effective and to be able to offer greater means of protection and humanitarian assistance, international cooperation is an action that can bring greater benefits for their fulfillment. In this regard, REDESCA recalls that Article 30 of the OAS Charter mentions that the States, inspired by the principles of solidarity and inter-American cooperation, commit themselves to join efforts to ensure that international social justice prevails in their relations and that their peoples achieve integral development, which are indispensable conditions for

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<sup>599</sup> REDESCA, [V ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\)](#), OEA/SER.L/V/II May 26, 2022, para. 1296.

<sup>600</sup> REDESCA, minutes of visit to Panama, May 3, 2023

<sup>601</sup> REDESCA, minutes of visit to Mexico for meetings with civil society, April 10, 2023

<sup>602</sup> Ibid

<sup>603</sup> Secretariat for Human Rights of Honduras, Contributions of the State of Honduras to the REDESCA request, Note, 177-DPM-SRECI-2023, April 20, 2023, p. 29.

<sup>604</sup> Secretariat for Human Rights of Honduras, Contributions of the State of Honduras to the REDESCA request, Note, 177-DPM-SRECI-2023, April 20, 2023, p. 33.

<sup>605</sup> Id., p. 29

<sup>606</sup> ILO, Labor Migration in Latin America and the Caribbean-Countries: [Guatemala-Good Migration Practices](#), 2023; ILO, Reintegration Study: migration and cities. Guatemala, 2019, p. 37

<sup>607</sup> ILO, [Marco institucional para las migraciones en Guatemala: Inercia, reacomodos, y desafíos](#), 2020, p. 37.

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peace and security. Similarly, Article 26 of the American Convention on Human Rights also covers international cooperation to progressively achieve the full realization of the DESCAs norms contained in the OAS Charter<sup>608</sup>.

380. Considering the above, the Office of the Special Rapporteur, taking note of what the Committee on Economic, Social and Cultural Rights stated in its General Comment No. 3, points out that cooperation for development and, therefore, for the realization of economic, social and cultural rights is an obligation of all States. This is particularly incumbent on States that are in a position to assist others in this context<sup>609</sup>. For its part, the Inter-American Court of Human Rights has gone further, stating categorically that "the duty of cooperation between States in the promotion and observance of human rights is a norm of erga omnes character, in that it must be complied with by all States, and is binding in international law"<sup>610</sup>.

381. In this regard, REDESCA reiterates that this duty can be understood on the one hand from a more general conception related to the development of an international framework conducive to the realization of human rights in which States provide assistance of various kinds for this purpose; and a more specific one that implies cooperation to ensure that the State itself and those non-State actors whose conduct it is in a position to influence, do not hinder the enjoyment of human rights in other countries<sup>611</sup>. In this regard, the Commission has pointed out that all forms of concretization of international solidarity for the provision of humanitarian assistance and protection of the human rights of persons in contexts of human mobility -in this case of Haitian persons-, must be implemented in strict compliance with the obligations and standards of international law, the inter-American corpus juris and the inter-American public interest<sup>612</sup>.

382. In the context of this report, the IACHR has underscored the multidimensional and transnational nature of human mobility and the importance of shared responsibility among States. It has also highlighted the need for international cooperation and solidarity mechanisms for the comprehensive protection of the human rights of persons in the context of human mobility, regardless of their migratory situation<sup>613</sup>. Similarly, the Commission has recognized that the notion of international solidarity is key to the application of universality and the primacy of human rights in contexts that demand coordinated action in the face of structural crisis scenarios that affect the human rights of a population<sup>614</sup>.

383. Therefore, REDESCA notes that international assistance and cooperation are necessary to enable States facing a sudden influx of mobile persons to meet their core DESCAs obligations, as defined above. As the Committee clearly indicated in its statement on poverty, these obligations "give rise to national responsibilities in the case of all States and international responsibilities in the case of developed States, as well as for other entities that are 'in a position to assist'"<sup>615</sup>.

384. Thus, in line with the Committee on ESC rights, REDESCA is aware that, when faced with large flows of migrants, some States bear a greater burden than others. It therefore considers that any measure adopted by States to facilitate the full realization of the rights recognized in international instruments in the territory of other States contributes to the objectives of protection systems<sup>616</sup>.

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<sup>608</sup> This is also emphasized in the preamble of the Protocol of San Salvador, as well as in Articles 1, 12 and 14 of the same treaty, which refer to this obligation.

<sup>609</sup> Committee on ESC rights, General Comment No. 3: The nature of States Parties' obligations (Art. 1, Para. 1 of the Covenant), E/1991/23, para. 14.

<sup>610</sup> IACHR Court. Advisory Opinion OC-25/18, May 30, 2018. Series A No. 25, para. 199.

<sup>611</sup> IACHR-REDESCA; Report Business and Human Rights: Inter-American Standards, OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 169.

<sup>612</sup> IACHR, Resolution 2/21 - [Protection of Haitian Persons in Human Mobility: Inter-American Solidarity](#), October 24, 2021. Para. 11

<sup>613</sup> IACHR, Resolution 2/21 - [Protection of Haitian Persons in Human Mobility: Inter-American Solidarity](#), October 24, 2021.

<sup>614</sup> IACHR, Resolution 2/21, Protection of Haitian Persons in Human Mobility: Inter-American Solidarity, October 24, 2021, p. 4.

<sup>615</sup> Committee on ESC rights, Obligations of States with regard to refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, para. 18.

<sup>616</sup> Id.

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385. To the extent that cooperation is subsumed as a suitable mechanism to make effective the realization of ESCER and as an obligation, the Office of the Special Rapporteur notes that there are several existing cooperation frameworks that have been established either through political declarations, or through the establishment of subregional and regional agreements between States. In this regard, it is important to emphasize some actions that have been promoted by the inter-American system, in order to highlight the relevance of activating cooperation mechanisms in different forums.

386. For example, the IACHR, through its pronouncements, has managed to establish some indications and guidelines to seek the implementation of the principle of international solidarity and cooperation in such contexts. In this regard, the Commission, through the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, establishes social inclusion and humanitarian assistance to save lives, alleviate suffering and safeguard human dignity as fundamental principles for the actions of States in this area<sup>617</sup>.

387. Similarly, the Commission has established as concrete actions to seek strategies, mechanisms and spaces for coordination and exchange of information to reconcile the implementation of urgent measures with actions that support, among other issues: i) the strengthening of human and institutional capacities in the country, ii) the linkage of Haitian communities abroad, iii) the facilitation of remittances, and iv) the expansion of the supply of channels and circuits of professional, academic and scientific mobility. The above would result in the combination of emergency demands with the need for structural sustainability to ensure the non-repetition of risk and vulnerability factors of the population in human mobility<sup>618</sup>.

388. In this regard, REDESCA notes that cooperation is found as a unity of purpose in the Global Compact for Safe, Orderly and Regular Migration<sup>619</sup>, as well as in the recent Declaration on Migration and Protection of Los Angeles, adopted in the framework of the Ninth Summit of the Americas<sup>620</sup>. In this instrument, a commitment was established to promote stability and international assistance for communities of destination, origin, transit and return, in order to seek to cover "basic humanitarian needs, protection, security, safety, public health, education, financial inclusion and employment, among others"<sup>621</sup> of people in a situation of human mobility, so that they can be socially integrated in the host countries.

389. At the same time, REDESCA notes the efforts being made in parallel between the Regional Conference on Migration (RCM) and the Central American Integration System (SICA)<sup>622</sup>. In this regard, the States of the RCM reiterated their commitment to promote, among others, cooperation to address the opportunities and challenges related to migration governance, exchange experiences and best practices, promoting a dignified, safe, orderly, and regular migration, in accordance with the international framework of human rights, international commitments and national laws, as well as the principles and approaches set out in the Statutory Charter of the RCM<sup>623</sup>. Likewise, they have expressed their commitment under the principle of shared responsibility, to strengthen cooperation for development and address the structural causes of irregular migration<sup>624</sup>.

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<sup>617</sup> IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, Resolution 04/2029, principles 62 and 63.

<sup>618</sup> IACHR, Resolution 2/21 - [Protection of Haitian Persons in Human Mobility: Inter-American Solidarity](#), October 24, 2021, para. 13.

<sup>619</sup> Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, Draft outcome document of the Conference, A/CONF.231/3, 30 July 2018.

<sup>620</sup> IX Summit of the Americas, Declaration on Migration and Protection of Los Angeles, June 10, 2022.

<sup>621</sup> Idem

<sup>622</sup> REDESCA is also aware of the implementation and performance of the Quito Process, which is part of a series of meetings and commitments established between Latin American countries to coordinate the response to the Venezuelan migration crisis. Mexico, Costa Rica, and Panama are part of this process. For more information, see: [Technical Secretariat of the Quito Process](#), 2022

<sup>623</sup> RCM, Extraordinary Statement to the International Migration Review Forum, Mexico City, April 1, 2022.

<sup>624</sup> RCM, Extraordinary Declaration on Regional Shared Responsibility to Manage Migration and Displacement, XXVI Regional Conference on Migration, January 13, 2021



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390. Furthermore, in the context of the Regional Integrated Framework for Protection and Solutions (MIRPS<sup>625</sup>), the MIRPS States renewed their joint commitment to protection and solutions and welcomed further international collaboration with the MIRPS Support Platform, in the run-up to the Global Refugee Forum (GRF) to be held in 2023<sup>626</sup>.

391. In the same sense, REDESCA takes note of the activities carried out through the MIRPS for the implementation of specific projects through the MIRPS Fund, by means of a High Level Selection Committee that reviews and analyzes project proposals. At the moment, the Fund would be financing projects in Mexico, Honduras, Guatemala, El Salvador, Costa Rica and Panama, of which the project in El Salvador and Honduras respond to DESCA situations, since they would be focused on offering scholarships for study, job specialization and the delivery of humanitarian assistance and seed capital<sup>627</sup>.

392. At the same time, the Office of the Special Rapporteur takes note of the Comprehensive Development Plan for El Salvador, Guatemala, Honduras and southeastern Mexico, which aims to streamline the process and develop an implementation agenda based on proposals arising from the needs of the countries and the experience of different international and regional institutions, in accordance with international human rights law<sup>628</sup>. In this sense, REDESCA welcomes the fact that this mechanism proposes "a path towards an economically efficient, socially inclusive and environmentally sustainable style of development that responds to pressing demands generated by long and short-term situations. In this way, economic development is promoted in the countries of origin to improve the well-being of the populations from a human security and human rights approach<sup>629</sup>".

393. Along these lines, the Office of the Special Rapporteur takes note of the "Sembrando Vida" (Sowing Life), "Jóvenes Construyendo Futuro" (Youth Building a Future), Comprehensive Risk Management in El Salvador, Guatemala, and Honduras; Sectoral Program to Support the Financing of Micro, Small and Medium-Sized Women's Enterprises and the City of Children Program<sup>630</sup>, which are to be implemented jointly by the governments of Mexico, El Salvador, Guatemala and Honduras. These projects would be financed by the Mexican Agency for International Development Cooperation (AMEXID) and seek to promote the 4 areas of the Development Plan that are focused on migration management, social welfare, economic development and environmental sustainability<sup>631</sup>.

394. Similarly, the United States, Mexico and Canada have taken actions to improve migration processes between the three countries. In this regard, REDESCA notes that the vision of the three countries is to strengthen and increase access to protection for refugees, asylum seekers and vulnerable migrants throughout the region. This includes opportunities for access to targeted protection pathways, integration programs and support for the most at-risk groups, including internally displaced persons and victims of human trafficking and smuggling<sup>632</sup>. Despite this, civil society has mentioned that, although there are labor exchange

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<sup>625</sup> The MIRPS is a mechanism for the implementation of the Global Compact on Refugees to facilitate regional cooperation among countries of origin, transit and destination for greater shared responsibility for prevention, protection and durable solutions in the face of increasing forced displacement in Central America and Mexico.

<sup>626</sup> UNHCR, [Central America and Mexico reaffirm commitment to jointly address needs of displaced persons](#), 13 December 2022

<sup>627</sup> MIRPS, Bulletin No. 1, March 2023

<sup>628</sup> ECLAC, [About the Comprehensive Development Plan](#).

<sup>629</sup> ECLAC, Comprehensive Development Plan for El Salvador, Guatemala, Honduras and south-southeast Mexico. Síntesis (LC/TS.2021/7), Santiago, 2021, p. 7.

<sup>630</sup> Government of Mexico, [Mexico's Initiatives for the Implementation of the Integral Development Plan](#)

<sup>631</sup> Idem.

<sup>632</sup> CEO, Mexico, U.S. and Canada commit to take action towards next summit in 2022, November 19, 2021

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or temporary hiring programs for migrant workers in the United States, these often expose them to a high risk of labor exploitation and unsafe working conditions<sup>633</sup>.

395. In the framework of bilateral actions, note was taken of the activation of a binational Panama-Colombia alert, so that their Ombudsman's Offices can exchange unofficial figures from Colombia, in order to take stock and determine how many people may be left behind and how many may be diverting to other routes. Similarly, note was taken of the initiative of the governments of Colombia and Panama to establish a safe route to reduce the risks for migrants who walk daily through the Darien jungle<sup>634</sup>.

396. REDESCA also notes that the States are also seeking to influence international financing criteria for the implementation of these projects. In this regard, Costa Rica has urgently called for "going beyond per capita GDP" and having new indicators for the allocation of aid, investment and international cooperation, "that take into account other aspects such as structural deficiencies, climate risks, market fluctuations and fiscal stability"<sup>635</sup>.

397. Although the Office of the Special Rapporteur takes note of these initiatives, it should be noted that various civil society organizations have reported that challenges persist in their implementation<sup>636</sup>. They have emphasized the lack of financing for its operation, which, among others, has repercussions on the lack of guarantee of ESCERs of people in contexts of human mobility, including their immediate needs. Likewise, they highlight the absence of clear and transparent information that allows public participation in the mechanisms, including organizations in general, as well as people in situations of human mobility. In this regard, the organizations encourage the adoption of a participatory multilateral approach to bilateral approaches to cooperation, which have as their point of action the addressing of the underlying and structural causes of human mobility<sup>637</sup>.

## VI. CONCLUSIONS AND RECOMMENDATIONS

398. Through this report, REDESCA has made a broad diagnosis of the DESCA panorama in Central America and Mexico, considering the underlying reasons for large-scale mobility in the sub-region, including the poverty dimension and the impact of the climate emergency. It has also systematized the specific obligations of States with regard to ESCER, with a particular focus on people in human mobility. In this context, in addition to welcoming and recognizing the measures implemented by the States of Central America and Mexico, the Office of the Special Rapporteur expresses its concern about the profound gaps that exist between the reality of access to ESCER by the populations of these countries, and particularly of persons in contexts of human mobility under their jurisdiction, in relation to the standards applicable within the Inter-American System.

399. Thus, it was observed that the failure to guarantee the ESCER and the right to development - from a human rights perspective - together with the consequent poverty and the impacts of the climate emergency, continue to force a large part of the region's population to migrate, so that in many cases people are leaving their homes not as an option, but as a survival measure that in most cases involves risks to their physical and mental well-being - especially for those who decide to use irregular routes. For the Special

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<sup>633</sup> Southern Border Monitoring Collective, Response to the questionnaire poverty, climate change, ESCER in Central America and Mexico in the context of human mobility, May 2023, p. 10 and IACHR, Hearing on progress and challenges in coordination and international cooperation for the protection of the rights of persons in human mobility in the region, 187 Regular Period of Sessions, July 12, 2023

<sup>634</sup> REDESCA, [VI ANNUAL REPORT OF THE SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS \(REDESCA\) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS \(IACHR\), 2022, OEA/SER.L/V/II Doc. 50](#), 6 March 2023, para. 1444.

<sup>635</sup> UN, [Costa Rica requires the support of the international community to face the migration challenge](#), September 2022

<sup>636</sup> IACHR, Hearing on Progress and Challenges in International Coordination and Cooperation for the Protection of the Rights of Persons on Human Mobility in the Region, 187th Regular Period of Sessions, July 12, 2023

<sup>637</sup> Idem

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Rapporteur, this situation is also the result of economic models of capital concentration that do not allow for the distribution of resources among the different population groups, the absence of fair and distributive fiscal policies, as well as insufficient international cooperation to address this regional problem.

400. Without detracting from these observations, REDESCA reiterates that, in analyzing these factors in a particular way, it is not unaware that human mobility is a multi-causal phenomenon, in which violence, insecurity and deprivation of other rights also play a determining role. In this sense, it considers that one of the great challenges for the countries of Central America and Mexico is to adopt their policies and measures in response to the complexity of this phenomenon, recognizing that for a large number of people in contexts of human mobility there are economic, social, political and/or environmental reasons for leaving their countries or place of residence.

401. In addition to the fact that people leave their countries under very different conditions and for different reasons, there are factors such as their level of purchasing power, education and even social class that make their travel experience very different. Similarly, components such as violence, persecution or events associated with climatic emergencies expose people to greater risks from organized crime or violence, extortion, kidnapping or trafficking.

402. In this scenario, the Office of the Special Rapporteur insists that, in order to respond to this phenomenon with a rights-based approach, one of the first obligations of the States of the region is to comply with their ESCER obligations in order to generate the appropriate conditions so that migration does not become a forced cause of migration. Even so, while States are obliged to guarantee the ESCER of all persons under their jurisdiction and control -including persons in contexts of human mobility-, it is required that for these persons the States ensure respect and guarantee of the inter-American standards on the matter, including the principle of equality and non-discrimination, in addition to the observance of a differentiated and intersectional approach.

403. In this context, REDESCA observed that although most Central American countries and Mexico have developed important regulations regarding ESCER -through their own constitutions, laws, policies, among other normative bodies-, there are still serious challenges to their realization, and in the case of migrants, there are various barriers to their effective access, showing multiple situations in which the protection of ESCER does not always guarantee the principles of equality and non-discrimination, progressiveness and the use of the maximum available resources.

404. In this way, the Office of the Special Rapporteur observes that the lack of guarantee of ESCER prevents people from living dignified life projects and, consequently, encourages their displacement. This, in turn, is exacerbated by phenomena such as climate change and emergency situations, such as the COVID-19 pandemic. In this context, as indicated in the section on environmental degradation and climate emergency, the impacts of extractive activities not only have an environmental impact, but also a general impact on human rights, particularly ESCER, including impacts on health, land tenure, water, food, and adequate housing.

405. In view of the challenges generated by the climate emergency in the context of human mobility, REDESCA considers it a priority to review the regulatory frameworks that regulate the protection of people in need of protection from the impacts of the climate emergency. This is especially considering that, as discussed, many people in the subregion indicated that part of their reasons for leaving their places of residence would be the loss of crops, their homes, droughts, floods, or other factors that promote their sudden departure from their homes, without recognizing in many cases that these situations were directly related to climate change.

406. In this context, although REDESCA welcomes the various national and regional efforts to work together to address the root causes of forced displacement of people and to ensure conditions for safe, orderly, and regular migration, it reiterates that until measures are adopted to overcome the structural causes that force people to move forcibly, international migratory movements will continue to grow. In such processes, given

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the magnitude and complexity of the problem, it is essential that international solidarity and cooperation be at the core, taking into account the importance of shared responsibility among States.

407. Consequently, in the framework of all measures in this area, REDESCA reiterates the importance of placing a comprehensive human rights approach at the center of these initiatives, which comprehensively addresses the various causes of human mobility, including the lack of guarantee and protection of ESCER. It also stresses the importance of regional and international cooperation to address human mobility in the region in a humanitarian and safe manner, and therefore places itself at the disposal of the competent authorities, the OAS and other specialized international organizations to socialize and identify actions to guarantee ESCER in the countries of origin, transit and destination.

408. Considering the above and the norms governing the Inter-American Human Rights System, in particular Article 41.b of the American Convention on Human Rights, REDESCA makes the following recommendations to the Central American and Mexican States:

## **RECOMMENDATIONS**

### **Poverty, inequality, and the guarantee of ESCER**

1. Adopt, as a priority, deliberate and concrete measures to advance in guaranteeing the ESCER of all persons, including those in contexts of human mobility without discrimination, under a differentiated and intersectional approach. In this framework, not only should the development of these rights be ensured, but their realization should be respected and guaranteed, including through the adoption of progressive measures, such as ensuring non-discrimination in the access and enjoyment of rights, and access to an effective remedy for their protection.
2. Incorporate the perspective of gender equality and intersectionality, based on a differentiated approach to protection, in the framework of all measures, plans and policies to guarantee the ESCER of people in contexts of human mobility, including their rights to health, work, food, housing and education.
3. Implement measures at the national and regional levels to expand regular, safe, accessible, and affordable migration channels, as well as to eliminate communication and cultural barriers to access information on the rights of people in situations of human mobility and services related to guaranteeing their ESCER, including health and education services, access to the labor market, housing, among others.
4. Implement economic and sustainable development policies to expand national social protection programs, eradicate hunger, alleviate poverty, and improve economic opportunities in the countries of the subregion. This also implies adopting fair fiscal policies that allow for the redistribution of resources and address the needs of the most vulnerable populations.
5. Based on international cooperation, design and implement regional actions for the adequate protection of the rights of people in contexts of human mobility, starting with the adoption of specific measures to address the underlying causes of migration related to poverty, climate change and the enjoyment of ESCER. Within this framework, public policies, and action plans against aporophobia, xenophobia and social and institutional racism should also be promoted and adopted.
6. Ensure the guarantee of the principle of equality and non-discrimination in social policies and programs at all levels of government, in order to guarantee access to all public services, including those that are privatized or outsourced, aimed at protecting the ESCER of people in a situation of mobility. It should also ensure that there are mechanisms for access to justice and appropriate and effective means of challenge for the protection of their rights.

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7. Strengthen National Human Rights Institutions, national disaster response and humanitarian support entities, as well as emergency services and specialized civil society, so that they can provide rapid and timely assistance to populations in a situation of human mobility, including their DESCA.
  8. Implement training and awareness programs for public officials on the human rights of people in human mobility, with particular attention to their ESCER.
  9. Regarding the right to health, incorporate the health needs of people in human mobility into national and local health policies and plans, for example, by strengthening the capacity to provide affordable and nondiscriminatory services, reducing barriers to communication, and training health care providers to provide culturally sensitive services to promote the physical and mental health of people in human mobility and communities in general.
  10. Standardize and make more flexible the requirements for access to education for people in a situation of mobility, particularly children, in order to guarantee them access to and completion of studies at all levels of education. In this context, in the area of higher education, and with special attention to people from Nicaragua and Venezuela, implement a special mechanism for the homologation of degrees and revalidation of their knowledge in view of the obstacles they face in obtaining the corresponding documents and certifications in their countries of origin.
  11. Design and implement programs that offer access to labor and training opportunities for the population in general and for people in contexts of human mobility, in accordance with inter-American standards on labor rights. In this context, we urge to coordinate strategies, plans and actions with companies, the private sector, organizations, and international financial institutions, as well as to promote access to a wide range of technologies and goods that facilitate access to the labor market in different areas, including supply chains, the provision of services and other trades.
  12. Coordinate, plan and implement public policies that allow people in a situation of mobility to access the financial market and the banking system, either by relaxing requirements, granting enabling documents or other relevant measures. Such measures should be widely disseminated to the population in mobility, as well as to people working in these sectors, in order to avoid the imposition of barriers that are not established by law. In addition, such initiatives should include regional agreements that allow for the recognition of securities and property titles in cases of emergency.

### **Climate emergency and environment**

13. Design a regulatory framework that guarantees national and international protection for people who are displaced for climate-related reasons, both domestically and internationally, for which purpose, among others, the implementation of Resolution 3/2021 [Climate Emergency: Scope of Inter-American Human Rights Obligations](#) is urged.
14. Coordinate with social, scientific, and public institutions the implementation of a data registry system with a rights-based approach that compiles information on people displaced by the impacts of development and environmental projects, climate change risk, and violence against land and environmental defenders. This information should include the people affected, the geographic areas of expulsion and reception, the perpetrators and/or reasons for displacement, as well as the patterns of violence or other reasons for displacement. It is a priority to identify frontline communities in the face of the climate emergency and take specific measures for their protection.
15. Recognize, through its public policies and regulations, the intrinsic relationship between climate change, the food crisis and the crisis of violence and insecurity. This requires the allocation of specific resources for climate change prevention and adaptation policies, as well as for social and food support programs.

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16. Define actions that contemplate measures to prevent environmental impacts and climate emergency, including the design of public policies aimed at recognizing and protecting traditional territories and the rights of indigenous peoples, peasants and Afro descendants. Also include in the mechanisms and legal instruments for environmental protection, such as environmental and social impact studies, the risk of displacement of communities due to development projects or their effects on the territory.
  17. Adopt measures to guarantee access to justice and reparation for victims of environmental impacts, forced displacement due to development projects, and damages and losses caused by the climate emergency, with special consideration for groups in vulnerable situations, such as indigenous peoples and environmental defenders. In this context, the States that have not yet done so are urged to promptly ratify the Regional Agreement on the Right of Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

### **International cooperation**

18. Promote coordination among all the States of the subregion to adopt a regional cooperation scheme with an integral scope that will allow progress toward migration governance that takes into account the demographic, economic, social, cultural, and environmental realities of each country. Within this framework, cooperation mechanisms must be multilateral in nature and operate in a coordinated manner, guaranteeing their financing and including transparency and accountability mechanisms.
19. Encourage the continuous exchange of information in order to promote international cooperation among States towards orderly and safe migration, including the generation of statistics and databases that provide reliable information for the planning of national and regional public policies with a comprehensive rights-based approach.
20. Promote an inclusive and technical dialogue that, including all relevant stakeholders, aims to cover the protection of people who move for reasons associated with climate change and environmental degradation from the scope of international and inter-American human rights law.
21. Strengthen the incorporation, implementation, and evaluation of the rights-based approach with particular attention to ESCER and the underlying causes of human mobility related to ESCER, such as poverty, inequality, and climate change, in the work of regional mechanisms, such as MIRPS, CRM and those of the OAS. This applies equally to the implementation of the agreements of the Declaration of the Angels of the IX Summit of the Americas. To this end, it is essential that the effective participation of civil society and people in a situation of human mobility be guaranteed in the discussion and decision-making spaces of the cooperation and coordination mechanisms.
22. To the States of the subregion, companies and international financial institutions with activities in these countries: implement the standards and recommendations contained in the report [Business and Human Rights: Inter-American Standards](#) in relation to business activities related to the situations addressed in this report.
23. Widely disseminate this report and its recommendations, also through the generation of inclusive spaces with the participation of civil society and other relevant stakeholders, in order to establish strategies for debate, implementation and follow-up.

