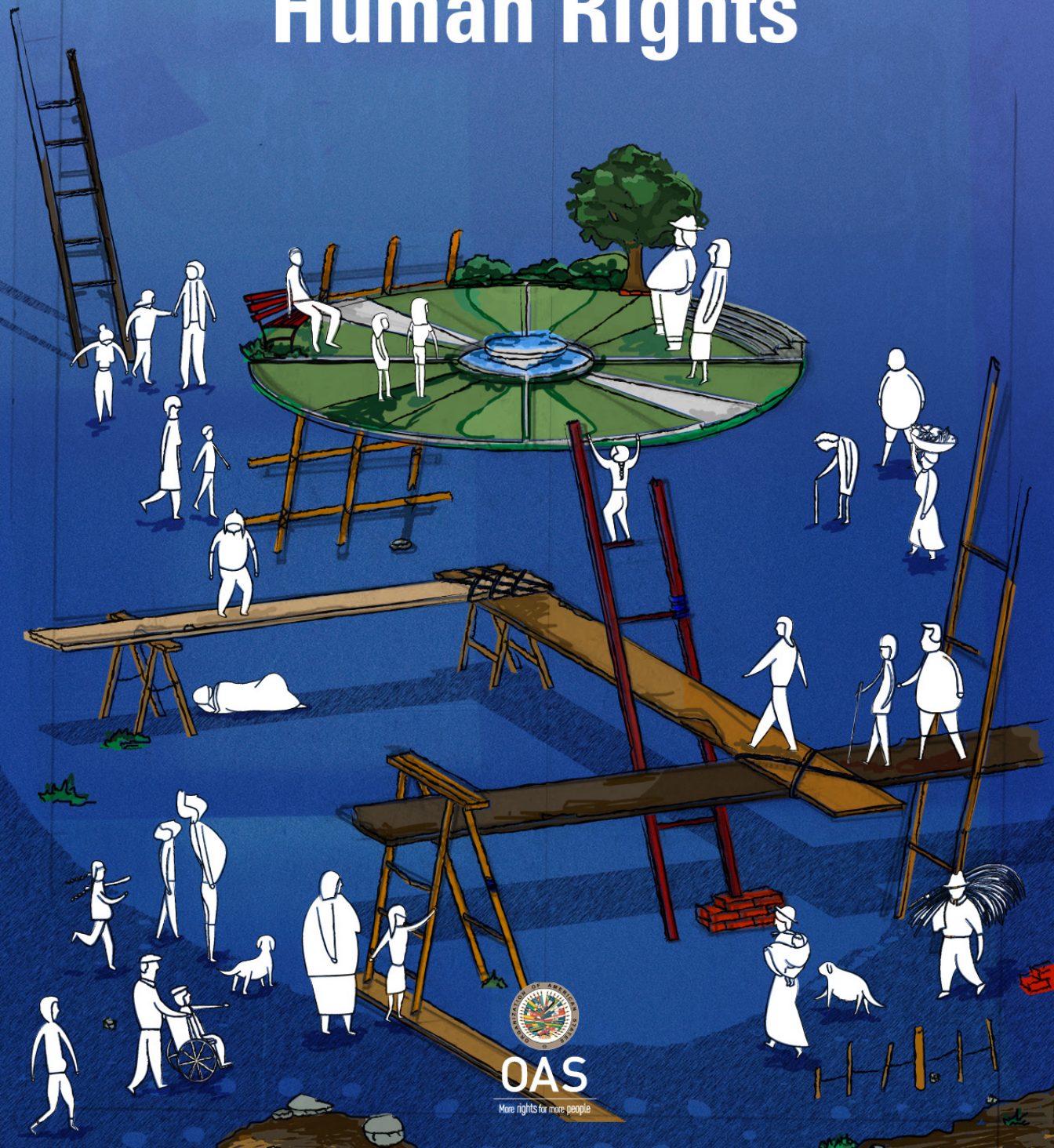


# Poverty and Human Rights



OAS

More rights for more people

## Cover Art Concept

Respect for the autonomy and dignity of people in a situation of poverty is a guiding principle on which this report is based. The cover depicts these individuals participating effectively in the formulation of policies to reduce and eliminate poverty. Empowered, they are putting up scaffolding and building ladders to overcome obstacles and reach the plaza, which represents the public space for debate and collective action. Also present is a sense of how poverty intersects with other factors, such as race or ethnicity, gender, disability, sexual orientation, gender expression. States have the obligation to guarantee access to the necessary tools to facilitate participatory debate and the collective construction of effective policies to eradicate poverty.

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CHAPTER 1  
INTRODUCTION



## INTRODUCTION

1. The Inter-American System and the Inter-American Commission on Human Rights in particular, have been progressively addressing poverty and extreme poverty affecting a significant number of people in the Americas. In 2001, the Commission issued its *Report on the Human Rights Situation in Paraguay* indicating that poverty is one of the major human rights concerns in the hemisphere,<sup>1</sup> and that it represents "a generalized violation of all human rights, civil and political, as well as social, economic, and cultural."<sup>2</sup>
2. Currently, and in the context of this report, the IACHR considers that poverty represents a human rights problem resulting in an impediment to the enjoyment and exercise of human rights on a true equal basis by the individuals, groups and communities living with it. In certain cases, it also involves violations of human rights for which the State may bear international responsibility. Extreme poverty constitutes a serious human rights problem because of the intensity with which it undermines the enjoyment and exercise of human rights.
3. Taking into account that human rights are indivisible and interdependent, the Inter-American Commission (hereinafter the "IACHR" or "the Commission") has emphasized that the violation of economic, social, and cultural rights generally also entails a violation of civil and political rights. Through its various mechanisms, the Commission has observed that the high degree of structural discrimination and social exclusion to which certain groups living in poverty are subjected renders their civic participation, access to justice, and their effective enjoyment of human rights illusory.<sup>3</sup> From a human rights perspective, poverty and extreme poverty impair both categories of rights and overcoming them both, therefore, is associated with access to, and satisfaction of, human rights in its widest sense.
4. The Commission considers that, although poverty is usually associated with a shortage of financial resources that does not necessarily mean that economic factors are solely responsible for poverty. Economic growth does

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<sup>1</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 5

<sup>2</sup> *Ibid.*, para. 17; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143. Doc. 59, November 3, 2011, para. 1.

<sup>3</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Op. Cit., para. 4

not automatically translate into a higher standard of living for excluded and marginalized individuals and groups, unless appropriate measures or public policies - from a human rights perspective - are adopted so as to generate conditions for real equality. Equally, notwithstanding the close ties between democracy, the rule of law, and human rights, this does not mean that democracy *per se* and the rule of law translate into full and effective enjoyment of human rights by persons living in poverty.

5. One of the main challenges faced by persons living in poverty is the condition of invisibility to which they are subjected. The IACHR has highlighted this problem, observing that “the torture of a single individual causes public outrage (...) yet the deaths of more than 30,000 children every day from mainly preventable causes go unnoticed.”<sup>4</sup> Consequently, a fundamental first step is to give due consideration and visibility to the serious problem of poverty.
6. The IACHR has received a wealth of information indicating that natural and climatic disasters can exacerbate the vulnerability of people living in poverty in the Americas. A study published by the World Bank has shown that the possible effects of climate change severely and disproportionately affect persons living in poverty, given that they are more exposed to climate-related hazards such as droughts, flooding, and heat waves, among others. That disadvantage is clearer when resulting in a considerable decrease in food production.<sup>5</sup>
7. As to how to conceptualize the problem, since the 1990s, the IACHR has been insisting that a focus on a human rights approach is indispensable in all State public policies and actions by multilateral organizations to tackle the issue.<sup>6</sup> Intergovernmental organizations, such as the World Bank and the Inter-American Development Bank, as well as specialized agencies have published numerous reports addressing the issue of poverty from an economic and social perspective, based mainly on indicators of changes in the level of development.
8. For its part, within the United Nations, the Economic Commission for Latin America and the Caribbean (ECLAC) has pointed out in one of its more recent publications that “Poverty represents a critical level of deprivation that threatens survival, dignity and the effective enjoyment of rights —notions

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<sup>4</sup> Ibid, p. 8.

<sup>5</sup> United Nations, World Bank: Climate Change could add 100 Million Poor.

<sup>6</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, OAS/SER.L./V/II.83 Doc. 16 rev, 1. June 1993.

which exceed the concept of sufficient monetary income to meet basic needs"<sup>7</sup>, and it has adopted a rights approach in its work.

9. Poverty analysis based on a human rights perspective begins with the recognition of the individuals, groups, and communities living in poverty as human rights holders and as agents of change.<sup>8</sup> That is to say that persons living in poverty cease to be regarded as "passive recipients of aid" or "charity" and instead are treated as holders of rights who can play an active part in taking decisions that affect them and demand protection and accountability from State authorities.
10. A gender perspective also needs to be included when addressing poverty with a human rights approach in order to take into consideration the historical discrimination and gender stereotypes that women, girls, and adolescents have been subjected to and that have severely limited the exercise of their civil, political, economic, social, and cultural rights in every sphere.
11. That discrimination has in turn increased their exposure to violence in all its manifestations, including physical, psychological, sexual, economic, obstetric, spiritual, and other forms of violence, while at the same time ensuring that the vast majority of such violent incidents go unpunished. A gender perspective also entails considering the specific risks faced by persons with diverse sexual orientations, identities and diverse or non-normative gender expressions, or whose bodies do not match standard notions of what is feminine or masculine. Likewise, States need to adopt an intersectional and intercultural approach that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as race, ethnicity, age, or economic status.
12. The human rights approach starts from the premise that poverty is not inevitable.<sup>9</sup> In many States, the exclusion of certain groups is thought to be largely due to the fact that, historically, social policies have ignored them or did not target them directly.<sup>10</sup> Structural and systemic inequalities – social,

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<sup>7</sup> United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), [Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#) January 2016 A publication issued after the Regional Conference on Social Development in Latin America and the Caribbean. Lima, Peru, November 2 to 4, 2015. Chapter 1.

<sup>8</sup> United Nations Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, A/HRC/21/39, July 18, 2012, para. 6.

<sup>9</sup> Ibid.

<sup>10</sup> Magdalena Sepúlveda, *De la retórica a la acción. Los elementos esenciales para garantizar que las políticas públicas tengan enfoque de derechos*. [See also: [From Rhetoric to Practice: Rights-Based Approach to Social Protection in Latin America](#)]

political, economic and cultural – often remain unaddressed and further entrench poverty.<sup>11</sup>

13. The drafting of this Report provides a first opportunity for the IACHR and the Inter-American human rights system to delve more deeply into, and develop, this subject matter using a rights-based approach, by analyzing the effects that poverty has on the enjoyment and exercise of those rights. The Report also seeks to pave the way for further development of the legal framework governing the international responsibility of States for poverty and extreme poverty. It further affords an opportunity to present States with clear standards within the framework of international human rights norms to enable them to address the obstacles to the enjoyment and exercise of human rights faced by more than 165 million people living in poverty in the Hemisphere, an estimated 69 million of whom live in extreme poverty.
14. Given the vast scope and complexity of the human rights problem of poverty and extreme poverty faced by individuals, groups, and communities living in those conditions, this Report hopes to provide an initial, by no means exhaustive, approximation to the consolidation and development of Inter-American standards in this area. At the same time, the Commission hopes that this Report highlights the principal impairments to human rights in these contexts and identifies the core challenges requiring greater attention by Member States of the Organization of American States (OAS). Together with the above, in addition the Commission issues recommendations reflecting its main concerns in this area.
15. The central themes of the Report include: a) the importance of addressing the problem of poverty from a human rights perspective; b) the need to disseminate standards at the Inter-American level; c) the relevance of ensuring visibility of the disadvantage in the exercise of human rights suffered by certain historically-discriminated groups; and d) the chance to present a series of recommendations on this subject to the Member States.
16. Adopting a human rights approach in the area of poverty eradication means that the policies and institutions promoting strategies in that direction must follow rules, principles, and standards of international human rights law. International law thus provides an explicit and imperative regulatory

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<sup>11</sup> United Nations Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, A/HRC/21/39, 18 July 2012, para. 5.

framework to guide the formulation of national and international policies and strategies.<sup>12</sup>

17. A human rights approach opens up a new perspective for efforts to eradicate poverty, based on respect for the dignity and autonomy of persons living in poverty, and empowers them to effectively participate in public life, in particular in the design of public policy.<sup>13</sup> In this way, a human rights approach constitutes a tool for improving and strengthening legislation, practices, and public policies for tackling poverty, by promoting clear efforts to perfect the day-to-day performance of democratic institutions.
18. Regarding the definition of Inter-American standards on poverty and extreme poverty – and considering that to date the Commission and the Inter-American Court have yet to fully develop such standards through specific and systematic case decisions - this Report could represent a major historical step as the first time that the IACHR explores in detail the international obligations of States in this area from a human rights perspective.
19. Defining such obligations is essential to build the standards needed to prevent the human rights violations derived from poverty and extreme poverty; to ensure the equal exercise of rights for individuals and groups living in poverty; and to provide effective reparation in cases of human rights violations attributable to the State.
20. In order to make the issue of poverty in the region visible, this Report provides a descriptive overview of the principal forms of structural discrimination and social exclusion encountered by individuals and groups who have historically been victims of discrimination and who live in poverty; and also addresses the disproportionate impact on the effective enjoyment of their rights.
21. As a background to this report, it is worth mentioning that in recent years – in the so-called process of strengthening the Inter-American System- OAS member states and other stakeholders of the system, called on the IACHR to increase its attention and work in connection with economic, social, and cultural rights.
22. In light of the above, in November 2012, during its 146<sup>th</sup> sessions, the IACHR decided to establish a Unit on Economic, Social, and Cultural Rights (ESCR

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<sup>12</sup> ECLAC Review 88, Víctor Abramovich, An Approximation to a Rights Approach to Development Strategies and Policies in Latin America.

<sup>13</sup> United Nations Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, A/HRC/21/39, July 18, 2012, para. 7.

Unit) with responsibility for coordinating the preparation of this Report. The ESCR Unit's objectives, set forth in its Work Plan, include developing international standards for interpreting Inter-American human rights instruments concerning economic, social, and cultural rights and broadening Inter-American jurisprudence in that area.

23. In 2014, the IACHR took the decision to establish a Special Rapporteurship on Economic, Social, Cultural and Environmental Rights that started its work in August 2017. Its purpose is to strengthen the institutional structure to deepen and increase the Commission's work in that area with the implementation of a work plan focused on hemispheric priorities.
24. At the international level, it is important to emphasize the consensus achieved by the United Nations with the adoption of the Sustainable Development Goals on September 25, 2015, when 193 states committed to achieving 17 goals by 2030, the first of them being to eradicate all forms of poverty.<sup>14</sup> This call for action can be considered entirely feasible, given the successes achieved by the Millennium Development Goals, which were set in 2000 and encouraged most countries to halve their poverty rates by 2015.
25. With respect to the methodology used to draft this report, in the first place, the Commission sought to obtain information on the main achievements and challenges faced by historically discriminated individuals, groups and collectivities, living in poverty. To that effect in February 2016, the IACHR sent a request for information and a public questionnaire to OAS member states –and ensured wide access to civil society organizations and other stakeholders— that has been appended as an annex to the present report.

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<sup>14</sup> United Nations, General Assembly, [Resolution adopted by the General Assembly on September 25, 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#). October 21, 2015.

2015 was the target year for the eight "Millennium Development Goals" (MDGs) envisaged in the Millennium Declaration, which was signed by 189 member states of the United Nations at the Millennium Summit in 2000. Acknowledging the achievements and the need for a new post-2015 agenda, in 2012, at Rio+20, the countries agreed to establish an open working group to develop a set of sustainable development goals. After more than a year of negotiations, the Open Working Group submitted its proposal for 17 sustainable development goals. Thus, there are currently 17 sustainable development goals (SDGs) with 169 targets, as opposed to the 8 Millennium Development Goals (MDGs) with 21 targets.



26. The IACHR would like to thank the Argentine,<sup>15</sup> Brazilian,<sup>16</sup> Colombian,<sup>17</sup> Guatemalan,<sup>18</sup> and Mexican<sup>19</sup> States for their observations. The Commission likewise takes note of the comments made by the Public Defenders' Office of the Autonomous City of Buenos Aires.<sup>20</sup> It also received contributions from the following civil society organizations: Associação Nacional de Juristas Evangélicos<sup>21</sup>; CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP<sup>22</sup>; CELS<sup>23</sup>; Center for Reproductive Rights<sup>24</sup>; Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM)<sup>25</sup>; Fundación Diversencia<sup>26</sup>; Grupo de Trabajo de la Universidad de Buenos Aires<sup>27</sup>; the "Imery Urdaneta" law firm in Venezuela<sup>28</sup>; José Manuel Pérez Guerra, an attorney in Mexico<sup>29</sup>; FIAN International<sup>30</sup>; PROMSEX<sup>31</sup>; TECHO<sup>32</sup>; and the Mesa de Discapacidad y Derechos of the Coordinadora Nacional de Derechos Humanos.<sup>33</sup> The Commission would also like to express its appreciation for

<sup>15</sup> Ministry of Social Development of Argentina, Contributions to the Preliminary Report "Poverty, Extreme Poverty, and Human Rights in the Americas" of the IACHR, February 6, 2017.

<sup>16</sup> Commentary of Brazil to the Preliminary Report. Communication No. 33, February 22, 2017.

<sup>17</sup> Observations of Colombia to the Preliminary Report. Communication S-GAIIID-17-005850, January 19, 2017.

<sup>18</sup> Commentary of Guatemala to the "Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas". Communication P-175-2017/VHGM/MJOSC/CLSA/cr, January 17, 2017.

<sup>19</sup> Observations of Mexico to the Preliminary Report "Poverty, Extreme Poverty, and Human Rights in the Americas", February 22, 2017.

<sup>20</sup> Comments by the Public Defenders' Office of the Autonomous City of Buenos Aires on the "Preliminary Report on Poverty and Extreme Poverty in the Americas", February 21, 2017.

<sup>21</sup> Associação Nacional de Juristas Evangélicos, Communiqué on the "Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas", February 21, 2017.

<sup>22</sup> CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP. Comments on the Preliminary Report on "Poverty, Extreme Poverty, and Human Rights" of the IACHR. February 2017.

<sup>23</sup> CELS, Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas", January 31, 2017.

<sup>24</sup> Center for Reproductive Rights. Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights, December 1, 2016.

<sup>25</sup> CLADEM, Contributions by CLADEM to the Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas, January 31, 2017.

<sup>26</sup> Fundación Diversencia. Comments on the Preliminary Report on "Poverty, Extreme Poverty, and Human Rights in the Americas", January 31, 2017.

<sup>27</sup> Interdisciplinary Working Group on Social Rights and Public Policies. "Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas, February 21, 2017.

<sup>28</sup> The "Imery Urdaneta" law firm, Observations regarding the Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas, February 21, 2017.

<sup>29</sup> José Manuel Pérez Guerra. Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas, February 22, 2017.

<sup>30</sup> FIAN International, Comments to IACHR Report on Extreme Poverty, February 21, 2017.

<sup>31</sup> PROMSEX, Comments and additional information regarding the preliminary report on "Poverty, Extreme Poverty, and Human Rights in the Americas" prepared by the Inter-American Commission on Human Rights, January 31, 2017.

<sup>32</sup> TECHO, Comments on the Preliminary Report Poverty, Extreme Poverty, and Human Rights, January 31, 2017.

<sup>33</sup> Mesa de Discapacidad y Derechos of the Coordinadora Nacional de Derechos Humanos, Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights, 2017.

the valuable contributions submitted by the Working Group of the Protocol of San Salvador.<sup>34</sup>

27. In connection with the preparation of this report, seven visits were conducted to OAS member states: Bolivia, the United States (two visits), Guatemala, Guyana, Paraguay, and Peru. The visits were designed to elicit information through three channels: directly from the individuals, groups, and collectives; from public authorities regarding the public policies implemented for the reduction of poverty; and from social movements and civil society organizations working in this area.
28. The report also includes information presented before the IACHR within the framework of the individual case and petition mechanism, precautionary measures, and requests for information pursuant to Article 41 of the American Convention, as well as during the hearings held during the IACHR sessions, and the visits conducted by the plenary of the Commission or by country and thematic rapporteurs.
29. In addition, in preparing this report, the Commission conducted a consultation with experts in the field, including representatives of multilateral organizations, universities, and NGOs, in order to gather additional inputs and validating the consistency of all the information and concepts. During the 159th period of sessions, held in Panama between November 29 and December 7, 2016, the IACHR also provided an opportunity for government and civil society representatives to present contributions.
30. On December 22, 2016, the IACHR presented and launched a preliminary report with a view to eliciting comments and additional information from the general public. It is worth noting that this is an innovation in the way the IACHR works and one that sought to broaden participation in the preparation of this report.
31. The information furnished by States, civil society organizations, private individuals, and academics through their replies to the questionnaire and comments on the preliminary report, as well as the comments and suggestions of the experts and international agencies consulted, the information provided during visits, and the input from consultations with States and civil society were of great use in the elaboration of this report, and the Commission is deeply grateful for that cooperation.
32. This report is divided into four substantive chapters. The first examines the conceptualization of poverty as adopted in the international sphere and by

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<sup>34</sup> Working Group of the Protocol of San Salvador. Notes for Inclusion in the Poverty and Extreme Poverty in the Americas Document. 2017.

Member states. It also summarizes progress made by the Organization of American States (OAS), Inter-American norms and standards relating to poverty, and international law. The second part identifies, based on the principle of non-discrimination, the impact of poverty on the exercise of human rights of historically discriminated persons, groups, and collectives. Chapter III then provides initial considerations regarding public policies facing poverty with a human rights approach. In Chapter IV focuses on the principal challenges faced by persons living in poverty as they seek justice and strive to obtain effective responses to their demands. Finally, the IACHR presents its conclusions and recommendations.

33. Finally, this report would not have been possible without the valuable and resolute support of the European Commission.



CHAPTER 2  
THE CONCEPTUALIZATION AND  
LEGAL FRAMEWORK  
OF POVERTY



## THE CONCEPTUALIZATION AND LEGAL FRAMEWORK OF POVERTY

34. Under international human rights law, States have an obligation to adopt measures aimed at eradicating poverty and extreme poverty, through appropriate political and economic decisions, even when there might be variables they cannot control. They also have an obligation to pursue public policies to guarantee human rights, directed in particular to ensuring essential minimal levels of economic, social, and cultural rights for persons and groups living in poverty, whenever, for reasons beyond their control, they cannot exercise those rights.

### A. *Poverty and Extreme Poverty in the Americas*

#### 1. **Conceptualization of Poverty at the International and National Level**

35. Regarding the definition of poverty, it is important to underscore that, at the international level, there is a broad debate over its conceptualization, the definition of poverty, how to measure it, and how to tackle it. Regarding this, first of all, the IACHR observes that two main approaches have been developed in the attempts to define and conceptualize poverty and extreme poverty. These efforts first emerged as a result of the need to calculate the number of persons living in poverty and extreme poverty in a given State.<sup>35</sup>
36. Among the difficulties faced in a conceptualization is a diversity of formulas on what we understand by the “cost of living,” “indigence,” “unmet basic needs,” “quality of life,” among others, due to the fact that their interpretation may vary in different States. There are also cultural differences about what is understood by “well-being” and by “development.”<sup>36</sup>
37. A first group of definitions attempts to accurately measure the conditions determining poverty on the basis of universally and generally applicable

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<sup>35</sup> Óscar Parra Vera, IIDH Review [Vol. 56], *Derechos humanos y pobreza en el Sistema Interamericano*, p. 274.

<sup>36</sup> Ibid.

criteria. Among these concepts are the attempts based on the measurement of the necessary income needed to purchase a minimum basket of goods and services for subsistence.

38. In its “monetary” approach (based on income or consumption), poverty is conceived as the absence of income or minimum purchasing power to guarantee the basic subsistence needs of persons.<sup>37</sup> This has commonly been referred to as “monetary poverty.” On the basis of that assumption, a person would be living in poverty whenever he or she lacks the economic means to purchase the material goods needed.<sup>38</sup>
39. From the standpoint of this approach, two main modes of measurement have been established: absolute poverty (income compared with the baselines set for poverty)<sup>39</sup> and relative poverty (income compared to the rest of the population). Relative poverty can be defined as the average or standard of a society in particular and compared to the rest of the inhabitants. For example, persons living on less than 40 percent of the mean income of the total population would be viewed as living in poverty.<sup>40</sup> This concept of poverty is usually used in high-income countries to describe those persons who have no access to cultural goods and services, entertainment, recreation, high-quality healthcare, and education, among others.<sup>41</sup>
40. The UN independent expert on human rights and extreme poverty, Arjun Sengupta, indicates that “poverty is the lack of income or purchasing power to secure basic needs. This income poverty can be considered in absolute or relative terms, depending on the understanding of the notion of basic needs.”<sup>42</sup> The distinction between poverty and extreme poverty in the framework of income scarcity would essentially be a matter of degree or breadth of the phenomenon. To the extent that poverty is defined on the

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<sup>37</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta. UN DOC: E/CN.4/2005/49, February 11, 2005, para. 3.

<sup>38</sup> Paul Spicker, Definitions of poverty: twelve clusters of meanings. Paul Spicker systematizes clusters of definitions for poverty into large segments: a) poverty as economic circumstances (measured on the basis of income); b) poverty as a material concept (where poverty is viewed as a deprivation of physical and mental well-being because of the absence of economic resources); c) as social circumstances (referring to notions of “social classes” and “exclusion,” among others); and d) as a moral judgment. See Paul Spicker, Sonia Álvarez Leguizamón, and David Gordon, Pobreza. Un glosario internacional [Poverty: An International Glossary], Latin American Social Sciences Council (Consejo Latinoamericano de Ciencias Sociales —CLACSO), Buenos Aires, 2009, pp. 291-306.

<sup>39</sup> United Nations, Commission on Human Rights, Op. Cit., paras. 4-5.

<sup>40</sup> The World Bank, Handbook on Poverty + Inequality, p. 43.

<sup>41</sup> Fernanda Doz Costa, Pobreza y derechos humanos: desde la retórica a las obligaciones legales-una descripción crítica a los marcos conceptuales, p. 89. In addition, see SACHS, J. D. The end of poverty, economic possibilities for our time. New York: The Penguin Press, 2005, p. 20.

<sup>42</sup> United Nations, Commission on Human Rights, op. cit., paras. 3-6.



basis of the access to goods and services and their availability, extreme poverty assumes that a much more reduced set of goods and services is available and/or that the situation of poverty has existed for a longer period of time.<sup>43</sup>

41. On the basis of this framework, the definitions of poverty and extreme poverty adopted by the World Bank for its lines of action can also be considered, without detriment to the need of resorting to other dimensions of poverty as it has done in its later publications.<sup>44</sup> The World Bank<sup>45</sup> has indicated, with respect to the world overview of poverty, that:

According to the most recent estimates, in 2011, 12.7% of the world's population lived on less than US\$1.90 a day, down from 37% in 1990 and 44% in 1981. This means that, in 2012, 896 million people lived on less than US\$1.90 a day, down from 1.95 billion in 1990 and 1.99 billion in 1981.<sup>46</sup>

42. As a measuring tool for the Millennium Development Goals (MDGs) (2000-2015),<sup>47</sup> the World Bank has developed a "Global Extreme Poverty Line," in other words, an income level to determine or measure the population that, worldwide, would be considered to be living in extreme poverty. For this purpose, it was established that persons who subsisted on less than US\$1.25 (national currency of the United States of America) a day were in said condition. At present, this line has been updated to US\$1.90 (U.S. currency)

<sup>43</sup> Ibid., para. 7.

<sup>44</sup> World Bank, Handbook on Poverty + Inequality, Op. cit., pp. 1-3. In the Handbook mentioned herein, there is a reference to the general definition for poverty, adopted by the World Bank in 2001, as a "pronounced deprivation in well-being." It is indicated regarding this that the conventional view associates well-being with possessing sufficient income to meet basic needs.

<sup>45</sup> The World Bank has the goal of reducing extreme poverty, that is, reducing the percentage of persons who survive on less than US\$1.90 a day, to 3 percent or less for 2030. See Lac Equity Lab: Pobreza.

<sup>46</sup> World Bank, Poverty Overview, October 7, 2015.

<sup>47</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Millennium Development Goals in Latin America and the Caribbean: Indicadores de pobreza y pobreza extrema utilizadas para el monitoreo de los ODM en América Latina. The poverty line of "1 dollar a day" in connection with ECLAC estimates of poverty.

In the document referred to above, it is clearly indicated that:

The first Millennium target is drafted in terms of an extreme poverty line equivalent to "1 dollar a day." This threshold represents an international minimum standard for poverty, developed by the World Bank for the purpose of having available a measure for absolute poverty that could be compared among the various developing regions and countries. The value used pertains to the average of the national lines of poverty adopted by the countries with the lowest levels of per capita income in the world.

(...)

ECLAC opted for using, in order to monitor Millennium target 1A, the national lines of poverty estimated by ECLAC, instead of international lines of poverty (ECLAC, Indicadores de pobreza y pobreza extrema utilizadas para el monitoreo de los ODM en América Latina).

a day<sup>48</sup> and this also constitutes a framework of reference for the Sustainable Development Goals (SDGs) (2016-2030).<sup>49</sup>

43. The World Bank, for its work on the countries of Latin America and the Caribbean, has specified that these countries have different levels of economic development, which has led analysts to use poverty lines that are higher. In that regard an extreme poverty line of US\$2.50 per day and the moderate poverty line of US\$4.00 a day have been set. The latest data published by the World Bank at the time of drafting the present report indicate that approximately one fourth of the region's population lives on less than US\$4 a day.<sup>50</sup>
44. The Inter-American Development Bank (IDB) has also adopted a monetary approach to considering poverty.<sup>51</sup> In a publication dated May 2015, the IDB, using the amount of daily per capita income (in U.S. dollars), divided the population into five groups: (i) "the extreme poor," with income below US\$2.5; (ii) "the moderate poor," with income between US\$2.5 and US\$4 a day; (iii) the "vulnerable class," earning between US\$4 and US\$10; (iv) the "middle-class," with income between US\$10 and US\$50, and (v) the "high-income class," with income above US\$50.<sup>52</sup>
45. In its estimates of the so-called poverty line, ECLAC has used considerations on multidimensional poverty among other methods. For this entity, estimating poverty means considering whether or not the income per inhabitant is below the poverty line or the minimum amount needed to make it possible to meet their basic needs.<sup>53</sup>
46. The poverty lines are calculated on the basis of the value of a basket of goods and services, using the method for the cost of basic needs, expressed in the currency of each country. ECLAC estimated the cost of the basic food basket pertaining to each country and geographic area, indicating that this basket encompasses the goods needed to meet the nutritional needs of the population, taking into consideration consumer habits, effective availability of food and its relative prices, as well as the price differences between

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<sup>48</sup> World Bank, Frequently Asked Questions: [Actualización de la Línea de Pobreza](#), September 30, 2015.

<sup>49</sup> World Bank, [LAC Equity Lab](#). See World Bank, [Poverty and Inequality and Monitoring Latin America and the Caribbean: A Slowdown in Social Gains](#), April 2016, p. 4.

<sup>50</sup> World Bank, [LAC Equity Lab](#), April 2016. See World Bank, [Poverty and Inequality and Monitoring Latin America and the Caribbean: A slowdown in Social Gains](#), April 2016, p. 1. See also World Bank paper: [Trabajar por el Fin de la Pobreza en América Latina y el Caribe –Trabajadores, Empleos y Salarios](#), June 2015, p. 7.

<sup>51</sup> Inter-American Development Bank (IDB), IDB Working Paper No. 591: [Pobreza, Vulnerabilidad y la Clase Media en América Latina](#). May 2015.

<sup>52</sup> Inter-American Development Bank (IDB), IDB Working Paper No. 591: [Pobreza, Vulnerabilidad y la Clase Media en América Latina](#). May 2015.

<sup>53</sup> ECLAC. [Panorama social de América Latina 2009](#). 2010, p. 53.

metropolitan, urban, and rural areas. To this value, called the indigence line, the organization added the amount required by the households to meet non-food basic needs, in order to calculate the total value of this poverty line.<sup>54</sup>

47. ECLAC has developed numerous analyses with a multidimensional focus on poverty<sup>55</sup> and its link to social protection,<sup>56</sup> gender gaps,<sup>57</sup> the life cycle, and the use of time, among other approaches.
48. The Food and Agriculture Organization of the United Nations (FAO) has understood poverty to be “a manifestation of a series of economic, political, social, and cultural ties experienced by societies that do not manage to integrate the entire population in their social production and reproduction processes.<sup>58</sup>” This organization has emphasized the link between poverty and hunger<sup>59</sup>, especially chronic infant malnutrition and undernourishment,<sup>60</sup> emphasizing food and nutrition security,<sup>61</sup> indicating that “a large part of the aspects of food insecurity and especially stunting and undernourishment are a consequence (and at the same time a cause) of poverty in the population.”<sup>62</sup> For the FAO, the poverty line can be defined as the monetary value of a basic food basket that meets the minimum “kilocalorie” needs required to develop a healthy and active life.<sup>63</sup>
49. The IACHR observes that, although the multidimensional character of poverty is acknowledged, monetary poverty, or income-based poverty, is

<sup>54</sup> Ibid.

<sup>55</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2013, [La Medición Multidimensional de la Pobreza](#).

<sup>56</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2015, [Instrumentos de protección social Caminos latinoamericanos hacia la universalización](#). This publication points out the link between social protection and poverty. According to this publication, social protection is aimed at responding not only to risks being encountered by the entire population (for example, unemployment, disability, or old age), but also structural problems such as poverty and inequality, p. 28.

<sup>57</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2004, [Entender la pobreza desde la perspectiva de género](#).

<sup>58</sup> United Nations, FAO, [Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe](#), 2012, p. 14.

<sup>59</sup> With regard to the right to food, in 2004, the Member Nations of the Food and Agriculture Organization (FAO) adopted [Voluntary Guidelines in support of the progressive realization of the right to adequate food in the context of national food security](#) (Guidelines on the right to food). This document provides practical guidance for materializing the right to adequate food in a number of policy and program areas.

<sup>60</sup> United Nations, FAO, [2015 Regional Overview of Food Insecurity in Latin America and the Caribbean: The region has reached the international hunger targets](#), 2015. This report points out that the correlation between extreme poverty and stunting in children under five years is 65 percent. While the correlation between extreme poverty and undernourishment is 83 percent, p. 22.

<sup>61</sup> United Nations, FAO, [Seguridad Alimentaria y Nutricional](#). Basic concepts. Food and nutrition security is defined by the FAO as the right of all persons to have access to healthy nutritional food, in line with the right to appropriate food and the basic right of all persons to not go hungry.

<sup>62</sup> United Nations, FAO, [Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe](#), 2012, p. 32.

<sup>63</sup> Ibid., p. 46.

widely used in the Americas, with its measurement based on the so-called “poverty lines.” In most of the region’s countries, this value has a dual character as it starts with the definition of an indigence, or extreme poverty, line to which are added goods and services for drawing up the poverty line.

50. As a rule, this indigence line is drawn up on the basis of the following parameters: (i) a minimum basic food consumption basket, depending on the composition of the households and their nutritional requirements on the basis of various parameters; (ii) the cost of purchasing these foods in light of average prices; and (iii) the income of households, measured on the basis of the household survey.
51. Thus, in order to overcome the indigence, or extreme poverty, line, the capacity to meet daily kilocalorie and nutritional needs is taken into consideration. Afterwards, to this line are added other basic goods and services, which vary in each country and may include access to the right to housing, education, health, and clothing, among others, which are considered to be minimum needs in order to have access to so-called quality of life. In other words, the “poverty lines” are thresholds or minimum standards that build a parameter making it possible for states to identify persons who are living in poverty in their territory.<sup>64</sup>
52. On the basis of available information and that received from states in response to the questionnaire published by the IACHR “Poverty and Human Rights in the Americas,” the states of Paraguay,<sup>65</sup> Uruguay,<sup>66</sup> Honduras,<sup>67</sup> Guatemala,<sup>68</sup> Jamaica,<sup>69</sup> Panama,<sup>70</sup> El Salvador,<sup>71</sup> Brazil,<sup>72</sup> Argentina,<sup>73</sup> and

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<sup>64</sup> Jeffrey Sachs, *The end of poverty, economic possibilities for our time*, 2005, p. 20.

<sup>65</sup> Response of the State of Paraguay to the IACHR questionnaire: Poverty and Human Rights in the Americas, Note No. 573/16/MPP/OEA, May 20, 2016.

<sup>66</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE.

<sup>67</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016. April 4, 2016.

<sup>68</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau. March 31, 2016.

<sup>69</sup> Response of the State of Jamaica to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note 6/80/1. Received May 3, 2016.

<sup>70</sup> Response of the State of Panama to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note A J.D.H.-MIRE-2016-21792. March 30, 2016.

<sup>71</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas. April 4, 2016.

<sup>72</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas.

<sup>73</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016.

Colombia,<sup>74</sup> among others, use the above-mentioned poverty lines, as a way to measure poverty.

53. Argentina indicates<sup>75</sup> that it understands poverty as a complex and multidimensional phenomenon with features going beyond the measurement of income and is associated with access to basic services, education, health, work, the environment, and the empowerment of women, etc. Nonetheless, it indicates that it uses the income-based poverty measurement, prepared by the National Statistics and Census Institute (Instituto Nacional de Estadística y Censos—INDEC) on the basis of the data gathered by the Permanent Household Survey (*Encuesta Permanente de Hogares—EPH*).
54. Its answer explains that the estimation method is of an indirect kind and consists of calculating the percentage of households or population with income below the minimum threshold. In the case of extreme poverty (which it considers indigence), it indicates that threshold is defined by the cost of a basic food basket for each household on the basis of the number of members and the nutritional requirements considering their demographic composition in terms of age and gender. In the case of poverty, it points out that the basic threshold is defined by one total basic basket (*canasta básica total—CBT*) for each household, which also includes the food, the value of other goods and services considered to be essential for that population. Furthermore, it specifies that the measurement of poverty using the poverty line method consists of establishing, on the basis of household income, whether or not they have the capability to meet a series of food and non-food needs deemed basic.
55. It adds that the Permanent Household Survey is a survey that periodically provides demographic information, as well as information on the incomes of the households and population of the country's main urban centers beginning in 1974, and that the consumer price index for Greater Buenos Aires provides information on the price of food items in the Basic Food Basket. It is worth mentioning that Argentina measures structural poverty based on the data from censuses conducted every 10 years. In particular, the measurement of households and population with Unmet Basic Needs has been taken since the National Population Census of 1980. This measurement

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<sup>74</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OAS Note No. 311/2016, April 25, 2016.

<sup>75</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016. When it presented its report, the State of Argentina indicated that INDEC was working on measuring the condition of poverty and indigence in order to draw up and disseminate its results. The findings of the INDEC report were published in September 2016.

was applied on the basis of the census results of 1980, 1991, 2001, and 2010.<sup>76</sup>

56. Brazil indicated that the more widespread method used to identify the population living in poverty is that of measuring insufficiency of income, coupled with a multidimensional approach to poverty.<sup>77</sup> The State considers that families living with a monthly income equal to or below R\$ 85.00 (reales, the national currency) per person are living in extreme poverty; and that those families with a monthly income of between R\$ 85.01 and R\$ 170.00 per person, live in poverty.<sup>78</sup>
57. The State also indicated that it employs a multidimensional approach to poverty as a bundle of basic unmet needs, “as a complementary concept of poverty such as insufficiency of income, by identifying families subject to the absolute deprivation of the minimum levels of goods and services (public and private) needed for survival. Some of the dimensions that can be assessed with this approach are: access to drinking water, sanitation, the type of housing, adequate food in terms of quantity and diversity, and school attendance.”<sup>79</sup>
58. Colombia has indicated that, officially, poverty is calculated in two ways: the first on the basis of the monetary income of households, which is known as monetary poverty, and the second on the basis of the Multidimensional Poverty Index, measuring poverty through five dimensions showing deprivation in Colombian households: the household’s schooling conditions; conditions for childhood and youth; work; health; access to public services; and housing conditions. Both measurements complement each other and are non-exclusive.<sup>80</sup> Furthermore, it indicates that from a monetary standpoint, a person is considered to be living in poverty if his or her monthly income is below the amount of the Poverty Line.

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<sup>76</sup> Ministry of Social Development of Argentina, Input for the Preliminary Report of the IACHR on “Poverty, Extreme Poverty and Human Rights in the Americas”, February 6, 2017, p. 2.

<sup>77</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas.

<sup>78</sup> Comments by the State of Brazil on the Preliminary Report. Note No. 33 of February 22, 2017. Response by the State of Brazil to the IACHR Questionnaire. Poverty and Human Rights in the Americas. The State of Brazil has stated that the figure for monetary extreme poverty in the country for the year 2014 is 2.4%; that for poverty is 7%.

<sup>79</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas.

<sup>80</sup> Observations of the State of Columbia to the Preliminary Report. Note S-GAIIID-17-005850, January 19, 2017. Response of the State of Colombia to the IACHR Questionnaire. Poverty and Human Rights in the Americas. Note MPC/OEA No 311/2016, April 25, 2016. In monetary poverty terms, comparing the 2015 findings with those of the previous year, the national total of persons living in poverty declined 0.7 percentage points, from 28.5% in 2014 to 27.8% in 2015. On the other hand, the Multidimensional Poverty Index fell 1.7 percentage points, from 21.9% in 2014 to 20.2% in 2015.

59. Colombia also indicates that a person is identified as living in extreme poverty if his or her monthly income is below the value of the Indigence Line. It specifies that the value of the indigence line is connected to the cost of a basic food basket, whose composition makes it possible to meet the minimum nutritional requirement recommended by the FAO. For its part, the poverty line pertains to the value of one basket, which in addition to meeting minimum nutritional requirements makes it possible to meet other basic needs such as transportation, housing, education, and health, among others. Both lines were estimated for urban and rural geographical areas on the basis of information about household consumption habits.<sup>81</sup>
60. El Salvador has indicated that, historically, poverty in the country has been measured using the income-based method, or monetary poverty, on the basis of official measurements by the Multi-Purpose Household Survey. It points out that monetary poverty is categorized as extreme or relative and that the parameter used is the value of the Basic Food Basket. It specifies that households that cannot cover the cost of the basis food basket with their per capita income, are considered to be in a situation of extreme poverty; and that those households whose income does not reach double that amount are considered to be in relative poverty.<sup>82</sup>
61. Likewise, the State has indicated that it has made progress in the multidimensional measurement of poverty. Specifically it reported that, in April 2014, a Law on Development and Social Protection, defining poverty as “the deprivation of resources, capabilities, and effective access of persons to rights and a continuous improvement in their standard of living” was enacted. It indicated that, for the multidimensional measurement of poverty, 20 indicators were established, grouped on the basis of the dimensions of education, housing conditions, work, social security, health, basic services, food security, and the quality of the habitat.<sup>83</sup>
62. Guatemala has indicated that, in order to conceptualize and measure poverty, an approach based on consumption instead of income was adopted, because it leads to a lower margin of error.<sup>84</sup> It specifies that “general (total) poverty refers to the population that manages to meet the cost of minimum

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<sup>81</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OAS Note No. 311/2016, April 25, 2016.

<sup>82</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas, April 4, 2016. The State has indicated that the per capita cost of the urban CBA in 2014 amounted to \$49.53 (in national currency) and the rural CBA to \$30.73.

<sup>83</sup> Ibid. It referred to a total value of 31.8 percent for monetary poverty and 35.2 percent for multidimensional poverty.

<sup>84</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau, March 31, 2016.

food consumption but not the additional minimum cost for other basic goods and services,” and that extreme poverty refers to “the population that manages to meet the minimum cost needed to pay for a basket that would make it possible to meet both food and non-food needs. That proportion of the population that fails to reach this threshold is deemed to be poor.”<sup>85</sup> It was indicated that poverty and extreme poverty are systematically measured on the basis of the National Living Conditions Survey, carried out by the National Statistics Institute with the latest measurement taking place in 2014/2015.<sup>86</sup>

63. Honduras has reported that poverty is defined “as the social and economic situation with a lack of satisfaction of basic needs affecting the standard and quality of life of persons.”<sup>87</sup> Likewise, it indicated that there is a national data-gathering system operated by the National Statistics Institute.<sup>88</sup> It specifies that, to measure poverty, the poverty line method be used “which consists of establishing, on the basis of household income, the capacity that households have to meet, on the basis of the purchase of goods and services, a series of food and non-food needs deemed to be basic.”<sup>89</sup>
64. Jamaica has pointed out that a person is living in poverty if his or her consumption level drops below a given threshold or poverty line. It indicated that the national poverty line was set at US\$1.90. It explained that the poverty line measures minimum food and non-food expenses that every person must have. Extreme poverty is at a lower level of a person’s minimum food expenses (set below US\$1.25). This line is called the food poverty line. A person is living in extreme poverty when his or her level of consumption drops below this line.<sup>90</sup>
65. Panama has indicated to the IACHR that “poverty is the socioeconomic situation or condition of the population that has no access to or lacks the resources to meet the basic physical and psychological needs for an adequate standard and quality of life, such as food, housing, education,

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid. The state reports a national extreme poverty figure of 59.3 percent for 2014.

<sup>87</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016, April 4, 2016.

<sup>88</sup> Ibid. The State of Honduras reports that, according to the INE and in accordance with the Permanent Multipurpose Household Survey, in June 2015, the percentage of poverty was calculated at 63.8 percent of the population, with percentage of 23.8 percent for relative poverty and 40 percent for extreme poverty.

<sup>89</sup> Ibid.

<sup>90</sup> Response of the State of Jamaica to the IACHR Questionnaire: Poverty and Human Rights in the Americas Note Ref. 6/80/1, received May 3, 2016. The State of Jamaica reports a national poverty percentage of 19.9 percent for 2012.



sanitation, or access to clean drinking water.<sup>91</sup> It has indicated that one way to measure poverty is setting the cost of the basic basket and considering that all those whose income is below this set cost are living in poverty, whereas those who are living on less than one balboa a day (Panama's national currency) are living in indigence."<sup>92</sup>

66. Paraguay indicated to the IACHR that the General Department of Statistics, Surveys, and Census defines "a poor population group as consisting of those persons living in households whose level of well-being (measured in terms of income) is below the cost of the basic consumption basket comprised of the series of goods and services that meet certain minimum requirements, both food and non-food, for human survival."<sup>93</sup>
67. It indicated, in addition, that the poverty line is set by first estimating the cost of the basic food basket with a calorie and protein content that satisfies the population's nutritional requirements; plus the cost of the basic non-food basket, comprised of other basic goods and services in connection with housing, clothing, education, among others. It specifies, furthermore, that the poverty line is a monetary indicator that combines both the cost of a basic food basket (extreme poverty) and the cost of a basic food basket plus other products essential for life (moderate poverty). In that respect, the monthly cost per person of the food basket is called the Extreme Poverty Line and that of the total basket has been called the Total Poverty Line.<sup>94</sup>
68. For its part, Uruguay has pointed out that official estimates for poverty and indigence in Uruguay are carried out by the National Statistics Institute. It specifies that the methodology used to measure indigence and poverty is based on the income method, on the basis of a basic food basket (CBA, by its acronym in Spanish), which takes into account minimum food requirements, and a basic non-food basket (CBNA, by its acronym in Spanish), which takes into account the consumption of other goods, such as housing, health, and transportation.<sup>95</sup> In this regard, the State specifically indicated that:

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<sup>91</sup> Response of the State of Panama to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note A J.D.H.-MIRE-2016-21792, March 30, 2016.

<sup>92</sup> Ibid. The State of Panama reports a national percentage of 10.3 percent for indigence, or extreme poverty, in 2015.

<sup>93</sup> Response of the State of Paraguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 573/16/MPP/OEA, May 20, 2016. The state of Paraguay has informed that, according to the General Department for Statistics, Surveys, and Census, 22.6 percent of the population is living in poverty and 10.5 percent in extreme poverty.

<sup>94</sup> Ibid.

<sup>95</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE. The State of Uruguay informs that, in 2015, the percentage of poor households dropped to 6.4 percent for the entire country, whereas the percentage for individuals was 9.7 percent. It also

“[t]he Poverty Line (LP) therefore combines both the CBA and the CBNA, and a household is deemed poor when per capita income adjusted by a scale of equivalencies is no higher than the value of the Poverty Line. Likewise, when per capita household income is no greater than the basic food basket, the household is considered to be indigent.” All persons living in a household in poverty are deemed to be poor, and the same holds true for indigent households.<sup>96</sup>

69. Peru refers to the mechanisms to reduce financial, social and geographical obstacles faced by persons living in poverty in order to ensure access to justice. It also submitted information on the education system for older persons, for indigenous populations in 12 languages, to benefits for teachers in isolated rural areas, etc.
70. In its short answer to the IACHR’s questionnaire, Suriname submitted a short report on access to justice for persons living in poverty, and it pointed out that Article 7 of its Constitution provides that any person has the right to request legal assistance, including persons living in poverty.
71. The States’ responses indicate that the most widely used method is that of poverty lines, in other words, measuring and conceptualizing poverty using a monetary approach. At the same time, they report the use of additional factors, such as access to a series of economic, social, and cultural rights for a multidimensional approach to poverty.
72. There is growing consensus about the need for countries to benefit from multidimensional measurements of poverty, so as to have information additional to that which was obtained on the basis of conventional methods, based on monetary income.<sup>97</sup> There are individuals and families above the poverty line established for each country and who nevertheless find themselves in situations in which their rights are not satisfied or are violated, for instance through lack of access to basic services, health, education, housing, and so on. Furthermore, those measurements of poverty do not adequately address short-term income insecurity or the impact of inconsistent income or support on families and communities.<sup>98</sup>

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indicates that, as of 2005, a decline has been recorded for the levels of indigence and that it leveled off from as of 2011. For 2014, the levels of indigence for the entire country amounted to 0.2 percent for households and 0.3 percent for individuals.

<sup>96</sup> Ibid.

<sup>97</sup> ECLAC, [La Medición Multidimensional de la Pobreza](#). LC/L.3615(CE.12/5), April 17, 2013.

<sup>98</sup> FIAN International, Comments on the IACHR Report on Extreme Poverty, February 21, 2017, p. 1.

73. The other approach to conceptualizing poverty is not based on primarily on monetary aspects, but rather uses broader terms. Some other definitions consider multidimensional poverty as the lack of a basic capacity to live a life with dignity.<sup>99</sup> The latter definition assumes a multidimensional conceptualization of poverty, which recognizes certain broader features of poverty, such as hunger, poor education, discrimination, vulnerability, and social exclusion,<sup>100</sup> among others.
74. The principal perspectives of the concept and measurement of poverty focus on those that view poverty from the monetary standpoint and others that take into consideration the multidimensional aspect of poverty, which views poverty as the deprivation of basic capacities and liberties, recognizing that they are associated not only with income deficiencies, but also with systematic deprivations in terms of access to rights and basic services.<sup>101</sup> It is relevant to indicate that the multidimensional calculation or measurement of poverty is related to a rights-based approach and a perspective based on capabilities.<sup>102</sup>
75. From a multidimensional perspective with a rights-based approach, persons are holders of rights defining access to remedies and liberties needed for an adequate standard of living; and thus poverty is not considered to be a state of scarcity or need, but rather a situation of a lack of access to basic rights.<sup>103</sup>
76. Furthermore, the definition of poverty presented by the independent expert on human rights and extreme poverty, Arjun Sengupta, must also be mentioned. He indicated that income is viewed as one of the elements comprising well being and that has an instrumental role.<sup>104</sup> On the basis of Amartya Sen's ideas — who coined the notion of capabilities to define the freedom or the means that make it possible to lead a full life on the basis of what every person chooses to be or do— Sengupta considered that it is

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<sup>99</sup> United Nations, Statement adopted by the Committee on Economic, Social and Cultural 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. Twenty-fifth session, Geneva, 23 April-11 May, 2001, para. 7.

<sup>100</sup> Ibid.

<sup>101</sup> Óscar Parra Vera, IIDH Review [Vol. 56], Derechos humanos y pobreza en el Sistema Interamericano. El rol del análisis estructural a partir de informes y siete escenarios estratégicos basados en la responsabilidad internacional [Human rights and poverty in the Inter-American System: the role of structural analysis on the basis of reports and seven strategic scenarios based on international responsibility], p. 274.

<sup>102</sup> ECLAC, La Medición Multidimensional de la Pobreza. Op. cit.

<sup>103</sup> Ibid.

<sup>104</sup> United Nations, Commission on Human Rights, “Derechos Humanos y Pobreza Extrema: Informe del experto independiente Arjun Sengupta Human sobre cuestiones de derechos humanos y extrema pobreza”. UN DOC: E/CN.4/2005/49, February 11, 2005, para. 8.

possible to define poverty as a “deprivation of capabilities”<sup>105</sup> and extreme poverty as the extreme form of this deprivation.<sup>106</sup>

77. From a rights-based and a multidimensional approach, reference must be made to the definition adopted by the UN Committee on Economic, Social and Cultural Rights. This Committee considers that poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. The Committee has indicated that it endorses the definition adopted by the International Charter of Human Rights, reflecting the individual and interdependent nature of all human rights.<sup>107</sup>
78. The multidimensional approach has also been adopted by the United Nations Development Programme (UNDP) in its Human Development Reports (HDR),<sup>108</sup> in which a number of indicators on health, education, food, nutrition, and other basic needs for a life of dignity are established, aside from per capita income.<sup>109</sup> Also the 2000 Human Development Report considers human rights as an intrinsic part of development, and that development is viewed as a means to realize human rights. In these Human Development Reports poverty is considered as wider than the absence of income, and “a deprivation in many dimensions. If income does not

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<sup>105</sup> Ibid., para. 10.

<sup>106</sup> Ibid.

<sup>107</sup> United Nations, [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 \(E/C.12/2001/10\)](#), para. 8. The definition of the ESCR Committee was adopted in line with the International Declaration of Human Rights.

<sup>108</sup> United Nations Development Programme, [Human Development Report 2015: Work for Human Development](#), p. 1. This report indicates that, with the notion of development focusing on human lives, for 25 years now, two dozen reports on global human development have been drawn up and more than 700 reports on human development at the national level. This report also precisely indicates (p. 3) that:

The Human Development Index (HDI) is a composite index focusing on three basic dimensions of human development: to lead a long and healthy life, measured by life expectancy at birth; the ability to acquire knowledge, measured by mean years of schooling and expected years of schooling; and the ability to achieve a decent standard of living, measured by gross national income per capita.

To which it adds that: “To measure human development more comprehensively, the Human Development Report also presents four other composite indices. The Inequality-adjusted HDI discounts the HDI according to the extent of inequality. The Gender Development Index compares female and male HDI values. The Gender Inequality Index highlights women’s empowerment. And the Multidimensional Poverty Index measures no income dimensions of poverty.”

<sup>109</sup> United Nations, Commission on Human Rights, *op.cit.*, para. 8.

constitute the sum total of human life, the absence of income cannot be the sum total of human deprivation.”<sup>110</sup>

79. The above-mentioned report indicates that, in 1997, the expression human poverty was introduced to differentiate that broader deprivation from the narrower poverty as measured by income, which is a more conventional definition, confined to the deprivation of income or consumption.<sup>111</sup> For its part, the 2015 Human Development Report, establishes:

Human poverty is defined by many dimensions of impoverishment: deprivation of a long and healthy life, of knowledge, of a decent standard of living, and of participation. On the contrary, income-based poverty is defined as the deprivation of one single dimension, income, either because it is considered to be the only impoverishment that is of interest or because all deprivations can be reduced to a common denominator. The concept of human poverty considers that the absence of sufficient income is an important factor of human deprivation, but not the only one. According to this concept, nor can all impoverishment be reduced to income.<sup>112</sup>

80. UNDP’s Multidimensional Poverty Index (MPI), aims to identifying multiple deprivations at the household and individual level in health, education, and standard of living. The UNDP specifies that the MPI “reflects both the prevalence of multidimensional deprivations, and their intensity,” that is, how many deprivations people experience at the same time, and makes it possible to calculate the number of people living in poverty and to make comparisons at the national, regional and global levels and to compare ethnic groups, urban or rural areas within countries, as well as other

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<sup>110</sup> United Nations Development Programme, Human Development Report 2000. Box 4.1: Poverty, human rights and human development, p. 73.

<sup>111</sup> Ibid.

In this context, it is important to mention that UNDP, in the above-mentioned report, also presents indices related to human poverty and human development, among others:

The Human Poverty Index (HPI) measures deprivation in terms of human development. Thus, while the HDI measures a country’s general progress in terms of achieving human development, the HPI reflects the distribution of the progress and measures the deprivation lag that persists. Regarding this, UNDP indicates that the Human Poverty Index is a multidimensional measurement of poverty. The Human Poverty Index for developing countries (HPI–1) measures deprivation in three dimensions of human life: longevity, knowledge, and a decent standard of living. The HPI of industrialized countries (HPI–2) includes social exclusion, in addition to the three other dimensions.

<sup>112</sup> United Nations Development Programme, Human Development Report 2015. Glossary on Human Rights and Human Development, p. 17.

relevant household and community characteristics. In that respect, the MPI is viewed as a complement to income-based poverty measurement tools.<sup>113</sup>

81. With respect to the modalities for measuring poverty adopted by OAS Member states, some countries of the Americas have also taken steps to adopt the multidimensional approach, in addition to a solely monetary approach. The National Council for Assessment of Social Development Policy (CONEVAL) in Mexico, adopted a multidimensional approach by identifying poverty as an intersection of two perspectives: economic well being and social rights.
82. Specifically, it indicates that a person is in a multidimensional poverty situation when he or she is not guaranteed his or her exercise of at least one of his or her rights to social development and if his or her income is insufficient to purchase the goods and services required by their needs; and that a person is living in extreme poverty when he or she suffers three or more social deprivations and their income is below the value of the food basket.<sup>114</sup>
83. In this regard, Uruguay reports that additionally it has applied the methodology of multidimensional measurement developed CONEVAL in Mexico. The dimensions included are: housing and in-household services, education, social security, and health. Persons living in poverty are thereby classified into four categories: a) “non-poor”: those who do not suffer from any deprivation of rights or income; b) “vulnerable in terms of rights”: those who do not suffer any deprivation in terms of income but are deprived of their rights; c) “vulnerable in terms of income”: those who are not deprived of their rights but suffer from deprivation in terms of income; and d) “multidimensional poor”: those who suffer from deprivation in terms of both rights and income.<sup>115</sup>
84. In its answer to the IACHR, Ecuador indicated that poverty is understood as a “situation of inequality that arises as a result of unfair actions taken by political and economic power, leading to a denial of the human rights of persons, whose multidimensional conception is examined on the basis of gender, inter-generational, self-identification of ethnic belonging, and the

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<sup>113</sup> United Nations Development Programme, [Frequently Asked Questions - Multidimensional Poverty Index \(MPI\)](#).

<sup>114</sup> Response from the state of Mexico to the IACHR questionnaire: Poverty and Human Rights in the Americas, Note OAS-00784, April 15, 2016. According to its measurement methods, the state of Mexico has reported that, in 2014, 46.2 percent of the population is living in poverty and 13 percent living in extreme poverty.

<sup>115</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE. As a result of this multidimensional methodology, the state indicated that it was recorded that, for 2013, multidimensional poverty amounted to 10 per cent.

area of residence perspectives.”<sup>116</sup> In its response it indicates that the definition includes a complex set of unmet needs, such as inequality of opportunities, exclusion, violence, freedom, identity, participation, use of time, among others aspects that not only depend on access to economic resources.<sup>117</sup>

85. Although extreme poverty should also be understood from a multidimensional perspective, it is argued that a person would be living in extreme poverty in Ecuador when he or she does not have the resources needed to meet at least their basic food needs.<sup>118</sup>
86. Besides measuring poverty with a monetary approach, Argentina indicated that “poverty [is] a complex and multidimensional phenomenon that encompasses a series of aspects that go beyond the measurement of income and that are connected with access to basic services, education, health, work, the environment, and the empowerment of women, etc.”<sup>119</sup>
87. Bolivia views poverty in its social, material, and spiritual dimensions. Thus, “material poverty is evident when there is no access to basic services and decent living conditions. Social poverty is evident when individualism prevails over community values; and spiritual poverty is evident when consumerism, individualism, discrimination, and racism are promoted.”<sup>120</sup>

## 2. Poverty from a Human Rights Perspective

88. The IACHR, as part of its mandate to promote observance of human rights in the region and to act as a consultative organ of the OAS in the matter, has worked with the concept of poverty from a human rights perspective.
89. To this end, the Inter-American Commission has indicated that poverty is one of the more concerning general human rights situations in the hemisphere,<sup>121</sup> and that in certain circumstances it constitutes a

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<sup>116</sup> Response of the State of Ecuador to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No 4-2-125-2016, May 31, 2016.

<sup>117</sup> Ibid. The state provided information about the figures for poverty, indicating that, by December 2015, the national percentage for income-based poverty would be 23.3 percent.

<sup>118</sup> Ibid.

<sup>119</sup> Response of the State of Argentina to the IACHR Questionnaire: “Poverty and Human Rights in the Americas.”

<sup>120</sup> Agenda Patriótica 2025. 13 Pilares de la Bolivia Digna y Soberana. Ministry of Communication. Plurinational State of Bolivia.

<sup>121</sup> IACHR, Third Report on the Situation of Human Rights in Paraguay. OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 5.

“generalized violation of all human rights, civil and political, as well as social, economic, and cultural.”<sup>122</sup>

90. Through its various mechanisms, the Commission has observed that the high levels of discrimination and social exclusion to which certain groups living in poverty are subjected to have rendered their citizen participation, access to justice, and the effective enjoyment of rights illusory.<sup>123</sup> Bearing in mind the indivisibility of rights, the IACHR has pointed out that the violation of economic, social, and cultural rights is generally accompanied by the violation of civil and political rights. In this context, in a situation where there are the highest levels of violations of economic, social, and cultural rights, there is also the greatest violation of civil and political rights.<sup>124</sup>
91. To the effect of the present report poverty is a problem presenting obstacles to the enjoyment and exercise of human rights in conditions of true equality of persons, groups and collectives. Poverty situations bring enhanced exposure to human rights violations; increased vulnerability to restrictions derived from individuals’ socioeconomic situation. Likewise, in certain cases, poverty may also imply human rights violations involving the international responsibility of the State.
92. This report also presents the conceptualization and measurement of so-called “extreme poverty.” In an effort to define its scope, several expressions are used, such as “absolute poverty,” “critical poverty,” “acute poverty,” “indigence,” “destitution,” and “hunger”, among others. All these terms refer to an extreme category in the poverty sphere. Thus, for the IACHR, extreme poverty is a serious human rights problem in light of its impact on the enjoyment and exercise of the human rights of persons, groups, and collectives living in this situation.
93. Experience shows that extreme poverty can seriously impair the democratic institutional framework, as it affects the very essence of democracy and renders citizen participation, access to justice, and the effective enjoyment of human rights in general, illusory. Therefore, in addition to allocating a sufficient budget to implement public policies for the eradication of poverty and the progressive achievement of economic, social, and cultural rights in full, States must be accountable for the appropriate use of these resources.
94. In brief, although poverty may vary in both intensity to the point of being extreme and in terms of duration by becoming chronic, the Commission

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<sup>122</sup> Ibid., para. 17; IACHR, The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights; OEA/Ser.L/V/II.143. Doc. 59, November 3, 2011, para. 1.

<sup>123</sup> IACHR, Third Report on the Situation of Human Rights in Paraguay. OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

<sup>124</sup> Ibid.



considers that States have the obligation to remove obstacles to the enjoyment and exercise of human rights by persons, groups, and collectives living in this situation. The State must also create the necessary conditions to ensure a dignified life for those living in situations of poverty until its eradication.

95. Through the exercise of its mandate, the Commission has shown that poverty and extreme poverty usually involve violations to the basic right to non-discrimination. These situations represent a context of social exclusion, deprivation, vulnerability to different forms of violence and also a lack of access to basic public services. Therefore, there is a consensus that poverty can always imply the denial of civil and political rights as well as economic, social and cultural rights.
96. In the context of poverty and extreme poverty, human rights violations add up, and each one of them negatively impacts the others, causing a vicious cycle of interconnected impairments and violations of human rights based on multisectoral discrimination, with grave consequences for the dignity of persons.
97. Addressing poverty from a rights-based approach shows the need for effective strategies to eradicate poverty and extreme poverty from a human rights perspective in light of the international obligations of the State, and not from a welfare or charitable standpoint. This type of approach is conducive to the design of public policies for the particular needs of historically discriminated persons, groups, and collectives, and to ensure effective conditions of equality.
98. The UN has indicated in its “Guiding Principles on Extreme Poverty and Human Rights” that poverty in itself is an urgent human rights problem because it affects human dignity and it is both a cause and consequence of human rights violations and therefore is a condition leading to other violations. It is characterized by multiple and interconnected violations of civil, political, economic, social, and cultural rights.<sup>125</sup>
99. The United Nations Children’s Fund (UNICEF) has indicated that “children living in poverty experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them

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<sup>125</sup> United Nations, The Guiding Principles on Extreme Poverty and Human Rights, approved by the Human Rights Council on September 27, 2012. General Assembly, A/HRC/21/39, July 18, 2012, para. 3.

unable to enjoy their rights, achieve their full potential or participate as full and equal members of society.”<sup>126</sup>

100. UNICEF also maintains that the concept of child poverty, in conjunction with estimates of its scope, can be construed on the principle of access to a specific number of economic and social rights.<sup>127</sup> In its view, non-compliance with these rights may have as a consequence premature death, hunger, malnutrition, and lack of access to drinking water, sanitation services, medical services, and information and education, with all the consequences that these entail. According to this, child poverty can be understood from a perspective that addresses the denial of the rights of children, thus proposing a human rights-based approach.<sup>128</sup>
101. In brief, the Inter-American Commission on Human Rights considers poverty as a structural problem resulting in the impairment of the enjoyment and exercise of human rights and that, on occasion, results in human rights violations, involving the international responsibility of the State.

### 3. General Poverty Figures for the Americas

102. The United Nations has considered the eradication of poverty and extreme poverty in all its forms to be one of the greatest challenges facing humanity.<sup>129</sup>
103. According to the parameters established by the Millennium Development Goals, Latin America shows a tendency to stagnation in its effort to reduce poverty.<sup>130</sup> According to ECLAC, poverty and indigence rates indicate that the number of persons living in poverty grew in 2014, reaching 168 million, of which 70 million were living in extreme poverty. ECLAC observed that both the poverty and the indigence rates rose in 2015, with 175 million in poverty on the basis of income, and 75 million of whom are living in

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<sup>126</sup> United Nations, UNICEF-ECLAC, [Child Poverty in Latin America and the Caribbean](#), p. 25.

<sup>127</sup> *Ibid.*, p. 26.

<sup>128</sup> *Ibid.*

<sup>129</sup> United Nations, [2030 Agenda for Sustainable Development](#), Goal 1: No Poverty. Eradicating poverty in all its forms and dimensions, including extreme poverty, is one of the greatest challenges facing the world and is an essential requirement for sustainable development. United Nations, [Transforming our world: the 2030 Agenda for Sustainable Development](#), Resolution approved by the General Assembly September 25, 2001, para. 14.

<sup>130</sup> United Nations, [Millennium Development Goals Report 2015](#).

indigence.<sup>131</sup> The IACHR has received information indicating that in Central America specifically; six out of every ten households are living in poverty.<sup>132</sup>

104. According to official figures, in 2014, 14.8 percent of the population (46.7 million) in the United States was living in poverty, with no significant changes since 2006. In 2013, poverty had reached 14.5 percent.<sup>133</sup> Similarly, 13.5 percent of Canada's population (4.6 million) was living on low income – with the total income of a household representing less than half of the average family income – in 2013.<sup>134</sup>
105. In terms of inequality, it is concerning that Latin America and the Caribbean remain the most unequal regions in the world, with an economic inequality gap that reinforces social and gender inequalities, despite the economic growth over the last decade.<sup>135</sup> According to the UNDP, 10 out of the 15 most unequal countries in the world are in Latin America.<sup>136</sup> Furthermore, the IACHR has received information that in 2014, in Latin America and the Caribbean 10 percent of the population owned 71 percent of the wealth, while the poorest half of the population was living in poverty and owned only 3.2 percent. In this context, and more specifically, 1 percent held 40 percent of the region's wealth.<sup>137</sup> These figures broadly demonstrate the real dimension of inequality in the region.
106. With regard to the Caribbean, available information shows that the countries with the highest percentage of their population living below the poverty line is: Haiti (77%), Belize (41.3%), Grenada (37.7%), Guyana (36.1%), and Saint Lucia (28.8%). Statistics on children and youth reveal that they suffer from the highest poverty rates; ECLAC attributes this to constantly growing

<sup>131</sup> ECLAC, [Social Panorama of Latin America 2015](#), p. 7.

<sup>132</sup> Obryan Poyser Calderón, [Quinto Informe Estado de la Región](#), Pobreza en Centroamérica [Fifth Regional Status Report, Poverty in Central America], p. 33.

<sup>133</sup> United States Census Bureau, [Poverty 2014 Highlights](#). Available at: <https://www.census.gov/hhes/www/poverty/about/overview/>. According to a 2013 report issued by the Organization for Economic Cooperation and Development (OECD), income inequality and relative poverty rates in the United States are among the highest in OECD member countries and have substantially increased over the past decades. [Inequality and Poverty in the United States](#), p. 2.

<sup>134</sup> See Statistics Canada, [Income of Canadians](#), published December 17, 2015.

<sup>135</sup> World Bank, [Working to End Poverty in Latin America and the Caribbean Workers, Jobs, and Wages](#), June 2015. In this regard, the State of Argentina points out that this report uses the SEDLAC (CEDLAS and the World Bank) database for 2007-2015 (State of Argentina, Input for the IACHR Preliminary Report on "Poverty, Extreme Poverty, and Human Rights in the Americas", February 6, 2017, p.4). See also, Thematic Hearing on tax policy and human rights, 156th period of sessions of the Inter-American Commission on Human Rights (IACHR), Washington, D.C., October 2015.

<sup>136</sup> UNDP, [About Latin American and the Caribbean](#). According to United Nations Development Program (UNDP) projections, nearly 1.5 million more men and women in Latin America and the Caribbean fell into poverty at the end of 2015. See: [Human Development Report on Latin America and the Caribbean 2016](#), press release.

<sup>137</sup> OXFAM, [Privileges That Deny Rights: Extreme inequality and the hijacking of democracy in Latin America and the Caribbean](#), September 2015, p. 6.

inequality rates. In the case of Belize and Grenada nearly half of their population aged 0-24 years lives in poverty.<sup>138</sup>

## ***B. The Inter-American and Universal Legal Framework on Poverty***

### **1. Inter-American System for the Protection of Human Rights**

#### **a. The Organization of American States' (OAS) Efforts to Eradicate Poverty**

107. OAS member states have referred to the adoption of poverty reduction measures as indispensable for achieving firm and inclusive democracies, in the Organization's foundational instruments.

108. Article 2 of the Charter of the Organization of American States (OAS) provides that one of the purposes of the Organization is to promote the economic, social, and cultural development of its member states and to eradicate extreme poverty. Likewise, Article 3 of the OAS Charter identifies the elimination of extreme poverty as an essential part of the promotion and consolidation of representative democracy. For its part, Article 34 of the Charter provides that, in the pursuit of integral development, the member states agree to devote their utmost efforts to accomplishing a series of basic goals, including, for instance, proper nutrition and conditions that offer the opportunity for a healthful, productive, and dignified life: fair wages, eradication of illiteracy, housing, etc. Achieving these goals in conditions of equality and in light of human rights constitutes a point of departure for integral development.

109. The Inter-American Democratic Charter, approved in Lima in 2001, highlights the link between the eradication of poverty and the stability and consolidation of democracy. One of its sections focuses specifically on the link between "Democracy, Integral Development, and Combating Poverty" establishing that "democracy and social and economic development are interdependent and mutually reinforcing" (Article 11) and that "[p]overty,

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<sup>138</sup> ECLAC, Subregional Headquarters for the Caribbean, [Implementation of the Cairo Programme of Action in the Caribbean \(1994-2013\)](#), 2014, p. 13.

illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy" (Article 12).<sup>139</sup>

110. The IACHR has highlighted the link between a robust democracy and the strength of its judiciary, especially in the protection of groups, collectives, and sectors particularly at risk of human rights violations and persons affected by poverty and situations of exclusion.<sup>140</sup> While democracy *per se* does not ensure full effectiveness of human rights for persons living in poverty, it is undeniable that "Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence."<sup>141</sup>
111. The indivisibility of human rights and their intrinsic relation to the effective existence of democracy implies, on the one hand, a close tie between the protection of civil and political rights and economic, social, environmental, and cultural rights. On the other hand, it entails a duty for States to pay special heed to the social sectors and individuals who have endured various forms of historical exclusion, or who are victims of ongoing prejudices, and to immediately take the steps needed to prevent, reduce, and eradicate the conditions and attitudes that generate or perpetuate discrimination in practice. These principles are reflected in the instruments governing the workings of the Inter-American human rights system.
112. Since 1994, the Heads of State in the Hemisphere have been meeting periodically at the Summits of the Americas to discuss common concerns, seek solutions, and forge a shared vision of the region's development. The mandates established have included giving consideration to the adoption of measures aimed at enhancing the standard of living of all peoples of the Americas. For example, in the 1998 Santiago Plan of Action, the Heads of State acknowledged that "extreme poverty and discrimination continue to afflict the lives of many of our families and impede their potential contribution to our nations' progress."<sup>142</sup>

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<sup>139</sup> OAS, Charter of the Organization of American States Inter-American Democratic Charter. It is likewise important to point out that, in the Summits of the Americas framework, States have recognized the universality, indivisibility, interdependence, and interrelatedness of human rights as essential to the functioning of democratic societies. Fifth Summit of the Americas, Port of Spain, Trinidad and Tobago, Declaration of Commitment of Port of Spain, April 17-19, 2009, para. 82, Third Summit of the Americas, Quebec City, Canada, April 20-22, 2001, Plan of Action, p. 5.

<sup>140</sup> IACHR, Considerations Related to the Universal Ratification of the American Convention and other Inter-American Human Rights Treaties, OEA/Ser.L/V/II.152 Doc. 21 of August 14, 2014, para. 10.

<sup>141</sup> OAS, Inter-American Democratic Charter. Article 7.

<sup>142</sup> OAS Plan of Action of Santiago, 1998.

113. The High-Level Meeting on Poverty, Equity and Social Inclusion held in Venezuela produced the Declaration of Margarita (2003),<sup>143</sup> which included novel considerations on combating poverty and inequality.<sup>144</sup> This document highlights the need for a multidimensional vision for achieving effective results in improving the living standards for all the inhabitants of the Americas.<sup>145</sup> The States commit to give priority to eradicating hunger, accessing adequate food and drinking water, and universal access to basic social services, with special attention to quality education and the health care safety net.

114. The Declaration of Mar del Plata adopted at the Fourth Summit of the Americas in 2005, recognizes that "one of the major challenges to democratic stability is to generate productive and quality employment in the interest of ensuring that our peoples benefit from economic prosperity." States are recommended to implement:

active policies to generate decent work and create the conditions for quality employment that imbue economic policies and globalization with a strong ethical and human component, putting the individual at the center of work, the company, and the economy.<sup>146</sup>

115. In order to achieve the goal of decent work, the States committed to building a "more solid and inclusive institutional framework, based on the coordination of public policies in the economic, labor, and social areas." Accordingly, the Declaration also proposes eight measures that must be included in public policies oriented to the achievement of decent work.<sup>147</sup>

116. Article 3 of the 2012 Social Charter of the Americas states that: "Member states, determined and committed to combating the serious problems of poverty, social exclusion, and inequity and to address their underlying causes and their consequences, have the responsibility to create favorable conditions for achieving development with social justice for their peoples, thus contributing to strengthening democratic governance."

117. It also provides that: "Member states will strengthen and foster policies and programs directed towards the achievement of societies that offer all people

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<sup>143</sup> [OAS Press Release N° C-197/03: Declaration of Managua affirms Hemispheric Commitment to Fight Poverty](#)

<sup>144</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

<sup>145</sup> Ibid.

<sup>146</sup> OAS, [Declaration and Plan of Action of Mar del Plata](#), 2005.

<sup>147</sup> Ibid.

opportunities to benefit from sustainable development with equity and social inclusion."<sup>148</sup> The Charter points out that extreme poverty constitutes an obstacle to development and, in particular, to the full democratic development of the peoples of the Hemisphere. In particular, it establishes that the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and the consolidation of democracy in the states of the Hemisphere.<sup>149</sup>

118. In 2014, the commitments entered into by the member states with regard to poverty in the region are also reflected in the Declaration of Asunción: Development with Social Inclusion, indicating that while American States have taken measures to achieve the integral development of their inhabitants, buttress democracy, and promote and protect human rights, "there still remain challenges in terms of poverty and extreme poverty; food security and nutrition; discrimination, equity, equality and social inclusion; inclusive and quality education; universal health coverage; decent, dignified and productive work; and citizen security."<sup>150</sup>
119. The Plan of Action of the Social Charter of the Americas was adopted during the General Assembly held in Washington, D.C. in 2015.<sup>151</sup> The purpose of the Plan of Action is to establish objectives and strategic lines of action in the areas of work, social protection, health, food and nutrition, education, housing, basic public services, and culture, aimed at contributing to the fulfillment of the principles, purposes and priorities contained in the Social Charter of the Americas.
120. The Plan reflects the commitment of the Member States to eradicate poverty and hunger and to address, as a matter of urgency, the serious problems of social exclusion and inequality at every level in order to achieve equity, inclusion, and social justice, while at the same time recognizing that the member states differ in terms of the progress they have made in the areas proposed. This Plan of Action will remain in force for five years from the date of its adoption, that is to say, until 2020. At the end of that period, the General Assembly may order a review and update of the Plan within the terms of the purposes and principles adopted in the Social Charter of the Americas.

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<sup>148</sup> OAS, [Social Charter of the Americas](#), adopted during the second plenary session of the OAS General Assembly in Cochabamba, on June 4, 2012. Article 3.

<sup>149</sup> Ibid.

<sup>150</sup> OAS, [Declaration of Asunción: Development with Social Inclusion](#). Adopted at the second plenary session, held on June 4, 2014.

<sup>151</sup> [OAS General Assembly resolution AG/RES. 2878 \(XLV-O/15\): Plan of Action of the Social Charter of the Americas](#) (adopted at the fourth plenary session, held on June 16, 2015).

121. During the OAS General Assembly in 2016, the member states adopted the Declaration on Promotion and Strengthening of the Social Charter of the Americas, which declared their commitment to "promoting and to progressively realizing the full achievement of economic, social, and cultural rights, through policies and programs" that they consider are the most effective and appropriate for their needs.<sup>152</sup> It also indicated the "need for member states to renew their commitment to implementing the Plan of Action of the Social Charter of the Americas based on their domestic laws, national realities, strategies, plans, and available resources, and to maintain a dialogue to exchange information on progress, experiences and lessons learned."
122. At the same General Assembly, the "Declaration on Institutional Strengthening for Sustainable Development in the Americas," was approved. This Declaration reaffirms the nature, purposes, and principles established in the OAS Charter and the commitments adopted by the member states in the 2030 Agenda for Sustainable Development, as well as other international commitments relating to the three dimensions of sustainable development: economic, social, and environmental.<sup>153</sup> In this Declaration, the States affirmed to:

Adopt a steadfast commitment to implement the 2030 Agenda in the Americas and to attain the Sustainable Development Goals and Targets, which are integrated and indivisible in nature, and reaffirm the commitment to eradicate hunger and poverty in all its forms and dimensions, including extreme poverty, to combat inequality, to protect the environment, to foster disaster risk management, and to fight climate change, among others.<sup>154</sup>

123. In brief, the OAS member states have recognized that sustainable development requires an approach that encompasses its three dimensions (economic, social, and environmental), in order to support development, eradicate poverty, and promote equality, equity, and social inclusion. The OAS member states have reiterated their support for sustainable development through numerous General Assembly resolutions and the

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<sup>152</sup> OAS, [Declaration on Promotion and Strengthening of the Social Charter of the Americas](#) AG/DEC. 85 (XLVI-O/16). Adopted at the second plenary session, held on June 14, 2016.

<sup>153</sup> OAS, [Declaration on Institutional Strengthening for Sustainable Development in the Americas](#) AG/DEC. 81 (XLVI-O/16). Adopted at the fourth plenary session, held on June 15, 2016.

<sup>154</sup> Ibid.



adoption of national, subregional, regional, and international commitments.<sup>155</sup>

124. In September 2015, within the framework of the United Nations, the member states adopted the 2030 Agenda for Sustainable Development and the new Sustainable Development Goals (SDGs) with a global reach, which entered into force on January 1, 2016. The States committed to working toward full implementation of the 17 SDGs and their targets, which are "integrated and indivisible in nature and combine the three dimensions of sustainable development: economic, social and environmental."<sup>156</sup>
125. To support the above-mentioned commitments by States to meeting the goals and targets agreed to in the 2030 Agenda for Sustainable Development, the Inter-American Committee on Sustainable Development approved the Inter-American Program for Sustainable Development (PIDS, by its acronym in Spanish), at its fifth regular meeting held in Washington, D.C. on June 1-3, 2016, after having completed its review and updating of the Program. The PIDS was then adopted by the OAS General Assembly at its 46th regular session, held in Santo Domingo, in the Dominican Republic.<sup>157</sup>
126. It is worth noting that the adoption of this program makes the Organization of American States the first regional organization to have an institutional policy instrument aligned with the United Nations 2030 Agenda. The Program establishes the strategic areas in which the OAS will assist member states that so request, with implementing the Sustainable Development Goals.<sup>158</sup>
127. The Inter-American Social Protection Network (IASPN) of the OAS General Secretariat, has facilitated the exchange of practices and knowledge in the area of social protection and social development policies for eradicating poverty by Ministries of Social Development, related government agencies, and other stakeholders in countries of the region.<sup>159</sup>

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<sup>155</sup> OAS, [Inter-American Program for Sustainable Development \(PIDS\)](#). Adopted at the third plenary session, held on June 3, 2016.

<sup>156</sup> Ibid.

<sup>157</sup> OAS General Assembly resolution: [Inter-American Program for Sustainable Development](#), AG/RES. 2882 (XLVI-O/16). Adopted at the second plenary session, held on June 14, 2016.

<sup>158</sup> [Article in: La Prensa, "OEA aprueba Programa para el Desarrollo Sostenible", June 4, 2016.](#)

<sup>159</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

## **b. The Inter-American System for the Protection of Human Rights and the Work of the IACHR**

128. The American Declaration on the Rights and Duties of Man was adopted in 1948 as a legal point of departure for the System. According to the jurisprudence of the American System, this Instrument is as source of legal obligation for all Member States of the OAS, without exception.<sup>160</sup> The Declaration establishes a series of rights closely related to overcoming poverty, namely the right to equality before the law; the right to integrity of the person; the right to preservation of health through sanitary and social measures relating to food, clothing, and housing; to education; to work and to fair remuneration; and to social security, among others.<sup>161</sup>
129. In 1969, the American Convention on Human Rights was approved. Its preamble states that "the ideal of free men enjoying freedom from [...] want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights."<sup>162</sup> Thus, the American Convention calls for attention to be paid to the link between poverty and the effective exercise of human rights.
130. In particular, it needs to be stressed that Article 1.1 of the American Convention establishes that States are obliged to respect the rights recognized therein and to ensure the free and full exercise to all persons subject to their jurisdiction, without discrimination. Article 2 contains the duty to adopt such legislative or other measures as may be necessary to give effect to the rights and freedoms upheld in the American Convention. Article 24 of the American Convention establishes the principle of equal protection of the law, without discrimination. That provision is applicable to the entire legal system of the State Parties, including the norms establishing or regulating economic, social, and cultural rights. Article 26 establishes the progressive obligation vis-a-vis economic, social and cultural rights.
131. Since 1988, the Inter-American System adopted an instrument specifically addressing economic, social, and cultural rights, namely, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the "Protocol of San Salvador". Among its Articles there is a lengthy catalogue of these kinds of rights, the

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<sup>160</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OAS/Ser./L./VII.110 doc. 52, March 9, 2001, para. 17, quoting the I/A Court H.R.. Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10-89, of June 14, 1989, Series A, No.10.

<sup>161</sup> [American Declaration of the Rights and Duties of Man](#).

<sup>162</sup> Both treaties reiterate the provisions of the Universal Declaration of Human Rights.

satisfaction of which is closely linked to the overcoming of poverty: the right to work, to health, social security, food, education, a healthy environment,<sup>163</sup> and the benefits of culture.

132. Another important element in Article 12 of the OAS Democratic Charter indicates that: "The OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere. This shared commitment regarding the problems associated with development and poverty also emphasizes the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy."<sup>164</sup>
133. For its part, Article 21 of the Social Charter establishes that: "Fighting poverty, reducing inequities, promoting social inclusion, and conservation and sustainable use of natural resources are fundamental and interrelated challenges facing the Hemisphere, and overcoming these challenges is essential to achieving sustainable development. Member states will adopt and execute, with the participation of the private sector and civil society organizations, strategies, plans, and policies to meet these challenges as part of their development efforts and for the benefit and enjoyment of all persons and all generations."<sup>165</sup>
134. In the present Report, due to its special connection with the issue of poverty, it is important to mention individually the principal instruments that were adopted in the last decades to protect the rights of historically discriminated persons and groups.
135. Since 1995, Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women<sup>166</sup> established that States Parties "shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are

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<sup>163</sup> The said Article 11 of the Protocol of San Salvador on the right to a health environment provides:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services";  
2. The States Parties shall promote the protection, preservation, and improvement of the environment."

<sup>164</sup> OAS, [Charter of the Organization of American States](#) Inter-American Democratic Charter.

<sup>165</sup> OAS, [Social Charter of the Americas](#), adopted during the second plenary session of the OAS General Assembly in Cochabamba, on June 4, 2012. Article 3.

<sup>166</sup> OAS, [The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women \(Convention of Belém do Pará\)](#), adopted on September 6, 1994.

disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."

136. The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities,<sup>167</sup> adopted in 2001, provides in Article III that States shall undertake to adopt the legislative, social, educational, labor-related, or any other measures needed to "eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities."
137. The Inter-American Convention against All Forms of Discrimination and Intolerance,<sup>168</sup> of 2013, provides that the States Parties shall undertake "to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to discrimination or intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups" (Article 5) and "formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons" including "policies of an educational nature, labor or social measures, or any other kind of promotional policies and the dissemination of legislation on the subject by all possible means" (Article 6).
138. That same year, the Inter-American Convention against Racism, Racism discrimination and Related Forms of Intolerance added the duty of States "to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of intolerance," (Article 4)<sup>169</sup> and expressly prohibited the denial of access to any social, economic, and cultural rights. (Article 4. xii).

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<sup>167</sup> OAS, [Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities](#), adopted on July 6, 1999 in Guatemala City, Guatemala. 29th session of the OAS General Assembly, The Convention entered into force on September 14, 2001.

<sup>168</sup> OAS, [Inter-American Convention against All Forms of Discrimination and Intolerance](#). Adopted in Antigua, Guatemala on June 5, 2013 during the forty-third regular session of the General Assembly. At the time this report was written, this Convention had not yet entered into force (Entry into force: on the thirtieth day following the date on which the second instrument of ratification of, or accession to, the Convention is deposited with the General Secretariat of the Organization of American States).

<sup>169</sup> OAS, [Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance](#). This Convention had not yet entered into force when this report was written. It was adopted on June 15, 2013

139. The Inter-American Convention on Protecting the Human Rights of Older Persons,<sup>170</sup> of 2015, prohibits age discrimination and establishes that States shall develop specific approaches in their policies, plans, and legislation on ageing and old age, guaranteeing the right to work, social security, health, education, culture, and housing, as well as other rights (Article 5). It is important to highlight that in its 2017-2021 Strategic Plan adopted during the 161 Sessions in March 2017, the IACHR incorporated the analysis of the situation of older persons in the Hemisphere as part of the identification of themes and priority populations.
140. The “American Declaration on the Rights of Indigenous Peoples”, adopted in 2016 after 16 years of debate, recognizes the fundamental right of indigenous peoples to self-determination and to their cultural traditions, collective ownership of the land in their ancestral territories, education, health, a healthy environment, and labor rights.<sup>171</sup>

***i. Standards of the Inter-American System in Relation to Poverty***

141. In their jurisprudence, both the IACHR and the Inter-American Court have tackled a range of issues concerning poverty and extreme poverty in connection with a number of human rights established in the Inter-American instruments, in light of the standards of the universal system and technical information from specialized agencies. Both the IACHR and the Inter-American Court have indicated that human rights treaties are living instruments, the interpretation of which must be in line with evolving times and current living conditions. An evolving interpretation is consistent both with the general rules on interpretation enshrined in Article 29 of the American Convention,<sup>172</sup> and with those established by the Vienna Convention on the Law of Treaties.
142. While the jurisprudence of the Inter-American System on the situation of persons living in poverty is still under development, both the Inter-American Commission and Court have considered those circumstances as a specialized contextual framework that translates into specific state obligations.

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during the forty-third regular session of the General Assembly and will enter into force when the second instrument of ratification or accession is deposited.

<sup>170</sup> OAS, [Inter-American Convention on Protecting the Human Rights of Older Persons](#), June 15, 2015.

<sup>171</sup> OAS, American Declaration of the Rights of Indigenous Peoples, adopted within the framework of the forty-sixth regular session of the OAS General Assembly, on June 15, 2016.

<sup>172</sup> According to Article 29(b) of the Convention, none of that treaty's provisions shall be interpreted as “restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.”

143. Decades ago, the organs of the Inter-American System for the protection of human rights first began to address poverty contexts and their inequality, exclusion, and structural discrimination conditions, when analyzing the overall situation of human rights in the states of the Hemisphere, with particular regard to the situation of economic, social, and cultural rights.
144. The IACHR has issued country reports that shed light on the situations of structural poverty with discrimination, generalized violence, citizen insecurity, and lack of observance and guarantees of economic, social, and cultural rights. In 1979, the IACHR indicated in its report on the situation of human rights in Haiti that: “[w]ith regard to the effectiveness of the right to education, health, welfare, and the right to work and to a fair wage, it may be said that it is almost nonexistent, particularly because of the extreme poverty, illiteracy, poor hygiene, high birth rate and high infant mortality rate, high rate of unemployment, the lack of medical materials, the low per capita income, etc.”<sup>173</sup>
145. In the Fourth Report on the Situation of Human Rights in Guatemala, the IACHR considered that at that time “the disparities in the actual enjoyment of economic, social and cultural rights are abysmal and effectively discriminate against large sectors of the population, particularly the Guatemalan Maya-Quiché.”<sup>174</sup> It also indicated that “States Parties have undertaken to adopt measures to the extent of their resources to achieve progressively the effective realization of these rights.” The Commission found that “the resources allocated to social programs represent a portion of GNP that is disproportionate to the magnitude of the inequalities in internal distribution.”<sup>175</sup>
146. In the framework of the system of individual cases and petitions, both the Commission and the Court have noted how poverty, exclusion, and marginalization can be factors that contribute to human rights violations,<sup>176</sup> aggravate them, or become a consequence of such violations.<sup>177</sup> What

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<sup>173</sup> IACHR, “[Report on the Situation of Human Rights in Haiti](#),” Chapter VIII (Right to Education and Right to the Preservation of Health and to Well-Being) and Chapter IX (Right to Work and to a Fair Wage), Conclusions, para. 10.

<sup>174</sup> IACHR, [Fourth Report on the Situation of Human Rights in Guatemala, Chapter I, The Socioeconomic Context, the Attendant Rights and The Planned Government Measures](#), Conclusions.

<sup>175</sup> Ibid.

<sup>176</sup> See, for example, I/A Court H.R., [Case of Servellón García et al., Merits, Reparation and Costs. Judgment of September 21, 2006](#), para. 117.

<sup>177</sup> I/A Court H.R., [Case of the Sawhoyamaya Indigenous Community v. Paraguay](#), Submissions of the IACHR, para. 181.

follows is an analysis of standards developed by the Inter-American System in relation to certain key aspects in this area.

**ii. *Application of the Principle of Equality and Non-discrimination with Respect to Persons Living in Poverty***

147. The IACHR has repeatedly stated that the principle of non-discrimination is one of the pillars of any democratic system, and a fundamental basis of the system for protection of human rights established by the OAS.<sup>178</sup> The American Declaration and the American Convention were both inspired by the ideal that “[a]ll men are born free and equal, in dignity and in rights.”<sup>179</sup>
148. Also, in the area of economic, social and cultural rights, the IACHR has emphasized that the first obligation with “‘immediate effect’ arising from the progressive development economic, social and cultural rights consists of ensuring that those rights shall be exercised in conditions of equality and without discrimination.”<sup>180</sup> The IACHR has also specified a dual conception of the right to equality and non-discrimination: one has to do with the prohibition on any arbitrary difference in treatment; another concerns the obligation to create conditions of real equality for groups that have historically been excluded and are at greater risk of discrimination.<sup>181</sup>
149. In accordance with Article 1(1) of the American Convention, the principle of equality and non-discrimination is a protection that underlies the guarantee of all other rights and freedoms, since every person is entitled to the human rights enshrined in those instruments, and the State is required to observe and ensure their full and free exercise without discrimination of any kind.

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<sup>178</sup> See, *inter alia*, IACHR, Annual Report of the Inter-American Commission on Human Rights 1999, Chapter VI. The same can be said, in general, in the framework of the United Nations, as the Human Rights Committee has established: “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.” (UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, November 10, 1989, para. 1.

<sup>179</sup> American Declaration of the Rights and Duties of Man, Preamble.

<sup>180</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.L/V/II.132, July 19, 2008, para. 48. That principle was also advanced more recently by the Working Group on the Protocol of San Salvador. See Organization of American States, Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 43.

<sup>181</sup> IACHR, The Situation of People of African Descent in the Americas, OEA/Ser.L/V/II.Doc.62, December 5, 2011, para. 89, citing, *inter alia*, IACHR, Application to the Inter-American Court of Human Rights in the *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80. For a more detailed explanation of the two concepts of the right to equality and non-discrimination cited, see, IACHR, The Situation of People of African Descent in the Americas, paras. 90-95.

The same principle applies to the second part of Article II of the American Declaration.

150. In the words of the Inter-American Court, “Article 1(1) of the Convention is a general norm the content of which extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein ‘without any discrimination.’ In other words, whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is per se incompatible with it.”<sup>182</sup>
151. Article 24 of the Convention enshrines that all persons are equal before the law and entitled, without discrimination, to equal protection of the law. The same applies to the first part of Article II of the American Declaration. In other words, Article 24 of the American Convention and Article II of the American Declaration would be violated if “the discrimination refers to unequal protection by domestic law.”<sup>183</sup>
152. Article 1(1) of the American Convention contains an express prohibition against discrimination for reasons of “economic status” or “any other social condition.” Thus, the Commission considers that based on the above provision and the advances in the case law of the Inter-American System, the poverty or extreme poverty of an person, group, or collective may be regarded as a prohibited category of discrimination. Such an evolving interpretation is consistent with the general rules of interpretation recognized in Article 29 of the American Convention.
153. The Inter-American Court has held in that regard that:

The specific criteria by virtue of which discrimination is prohibited do not constitute an exhaustive or limitative list, but merely illustrative. Indeed, the wording of said article leaves open the criteria with the inclusion of the term “other social condition,” allowing for the inclusion of other categories that have not been explicitly indicated. Consequently, the Court should interpret the expression “any other social condition”

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<sup>182</sup> I/A Court H.R., Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparation and Costs. Judgment of October 24, 2012. Series C No. 251, para. 224; I/A Court H.R., Case of Atala Riffo and Girls. v. Chile. Merits, Reparation and Costs. Judgment of February 24, 2012. Series C No. 239, para. 78; and I/A Court H.R., Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53.

<sup>183</sup> For the distinction between Articles 1(1) and 24 of the American Convention, see I/A Court H.R., Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparation and Costs. Judgment of October 24, 2012. Series C No. 251, para. 226.



contained in Article 1(1) of the Convention in the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law.<sup>184</sup>

154. The UN Committee on ESCR has stated that “[t]he nature of discrimination varies according to context and evolves over time”<sup>185</sup> and that therefore “a flexible approach to the ground of ‘other status’ is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified.”<sup>186</sup> Specifically, with respect to poverty and extreme poverty, it has noted that:

Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. Membership of a trade union, for example, should not affect a person's employment or their prospects of promotion. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.<sup>187</sup>

155. The Working Group following up on implementation of the Protocol of San Salvador has emphasized that the immediacy of the obligation not to discriminate and to ensure equality precludes differences in treatment based on factors expressly prohibited in the Protocol and requires that States:

... recognize and equally guarantee to all, the rights contained in the PSS [Protocol of San Salvador], using objective and reasonable distinction criteria, and avoiding arbitrary differences of treatment, especially differences in treatment based on expressly proscribed factors, such as race, religion or social origin. However, it also requires that States recognize that there are certain sectors that are at a disadvantage in

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<sup>184</sup> I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 85

<sup>185</sup> UN Committee United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 27.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*, para. 35.

exercising their social rights and that they adopt positive measures and policies to ensure their rights.<sup>188</sup>

156. In its report on Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, the IACHR has stated that in adopting social policies and measures to ensure these rights, states must identify sectors that are traditionally discriminated against in terms of access to certain rights, including women, indigenous peoples, and people of African descent, among others, and in “implementing ... social policies and services, establish special or differential measures to uphold and ensure the rights of those sectors.”<sup>189</sup>
157. In the context of the United Nations human rights system, Articles 1 and 2 of the Universal Declaration of Human Rights provide that “[a]ll human beings are born free and equal in dignity and rights” and that everyone is entitled, therefore, to enjoy the rights recognized “without distinction of any kind” by virtue of “property, ... or other status.”
158. For its part, the ESCR Committee has stated that:
- [d]iscrimination may cause poverty, just as poverty may cause discrimination. Inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities. Accordingly, the international norms of non-discrimination and equality, which demand that particular attention be given to vulnerable groups and individuals from such groups, have profound implications for anti-poverty strategies.<sup>190</sup>
159. The then United Nations Special Rapporteur on the question of human rights and extreme poverty, Magdalena Sepulveda, has indicated that patterns of discrimination keep people in poverty which in turn perpetuates

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<sup>188</sup> OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 44. See also the related analysis on this subject in IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.L/V/II.132, July 19, 2008, para. 48.

<sup>189</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.L/V/II.132, July 19, 2008, paras. 53, 55; see also the discussion of this subject in Organization of American States, Progress Indicators for Measuring Rights under the Protocol of San Salvador, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 63.

<sup>190</sup> United Nations, 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: Statement adopted by the Committee on 4 May 2001 (E/C.12/2001/10), para. 11.

discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination.<sup>191</sup>

160. Specifically, the Inter-American System not only embraces a formal notion of equality limited to demanding reasonable and objective criteria for distinction and therefore prohibits any unreasonable, capricious or arbitrary differences in treatment; but is also moving toward a concept of material or structural equality acknowledging that for certain sectors of the population, affirmative action measures are required. This involves resorting to differential treatment whenever equal treatment might suspend or limit access to a service, good or the exercise of a right because of the circumstances affecting a disadvantaged group.<sup>192</sup>
161. The IACHR has held that, in accordance with Inter-American standards ensuring equality and the principle of non-discrimination, States have an obligation to adopt affirmative action measures and make distinctions based on de facto inequalities in order to protect those who require it. Otherwise, the omission to adopt affirmative action measures to reverse or change a de jure or de facto situation of discrimination against a certain group, generates State responsibility.<sup>193</sup>
162. When analyzing situations of structural discrimination, the Commission has indicated that “[t]he general principles of non-discrimination and equality” reflected in Articles 1 and 24 of the Convention require “the adoption of measures to address inequalities in internal distribution and opportunity.”<sup>194</sup> For its part, the Inter-American Court has found that States must adopt the affirmative measures needed to ensure the effectiveness of equality before the law for all persons.<sup>195</sup>
163. It follows from the foregoing that States have an obligation to refrain from adopting any measures that are in any way intended, directly or indirectly, to create situations of discrimination, and must take positive steps to reverse or change any discriminatory situations that exist in their societies, based on the notion of equality and the principle of non-discrimination.

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<sup>191</sup> United Nations, Report of the Special Rapporteur on Extreme Poverty and Human Rights, A/63/274, August 13, 2008, para. 29.

<sup>192</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, paras. 89-99.

<sup>193</sup> IACHR, Report No. 36/09 (Admissibility and Merits), Case 12.440, Wallace de Almeida (Brazil), March 20, 2009, paras. 145 and 147.

<sup>194</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>195</sup> I/A Court H.R., Case of the Girls Yean and Bosico v. the Dominican Republic, Judgment of September 8, 2005. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005, Series C No. 130, para. 141.

164. The Commission has also said that in light of the above principles of non-discrimination and equality of opportunity, that a State must ensure “that the policies it adopts do not place a disproportionate burden on the marginalized and most vulnerable sectors of society, particularly those disadvantaged by poverty.”<sup>196</sup>
165. In the *Case of the Xákmok Kásek Indigenous Community v Paraguay*, in which the duty to respect and ensure rights without any discrimination was examined, in light of a series of alleged human rights violations to the detriment of that community, the Commission argued that the case illustrated “the persistence of structural discrimination factors.”<sup>197</sup> In that connection, the Inter-American Court found that there was de facto discrimination against the members of the said community:

With regard to indigenous peoples, the Court, in its case law, has specifically established that “it is essential that the States grant effective protection that takes into account their particularities, their economic and social characteristics, and also their situation of special vulnerability, their customary law, values, customs and practices.

In addition, the Court has indicated that, “the States must abstain from taking measures that are, in any way, directly or indirectly designed to create *de jure* or *de facto* situations of discrimination.” The States are obliged “to adopt positive measures to reverse or change discriminatory situations that exist in their societies and that prejudice a specific group of people. This includes the special obligation of protection that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.”<sup>198</sup>

166. It is, likewise, important to highlight the *Case of the workers of the Brazil Verde Estate against Brazil*, relating to forced and slave labor practices for indebtedness at a farm located in the State of Pará, to the detriment of persons coming from the poorest regions in the country and with the fewest job opportunities. The Inter-American Court found that the enslavement and trafficking in persons suffered by the 85 identified workers occurred “within

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<sup>196</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>197</sup> I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment of August 24, 2010, Series C No. 214, para. 265.

<sup>198</sup> I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment of August 24, 2010, Series C No. 214, paras. 270 and 271.

the framework of historical structural discrimination based on economic position.”<sup>199</sup> In particular, the Court took into consideration the vulnerability of the workers due to their situation of poverty, and stated that:

The Court ascertains in the instant case signs of particular victimization that the 85 workers rescued on March 15, 2000 had in common: they were in a situation of poverty; came from the poorest parts of the country, with the lowest level of human development and fewest possibilities of work and employment; they were illiterate, with little or no schooling (para. 41 above). This placed them in a situation in which they were more prone to being recruited via false promises and deceit. That circumstance of immediate risk for a given group of persons with identical characteristics, coming from the same regions of the country, is rooted in the past and has been known to exist at least since 1995, when the Government of Brazil expressly acknowledged the existence of “slave labor” in the country (para. 111, above).

It appears from the evidence in the case file that there was a situation based on the economic status of the victims rescued on March 15, 2000 that amounted to discriminatory treatment. According to several reports by the ILO and the Brazilian Ministry of Labor, “it is the extreme poverty of the worker that leads him spontaneously to accept the labor conditions offered,” particularly since “the more living conditions deteriorate, the greater the willingness of workers to face the risks of working far from home. In that sense, poverty is the main factor driving contemporary slavery in Brazil, because it increases the vulnerability of a significant segment of the population, making them easy prey for slave labor recruiters.”<sup>200</sup>

167. People living in poverty and extreme poverty often suffer disadvantages and discrimination on the basis of race, gender, age, ethnic origin, cultural practices, language, and other factors. Indeed, individuals, groups and collectives that have historically been discriminated against, such as women, children and adolescents, older persons, persons with disabilities, migrants and their families, refugees, asylum seekers, internally-displaced persons, and members of indigenous peoples, among others, who live in poverty and extreme poverty in the Americas have been and in many cases still are

<sup>199</sup> I/A Court H.R., *Case of the Hacienda Brazil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 343.

<sup>200</sup> *Ibid.*, paras. 339 and 340.

victims of what has been termed intersectional discrimination and structural discrimination.

168. Intersectional and structural discrimination have a major impact on the exercise of human rights in the area of economic, social, and cultural rights. As the IACHR explained in its report *Access to Maternal Health Care from a Human Rights Perspective*,<sup>201</sup> “the duty to protect women’s integrity under conditions of equality includes the States’ need to prioritize their resources and efforts to address the particular needs of the groups of women identified in this report who are most at risk of suffering injury to their integrity in terms of access to maternal health services, i.e., poor women, women in rural areas, including indigenous and/or Afro-descendent women, due to the multiple forms of discrimination they face.”<sup>202</sup>
169. In this connection, it is important to point out that, recognizing the intersectional discrimination against low-income women, the UN Committee on the Elimination of Discrimination against Women (CEDAW) has recommended that “States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”<sup>203</sup>
170. In its General Recommendation No. 28, this Committee referred to intersectionality as a “basic concept” for understanding the scope of the obligations of States parties to the CEDAW. In particular, it stated that “[t]he discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.”<sup>204</sup>
171. Thus, it emphasized that “[d]iscrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men.”<sup>205</sup> As for State obligations in this regard, the Committee pointed out that “States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”<sup>206</sup> They must, moreover, “adopt and

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<sup>201</sup> IACHR, *Access to Maternal Health Care from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 87.

<sup>202</sup> Ibid.

<sup>203</sup> United Nations, Committee on the Elimination of Discrimination against Women, General recommendation No. 25, para. 12.

<sup>204</sup> United Nations, Committee on the Elimination of Discrimination against Women, General recommendation No. 28, para. 18.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

pursue policies and programs designed to eliminate such occurrences, including, where appropriate, temporary special measures [...].”<sup>207</sup>

172. As regards intersectional discrimination, the Inter-American System pushed its analysis of that concept forward in its jurisprudence in the *Case of Gonzales Lluy et al. v. Ecuador*, in which poverty was considered one of several factors that combined to give rise to the discrimination suffered by the victim in that case. The Inter-American Court ruled in connection with violation of the rights to life, physical integrity, and education derived from the transmission of HIV to the detriment of the victim when she was three years old.<sup>208</sup> The Inter-American Court used the concept of “intersectionality” in its analysis of the discrimination and found that in the case there was a confluence of multiple intersecting vulnerability factors and risks of discrimination associated with her status as a girl, a woman, a person living in poverty, and someone living with HIV.<sup>209</sup>
173. The Court determined that the discrimination experienced by the victim was caused not only by numerous factors, but also arose from a specific form of discrimination that resulted from the intersection of those factors; in other words, if one of those factors had not existed, the discrimination would have been different in nature.<sup>210</sup> It also emphasized that poverty had an impact on the initial access to health care that far from being of an adequate quality, it was the cause of the HIV transmission. The situation of poverty also had an impact on the difficulties to gain better access to the education system and to have access to adequate housing.<sup>211</sup>
174. The organs of the system have also specifically analyzed the relationship between poverty and the State’s responsibility with respect to discrimination against persons with disabilities. For example, in the *Case of Ximenes-Lopes v. Brazil*, the IACHR and the Court examined the links between mental disability, on one hand, and vulnerability and social exclusion, on the other. In that case, the Court found that:

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<sup>207</sup> Ibid.

<sup>208</sup> I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298 XIII. Operative Paragraphs.

<sup>209</sup> I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*, para. 290. According to the concurring opinion of Judge Juan Eduardo Ferrer MacGregor, it was the first time that the Court had used the concept of “intersectionality,” and it examined in depth the scope of the principle of non-discrimination, taking into account that in that case, multiple discrimination occurred based on the composite nature of the causes of discrimination.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

any person who is in a vulnerable condition is entitled to special protection, which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights. The Court reaffirms that not only should the States refrain from violating such rights, but also adopt positive measures, to be determined according to the specific needs of protection of the legal person, either because of his personal condition or the specific situation he is in, such as his disabilities.<sup>212</sup>

175. It is a fact that not all societies discriminate against the same people. In some societies, specific ethnic, religious, or political groups are discriminated against, whilst in other societies they are not. In addition, historically, new groups have emerged that become subject to a form of discrimination that did not previously exist, (such as people with HIV/AIDS or older persons). Thus, “groups in a vulnerable situation” or “groups that historically suffer discrimination” will vary from one society to the next and from one point in history to another. Therefore, every State must ascertain who those groups are in order to devise appropriate inclusive policies that ensure them the free and full exercise of their rights.<sup>213</sup>

176. In its report of the *Jorge Odir Miranda Cortez et al.* case, the IACHR indicated that:

[g]enerally speaking, it should be mentioned that persons living with HIV/AIDS very often suffer discrimination in a variety of forms. This circumstance magnifies the negative impact of the disease on their lives and leads to other problems, such as restrictions on access to employment, housing, health care, and social support systems. There can be no doubt that the principle of non-discrimination must be very strictly observed to ensure the human rights of persons affected by HIV/AIDS.<sup>214</sup>

177. Frequently, rules and practices restricting undesirable conduct and activities considered “undesirable” or contrary to public order- such as begging, sleeping or loitering in the streets, among others – aggravate the situation of exclusion, disadvantage and discrimination faced by persons living in poverty.

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<sup>212</sup> I/A Court H.R., *Case of Ximenes-Lopes v. Brazil*, Judgment of July 4, 2006, Judgment of July 4, 2006, Series C No. 149, para. 104.

<sup>213</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 118.

<sup>214</sup> IACHR, Report No.27/09, *Jorge Odir Miranda Cortez et al. El Salvador*. March 20, 2009, para. 70 and 74.



178. The sanctioning or criminalization of such acts and behavior coupled with the obstacles faced by the poor when seeking access to justice on equal terms with others contribute to their heightened exclusion and stigmatization. The IACHR considers it important to stress that the prohibition on begging and related activities could amount to a violation of the principles of equality and non-discrimination.
179. In brief, the Inter-American Commission emphasizes that international obligations in relation to the principle of non-discrimination and equal protection before the law are duties subject to immediate compliance that States must take into account when adopting appropriate measures and policies with regard to persons, groups, and collectives living in poverty and extreme poverty.

**iii. *Stigmatization, Social Exclusion, and Violence against Persons Living in Poverty***

180. In the exercise of its mandate, the Commission has verified that the emergence and reproduction of different forms of violent behavior is the outcome of a process influenced by diverse factors of a social, economic, institutional, and cultural nature, among others.<sup>215</sup>
181. In its 1978 First Report on the Situation of Human Rights in El Salvador, the IACHR observed how economic instability and inequality in land distribution, among other factors, had an impact on the poverty affecting most of the population, particularly peasant farmers.<sup>216</sup> It also observed that the economic and social inequality that seriously affected the population of El Salvador at the time, as shown by the circumstances above, had negative repercussions on the observance of human rights.<sup>217</sup>
182. The IACHR has examined the differentiated impact that violence, discrimination, and poverty has on individuals, groups, and collectives that have historically endured discrimination. In its Report on Violence, Children and Organized Crime, the IACHR noted that when comparing human development and human rights compliance levels with homicide rates, the

<sup>215</sup> IACHR, [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II.Doc. 57, December 31, 2009, paras. 217-219.

<sup>216</sup> IACHR, [Report on the Situation of Human Rights and El Salvador \(1978\)](#), Chapter XI, [Economic and Social Rights](#). The IACHR mentioned: "The excess supply of manpower in the field and the low productivity of the small rural properties contribute to the low income of the farm workers. Moreover, the uneven distribution of the land and the emphasis on exportation of agricultural products are factors influencing the poverty in which a large part of the population lives."

<sup>217</sup> Ibid.

result is an inverse relationship between them: the countries with lower homicide rates have better rates of human development and guarantees for human rights than countries with higher homicide rates.

183. While widespread contexts of poverty do not automatically lead to insecurity and crime, situations of sharp social inequalities in certain communities, coupled with other factors, such as the State’s specific response or belonging to a historically discriminated group, are more likely to be linked to violence and insecurity.<sup>218</sup>
184. The Commission has also stated that adolescent males living in poverty who belong to traditionally discriminated and excluded groups, such as Afro-descendants and other minorities, carry a particular stigma in such contexts and are the victims of the highest impact of the violence and insecurity.<sup>219</sup> The Commission has shown how poverty is a factor that disproportionately impacts discrimination against women and girls, who are particularly affected by gender violence, including, inter alia, domestic violence, sexual abuse, and traditional practices that discriminate against women.<sup>220</sup>
185. The UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Simonovic, has indicated that one of the goals of the 2030 Agenda for Sustainable Development is to achieve gender equality and the empowerment of all women and girls (Goal 5). In her words “for the first time, a global gendered framework for development has been adopted that is inclusive and builds upon human rights instruments.”<sup>221</sup> She also notes that violence against women is also a barrier to achieving other gender-related goals, such as those on health, education, reducing poverty in all its forms, and sustainable growth.<sup>222</sup>
186. Discriminatory socio-cultural patterns influence gender-based violence and the lack of a diligent response. In its Report on Missing and Murdered Indigenous Women in British Columbia, Canada, the IACHR indicated that “the creation and use of stereotypes becomes one of the causes and consequences of gender violence practiced against women. The stereotypes

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<sup>218</sup> IACHR, [Violence, Children and Organized Crime](#). OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 52

<sup>219</sup> IACHR, [Violence, Children and Organized Crime](#), para. 576.

<sup>220</sup> See, for example, IACHR, [Report on the Situation of Human Rights in Jamaica](#), OEA/Ser.L/II.44, August 10, 2012, paras. 214, 216, and 218. In that report, the IACHR said that “the poorest and most excluded sectors of the population [are] being disproportionately victimized by the overall situation of insecurity. In the same way, the deep inequalities pervading Jamaican society are exacerbated by the State’s inadequate measures to protect and guarantee the human rights of women, children and other vulnerable groups. (para. 6).

<sup>221</sup> UN, [Report of the Special Rapporteur on violence against women, its causes and consequences](#), A/HRC/32/42, April 19, 2016, para. 38.

<sup>222</sup> Ibid.

in an investigation are the result of the existing situation of inequality and discrimination that many women confront due to multiple factors that are interrelated with their sex, such as race, age, ethnicity, socioeconomic condition and others.”<sup>223</sup>

187. With respect to LGBTI persons, especially trans gender persons and trans gender persons from racial minority groups, the IACHR has found that they are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence.<sup>224</sup> In Latin America, discrimination and structural exclusion in the labor market, based on sexual orientation, gender identity and gender expression, is one of the factors that sets in motion an endless cycle of poverty.
188. Migrants with both diverse sexual orientation and gender identities face an increased risk of discrimination and violence, particularly persons who are forced to leave their countries, or who are internally displaced in their own countries, and who, as a consequence of their displacement, live in situations of poverty in their cities and countries of destination.<sup>225</sup>
189. In many individual cases examined by the organs of the Inter-American System, poverty is identified as a factor in stigmatization, violence, and human rights violations. *The Case of Servellón García et al. v. Honduras*, is an emblematic case on violence connected with the stigmatization of at-risk children and youth living in poverty. In that case, the victims were deprived of their liberty as part of systematic collective detentions without lawful cause.
190. The Inter-American Court found that the facts of the case occurred because of “the victims’ condition of people in situations of social risk, which proves that the State did not provide [them] with an environment that would protect them from violence and abuse, nor did it allow them access to basic services and goods, in such a way that said absence without doubt deprived the minors of their possibility to emancipate, develop, and become adults that could determine their own future.”<sup>226</sup> The judgment highlights the State’s obligation to “ensure the protection of children and youngsters

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<sup>223</sup> IACHR, Report Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II, December 21, 2014, para. 175.

<sup>224</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OAS/Ser.L/V/II.rev.2. Doc.36, November 12, 2015, para. 371.

<sup>225</sup> Ibid.

<sup>226</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*, Merits, reparations and costs, Judgment of September 21, 2006, Series C No. 152, para. 117.

affected by poverty and socially alienated and, especially, to avoid their social stigmatization as criminals.”<sup>227</sup>

191. It expressly established that State agents cannot allow or promote practices in society that perpetuate the stigma that children and young persons living in poverty are predisposed to delinquency, or necessarily involved in the increase in public insecurity, and that stigmatization of that sort creates a climate in which at-risk juveniles face a latent threat of having their lives or liberty illegally curtailed.<sup>228</sup>
192. In the *Case of Rosendo Cantu et al. v. Mexico*, in connection with the specific duty to sanction violence against women, the IACHR indicated that the obstacles faced by indigenous women in obtaining access to justice, are generally related to social exclusion and ethnic discrimination and that such barriers can be particularly serious, since they represent “combined forms of discrimination” because the alleged victims are women, indigenous people and poor.<sup>229</sup> In its judgment, the Inter-American Court found that:

... the State must pay special attention to the needs and rights of the child, considering her particular condition of vulnerability. In accordance with its treaty-based obligations, the State should have adopted special measures in favor of Mrs. Rosendo Cantú, not only when filing the criminal complaint, but also during the time when, as a minor, she was involved in the investigations into the offense of which she was the victim, particularly so since she was also an indigenous person, and indigenous children whose communities are affected by poverty find themselves in a situation of particular vulnerability.<sup>230</sup>

193. In the *Case of González et al. (“Cotton Field”) v. Mexico*, the Court found that “States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can respond effectively in cases

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<sup>227</sup> Ibid., para. 116.

<sup>228</sup> Ibid., para. 112.

<sup>229</sup> I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010, Series C No. 216, para. 169.

<sup>230</sup> Ibid., para. 201.

of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. This should take into account that, in cases of violence against women, the States also have, in addition to the generic obligations established in the American Convention, an enhanced obligation since the Convention of Belém do Pará entered into force.”<sup>231</sup>

194. The IACHR has indicated that “[t]he obligation of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned, imposes upon the States a parallel obligation. On the one hand, States should monitor the social situation by producing adequate statistical data for designing and assessing public policies. On the other hand, States should take into account the policies implemented by the civil society. The obligation undertaken in Article 7.b of the Convention of Belém do Pará must be read in combination with the obligation established in Article 8.h to guarantee that statistics and other relevant data on the causes, consequences and incidence of violence against women are researched and compiled with a view to evaluating the effectiveness of measures to prevent, punish and eradicate violence against women and then formulating and introducing any needed changes.”<sup>232</sup>
195. In the *Case of Uzcátegui et al. v. Venezuela*, which concerned the extrajudicial execution of a person who lived in poverty. The Court found that the facts of the case were part of a pattern of extrajudicial executions by police squads or units and that several state entities were aware of those circumstances, including those responsible for the investigation.<sup>233</sup> When considering the violation of Article 21 of the American Convention (right to property) in its judgment, the Court established that:

The Court also finds that, given the circumstances in which the action took place and, in particular, the socioeconomic status and vulnerability of the Uzcátegui family, the damage to their property during the raid had a far greater impact than it would have had for other family groups with other means. In this regard, the Court considers that States must take into account that groups of people living in adverse circumstances and with fewer resources, such as those living in poverty, experience an

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<sup>231</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>232</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 42.

<sup>233</sup> I/A Court H.R., *Case of Uzcátegui et al. v. Venezuela*. Merits and Reparations. Judgment of September 3, 2012, Series C No. 249, paras. 133-143.

increase in the extent to which their rights are affected, precisely because of their more vulnerable situation.<sup>234</sup>

#### iv. ***The Right to a Life with Dignity of People Living in Poverty***

196. Pursuant to the provisions of Article 4 of the American Convention, States have the obligation to respect the right to life.<sup>235</sup> The Inter-American System has established that this right has two aspects: not only the right for every person not to be deprived of life arbitrarily, but also a right to guarantees ensuring the conditions necessary for a dignified existence.<sup>236</sup> Based on this dual perspective, it is possible to state that poverty, particularly extreme poverty, may constitute, in certain circumstances, a violation of the right to life, interpreted broadly.

197. The Commission has indicated that “[c]ertainly the requirements of the human right to a dignified life go beyond the equally fundamental contents of the right to life (understood in its strictest sense), the right to humane treatment, the right to personal liberty, the rights related to the system of representative democracy, and all other civil and political rights.”<sup>237</sup>

198. The Inter-American Court has referred to the concept of a life with dignity under the obligations established in the Convention’s aforementioned Article 4. In the *Case of Villagrán Morales et al. v. Guatemala*, the Inter-American Court established that “the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.”<sup>238</sup>

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<sup>234</sup> Ibid., para. 204.

<sup>235</sup> The relevant part of Article 4 of the American Convention recognizes the right to life in these terms: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. (...)”

<sup>236</sup> I/A Court H.R., *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala, Merits, Judgment of November 19, 1999*, para. 144. Also see *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125*, para. 162.

<sup>237</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, chap. VI.1 and 2. Also see IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, August 7, 2009, para. 271.

<sup>238</sup> I/A Court H.R., *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala, Merits, Judgment of November 19, 1999*, para. 144. Judges Antonio Augusto Cançado Trindade and Alirio Abreu Burelli, state in their concurring opinion in this case:

“In the last years, the conditions of life of large segments of the population of the States Parties to the American Convention have deteriorated notoriously, and an interpretation of the right to life cannot make abstraction of this reality. (...)”

199. This interpretation was echoed in *the cases of the Yakye Axa, Sawhoyamaxa, and Xákmok Kásek indigenous communities v. Paraguay*, in which the Inter-American Court found that the State had not taken the necessary measures to provide the conditions essential for a life with dignity on failing to guarantee provision of water, food, health, and education, among other issues.<sup>239</sup>
200. In the Inter-American System, States must undertake the obligation to protect and ensure the right to life by generating the minimum living conditions compatible with human dignity and abstaining from promoting conditions that impair or impede it,<sup>240</sup> for instance by preventing access to safe drinking water.
201. Likewise, in the same judgment, the Court referred to State obligations regarding individuals, collectives, and groups facing historical situations of discrimination. This obligation to adopt specific measures to ensure the right to a life with dignity is heightened whenever it involves members of historically discriminated and at-risk groups, whose require priority attention.<sup>241</sup>
202. Regarding the special consideration of older persons, the Court has indicated that the State must adopt measures to ensure they remain functional and

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The project of life is consubstantial of the right to existence, and requires, for its development, conditions of life with dignity, of security and integrity of the human person. (...)

The arbitrary deprivation of life is not limited, thus, to the illicit act of homicide; it extends itself likewise to the deprivation of the right to live with dignity. This outlook conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights." I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala, Merits, Judgment of November 19, 1999*, concurring opinion of judges Antonio Augusto Cançado Trindade and Alirio Abreu Burelli, paras. 6, 8, 9, 2, 3, and 4.

<sup>239</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay. Request for Interpretation of the Judgment on Merits, Reparations and Costs. (Art. 67 American Convention on Human Rights). Judgment of February 6, 2006*. Series C No. 142, para. 161; I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of March 29, 2006*. Series C No. 146; I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparation and Costs. Judgment of August 24, 2010*. Series C No. 214, paras. 194 to 217.

<sup>240</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005*, para. 162. Additionally, in this case, the Court made specific reference to the impact of the lack of access to water on the right to life with dignity:

Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity (para. 167).

<sup>241</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005*, Series C No. 125, para. 162.

autonomous by guaranteeing the right to adequate food, access to clean water, and healthcare.<sup>242</sup>

203. The Court observed that together with the deprivation of their land, Sawhoyamaxa Community members suffered unemployment, illiteracy, high rates of death from preventable diseases, malnutrition, poor living conditions and environment, limited access to and use of healthcare services and drinking water, and marginalization for economic, geographic, and cultural reasons.<sup>243</sup> The judgment found that the State violated Article 4(1) of the American Convention, in conjunction with its Article 1(1) for non-compliance with its obligation to adopt the necessary positive measures within its jurisdiction that could reasonably have been expected to prevent or avoid risk to the right to life of Sawhoyamaxa Community members.<sup>244</sup>
204. In other words, a State can be found internationally responsible for failure to adopt measures to facilitate access to minimal conditions that would enable individuals, groups, or collectives facing poverty and extreme poverty to live a life with dignity. The Court has indicated that special duties are derived from the general obligations established in Articles 1(1) and 2 that can be determined according to the particular needs of protected individuals, whether on the basis of personal status or the specific situation facing the individual such as extreme poverty or marginalization.<sup>245</sup>
205. The members of the indigenous community demanded that the State of Paraguay return the ancestral lands from which they had been excluded. They argued that they were living under precarious circumstances and extreme poverty,<sup>246</sup> including unemployment, malnutrition, poor housing, and lack of access to drinking water and health care services. In this case, the Inter-American Court found that the right to life included the right to access to conditions that make a dignified existence possible.
206. Based on this, the Court found it admissible to evaluate whether the State had complied with its positive obligations regarding the right to life “in view

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<sup>242</sup> Ibid., para. 175.

<sup>243</sup> Ibid., para. 73.

<sup>244</sup> Ibid., para. 178.

<sup>245</sup> I/A Court H.R., *Case of the “Pueblo Bello Massacre” v. Colombia*. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 120. I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, paras. 108, 110. I/A Court H.R., *Case of the Gómez-Paquiyaury Brothers v. Peru*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, para. 71, such as extreme poverty or marginalization and childhood. I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 154.

<sup>246</sup> I/A Court H.R., *Case of the “Juvenile Reeducation Institute” v. Paraguay*, Preliminary Objections, Judgment, Merits, Reparations, and Costs, Judgment of September 2, 2004. para. 158(c).



of the provisions set forth in Article 4 of the Convention, in combination with the general duty to respect rights, embodied in Article 1(1) and with the duty of progressive development set forth in Article 26 of that same Convention; and with Articles 10 (Right to Health); 11 (Right to a Healthy Environment); 12 (Right to Food) and 14 (Right to the Benefits of Culture) of the Additional Protocol to the American Convention ... and the pertinent provisions of ILO Convention No. 169.”<sup>247</sup>

207. In the same case, the Court analyzed the conditions of the communities’ temporary settlement and stated that “in this settlement the members of the Yakye Axa Community do not have access to appropriate housing with the basic minimum services, such as clean water and toilets.”<sup>248</sup> In that way, the Court construed access to appropriate housing to be part of the right to a decent life.<sup>249</sup>
208. With regard to access to appropriate housing, it is worth highlighting the informal settlements situation in Latin America. According to IDB figures, there are 125 million people living in poverty in the region’s cities and 113.4 million people (23.5% of urban inhabitants) living in informal settlements.<sup>250</sup> The IACHR has received information indicating that in Argentina, for instance, the housing shortfall increased steadily between 1991 and 2010, a period in which the share of urban households affected by housing problems increased by 77.6%. Census data for 2010 show some 200,000 people living in shanty towns and settlements in the City of Buenos Aires, double the number for 2001 and four times more than in 1992.<sup>251</sup>
209. During the regional thematic hearing on the “Economic, social, and cultural rights situation of the inhabitants of urban settlements in the Americas,” conducted during its 154<sup>th</sup> period of sessions, the IACHR received information indicating that life in informal settlements “goes beyond just a

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<sup>247</sup> I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005, Series C, No. 125, para. 163.

<sup>248</sup> *Ibid.*, para. 164.

<sup>249</sup> With respect to the right to housing in the Inter-American System, it is worth noting the concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, in which he points out that “In current Inter-American jurisprudence, the right to housing has been protected indirectly, essentially because it is deemed to be connected to the rights to life (Article 4) and to property (Article 21) in scenarios such as the conditions for a decent life for indigenous communities, forced displacement, massacres, break-ins without a warrant, and the destruction of property” (para.41). I/A Court of H.R. *Case of Yarce et al v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, judgment of November 22, 2016, Series C. No. 325.

<sup>250</sup> IDB, Urban Development, August 11, 2017.

<sup>251</sup> Comments by the Public Defenders’ Office of the City of Buenos Aires on the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas,” February 21, 2017, p.5.

lack of access to decent housing”<sup>252</sup> and also involves a lack of access to health, education, drinking water, and other basic services.

210. For example, according to figures provided by the TECHO organization, 75.8% of households living in informal settlements in Chile have no formal access to safe water, and 91.5% lack proper sanitation facilities; while in Argentina, 95% of households in settlements lack connectivity to running water and 98% lack proper sanitation facilities. In 62% of the settlements in Paraguay, garbage is burnt as a method of waste disposal; while in Costa Rica, 66.1% of settlements use hand-dug wells to get rid of waste.<sup>253</sup> In this regard improving living conditions for persons living in human settlements is linked to the achievement of Sustainable Development Goal No.11, aimed at making cities and human settlements inclusive, safe, and sustainable.<sup>254</sup>
211. All these examples show the interdependence of civil and political rights with economic, social, and cultural and environmental rights. Within this interdependence rationale, the Inter-American Court has also established a link between the right to health and the right to education, as fundamental pillars to ensure the enjoyment of a life with dignity.<sup>255</sup>
212. The Court has also referred to the issue of adolescents deprived of liberty in the *Case of the Juvenile Reeducation Institute v. Paraguay*, where a number of detainees had died under different circumstances in that institution. The Inter-American Court found that “to protect a child’s life, the State must be particularly attentive to that child’s living conditions while deprived of his or her liberty.” Consequently, “[r]egarding children deprived of their liberty and thus in the custody of the State, the latter’s obligations include that of providing them with health care and education, so as to ensure to them that their detention will not destroy their life plans.”<sup>256</sup>
213. In the *Case of the “Street Children” (Villagrán Morales et. al.) v. Guatemala*, the Inter-American Court said that “in the light of Article 19 of the American Convention, the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or

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<sup>252</sup> TECHO, Comments on the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights,” January 31, 2017, p. 2.

<sup>253</sup> Ibid.

<sup>254</sup> United Nations. Sustainable Development Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable, August 11, 2017, p. 1.

<sup>255</sup> I/A Court H.R., Advisory Opinion OC-17/02 of August 28, 2002, Series A, No. 17, para. 86. Specifically, the Court stated:

In brief, education and care for the health of children require various measures of protection and are the key pillars to ensure enjoyment of a decent life by the children, who in view of their immaturity and vulnerability often lack adequate means to effectively defend their rights.

<sup>256</sup> I/A Court H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Judgment, Merits, Reparations, and Costs, Judgment of September 2, 2004, paras. 160, 161.

tolerated a systematic practice of violence against at-risk children in its territory.”

214. The decision also held that when States violate the rights of children at risk, they are victims of a double aggression. In the first place, “such States do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the ‘full and harmonious development of their personality’, even though every child has the right to harbor a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs. Second, they violate their physical, mental and moral integrity and even their lives.”<sup>257</sup>
215. The foregoing shows that States have positive obligations to establish the conditions necessary to prevent the violations of the right to a life with dignity that may take place in situations of poverty and extreme poverty impeding access to the minimum conditions established under Inter-American standards as necessary to guarantee a life with dignity.

**v. *The Progressive Development of the Economic, Social, and Cultural Rights of People Living in Poverty***

216. The interpretation and consideration of economic, social, and cultural rights is essential for the Commission as regards the standards of the Inter-American System on the situation of people living in poverty and extreme poverty. Both the Inter-American System and the universal system have established the Member States’ obligations to progressively achieve full realization of economic, social and cultural rights.
217. The Protocol of San Salvador has special importance as a specific rule for the OAS Member States. The 1948 OAS Charter itself enshrines special obligations for States on economic, social, and cultural rights, particularly after the reforms adopted in the Protocol of Buenos Aires. Along the same lines, the American Declaration recognizes the rights to the preservation of health and to well-being (Article XI); education (Article VII); the benefits of culture (Article XIII); to work and to fair remuneration (Article XIV); leisure time and to the use thereof (Article XV); and social security (Article XVI), among others.

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<sup>257</sup> I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et. al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 191.

218. With respect to the American Convention, Article 26 provides that:

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

219. The rights defined in Article 26 of the American Convention are the rights deriving from the economic, social, educational, scientific, and cultural provisions of the OAS Charter. The case law of the Inter-American Court and the IACHR have also found that the right to social security, right to health, and labor rights as economic, social, and cultural rights, are derived from the OAS Charter.<sup>258</sup>

220. In its case law, the IACHR has indicated that the nature of the obligations derived from Article 26 of the American Convention means that the full effectiveness of the rights enshrined therein must be achieved progressively and according to the resources available. This implies a correlating duty to not reverse any of the progress made on these issues, because that could implicate the international responsibility of the State. This is the obligation of “non-regression” developed by other international bodies and understood by the IACHR as a State duty that can be enforced through the individual petitions mechanism enshrined in the Convention.<sup>259</sup>

221. Regarding the aforementioned obligation to make progress on economic, social, and cultural rights, in its decision in the *Case of Acevedo Buendía*, the Inter-American Court analyzes the content of the obligations established in Article 26 of the American Convention and recalls the interdependence between civil and political rights and economic, social, and cultural rights. It finds that they must be understood comprehensively as human rights, with

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<sup>258</sup> I/A Court H.R., *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009, Series C No. 198, para. 106; IACHR Report No. 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute et al. (Peru), March 27, 2009, para. 130; IACHR Report No. 25/04 Application 12,361, Admissibility Ana Victoria Sánchez Villalobos et al. (Costa Rica), March 11, 2004, paras. 52-70; IACHR Report No. 27/09, Merits, Case 12,249, Jorge Odir Miranda Cortez et al. (El Salvador), March 20, 2009, paras. 77 and 79; IACHR, Report No. 100/01, Case 11,381, Milton García Fajardo et al. (Nicaragua), October 11, 2001, para. 95; IACHR, Report No. 121/09, Petition 1186-04, Admissibility, Opario Lemoth Morris et al. (Miskito divers) (Honduras), November 12, 2009, para. 50.

<sup>259</sup> IACHR, Admissibility and Merits Report No. 38/09, National Association of Ex-employees of the Peruvian Social Security Institute et al. (Peru), March 27, 2009, para. 139.

no hierarchy between them and in all cases enforceable vis-a-vis the competent authorities.<sup>260</sup>

222. The IACHR emphasizes that the Inter-American System has been making progress in establishing the principles and standards applicable to the scope of the rights of judicial due process and effective judicial protection in cases involving the violation of economic, social, and cultural rights.<sup>261</sup> This means that the State's progressive implementation of measures to make economic, social, and cultural rights effective must be subject to accountability.<sup>262</sup> Compliance with State obligations will be examined by the bodies called on to establish whether human rights violations have been committed.<sup>263</sup> The Court also addressed the correlating duty of non-regression and its justiciable nature.<sup>264</sup>
223. The IACHR has recognized the importance of economic development for the prosperity of the peoples of the Hemisphere, in the sense that, as stated in the Inter-American Democratic Charter, "The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere."<sup>265</sup> At the same time, the Commission has indicated that development activities must be accompanied by adequate and effective measures to ensure that they do not impinge on the fundamental rights of those persons that can specifically and negatively be affected, including indigenous communities and the environment on which they depend for their physical, cultural, and spiritual well-being.<sup>266</sup>
224. The Commission has emphasized that there is no real development without full respect for human rights. This involves limitations and obligations for State authorities. Specifically, development must be managed sustainably, requiring States to ensure protection of the environment. As the IACHR has explained, "the norms of the Inter-American human rights system neither prevent nor discourage development; rather, they require that development

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<sup>260</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009, Series C No. 198, para. 101.

<sup>261</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights, para. 68.

<sup>262</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009, Series C No. 198, para. 101.

<sup>263</sup> *Ibid.*, para. 103.

<sup>264</sup> *Ibid.*, para. 101.

<sup>265</sup> IACHR, Report on the Merits No. 40/04, Maya Indigenous Communities of the Toledo District, Belize (Case 12,053), October 12, 2004, para. 150.

<sup>266</sup> *Ibid.*

take place under conditions that respect and ensure the human rights of the individuals affected.”<sup>267</sup>

225. Article 1 of the Protocol of San Salvador establishes that States have an obligation to adopt “the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.”
226. Article 2 requires States to adopt whatever legislative or other measures that may be necessary to make the rights and freedoms recognized in the Protocol effective. Article 3 establishes that States Parties to the Protocol commit to guaranteeing the exercise of these rights without 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.”
227. Regarding the obligations contained in the Protocol of San Salvador, the Commission has held that, based on the obligation of progressivity, the State is in principle prohibited from adopting policies or measures and issuing legal standards that, without adequate justification, worsen the economic, social, and cultural rights standard enjoyed by the population at the time the Protocol of San Salvador was adopted or subsequent to each “progressive” step taken.<sup>268</sup> Thus, the State is required to improve the situation of these rights and is simultaneously prohibited from reducing the level of protection of the rights in force or, where applicable, from revoking existing rights without sufficient justification.
228. The first stage of evaluating the progress of the implementation of social rights involves comparing the extent to their entitlement, their content and guarantees as provided for under new legal measures with the prior situation of the rights’ recognition, extent, and scope. Any weakening or worsening of these factors without proper justification from the State would be an unauthorized regression under the Protocol. The obligation of non-

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<sup>267</sup> IACHR, Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/SER.L/V/II. Doc.56/09. December 30, 2009, para. 204.

<sup>268</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights, para. 6. See also IACHR, Report on Jorge Odir Miranda Cortez et al. El Salvador. March 20, 2009. Paragraphs 105 and 106.

regression is thus one of the parameters used to judge measures adopted by the State.<sup>269</sup>

229. For its part, the UN ESCR Committee has clarified that the International Covenant on Economic, Social and Cultural Rights establishes a series of obligations for States, in terms of both conduct and results.<sup>270</sup> In this sense, it recognizes that the full realization of the rights defined in the Covenant is subject to the principle of progressive development, and a State's degree of compliance depends on the resources available to it.<sup>271</sup> However, the Covenant recognizes two types of obligations that take effect immediately for States: a) the obligation to "adopt measures" enshrined in Article 2(1); and b) the obligation to guarantee the exercise of rights free from discrimination, established in Article 2(2) of the Covenant.<sup>272</sup>
230. On the immediate obligation "to adopt measures," the CESCR has established that although full realization of the rights in question must be progressive, measures toward achieving that goal must be adopted within a short period of time of the entry into force of the Covenant for States Party. The measures must be purposeful, specific, and aimed at fully satisfying the obligations established in the Covenant.<sup>273</sup>
231. Among the measures to be adopted, the Committee identifies the following: amending and adopting legislation; guaranteeing effective legal remedies; and administrative, financial, educational, and social measures, among others.<sup>274</sup> Also very important to this analysis is the fact that the CESCR specifies the minimum content of the economic, social, and cultural rights without prejudice to the requirement that they be satisfied progressively. Specifically, the CESCR has indicated in this regard that:

(...) the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of

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<sup>269</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights](#), para. 6. Regarding the obligation to progressively implement economic, social, and cultural rights, it should be noted that the CESCR has also derived a prima facie prohibition on adopting deliberately regressive measures, called the principle of non-regression or retrocession prohibition. See Christian Courtis, "La prohibición de regresividad en materia de derechos sociales; apuntes introductorios" and "Ni un paso atrás. La prohibición de regresividad en materia de derechos sociales", Ed. del Puerto, Buenos Aires, 2006.

<sup>270</sup> United Nations, [Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of States parties obligations](#), 1990, para. 1.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid., para. 2.

<sup>274</sup> Ibid., paras. 3-5.

essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources.” In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>275</sup>

232. For its part, the Guiding Principles on Extreme Poverty and Human Rights establish that:

States have an immediate obligation to take steps towards the full realization of economic, social and cultural rights, and human rights law demands that at least minimum essential levels of all rights should always be ensured. International human rights law does allow, if resource constraints dictate, for the progressive realization of some aspects of economic, social and cultural rights over a period of time and with well-defined indicators, although deliberate retrogressive measures may be taken only exceptionally and on a temporary basis. At all times, States need to demonstrate the specific measures taken to tackle poverty and prove that they have done so to the maximum of their available resources, including through international assistance and cooperation.”<sup>276</sup>

233. In this context, in light of international standards, States have an obligation to make specific progress in public policies aimed at overcoming poverty and progressively guaranteeing that individuals, groups and collectives living in poverty and extreme poverty can enjoy their economic and social rights.

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<sup>275</sup> Ibid., para. 10.

<sup>276</sup> United Nations, [Guiding Principles on Extreme Poverty and Human Rights](#). Approved by the Human Rights Council by consensus on September 27, 2012 in Resolution 21/11. Para. 48.



234. It is important to mention as an example that the IACHR's *Third Report on the Human Rights Situation in Colombia* – when referring to Colombia's compliance with its obligations under Article 26 of the American Convention and the OAS Charter and the American Declaration - stated that the rights recognized in these instruments must “real effect in the daily lives of each of the inhabitants of Colombia, thereby guaranteeing minimal conditions for leading a dignified life.”<sup>277</sup>
235. In brief, the IACHR considers that although the rights enshrined in these provisions must be made fully effective progressively, States have certain immediate obligations regarding economic, social, and cultural rights, including the obligation to adopt measures, the prohibition on discrimination, and minimum economic, social, and cultural rights guarantees.
236. Pursuant to the Inter-American case law cited above, according to which the provisions of Articles 1(1) and 2 of the American Convention are fully applicable to Article 26, States are required to respect those rights without any discrimination and adopt domestic legal provisions to make them effective. In this regard, following on the considerations of the ESCR Committee, it should also be noted that based on an evolutionary and systemic approach to the American Convention, States have an obligation to guarantee the minimum and essential content of each social right as a baseline against which to measure progress and enforce its non-regression obligations.

**vi. *International State Responsibility for Violations Committed by Third Parties in the Context of Poverty***

237. The organs of the Inter-American System have repeatedly acknowledged that in certain circumstances, the State may be internationally responsible for human rights violations committed by private parties, which clearly includes private companies. Thus, from its first contentious cases, the Inter-American Court and the Commission have extended the application of the effects of Inter-American instruments to include third parties. For example, the Inter-American Court has specifically found that:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in

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<sup>277</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V.II.102 Doc. 9 rev. 1, February 26, 1999, para. 5.

which a State is obligated to prevent, investigate and punish human rights violations, or all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.<sup>278</sup>

238. In later judgments, the Inter-American Court explained that “The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons.”<sup>279</sup> In the words of the Court, “[t]he effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals.”<sup>280</sup>
239. It is clear that a State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. Effectively, “the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds between individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or a group of individuals and by the reasonable possibilities of preventing or avoiding that danger.”<sup>281</sup>
240. In other words, “even though an act, omission or deed by an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the

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<sup>278</sup> I/A Court H.R., Series C No. 4, para. 172; and *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, paras. 181, 182, and 187.

<sup>279</sup> I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005*, Series C No. 134, paras. 111 and 112.

<sup>280</sup> I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005*, Series C No. 134, para. 111 and 112.

<sup>281</sup> I/A Court H.R., *Case of the “Pueblo Bello Massacre” v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006*. Series C No. 140, para. 123.

specific circumstances of the case and the execution of these guarantee obligations must be considered.”<sup>282</sup>

241. This approach has been used in interpreting and applying the standards of the Inter-American System when addressing situations involving the violation of human rights by third parties. Thus, for example, in its 1997 *Report on the Situation of Human Rights in Ecuador*, after warning of the serious effects that petroleum exploitation has on the health and lives of a sector of the population, the Commission “urge[d] the State to take measures to prevent damage to individuals affected by the behavior of concessionaires and private actors.”<sup>283</sup> A number of situations like this that the Inter-American System has addressed have involved the violation of the human rights of indigenous and tribal peoples by extractive activities, involving exploitation and development by third parties.<sup>284</sup>
242. In early 2016, the Commission published its report entitled “Indigenous Peoples, Afro-Descendent Communities and Natural Resources,” which analyzes the State’s obligations regarding State extractive activities as well as the activities of mixed and private enterprises. In the report, the Commission identified six core State obligations in the context of extractive and development activities:

The Inter-American Commission considers that based on the most applicable international and regional human rights standards, States are obligated to act with due diligence to prevent and respond to human rights violations committed in the context of extractive and development activities. The State obligation in this context to act with due diligence has six dimensions: (i) the duty to adopt an appropriate and effective regulatory framework, (ii) the duty to prevent human rights violations, (iii) the obligation to supervise and monitor the activities of companies and other non-state parties, (iv) the duty to ensure mechanisms for effective participation and

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<sup>282</sup> Ibid.

<sup>283</sup> IACHR. Report on the Situation of Human Rights in Ecuador. Chapter VIII. OEA/Series L/V/II.96, doc. 10 rev. 1, April 24, 1997.

<sup>284</sup> The matters heard by the IACHR include, for example, the case of the Yanomami people in Brazil, decided in 1985, in which it was alleged that the private activities of miners affected the rights of the Yanomami. (IACHR. Case No. 7615 – Yanomami People (Brazil), Resolution No. 12/85, March 5, 1985); the case of sisters Mary and Carrie Dann, members of the Western Shoshone indigenous tribe in the state of Nevada, United States of America, regarding authorization of private gold prospecting activities on the tribe’s ancestral lands (IACHR. Merits Report No. 75/02, Case 11,140 – Mary and Carrie Dann (United States), December 27, 2002); the case of Mercedes Julia Huenteao Beroiza and Mapuche families *et al.*, filed over a hydroelectric project being carried out by a public company (IACHR. Friendly Settlement Report No. 30/04, Petition 4617/02 – Mercedes Julia Huenteao Beroiza et al. (Chile), March 11, 2004); among others.

access to information, (v) the duty to prevent illegal activities and forms of violence, and (vi) the duty to guarantee access to justice through the investigation, punishment, and adequate reparation of human rights violations in these contexts.<sup>285</sup>

243. The Inter-American System has also clearly established that States are internationally responsible for a lack of proper regulation, inspection, oversight, and control of the actions of private actors. This is closely related to the State's obligations regarding the situation of people living in poverty and extreme poverty and health services. Regarding the content of the obligation to regulate, in the *Case of Ximenes Lopes v. Brazil*, the Inter-American Court found that:

States are responsible for regulating and supervising at all times the rendering of services and the implementation of the national programs regarding the performance of public quality health care services so that they may deter any threat to the right to life and the physical integrity of the individuals undergoing medical treatment.<sup>286</sup>

244. The Court has been clear in finding that the State obligation to regulate covers both services provided by the State, directly or indirectly, as well as services offered by private parties.<sup>287</sup> In the *Case of Suárez Peralta v. Ecuador*, the Court linked these obligations to principles of availability, accessibility, acceptability, and quality of the medical services rendered, indicating that these obligations must be "oriented" toward satisfying these principles,<sup>288</sup> which were conceptualized by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 14 as "essential and interrelated."<sup>289</sup>

245. As it relates to the right to medical treatment, the provision of health care is at its core a public good and therefore by its nature not a service that can be considered as having a completely private nature. The State therefore has an

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<sup>285</sup> IACHR. *Indigenous Peoples, Afro-Descendent 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. 65.

<sup>286</sup> I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 99.

<sup>287</sup> I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 149.

<sup>288</sup> I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261.

<sup>289</sup> United Nations Committee on Economic, Social, and Cultural Rights. General Comment No. 14.

obligation to oversee, regulate, and monitor that cannot be compared to the relationship between private parties.<sup>290</sup>

246. The United Nations has a framework to “protect, respect, and remedy,” drafted in 2008 by the General Secretary’s Special Representative on human rights and transnational and other commercial enterprises, John Ruggie. The framework was taken up by the Human Rights Council<sup>291</sup> and supplemented in 2011 with the “UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework “(hereinafter, the “Guiding Principles”).<sup>292</sup>
247. According to the Guiding Principles, the States’ duty to “protect” consists in “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>293</sup> Along these lines, with regard to the States under the Inter-American System, the Commission emphasizes that as regards the Convention, this duty to protect is grounded in Inter-American instruments and coincides with the aforementioned general obligation to guarantee human rights, pursuant to the terms indicated.<sup>294</sup>
248. The Guiding Principles were also taken into account by the Inter-American Court of Human Rights in the *Case of the Kaliña and Lokono Peoples v. Suriname*. On that occasion, the Court established that “businesses must respect and protect human rights, as well as prevent, mitigate, and accept responsibility for the adverse human rights impacts directly linked to their activities,” and that States were responsible for protecting against “human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.”<sup>295</sup> That required “taking appropriate steps

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<sup>290</sup> I/A Court H.R., *Case of Gonzales Lluy et al v. Ecuador* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 184.

<sup>291</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Protect, Respect and Remedy: A Framework for business and human rights. A/HRC/8/5. April 7, 2008.

<sup>292</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework. A/HRC/17/31. March 21, 2011.

<sup>293</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Protect, Respect and Remedy: A Framework for business and human rights. Op. cit. Founding Principle 1.

<sup>294</sup> In this regard, the Commission notes that, as explicitly established in the Guiding Principles, “Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.” UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Op. cit.

<sup>295</sup> I/A Court H.R., *Case of the Kaliña y Lokono Peoples v. Suriname*, Merits, Reparations, and Costs. Judgment of November 25, Series C No. 309, para. 224.

to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>296</sup>

**vii. *Freedom of Expression, Access to Public Information, and Poverty***

249. The IACHR, through its Special Rapporteur for Freedom of Expression has stated that “the poverty and social marginalization endured by large sectors of society in the Americas affect the freedom of expression of the hemisphere’s citizens, in that their voices are ignored and consequently left out of any debate.”<sup>297</sup>

250. In more recent decisions, the IACHR has deepened analysis on the potential of freedom of expression—understood as the right to seek, receive, and disseminate information—and the realization of other human rights such as the right to education and to participate in cultural life and enjoy the benefits of scientific and technological progress (Articles 13 and 14 of the Protocol of San Salvador), the right to assembly and association (Articles 15 and 16 of the American Convention), political rights (Article 23 of the American Convention), and the right to health (Article 10 of the Protocol of San Salvador), among other rights.<sup>298</sup>

251. The States’ specific obligations to ensure the effective and universal enjoyment of the right to freedom of expression include taking positive measures to reduce the existing gap in access to the platforms, infrastructure, and technologies for the circulation of information. States also must guarantee all people access to public information, thereby reducing the information asymmetry faced by some people living in poverty and extreme poverty, as well as guarantee universal access to the media in general in a way that is both equitable and efficient, especially for people in poverty, women, and people with disabilities.<sup>299</sup>

252. The Inter-American human rights system has recognized that the media must be open to everyone without discrimination. Freedom of expression requires that the media be open to virtually everyone without discrimination, or more precisely, it requires that no individuals or groups

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<sup>296</sup> Ibid.

<sup>297</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Annual Report 2002. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of expression and poverty.](#)

<sup>298</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet. Annual Report 2013. Paragraph 36, December 31, 2013.](#)

<sup>299</sup> United Nations. [General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290.](#)

are a priori excluded or lack access. It also requires that the media meet certain conditions so that in practice, they are true instruments of this particular freedom, rather than vehicles to restrict it.<sup>300</sup> In some cases, the media has been used to help raise public awareness and exert pressure for the adoption of measures to improve the quality of life of the marginal or most vulnerable sectors of the population.<sup>301</sup>

253. The Internet has unprecedented potential for the exercise of freedom of expression and the fulfillment of other human rights that are central to reducing poverty and inequality on economic and social issues. It is therefore critical for the right to freedom of expression and access to the Internet to be effectively and universally enjoyed.
254. The States of the region have broadly recognized that access to technology is distributed unequally, based on wealth, gender, geography or social group, both between States and within them. The “digital divide” is not only related to the availability of Internet access, but also to the quality, information, and technical knowledge necessary for access to the Internet to be useful and beneficial for users.<sup>302</sup>
255. In a visit conducted to an area with extreme poverty in Bolivia, in order to collect information for the present Report, the Andean indigenous community surprised the IACHR delegation by including among their three priorities the installation of a cell phone antenna without which members of the community were at risk of not having access to an ambulance in case of life-threatening emergencies.
256. The right of access to public information is a fundamental right protected by the American Convention and it is linked directly to people’s ability to exercise and claim protection for other human rights. Through proper implementation of this right, people can learn exactly what rights they have and what mechanisms are available for protecting them.
257. Provision of information on human rights is indispensable for designing public policies and measures aimed at eradicating poverty and inequality. It

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<sup>300</sup> I/A Court H.R., The compulsory licensing of journalists. Advisory Opinion OC-85 of November 13, 1985. Series A No. 5. Para. 34.

<sup>301</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Annual Report 2002. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of expression and poverty.

<sup>302</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression and the Internet. Annual Report 2013. Paragraph 39, December 31, 2013. According to the latest figures available, 45.5 percent of people living in Latin America and the Caribbean are still not connected to the Internet.

is also a necessary tool for monitoring the progress made by States as they move toward realization of these rights.

258. On several occasions, the IAHCR has highlighted the various obligations attributed to the State derived from the right to access to public information, including the obligation to produce statistical information that is properly disaggregated so as to make it useful for studying and monitoring the situation of individuals, groups and collectives that have historically been discriminated against.<sup>303</sup>
259. In brief, the inefficiency of public policies in combating poverty is due in part to the lack of accurate diagnostic assessments of the issues in light of its multidimensional nature. The lack of information on people living in poverty and extreme poverty renders it invisible and hampers its understanding. Likewise it is advisable that the gathering of comprehensive information be carried out in collaboration with the people living in poverty. The involvement of the population and their direct understanding of the situation is key to the actions undertaken.<sup>304</sup>
260. Based on this, the IACHR emphasizes that States have a positive obligation to guarantee the availability of data on human rights that in turn has two dimensions: i) the duty to collect and guarantee availability of adequate information on the precise situation of vulnerable sectors; ii) the duty to guarantee that individuals have access to information and knowledge on accessing human rights, which is a precondition for exercising and demanding them.

### **c. Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador**

261. It is important to mention the progress achieved by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, of which the IACHR is a part, about progress indicators for measuring economic, social, and cultural rights.<sup>305</sup>

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<sup>303</sup> IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights (2008), para. 58.

<sup>304</sup> TECHO, Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights, January 31, 2017, pp. 3-4.

<sup>305</sup> The Working Group has been functioning since May 2010 with the designation of the lead experts. Pursuant to what was decided by the General Assembly in its Resolution AG/RES. 2262 (XXXVII-O/07), the above-mentioned Working Group shall be composed of:



262. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, known as the Protocol of San Salvador, was adopted in 1988 and has been in force since 1999, with 19 signatory states and 16 ratifications to date. The Protocol sets obligations with respect to the rights to health, adequate food, enjoying a healthy environment, education, work and trade unions, social security, cultural rights, recognition of the rights of children and adolescents, older persons, persons with disabilities, the rights of indigenous peoples and Afro-descendants, and women's rights, among others.
263. The above-mentioned Inter-American instrument incorporates two mechanisms to monitor compliance: i) a system of individual petitions for alleged violations of the rights to trade union freedom and education (Article 19.6); and ii) a system of periodic reports to be drafted by the states parties so that they can transmit information about the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol (Article 19).
264. In 2005, the OAS General Assembly adopted the "Standards for the Preparation of Periodic Reports pursuant to the Protocol of San Salvador,"<sup>306</sup> establishing that the submission of the reports must be guided by the principle of progressiveness and by a system of progress indicators.
265. To move forward with providing a first definition of the contents of the indicators, the OAS General Assembly pointed out that it was necessary to define the progress indicators selected so that the states would report about fulfillment of their obligations in the area of economic, social, and cultural rights. Likewise, it requested the Inter-American Commission to propose indicators that would measure the progress—or possible regression—by the states, and in response the document Report on Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights was issued.<sup>307</sup>
266. The system proposed by the IACHR presented quantitative indicators with qualitative signs of progress and these, in turn, with categories cross-cutting all rights, at the same time that it adopted a methodology with a human

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1. Three government experts, taking into account equitable geographic distribution and rotation, and an alternate government expert.

2. One independent expert, who shall be a highly qualified professional with recognized experience in the field, and one alternate independent expert.

3. One member of the IACHR designated for that purpose.

<sup>306</sup> OAS. Standards for the Preparation of Periodic Reports pursuant to the Protocol of San Salvador. AG/RES. 2074 (XXXV-O/05). 2005.

<sup>307</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14. 2008.

rights-based approach. On the basis of this background, the Working Group initiated a broad process to establish indicators to measure progress in compliance with the Protocol of San Salvador and decided to bring together the rights contained in the Protocol into two groups. Thus, the first group of rights incorporates the right to health, social security, and education; and the second group includes the right to work and trade union rights, the right to adequate nutrition, the right to a healthy environment, and the right to the benefits of culture.

267. These indicators benefit from the principle of equality and non-discrimination, as a cross-cutting principle whereby it is possible to identify whether or not the conditions are in place to effectively have access to social rights in each one of the states, taking into account the patterns of discrimination that have historically affected certain groups and persons, among whom are persons living in poverty and extreme poverty. The IACHR has highlighted the relevance of incorporating indicators on inclusion-exclusion, which reveal situations of structural poverty or patterns of intolerance and stigmatization of social sectors, among other components to evaluate contexts of inequity.<sup>308</sup>
268. Thus, at present, for the work of the Protocol of San Salvador Working Group, the figures for poverty and extreme poverty constitute key elements to build and monitor the rights indicators developed to follow up on the Protocol of San Salvador.<sup>309</sup>
269. The IACHR commends the progress and efforts made by the Working Group on the Protocol of San Salvador and indicates that at present, said Working Group has concluded the process of evaluation of the first round of national reports in connection with a first group of rights (rights to health, education, and social security), that were due in June 2014, in light of OAS General Assembly resolution AG/RES. 2713 CXLII-O/12).<sup>310</sup>

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<sup>308</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14, 2008, para. 63.

<sup>309</sup> Likewise, it has to be pointed out as an example, that the WGPSS has indicated that, to measure the right to adequate food, the following has been taken as a results indicator: "Percentage of households below the total indigence or extreme poverty line, urban and rural." And that for cultural rights the following has been taken as a process indicator: "Merit-based competitive funding available for civil society aimed at providing targeted protection of cultural rights, especially for women, children and adolescents, older persons, LGBTBI persons, persons with disabilities, immigrants, indigenous peoples, persons living in poverty and all minorities." OAS, Indicadores de progreso para la medición de derechos contemplados en el Protocolo Adicional a la Convención Americana sobre Derechos Humanos en materia de derechos económicos, sociales y culturales "Protocolo de San Salvador" / Prepared by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador. OAS, Official documents; OEA/Ser.D.

<sup>310</sup> Working Group on the Protocol of San Salvador. Progress indicators for measuring rights under the Protocol of San Salvador, 2015.

270. At the time of writing the present Report, the reception and evaluation of national reports relating to the second group of rights - the right to work and trade union freedoms, the right to a healthy environment, the right to appropriate food, and cultural rights – is ongoing.<sup>311</sup>
271. Moreover, both the IACHR and the Working Group consider that the obligations with respect to social rights are inextricably linked with guarantees of access to information and social participation. These goals require greater coordination and implementation efforts on the part of States, in addition to an increase in financial and budgetary commitments needed to effectively sustain social policies. There is an indissoluble link between the economic sphere and social policies, and States need to invest more to ensure compliance with their obligations.<sup>312</sup>
272. The monitoring system designed by the Working Group is governed by the principle of feedback, inasmuch as each State submitting its national report is the primary beneficiary of the monitoring exercise. The progress indicators enable a comprehensive assessment of actions undertaken and an analysis of possible changes in public policies to guarantee the satisfaction of human rights. Moreover, the fact that the mechanism is governed by the principle of progressivity rather than regression, allows an assessment into whether there have been improvements in the implementation of universal and comprehensive policies.<sup>313</sup>
273. The IACHR reminds the States Parties of the importance of “owning” the mechanism established to comply with Article 19 of the Protocol of San Salvador and extends that invitation to civil society as a whole. It urges States that have not yet ratified the Protocol of San Salvador to do so as soon as possible so as to guarantee their citizens the exercise of economic, social, cultural and environmental rights.

## 2. Universal System

### a. Human Rights Mechanisms and Steps towards Economic, Social and Cultural Rights

274. The universal system has recognized that poverty is a human rights-related issue and that there is a link between comprehensive enjoyment of all

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<sup>311</sup> Working Group on the Protocol of San Salvador. Notes to be incorporated into the Document on Poverty and Extreme Poverty in the Americas (IACHR, 2017).

<sup>312</sup> Ibid.

<sup>313</sup> Ibid.

human rights and poverty reduction. The joint preamble to the two binding treaties adopted by the United Nations in 1966 (the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights [ICESCR]) establishes that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."<sup>314</sup>

275. In view of the indivisibility and interdependence of human rights, reaffirmed at the World Conference on Human Rights in Vienna, in 1993, it is worth stressing that poverty is also a pertinent issue for other universal treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of Persons with Disabilities; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Other relevant instruments include the United Nations Declaration on the Rights of Indigenous Peoples and the International Labor Organization's Convention No. 169.<sup>315</sup>
276. For the Committee that monitors compliance with the ICESCR (ESCR Committee), poverty has been a core issue and one of its principal concerns. Over the years, the Committee has pointed out that the right to work, the right to an adequate standard of living,<sup>316</sup> the right to adequate housing, the right to health, and the right to education, lie at the heart of the aforementioned Covenant, and have a direct and immediate bearing on the eradication of poverty.<sup>317</sup>

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<sup>314</sup> [United Nations Committee on Economic, Social and Cultural Rights. Substantive Issues arising in implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, para. 1.](#)

<sup>315</sup> United Nations, [Core International Human Rights Instruments](#). There are 10 core international human rights treaties. Each of these instruments has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

<sup>316</sup> Article 11 of the ICESCR and Article 25 of the Universal Declaration recognize the right to an adequate standard of living, which includes access to adequate food, clothing, and housing, as well as the right to water and the continuous improvement of living conditions. See United Nations Committee on Economic, Social and Cultural Rights. Substantive Issues arising from implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights 10. Also, CESCR, General Comment N° 15, The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), para. 3.

<sup>317</sup> [United Nations Committee on Economic, Social and Cultural Rights. Substantive Issues arising in implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, para.1.](#)

277. This Committee has interpreted the obligations in the Covenant through its General Comments. Its General Comment No. 3 established "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" listed in the Covenant. Without this minimum core obligation, the Covenant "would be largely deprived of its *raison d'être*."<sup>318</sup> The Committee has established, in specific resolutions, that the essential levels of the rights to food, education, and health constitute non-derogable minimum obligations.<sup>319</sup>
278. Likewise, the Committee has established that Article 3 of the Covenant states that, in addition to prohibiting discrimination, "the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights."<sup>320</sup>
279. The Human Rights Council established the mandate of the United Nations Special Rapporteur on extreme poverty and human rights with the main purpose of assessing the link between enjoyment of human rights and extreme poverty.<sup>321</sup> Successive Special Rapporteurs have conducted a series of country visits and referred to specific issues such as Older Persons and Social Security (2009), Social Security Measures and the Millennium Development Goals (2010), The Penalization of Poverty (2011), Access to Justice (2012). The impact of austerity measures on the enjoyment of human rights (2013), and Citizen Participation of persons living in poverty (2013), among others.
280. Other United Nations Special Rapporteurship mandates have a bearing on poverty, such as the mandate on the human rights to safe drinking water and sanitation, to food, and to education; on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; on the rights of indigenous peoples; on the right of every

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<sup>318</sup> United Nations, *CESCR, General Comment N° 3, The Nature of the Obligations of the States Parties (paragraphs 1 and 2 of the Covenant)*, para. 10.

<sup>319</sup> United Nations, *CESCR, General Comment N° 14, the right to the highest attainable standard of health*, para. 47.

<sup>320</sup> United Nations, *CESCR General Comment N° 16, The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, para. 2.

<sup>321</sup> United Nations, *Special Rapporteur on extreme poverty and human rights* The Special Rapporteur is an independent expert appointed by the Human Rights Council to examine the situation in a country or a specific human rights matter and to report on it. He or she performs that role in an honorary capacity, is not a member of the United Nations staff, and does not receive a salary for performing her or his mandate. The person who is currently performing that mandate (and has been doing so since June 2014) is Mr. Philip Alston. His predecessors were Mrs. Magdalena Sepúlveda Carmona (May 2008 - June 2014), Mr. Arjun Sengupta (August 2004 - April 2008) and Mrs. A. M. Lizin (April 1998 - July 2004).

person to the enjoyment of the highest attainable standard of physical and mental health; and on adequate housing, among others.<sup>322</sup>

281. In 2012, the Human Rights Council adopted the Guiding Principles on Extreme Poverty and Human Rights, a document that provides for the first time global policy guidelines focusing specifically on the human rights of people living in poverty.<sup>323</sup> Those Principles constitute a practical tool for policy-makers to ensure that public policies reach the poorest members of society, respect and uphold their rights, and take into account the significant social, cultural, economic and structural obstacles to human rights enjoyment faced by persons living in poverty.<sup>324</sup>

## **b. The 2030 Agenda: Sustainable Development Goals**

282. In September 2000, following a decade of conferences and summits, the United Nations adopted the Millennium Declaration,<sup>325</sup> committing nations to a new global partnership aimed to reduce extreme poverty and establishing the Millennium Development Goals (MDGs), with targets to be met by 2015.<sup>326</sup> The MDGs set out to pursue eight fundamental goals:

- Eradicate extreme poverty and hunger.
- Achieve universal primary education.
- Promote gender equality and empower women.
- Reduce the under-five mortality rate.
- Improve maternal health.
- Combat HIV/AIDS, malaria and other diseases.
- Ensure environmental sustainability.
- Develop a global partnership for development.<sup>327</sup>

283. During that time frame, some very encouraging outcomes were achieved:

- The number of persons living in extreme poverty declined by more than half, falling from 1.9 billion in 1990 to 836 million in 2015.

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<sup>322</sup> United Nations. [Thematic Mandates](#) Complete list of mandates.

<sup>323</sup> United Nations, [Resolution adopted by the Human Rights Council. Guiding Principles on Extreme Poverty and Human Rights](#). A/HRC/RES/21/11.

<sup>324</sup> United Nations, [Guiding Principles on Extreme Poverty and Human Rights](#).

<sup>325</sup> United Nations, General Assembly [Millennium Declaration](#), Fifty-fifth session, Agenda item 60b, September 13, 2000.

<sup>326</sup> United Nations, We can eradicate poverty: Millennium Development Goals and beyond 2015 Millennium Development Goals and beyond 2015. See [Millennium Summit](#).

<sup>327</sup> United Nations [Millennium Development Report: 2015 Report](#), 15 September 2016. pp. 4-7.

- The number of children of primary school age without schooling worldwide fell by almost half, fell from 100 million in 2000 to an estimated 57 million in 2015.
  - The literacy rate among young people aged 15 to 24 increased globally from 83 per cent to 91 per cent between 1990 and 2015.
  - Women gained ground in parliamentary representation over the past 20 years in nearly 90 per cent of the 174 countries for which there is available data. The average proportion of women in parliament nearly doubled during the same period.
  - The global under-five mortality rate declined by more than half, dropping from 90 to 43 deaths per 1,000 live births between 1990 and 2015.
  - The maternal mortality ratio declined by 45% worldwide.
  - More than 71 per cent of births were assisted by skilled health personnel globally in 2014, an increase from 59 per cent in 1990.
  - New HIV infections fell by approximately 40 per cent between 2000 and 2013.
  - The global tuberculosis mortality rate fell by 45 per cent and the prevalence rate by 41 per cent between 1990 and 2013.
  - Globally, 147 countries have met the drinking water target, 95 countries have met the sanitation target, and 77 countries have met both.<sup>328</sup>
284. In Latin American countries, between 1990 and 2008, the percentage of the population in extreme poverty fell from 22.5% to 13.7%, which translated into a decline in the number of people living in extreme poverty from 93 million to 71 million in 20 Latin American countries.<sup>329</sup>
285. The information available shows it is difficult to know how much progress has been made with poverty reduction in the Caribbean, due to the paucity of information on the subject in that subregion.<sup>330</sup> Nevertheless, United Nations agencies have stated that official data using US\$1.25 and US\$2 per day criteria show that five countries (Belize, Guyana, Jamaica, Suriname, and Trinidad and Tobago) account for a little more than 75% of the subregional population and for much of the Caribbean population living in extreme poverty. Estimates based on national poverty lines suggest that in the early 2000s those five countries accounted for approximately 88% of the extreme poverty and more than 80% of total poverty.<sup>331</sup>

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<sup>328</sup> United Nations [Millennium Development Goals Report 2015](#). 15 September 2016. pp. 4-7.

<sup>329</sup> United Nations (2010). [Millennium Development Goals. Achieving the Millennium Development Goals with equality in Latin America and the Caribbean: Progress and Challenges](#). 19 September 2016. p. 8.

<sup>330</sup> *Ibid.*, pp. 8-11.

<sup>331</sup> *Ibid.*

286. Notwithstanding the significant progress observed, it has been uneven across regions and countries, with huge disparities. Millions of people continue to live in poverty and extreme poverty in the world and in the Americas, whereby the hardest hit are those who suffer multiple discrimination, due to their gender, age, disability, ethnicity or geographical location.
287. In response to the need to continue striving for the eradication of poverty and the satisfaction of rights all over the world, a process was triggered that culminated in the adoption of the new "2030 Agenda." In effect, given that the eight MDGs had a time frame through to 2015, the passing of that deadline made it necessary to propose new goals that would address both pending and future needs thereafter. That is precisely how the Sustainable Development Goals (SDGs) came about, as a strategy for addressing MDG matters still pending, but broadening their scope to cover the three dimensions of sustainable development: economic, social, and environmental.<sup>332</sup>
288. January 1, 2016 was established at the starting point for the SDGs and for all countries of the world to intensify their efforts to overcome poverty in all its forms, reducing inequalities and overcoming discrimination and protecting the environment.<sup>333</sup>
289. The Agenda 2030 recognizes that ending poverty must go hand-in-hand with strategies that build economic growth and addresses a range of social needs including education, health, social protection, and job opportunities, while tackling climate change and promoting environmental protection.<sup>334</sup>
290. The SDGs recognize the fundamental nature of human dignity as a guiding principle and respect for human rights and the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.<sup>335</sup>
291. While the SDGs are not legally binding, governments are expected to adopt them as official targets and to establish national frameworks for the

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<sup>332</sup> United Nations (2015). [United Nations General Assembly Resolution 70/1. Transforming our World: the 2030 Agenda for Sustainable Development](#). 25 September 2015. p. 3.

<sup>333</sup> United Nations (2015). [Resolution adopted by the General Assembly on 25 September 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#). A/RES/70/1, October 21, 2015.

<sup>334</sup> United Nations (2015). [Sustainable Development Goals](#). 19 September 2016. p. 1.

<sup>335</sup> United Nations, General Assembly, [Resolution adopted by the General Assembly on September 25, 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#). Wednesday, October 21, 2015. Introduction.



achievement of these objectives. States have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection. Regional follow-up and review will be based on national-level analyses and contribute to follow-up and review at the global level.<sup>336</sup>

292. Within the 17 goals, 169 specific -- integrated and indivisible -- targets were set. This Report refers to the goals that are closely related to the elimination of poverty worldwide and the targets chosen to achieve the effective implementation of each:
293. Goal 1 is to end poverty in all its forms worldwide. The targets for meeting this goal include: implement nationally appropriate social protection systems and measures for all men and women, including floors; ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property; reduce the exposure and vulnerability of the poor and those in vulnerable situations to climate-related extreme events and other economic, social and environmental shocks and disasters; ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programs and policies to end poverty in all its dimensions.<sup>337</sup>
294. Goal 2 is to end hunger, achieve food security and improved nutrition and promote sustainable agriculture. Targets for meeting this goal include: by 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants and pregnant women, to safe, nutritious and sufficient food all year round; adopt measures to ensure the proper functioning of food commodity markets and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility; correct and prevent trade restrictions and distortions in world agricultural markets.<sup>338</sup>
295. Compliance with all the sustainable development goals and the 2030 Agenda, requires a gender perspective, taking into account the discrimination and historical stereotypes that have led to inferior treatment of women, girls, and adolescents, and to their having a limited impact on social, political, and economic life in their countries.

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<sup>336</sup> United Nations (2015). [The sustainable development agenda](#). 19 September 2016. p. 1.

<sup>337</sup> United Nations (2015). [Goal 1: End poverty in all its forms everywhere](#). 19 September 2016. p. 1.

<sup>338</sup> United Nations. [Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture](#). 19 September 2016. p. 1.

296. An important step towards incorporating that perspective was the adoption of Goal 5, which seeks gender equality and empowerment, autonomy, and dignity for all women. It is vital to take into consideration all the principles and legal standards upheld by universal and regional instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará, among others.
297. Goal 8 is to promote inclusive and sustainable economic growth, employment and decent work for all. Targets for meeting it include: sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries; achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labor-intensive sectors; promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services.<sup>339</sup>
298. Goal 10 is to reduce inequality within and among countries. Several targets have been set to reach this goal, including to: ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard; adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality; encourage official development assistance and financial flows, including foreign direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries.<sup>340</sup>
299. Each country is committed to planning a work agenda designed to implement these goals and ensure compliance by 2030 with the fundamental goal of ending all forms of poverty.<sup>341</sup>

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<sup>339</sup> United Nations. [Goal 8: Goal 8 is to promote inclusive and sustainable economic growth, employment and decent work for all.](#) 19 September 2016. p. 1.

<sup>340</sup> United Nations. [Goal 10: Reduce inequality within and among countries.](#) 19 September 2019. p. 1.

<sup>341</sup> United Nations. [Sustainable Development Agenda.](#) 19 September 2016. p. 1.

CHAPTER 3  
DIFFERENTIATED EFFECTS  
OF POVERTY



## DIFFERENTIATED EFFECTS OF POVERTY

300. The IACHR has observed, through its various mechanisms, that the elevated levels of discrimination and social exclusion that certain groups living in poverty endure have impeded their citizen participation, access to justice, and the effective enjoyment of rights.<sup>342</sup>
301. Economic growth does not automatically translate into better living standards for excluded and marginalized persons and groups, unless special, appropriate measures and public policies that include a human rights approach are adopted to create truly equal conditions. This is why the strides made in strengthening democracy and the rule of law in the Americas are seldom reflected in the full enjoyment of human rights for those living in poverty, extreme poverty, or other situations of marginalization and discrimination.
302. The Inter-American System does not recognize the right to live free of poverty as a legal rule, but its *corpus juris* recognizes human rights whose enjoyment is closely linked to overcoming poverty and extreme poverty. The IACHR emphasizes that in the light of these obligations, States must pay special attention to the social sectors and individuals who have suffered from the various manifestations of historic exclusion or are victims of persistent prejudice, and must immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that create and perpetuate discrimination.
303. This section aims to offer an introduction to the extreme forms of discrimination and social exclusion facing diverse persons, groups, and collectives living in poverty. For that purpose, the IACHR has information provided by state and non-state actors on poverty and the continuous discrimination, historical exclusion and permanent vulnerability. There is no doubt that the persons groups and collectives referred to in this section are not the only ones afflicted by poverty. However the activities developed by the Inter-American System for many decades through protection and promotion, provide solid ground for the assessment of the extra burden on these persons and groups.

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<sup>342</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

## A. Women

304. Women are affected by poverty to a greater extent and are at a particular disadvantage in exercising their civil, political, economic, social, and cultural rights. In its study on the *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*,<sup>343</sup> the Commission recognized the obligation “with immediate effect” to ensure the exercise of economic, social, and cultural rights without discrimination and in conditions of equality. It identified women as a sector that has traditionally been discriminated against and excluded from exercising these rights.
305. In mid-2014, there were 612 million people living in Latin America, more than half of whom were women (310 million women and 302 million men).<sup>344</sup> For that year it was estimated that “28.0% of the region’s population lived in poverty and 12% in indigence. The majority of those living in such conditions are children, indigenous, and Afro-descendants.”<sup>345</sup>
306. The IACHR has received information describing the diverse forms of discrimination that women suffer both in practice and in legal terms, in connection with the access and control of economic resources; the distribution and control of these resources within the family and outside the home; and the obstacles to procuring means to obtain these resources, a problem that is particularly severe in the area of work. These forms of discrimination vary and contribute to women’s poverty, violations of their productive and reproductive autonomy, and to a general lack of protection for their human rights.<sup>346</sup>
307. In order to reach equality between men and women and guarantee women’s rights autonomy is an indispensable requirement.<sup>347</sup> Economic and reproductive autonomy are essential aspects to the guarantee and exercise of civil, political, economic, social and cultural rights of women in situations of poverty and extreme poverty.
308. Reproductive autonomy entails a reconfiguration of the division of labor between the sexes that requires the State to take steps to promote a

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<sup>343</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, July 19, 2008, para. 48.

<sup>344</sup> ECLAC, Demographic Observatory of Latin America, Population Projections, November 2015, p. 138.

<sup>345</sup> ECLAC, Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean, January 2016, p. 162.

<sup>346</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.143, November 3, 2011, para. 252.

<sup>347</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, July 19, 2008, para. 57.

reconciliation between productive and labor life and a distribution of the tasks involved in providing care and upbringing. It also involves having due and adequate access to the information and services needed to be able to make free decisions concerning reproductive health and family planning. At the same time, women's financial autonomy needs to be rooted in the ability to generate income and decide on expenditures.<sup>348</sup>

309. The absence of conditions for a large number of women in the Hemisphere to be able to make timely, free, and safe decisions on reproduction constitutes a serious obstacle to emerging from poverty and inequality. At the same time, women without access to, or use or control of, productive resources (work, land, capital, information, new technologies, natural resources, housing) find themselves with limited capacity to generate income and obtain benefits commensurate with the contributions they make. The negative consequences of that in turn perpetuate their exclusion and inequality.
310. The Commission has expressed its concern about the inequalities between sexes, groups, and sectors in terms of access to economic resources, as a cause and contributing factor to this cycle of poverty.<sup>349</sup> In the region, women account for around 51% of the total population and only receive 38% of the total monetary income created and earned by people, with the remaining 62% going to men.<sup>350</sup> In this framework, Afro-descendent and indigenous women are especially at risk and have long been the victims of discrimination on three fronts: gender, poverty, and race. That discrimination has prevented them from fully exercising their civil, political, economic, social, and cultural rights.<sup>351</sup>
311. Women bear a disproportionate share of the burdens of care and upbringing within the family. Those burdens and the constraints they impose on women's use of time lower their chances of accessing formal sector, decent, and quality jobs, as well as the financial resources they need for their subsistence and that of their families. Although women continue to join the labor market and the education sector, the strides they have made in these areas are still in their early stages.<sup>352</sup>

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<sup>348</sup> ECLAC, *Social Panorama of Latin America 2002-2003*, p. 140.

<sup>349</sup> IACHR, *Annual Report 2006*, Introduction, para. 5.

<sup>350</sup> ECLAC, *Inclusive social development: a new generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*, January 2016, p. 26.

<sup>351</sup> IACHR, *Annual Report 2011*, Introduction, para. 5.

<sup>352</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.143, November 3, 2011, para. 247.

312. The ILO has indicated that women living in poverty and extreme poverty are typically characterized by their high rates of unpaid work and economic dependence on their partner, as well as their concentration in low-wage – mainly informal – occupations<sup>353</sup> and without access to social security.<sup>354</sup>
313. As a specific example of a generalized situation, the IACHR's 2012 *Report on the Situation of Human Rights in Jamaica* examines the country's legal framework to address discrimination against women and the obstacles facing them. The Commission noted that poverty disproportionately impacts women, in addition to low salaries, high unemployment rates, and underrepresentation in the political process as barriers confronted by women in overcoming discrimination and stereotypes that persist in Jamaica.<sup>355</sup>
314. In 2012, the Commission issued a report on the rights of women, establishing:
- a) a close link between the eradication of poverty and the protection and exercise of all women's rights;
  - b) the States' obligations to ensure that spouses in marriage and partners in *de facto* unions are treated as equals in the administration of assets and property, and that the rights of women in *de facto* unions receive equal protection when the union is dissolved;
  - c) the State's obligations to ensure that women have access to property, land, housing, credit and other banking assets both within and outside marriage; and
  - d) the State's obligation to ensure that women have access to work, as a vital source of revenue and a means to preserve economic independence, and an obligation to protect women's economic rights in other areas such as social security.<sup>356</sup>
315. The Inter-American Commission is concerned about the fact that the gender division of labor continues to have a direct impact on women's economic and financial autonomy, because it limits their options for joining the workforce

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<sup>353</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina: separata*, Mujeres, pobreza y mercado de trabajo: Argentina y Paraguay [Gender inequality and poverty in Latin America: offprint. Women, poverty, and the labor market], International Labor Organization, 2003. Ch. 1, p. 26.

<sup>354</sup> For instance in Argentina "34.9% of working women have an informal occupation, precarious employment and no social security" (Ministry of Social Development of Argentina, Input for the Preliminary Report "Poverty, Extreme Poverty and Human Rights in the Americas" of the IACHR, of February 6, 2017, p.7.).

<sup>355</sup> IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144, August 10, 2012, para. 214.

<sup>356</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, Executive Summary, OEA/Ser.L/V/II.143, November 3, 2011, para. 27.



and their access to, and use and control of, necessary economic resources. It also leads to the feminization of poverty, especially in cases of widowhood, marriage breakdown, family disintegration, or in cases where women are the head of the household.

316. The gender division of labor also imposes severe constraints on women's use of time, given their disproportionate burdens of domestic chores, care, and upbringing. That in turn limits their capacity to join the labor market and to reach managerial positions in economic, social, and political spheres. The IACHR considers that this social problem needs to be addressed with appropriate policies and measures geared towards better distribution of the wealth and assets generated by employment opportunities in a way that acknowledges women's unpaid labor.<sup>357</sup>
317. There are also marked differences in the region in terms of women's access to resources of their own, depending on whether they live in urban or rural areas. Guatemala and Honduras are countries with large percentages of women without income of their own, with the majority living in rural areas. In Guatemala, 31.2% of urban women and 52% of rural women have no income of their own; in Honduras, the figures are 32% and 49.3%, respectively.<sup>358</sup> Similarly, more than 28% of urban and rural women in México have no income of their own; in El Salvador that is the case for 29.6% of urban women and 42.3% of rural women.<sup>359</sup>
318. One of the issues of most concern to the Commission with respect to poverty among women in the region is gender-based violence. The most common forms of violence that women still face in the Americas are domestic and sexual violence perpetrated by both men known to them and strangers, sexual and other harassment in the workplace, homicide, trafficking in persons, and institutional violence. Based on data provided in Demographic, Health, and Reproductive Health Surveys, the Pan American Health Organization (PAHO) indicates that between 15 and 17% of women between the ages of 15 and 49 in Bolivia, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Paraguay, and Peru have, at some point, been physically or sexually assaulted by a partner.<sup>360</sup>

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<sup>357</sup> Ibid., para. 16

<sup>358</sup> ECLAC, Gender Equality Observatory. Equality Indicators.

<sup>359</sup> Ibid.

<sup>360</sup> Pan American Health Organization, Violence against Women in Latin America and the Caribbean: Comparative analysis of population-based data from 12 countries, Washington D.C., 2014, p. 34.

319. For its part, in its 2013-2014 Human Development Report for the region, the United Nations Development Programme points to Bolivia, Colombia, Ecuador, and El Salvador as the countries with the highest rates of violence against women committed by any perpetrator (including a partner).<sup>361</sup> The highest rates for domestic violence are found in Chile, the Dominican Republic, and Uruguay.<sup>362</sup> In 2005-2011, fifteen countries had rates of rapes against women of between 9.0 and 56.5 per hundred thousand inhabitants, with the Dominican Republic having the highest rate (56.5), followed by Costa Rica (34.6) and México (29.0). Countries in which the percentage rate increased included Bolivia, the Dominican Republic, and Brazil.<sup>363</sup>
320. Poverty, lack of opportunities, and barriers to access to education render women and girls vulnerable and easy prey for organized crime. In fact, women with low socio-economic and educational levels are among the persons at highest risk of being induced to participate in criminal operations as perpetrators or as traffickers.<sup>364</sup> The number of women incarcerated for drug-related crimes, including possession, is very high and increasing all the time. For instance, in Argentina, Brazil, Chile, Paraguay, and Peru, the percentage of women deprived of liberty for drug-trafficking or possession exceeds 50%; in El Salvador the figure is 25.2%; in Mexico 5.4%.<sup>365</sup>
321. The Study of the Secretary-General of the United Nations<sup>366</sup> emphasized that poor women are at increased risk of being the victims of violence inflicted by their partner and of sexual violence, including rape. The correlation between poverty and violence against women evidences the need for changes in policies and practices in order to respect, protect, and fulfill women's economic and social rights.
322. In this context of violence, the IACHR is particularly concerned by how limited access to justice is for women living in poverty or extreme poverty. In its report on *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American Human Rights System*, the IACHR verified the divergence in access to justice of women that have economic means in comparison with those who are

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<sup>361</sup> United Nations Development Programme (UNDP), Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America, p. 84.

<sup>362</sup> United Nations Development Programme (UNDP), Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America, p. 83.

<sup>363</sup> Ibid.

<sup>364</sup> OAS, Inequality and social inclusion in the Americas – 14 essays, OEA/Ser.D/XV.11, undated, p. 131.

<sup>365</sup> United Nations Development Programme (UNDP), Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America, p. 125.

<sup>366</sup> United Nations, *Ending violence against women; From words to action. Study of the Secretary-General*, 2006, p. 39.

economically disadvantaged, and it has insisted in the necessity of offsetting situations of economic disadvantage.<sup>367</sup>

323. The Commission has pointed out that women can only claim their rights when they know them and therefore it reiterates that the lack of information on the judicial remedies available - and the fact that violence and discrimination are still accepted in the societies of the hemisphere - have had as a result a reduced number of complaints about acts of violence against women.<sup>368</sup> For instance, in Guatemala, there were 46,388 complaints of violence against women in its various forms filed with the Public Prosecutors' Office (*Ministerio Público*) during 2016. The Courts handed down 1,649 judgments, of which 506 were acquittals in cases involving violence against women. In Peru, it is estimated that four out of every ten girls between the ages of 15 and 19 claim to have been forced into non-consensual sexual relations. In addition, Peruvian National Police records for 2015 list 2,889 complaints of sexual abuse of children and adolescents nationwide.<sup>369</sup>
324. Maternal mortality continues as a serious human rights problem dramatically affecting women in the region and worldwide, with repercussions on women's families and communities. Specifically, women who have historically been marginalized for reasons of race, ethnicity, economic status, and age are the ones with the least access to the maternal health services.<sup>370</sup> The Commission has received information indicating that approximately 536,000 women die each year throughout the world due to complications from pregnancy and childbirth, despite the fact that these deaths are generally preventable at relatively low cost.<sup>371</sup>
325. The World Bank estimates that if women had access to interventions for pregnancy and birth-related complications, particularly emergency obstetric care, 74 percent of maternal deaths could be prevented.<sup>372</sup> In that sense, the high maternal mortality rate due to avoidable causes is a

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<sup>367</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American Human Rights System](#), OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 65.

<sup>368</sup> IACHR, [Access to Information, Violence against Women, and the Administration of Justice in the Americas](#), OAS/Ser.L/V/II.154, March 27, 2015, para. 55.

<sup>369</sup> PROMSEX, Comments and additional information regarding the Preliminary Report on "Poverty, Extreme Poverty, and Human Rights in the Americas" prepared by the Inter-American Commission on Human Rights, January 31, 2017, p. 2.

<sup>370</sup> IACHR, [Access to Maternal Health Services from a Human Rights Perspective](#), OEA/Ser.L/V/II, June 7, 2010, para. 1.

<sup>371</sup> *Ibid.*, para. 7.

<sup>372</sup> World Bank, [The Millennium Development Goals for Health: Rising to the Challenges](#), 2004, p. 54.

manifestation of the violation of women’s human rights, particularly their sexual and reproductive rights.<sup>373</sup>

326. The United Nations Human Rights Council has reported that an average of 1,500 women and girls die every day as a result of preventable complications related to pregnancy and childbirth.<sup>374</sup> For every woman who dies, another 30 are injured or become permanently ill, potentially resulting in life-long pain, disability, and socio-economic exclusion.<sup>375</sup> Although maternal mortality and morbidity affect women of all social and economic classes, the IACHR warns that the disproportionately high number of poor, indigenous, and/or Afro-descendant women – most of whom live in rural areas – are more often unable to fully enjoy their maternal health-related human rights.
327. The Commission has received information on the alarming impact that the criminalization of abortion in all circumstances is having on women throughout the region. During the public hearings, the Commission received information on cases of women in El Salvador who were arrested, deprived of their liberty, and convicted on the basis of complaints filed by their doctors without sufficient evidence after attending emergency rooms because of spontaneous miscarriages.<sup>376</sup> It has been reported that between 2000 and 2011 at least 129 women were tried for the crimes of abortion or aggravated homicide in that country.<sup>377</sup>
328. As a consequence of laws that criminalize abortion, there are women facing sentences of between 30 and 40 years in prison, who were initially accused of induced abortion and then convicted of aggravated homicide.<sup>378</sup> According to CLADEM, five Latin American countries criminalize abortion under any circumstances: El Salvador, Haiti, Honduras, Nicaragua, and Suriname.<sup>379</sup>

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<sup>373</sup> Ministry of Social Development of Argentina, Input for the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR, February 6, 2017, p. 7.

<sup>374</sup> United Nation, Human Rights Council, Preventable mortality and morbidity and human rights, A/HRC/11/L.16/Rev.1, June 12, 2009, para. 1.

<sup>375</sup> United Nations, Millennium Development Goal 5: Improve Maternal Health.

<sup>376</sup> IACHR, Annex to the Press Release issued at the end of the 147th period of sessions, “Situation of Human Rights of Women and Girls in El Salvador,” held on March 16, 2013. IACHR. Legal standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application. OEA/Ser.L/V/II.143 Doc. 60, November 3, 2011. Para. 54.

<sup>377</sup> IACHR, Situation of Human Rights of Women and Girls in El Salvador, hearing held on March 16 2013. Annex to the Press Release issued at the end of the 147th period of sessions.

<sup>378</sup> Mesoamerican Women Human Rights Defenders Initiative, Attacks against women human rights defenders in Mesoamerica, Report 2012-2014, p.2.

<sup>379</sup> CLADEM, Contributions by CLADEM to the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR, January 31, 2017, p. 10. CLADEM also points out that “The absolute criminalization of abortion goes so far as to prohibit the interruption of the pregnancy of women victims of

329. In countries in which the legislation against abortion is highly restrictive, maternal mortality due to post-abortion complications is frequent due to the fact that the punitive system coincides with a lack of provision for safe and legal health services where the women can receive medical attention.<sup>380</sup> In this context, the laws trigger indirect discrimination. On the one hand, most women can only have an abortion in unhealthy and unsafe conditions, assisted by unqualified persons (clandestine abortions). On the other hand, fear of criminal prosecution for alleged commission of the crime of abortion deters women from seeking medical attention, especially in hospitals.<sup>381</sup>
330. Most of the women who have been prosecuted are young women living in poverty, have low levels of education, and face enormous challenges in accessing basic health services.<sup>382</sup> During the hearing on *Sexual and Reproductive Rights of Women in South America* held as part of the 158th Special Session, the participating organizations highlighted the gender-based discrimination and prejudices in all spheres of women's lives, particularly poor women. This situation is exacerbated in the area of sexual and reproductive rights through laws, policies, and practices based on discriminatory stereotypes that further perpetuate violence against women.<sup>383</sup>
331. The lack of comprehensive sexual education harms the reproductive autonomy of girls, adolescents, and young women. The lack of information on sexual education makes sexuality a taboo that must be silenced as something negative that cannot be shared nor complained about when abuses are perpetrated. The figures for 12 countries in Latin America and the Caribbean show that 60,690 girls under the age of 14 became mothers during 2012.
332. Several studies reveal that the majority of these girls are victims of sexual violence. In the segment for girls aged 15 to 19, there is a large incidence of

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sexual violence or who may die if the pregnancy continues and it affects above all women living in poverty in remote areas, young women, and those with limited education" (p.10).

<sup>380</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 42. CIDH. *Legal standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*. OEA/Ser.L/V/II.143 Doc. 60, November 3, 2011. paras. 52-54. IACHR. [On International Women's Day, IACHR Urges States to Guarantee Women's Sexual and Reproductive Rights](#). March 6, 2015.

<sup>381</sup> PROMSEX, Comments and additional information regarding the Preliminary Report on "Poverty, Extreme Poverty, and Human Rights in the Americas" prepared by the Inter-American Commission on Human Rights, January 31, 2017, p. 2.

<sup>382</sup> IACHR, [Updated Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application, 2011-2014](#), OEA/Ser.L/V/II.143, November 3, 2011, para. 54.

<sup>383</sup> IACHR, [Sexual and Reproductive Rights of Women in South America](#), hearing held June 7, 2016. [Report on the 158th Special Session of the IACHR](#).

early sexual initiation as well as violence toward girls by family members, people they know, neighbors, relatives, or strangers.<sup>384</sup> Pregnancy has immediate and lasting consequences for girls and entails the infringement of many of their rights to health, education, and social and community inclusion, as well as their integration into family life and their life plans.

333. The majority of child mothers drop out of school. Realization of the right to education of adolescent and young pregnant women and mothers is often thwarted by widespread discrimination against them in educational systems in Latin American countries. This is manifested in a variety of ways ranging from denying them access to schools, imposing disciplinary sanctions, and even permitting or tolerating subtle forms of harassment, exclusion, and rejection by students, teachers, and parents. They also tend to be shunned by most of their friends and face tension at home. From the economic point of view, they lack autonomy and depend on their family of origin. Access to employment is difficult, while social assistance is not comprehensive, and generally does not cover all the needs of the young person or her baby.<sup>385</sup>
334. The intersection between gender discrimination and discrimination suffered by indigenous peoples has specific consequences impairing the exercise of sexual and reproductive rights. Indigenous women – who are generally economically disadvantaged – have less access to high quality sexual and reproductive health care services that are safe and respectful of an intercultural and human rights perspective. Thus, in a maternal health context, there are cases of obstetric violence when health professionals fail to respect the cultural background of women and their customs, either before or at the time of birth, and fail to give them the information they need.<sup>386</sup>
335. The Pan American Health Organization/World Health Organization (PAHO/WHO) has indicated that high poverty rates in Latin America and the Caribbean increase the burden of some infectious diseases. In particular, it has observed that “neglected diseases,”<sup>387</sup> known as infectious diseases, which are often parasitic, are directly and overwhelmingly related to the

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<sup>384</sup> CLADEM, *Girl Mothers: Regional Review on forced child pregnancy and motherhood in Latin America and the Caribbean*, 2016. See also: MESECVI. *Hemispheric Report on Sexual Violence and Child Pregnancy in the States Party to the Belém do Pará Convention*, 2016; and UNICEF. *Experiences and accounts of pregnancy amongst adolescents*. 2014.

<sup>385</sup> CLADEM, *Girl Mothers: Regional Review on forced child pregnancy and motherhood in Latin America and the Caribbean*, 2016.

<sup>386</sup> IACHR. *Indigenous Women and Their Human Rights in the Americas*. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, paras. 203-204. PROMSEX, *Comments and additional information regarding the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas”* prepared by the Inter-American Commission on Human Rights, January 31, 2017, p. 4.

<sup>387</sup> PAHO/WHO, *General Information on Neglected Infectious Disease Integrated Approach*.

populations most at risk and excluded, such as women living in poverty and extreme poverty, residents of urban informal settlements, migrant workers, and indigenous populations.<sup>388</sup>

336. The WHO characterizes these types of diseases as “both a cause and a consequence of poverty,” as they can cause chronic conditions that can reduce learning capabilities, productivity, and, thus, income earning capacity. These diseases may be preventable given that they are the result of insufficient access to clean drinking water, sanitation, adequate housing, education, and health services.<sup>389</sup>
337. Migrant women are also forced to migrate to other territories due to poverty and the lack of opportunities to earn an income.<sup>390</sup> Far from the stereotype of women migrating as partners or passive companions, the search for employment is one reason why women emigrate. As for female human rights defenders, they constitute a group at risk of living in poverty. In contexts characterized by weak institutions, organized crime, corruption, and militarization, women defenders experience risks and aggression in the form of threats, warnings, intimidation or psychological harassment, the excessive use of force, in addition to murders, threats leveled at family members, and so on.<sup>391</sup> This context of violence renders them vulnerable when it comes to exercising their economic, social, and cultural rights.

## ***B. Children and Adolescents***

338. Measuring child poverty requires a multidimensional approach based on a perspective that includes children and adolescents’ access to adequate services enabling their full physical, social, mental, spiritual, and moral development, providing for their ability to enjoy all their rights, reach their full potential, and participate as full and equal members of society.

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<sup>388</sup> PAHO/WHO, Elimination of Neglected Diseases and Other Poverty-Related Infections, Concept Document CD49/9, para. 2.

<sup>389</sup> PAHO/WHO, Elimination of Neglected Diseases and Other Poverty-Related Infections, Concept Document CD49/9, para. 2, (Resolution CD49.R19, Elimination of Neglected Diseases and Other Poverty-Related Infections. See also: PAHO/WHO Plan of Action for the Elimination of Neglected Infection Diseases and Post-Elimination Actions 2016-2012, June 2016.

<sup>390</sup> IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015. Paras. 30-31.

<sup>391</sup> CLADEM. Patterns of Violence against Women in Latin America and the Caribbean. Report presented to the United Nations Rapporteur on Violence against Women, its Causes and Consequences, 2014, p. 9.

339. The particular concern for children and adolescents is not only due to their overrepresentation among the poor but also to their dependency on adults to meet their basic material needs and to enjoy their rights, as well as the particular vulnerability of their development to the consequences of poverty and inequality.<sup>392</sup>
340. There are currently more than 80 million children and adolescents in Latin America and the Caribbean living in poverty or extreme poverty, or more than 45 percent of the population under the age of 18. According to ECLAC and UNICEF figures, one out of every five children lives in extreme poverty – the equivalent of 32 million children in the region. Indigenous and Afro-descendent children are the most affected by poverty: one out of every three indigenous and Afro-descendent children lives in extreme poverty and two out of every three live in poverty.<sup>393</sup>
341. All countries in the region, regardless of their level of development and economic growth, are dealing with the consequences of child poverty. In Canada, one of the most developed nations, nearly 14 percent of children and adolescents live in relative poverty - which measures how much a household's consumption pattern differs from a typical household in the society to which it belongs - with an index reaching 40% for indigenous children.<sup>394</sup> In the United States, more than 16 million children and adolescents (22%) live in families with income below the federal poverty threshold,<sup>395</sup> with the Afro-descendent population especially affected.
342. The impact of poverty has more profound and lasting effects on children than on adults. The higher impact of poverty on children and adolescents is associated with the rights that are principally violated in poor households, such as the right to health, nutrition, drinking water, sanitation, access to quality education, decent housing, and adequate care provided by families and social institutions, among others. These rights are fundamental for children and adolescents who are undergoing physical, cognitive, and intellectual growth and who deserve special protection from the State, precisely because these rights are essential as a foundation for enjoying all other rights.

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<sup>392</sup> ECLAC, [Social Panorama of Latin America 2013](#), (LC/G.2580), Santiago, Chile, p. 96.

<sup>393</sup> UNICEF and ECLAC, [Pobreza infantil en América Latina y el Caribe](#), [Child Poverty in Latin America and the Caribbean] 2010, pp. 37, 38, and 47.

<sup>394</sup> UNICEF, [Measuring child poverty, New league tables of child poverty in the world's rich countries, Report Card 10, 2012](#); Canada, Statistics Canada. Table 111-0015 - Family characteristics, Low Income Measures (LIM), by family type and family type composition, annual, CANSIM.

<sup>395</sup> Columbia University, National Center for Children in Poverty, [Basic Facts about Low-Income Children, Children under 18 years, 2014](#).



343. Child poverty, in addition to preventing children from accessing the basic standards of wellbeing and meeting their current basic needs, also affects their future by restricting their ability to develop skills to access future opportunities, thus inuring them to the cycle of inter-generational poverty. In this sense, the United Nations High Commissioner – in its Guiding Principles on Extreme Poverty and Human Rights – has called attention to the fact that even short periods of deprivation and exclusion can dramatically and irreversibly harm a child’s right to survival and development, thereby causing poverty in adulthood.<sup>396</sup>
344. Given that children are constantly developing and are dependent on adults to ensure their more fundamental rights and wellbeing, the role of families is essential to protecting children. The Court and the Commission have indicated that “in principle, the family should provide the best protection to children (...). And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus.”<sup>397</sup>
345. The Commission has observed that poverty in the region is one of primary reasons parents decide to give up guardianship of their children, give them up for adoption, or abandon them. It is also one of the main reasons why the authorities decide to separate children from their parents and place them in institutions. In this regard, the Inter-American Court has established that poverty cannot be the sole grounds for separating children from their parents and the resulting denial of other rights enshrined in the American Convention, rather a determination must be made based on the need to take measures to support the family.
346. The Commission has also observed that poverty increases the vulnerability of children and adolescents to violence, exploitation, abuse, and mistreatment.<sup>398</sup> Children and adolescents living and growing up in neighborhoods and contexts with limited access to basic services and the presence of criminal groups are exposed to being captured, utilized, and exploited by these groups to carry out their illegal activities. In the words of the IACHR: “The limitations adolescents face in exercising and enjoying their rights, in conjunction with the lack of education and work opportunities that

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<sup>396</sup> Office of the United Nations High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, pp.8-10.

<sup>397</sup> IACHR, [Report on the Rights of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OEA/Ser.L/V/II. Doc.54/13, 2013, para. 42. I/A Court of H.R. [Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002](#). Series A No. 17, para. 66. IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, paras. 49 et seq..

<sup>398</sup> Office of the United Nations High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, pp.8-10.

would enable them to develop an independent life project with dignity, further expose them to criminal organizations and their activities.”

347. The Commission believes that children and adolescents linked to criminal groups is an outgrowth of the lack of State measures to guarantee the rights of children and protect them from the rights violations, exclusion, and violence that they face at each turn.”<sup>399</sup> The Commission has noted that in these contexts, girls and female adolescents – due to trickery, pressure, and a lack of other options – are more exposed to being captured and sexually exploited, given the high levels of trafficking for sexual exploitation in the region.<sup>400</sup>
348. The IACHR has also brought attention to the persistent stereotypes that identify adolescents, particularly males in poor and peripheral neighborhoods, as the main agents responsible for violence and criminal activities. There is a widespread social perception that views these adolescents as potential “social dangers” that must be controlled. These perceptions have led to frequent abuses and arbitrary practices carried out by law enforcement against adolescents, as well as excessive penalization and criminalization against them and extremely precarious detention conditions.<sup>401</sup>
349. The IACHR notes the great advances made in the region in the fight to eradicate childhood malnutrition. Nonetheless, moderate to serious malnutrition affects 2.3 million children from the ages of 0 to 4 in Latin America and the Caribbean, which represents 4.5 percent of the children in this age group. In addition, 8.8 million children are affected by chronic malnutrition, which is equal to nearly 16 percent of children. This statistic does not reflect the heterogeneous nature of the situation in the various countries of the region, where this percentage fluctuates significantly. In countries such as Argentina, Chile, Brazil, Jamaica, Mexico, Paraguay, and the Dominican Republic, the percentage of children suffering from moderate or serious malnutrition is 3.5 percent, while this percentage is above 10

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<sup>399</sup> IACHR, Report on Violence, Children, and Organized Crime, OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 578. In this context, for instance, the Ministry of Justice and Human Rights of Argentina reports that it has implemented the National Program “Victims against Violence”, taking into account concerns with respect to access to rights and the particular dependence of children on adults (Ministry of Social Development of Argentina, Input for the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR, February 6, 2017, pp. 11-12).

<sup>400</sup> IACHR, Report on Violence, Children and Organized Crime, OEA/Ser.L/V/II.Doc. 40/15, 2015, paras. 8 and 239 et seq..

<sup>401</sup> IACHR, Report on Violence, Children and Organized Crime, OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 2.

percent in countries like Guatemala, Haiti, Honduras, Guyana, and Suriname.<sup>402</sup>

350. One of the first signs of malnutrition is stunted growth and shorter height of a boy or girl for his or her age. High levels of stunting are associated with poor socioeconomic conditions and increased risk of frequent and early exposure to adverse conditions such as illness and/or inappropriate feeding practices.<sup>403</sup> In 2010, seven million children in Latin America were short for their age.<sup>404</sup> Malnutrition is particularly dangerous for children because they are in a crucial period of their development and growth. It is a factor that increases their risk of death, inhibits their full cognitive development, and may have irreversible consequences for their health status throughout their entire adult life.<sup>405</sup>
351. Although in recent years, child labor has been substantially reduced in Latin America and the Caribbean, 5.7 million children work before reaching the minimum employment age or perform jobs that should be prohibited, according to ILO Convention 182 on the worst forms of child labor. The large majority of these children work in agriculture, while others are employed in other high-risk sectors such as mining, garbage collection, domestic work, pyrotechnics, and fishing.<sup>406</sup> Children living in poverty are exposed to informal child labor and to situations that may represent abuse and exploitation, including modern forms of slavery.
352. Children’s involvement in productive activities for economic reasons is frequent in the region and families see it as a contribution to the household economy. The IACHR has expressed its concern regarding situations of abuse, mistreatment, and exploitation to which children engaged in some

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<sup>402</sup> The figures may be read at UNICEF and CEPAL, *Child Poverty in Latin America and the Caribbean, 2010*, p.56 et seq.

<sup>403</sup> “On a population basis, high levels of stunting are associated with poor socioeconomic conditions and increased risk of frequent and early exposure to adverse conditions such as illness and/or inappropriate feeding practices.” WHO, *Global Database on Children Growth and Malnutrition, Child growth indicators and their interpretation*. Available at: <http://www.who.int/nutgrowthdb/about/introduction/en/index2.html>

<sup>404</sup> Mercedes de Onis, Monika Blössner, Elaine Borghi. *Prevalence and trends of stunting among pre-school children, 1990–2020*. En: *Public Health Nutrition*, 2012, p. 5.

<sup>405</sup> In this regard, the Argentine State reported that the National Early Childhood Plan was implemented in order to guarantee the development of children between 45 days and four years old in a situation of social vulnerability, one of its components being “child-friendly spaces” (*Espacios de Primera Infancia* - EPIs). Furthermore, with a view to ensuring children’s healthy development and preventing child malnutrition, joint work is being done with the Cooperadora de Nutrición Infantil or CONIN Foundation to provide periodic nutritional care based on the age of each child, within the EPI setting. Various projects were also implemented to promote and strengthen Child Malnutrition Prevention and Recovery Centers in a number of provinces. Ministry of Social Development of Argentina. *Ministry of Social Development of Argentina, Input for the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR*, February 6, 2017, pp. 8-9.

<sup>406</sup> Figures from the [International Labor Organization](#) (ILO).

type of productive activity may be subjected; their vulnerability when reporting such situations; their frequent victimization by stigmatization and criminalization, even at the hands of government security forces; and how difficult it is for them to complete their education, as evidenced by high absenteeism and dropout rates.<sup>407</sup>

353. Domestic work performed by children and adolescents is a worrying practice in the region that is still well established and socially accepted. According to information received by the IACHR, there are high numbers of girls in particular who are working in domestic service to contribute to the household economy. This impairs the exercise of rights such as the right to education, although many families in precarious socio-economic circumstances send their daughters to the cities to work as maids in the belief that they will have better access to education. This situation also exposes them to mistreatment, abuse, violence, neglect, and exploitation, all of which is facilitated by their vulnerability due to distance from and lack of habitual contact with their families. A high percentage of trafficking victims have a history of working as maids at a young age.<sup>408</sup>
354. Even when recognizing the advances recorded in the region in the area of education, 1.4 million children have never attended school, and in some Central American countries such as El Salvador, Guatemala, Honduras, and Nicaragua between 2 percent and 4 percent of school aged children have never been able to exercise this right. In addition, 5.6 percent of the region's children have dropped out of school (10 million). This situation is particularly widespread in some Central American countries (Guatemala, Nicaragua, and Honduras) and in Peru, where more than 10 percent of children aged 6 to 17 do not attend school.<sup>409</sup>
355. Children living in poverty are more likely to leave school, or may not even attend school, in order to perform income-generating activities or to help with household tasks. The economic consequences of dropping out of primary and secondary school are devastating and perpetuate the cycle of poverty. Girls are more frequently denied the right to education than boys; this in turn reduces their options and increases women's impoverishment.<sup>410</sup> In neighborhoods and areas most affected by poverty, educational quality often tends to be deficient and indicates that in practice education is not fulfilling its important mission.

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<sup>407</sup> IACHR, Press Release 147/16, [IACHR calls attention to the continuing challenges facing pre-teen and teenage girls in the region](#), October 12, 2016.

<sup>408</sup> Ibid.

<sup>409</sup> UNICEF and ECLAC, [Child poverty in Latin America and the Caribbean](#), 2010, p. 69.

<sup>410</sup> United Nations, Office of the High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, p. 34.

356. The IACHR reiterates that education is a fundamental human right and an indispensable means for realizing other human rights. Education is a fundamental means by which children fully develop their personalities, talents, and capacities, thus increasing their chances of finding quality employment and lifting themselves out of poverty. In particular, education plays a decisive role in emancipating girls and women, in promoting children's rights and making children aware of those rights, and in protecting them against abuses and violations of those rights.

### ***C. Indigenous Peoples***

357. The Commission notes that indigenous peoples in the Americas continue to be disproportionately affected by poverty and extreme poverty, compared to the general population. Poverty affects 43 percent of the indigenous households in the hemisphere, twice the poverty rate for non-indigenous households.<sup>411</sup> In addition, 24 percent of all indigenous households live in conditions of extreme poverty, i.e., extreme poverty affects these communities 2.7 times more than it does non-indigenous households.<sup>412</sup>
358. Contributing factors to these rates include the persistence of a situation of structural and historical exclusion of the indigenous population, which generates and facilitates inter-generational repetition of inequality and poverty. This is reflected in the fact that indigenous peoples continue to be affected by higher levels of illiteracy, malnutrition, difficulties in accessing medical services, and obstacles to accessing basic services such as drinking water, sanitation, electricity, and adequate housing. Similarly, challenges still persist that hamper their access to justice and undermine the effective participation and political representation of these communities.<sup>413</sup>
359. While Latin America experienced rapid economic growth and reduced rates of poverty and extreme poverty in the 2000s, this poverty reduction has not been distributed equitably.<sup>414</sup> Although the regional trend in the area of poverty reduction has also benefitted indigenous peoples, indigenous households have not seen the same reduction in poverty as non-indigenous households.<sup>415</sup> On the contrary, the difference between poverty rates among indigenous and non-indigenous populations remains unchanged or

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<sup>411</sup> World Bank, *Indigenous Latin America in the Twenty-First Century, the First Decade*, 2015, p. 59.

<sup>412</sup> Ibid.

<sup>413</sup> Ibid.

<sup>414</sup> Ibid.

<sup>415</sup> Ibid., pp. 58-59

continues to expand to the detriment of indigenous peoples, thus exacerbating inequality.<sup>416</sup>

360. For example, chronic poverty declined significantly in Bolivia during the 2000s but the poverty gap between indigenous and non-indigenous households increased by 32 percent.<sup>417</sup> This was also the case in Ecuador, with an increase of 13 percent, and in Brazil, with an increase of 99 percent.<sup>418</sup> In Chile, the available data indicate that the income-based poverty rate among indigenous populations is twice that of the non-indigenous population (23.4 percent versus 13.5 percent), and the income-based rate of extreme poverty is exactly twice that of the non-indigenous population (8.2 percent versus 4.1 percent).<sup>419</sup>
361. In Paraguay, poverty rates for the indigenous population are 7.9 times higher than for the rest of the population.<sup>420</sup> In Guatemala, between 2006 and 2014, indigenous persons affected by extreme poverty increased from 30 percent to 40 percent of the members of indigenous peoples.<sup>421</sup> The gap between indigenous and non-indigenous populations is particularly notable in the area of extreme poverty. While 12.8 percent of the non-indigenous population is living in extreme poverty, 39.8 percent of the indigenous population is in that situation.<sup>422</sup>
362. Data compiled by the World Bank provide some clear evidence that even under similar conditions of education, employment, geographic location, and civil status, indigenous households have higher poverty rates than their non-indigenous peers.<sup>423</sup> A comparison of similar households — where the head of the family has completed primary school, is married, and has two children — has demonstrated that the household’s probability of being poor increases by 13 percent and its probability of being extremely poor increases by 15.5 percent if the head of household belongs to an indigenous group.<sup>424</sup>

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<sup>416</sup> Ibid., p. 58; ECLAC, [Guaranteeing indigenous people’s rights in Latin America. Progress in the past decade and remaining challenges](#), 2014.

<sup>417</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>418</sup> Ibid.

<sup>419</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to Chile](#), A/HRC/32/31/Add.1, April 8, 2016, para. 53.

<sup>420</sup> United Nations, Department of Economic and Social Affairs, [State of the World’s Indigenous Peoples](#), ST/ESA/328, 2009, p. 27.

<sup>421</sup> Response from the State of Guatemala to the questionnaire, Human Rights Ombudsman of Guatemala.

<sup>422</sup> Ibid.

<sup>423</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 61.

<sup>424</sup> Ibid., p. 61.

363. In this regard, it has been pointed out that the mere fact of being born to indigenous parents “substantively increases the probability of being raised in a poor household, regardless of other conditions such as levels of education of the parents and size or location of the household, contributing to a poverty trap that hampers the full development of indigenous children’s potential.”<sup>425</sup>
364. Indigenous peoples in high- and middle-income countries also live in situations of serious social and economic marginalization,<sup>426</sup> although the disparities “[tend] to be masked at the international level owing to the lack of disaggregated data and the high level of enjoyment of such rights by the non-indigenous population compared with indigenous peoples.”<sup>427</sup>
365. In effect, the statistics in Canada and the United States are alarming. In its report on the situation in the United States, the former United Nations Special Rapporteur on this subject emphasized that: “Native Americans, especially on reservations, have disproportionately high poverty rates, rising to nearly double the national average. Along with poverty, Native Americans suffer poor health conditions, with low life expectancy and high rates of disease, illness, alcoholism and suicide.”<sup>428</sup> The statistics also show that Native Americans in the United States have fewer years of schooling than the non-indigenous population, have criminalization and incarceration rates higher than those in the general population, and that reservations are affected by rates of violent crime that are double the national average.<sup>429</sup>
366. Consequently, the Commission emphasizes that this pattern of poverty and extreme poverty among the region’s indigenous communities exists regardless of their urban or rural context, in both developed and developing countries, and in countries where they represent the majority of the population or a minority.<sup>430</sup> In other words, being indigenous seems of itself to be a cause of poverty and extreme poverty; the origin of this phenomenon is the existence of a pattern of structural discrimination and historical social

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<sup>425</sup> Ibid., p. 61.

<sup>426</sup> IACHR, Missing and Murdered Indigenous Women in British Colombia, Canada, OEA/Ser.L/V/II. Doc. 30/14, 2014; United Nations, Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America, A/HRC/21/47/Add.1, August 30, 2012; United Nations, Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in Canada, A/HRC/27/52/Add. 2, July 4, 2014.

<sup>427</sup> United Nations, Permanent Forum on Indigenous Issues, Discussions on the Millennium Development Objectives, E/2006/43-E/C.19/2006/11, May 14-25, 2007, para. 6.

<sup>428</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America, A/HRC/21/47/Add.1, August 30, 2012, para. 34.

<sup>429</sup> Ibid.

<sup>430</sup> United Nations, Department of Economic and Social Affairs, State of the World’s Indigenous Peoples, ST/ESA/328, 2009, p. 1.

exclusion against them, reproducing a cycle of poverty affecting their ability to enjoy fundamental rights.

367. The Commission also notes that indigenous women may be particularly affected by poverty. They suffer additional discrimination based on gender, leading to additional disadvantages, marginalization, poverty, and in the most extreme cases, violence, trafficking, prostitution, and restricted access to justice. This exclusion is documented in all the available figures or statistics. This is particularly true in terms of high levels of illiteracy, high school dropout rates, high rates of unemployment or presence in the informal economy, and troubling levels of maternal mortality.
368. The Commission reiterates the fact that there is an intimate and documented relationship between the current precarious situation of indigenous peoples and structural violations of their rights to self-determination, land, and the resources within their territories.<sup>431</sup> In particular, indigenous communities frequently live under extremely miserable conditions due to the lack of access to land and the natural resources needed for their subsistence. In several countries of the hemisphere, many indigenous peoples have been driven from their lands and forced to live in poverty along the roadsides or in cities where they lack the minimum conditions for a decent life.<sup>432</sup>
369. As a result of the serious deforestation that occurs due to extractive or development activities, and the expansion of agricultural fields for soy or palm oil, for example, the invasion of settlers, or extraction or illegal logging activities, various indigenous peoples are facing a gradual loss of control over their territories and deteriorating living conditions.<sup>433</sup>

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<sup>431</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, A/HRC/27/52, August 11, 2014, para. 44.

<sup>432</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, Mission to Paraguay (December 1-16, 2011), 2012; I/A Court HR, Case of the Sawhoyamaya Indigenous Community v. Paraguay, Judgment of March 29, 2006 (Merits, Reparations, and Costs), Series C No. 146; I/A Court HR, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005 (Merits, Reparations, and Costs); I/A Court HR, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Judgment of August 24, 2010 (Merits, Reparations, and Costs).

<sup>433</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, Mission to Paraguay (December 11-16, 2011), 2012, p. 13; Response of the State of Guatemala to the questionnaire, Human Rights Ombudsman of Guatemala, p. 26; IACHR, 156th POS, Human Rights Situation of Indigenous Peoples in the Context of the Activities of the Palm Oil Industry in Guatemala, October 22, 2015. See also State of Argentina, Input for the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR, February 6, 2017, pp. 13-14, which describes in detail the implementation of the Social Forestry Program (Programa Social de Bosques -PROSOBO) as a tool for developing a diagnostic assessment and pinpointing the core issues relating to natural resource management, education and training.



370. It is worth stressing that indigenous peoples' access to and control over their territories is closely related to their right to food. Growing crops on their ancestral lands is not just something they do to survive; rather it is a reaffirmation of their values and culture. In that sense, for indigenous peoples the right to food and nutrition is satisfied by their access to food that is both nutritious and culturally acceptable.<sup>434</sup>
371. The continuing marginalization of the indigenous peoples is the result of a one-dimensional view of development that has discriminatory results, focuses primarily on their assimilation, and is based on the stigmatization of their cultures, their systems of production, and their conceptions of development. This one-dimensional view of development has excluded the indigenous peoples, has been developed at their expense and without their free, prior and informed consent, depriving them of their lands, territories, and resources as well as the economic and social benefits of contemporary development.<sup>435</sup>
372. This structural discrimination, the loss of their ancestral territories, and their exclusion from economic development are causes of poverty and extreme poverty that currently affect the indigenous peoples, and in turn have serious repercussions on their ability to enjoy fundamental rights, such as their rights to education, health, and work.
373. Access to education and the ability to conduct long-term studies are factors that to some extent make it possible to address the situation of inequality and exclusion endured by indigenous peoples. Although legislative reforms in Latin America have achieved a marked increase in school attendance among indigenous children of all age groups, there are still significant gaps in school attendance among indigenous and non-indigenous children.<sup>436</sup> The chance that indigenous children will complete primary and secondary school is less than that of non-indigenous children, reducing their ability to escape poverty, and this gap increases at the level of tertiary education in particular.<sup>437</sup>
374. The Commission emphasizes that another example of differentiated impact to rights faced by indigenous communities is the persistence of obstacles to

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<sup>434</sup> FIAN International. *Indigenous People: The Right to Live Off Their Ancestral Lands*. 2016.

<sup>435</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, Rights of indigenous peoples, including their economic, social, and cultural rights in the post-2015 development framework](#), A/69/267, August 6, 2014, para. 12.

<sup>436</sup> United Nations, ECLAC, [Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#), 2015, pp. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century, the First Decade*, 2015, pp. 80-82.

<sup>437</sup> United Nations, ECLAC, [Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#), 2015, pp. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century, the First Decade*, 2015, pp. 80-82.

the exercise of the right to decent work, based on significant barriers to full professional training, opportunities for decent work, and sufficient social security.

375. The indigenous population in the Americas continues to suffer persistent inequalities in terms of their access to health services. The fertility rates of indigenous women continue to be higher than the national averages; nevertheless, indigenous women generally have fewer prenatal checkups, less professional care for childbirth, more home births, and higher rates of maternal mortality, infant mortality, and chronic malnutrition.<sup>438</sup> Infant mortality in indigenous communities in Latin America is 70 percent higher than for the rest of the population.<sup>439</sup> Malnutrition among indigenous children is double the rate for non-indigenous children.<sup>440</sup> Access to medications is usually expensive, and access to traditional indigenous medicines and health practices is frequently hampered by the occupation of their lands.

#### **D. The Afro-descendent Population**

376. The Afro-descendent population in the Americas exceeds 150 million people – approximately 30 percent of the total population – and is among the continent’s poorest groups.<sup>441</sup> The consensus in the academic literature is that there is a strong correlation between race-ethnicity and quality of life indicators.<sup>442</sup> In this respect, those who belong to racial ethnic groups such as Afro-descendants and indigenous peoples are over-represented among the poorest people in the Americas. In addition, although the region has achieved sustained economic growth, an increase in income levels, and substantial progress in reducing poverty in the last 20 years, there are still large gaps between Afro-descendants and the rest of the population in the Americas.<sup>443</sup>

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<sup>438</sup> United Nations, ECLAC, *Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*, 2015, pp. 29-30.

<sup>439</sup> United Nations, Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 33; United Nations, Economic Commission for Latin America and the Caribbean (ECLAC). *The Millennium Development Goals: A Latin American and Caribbean Perspective*, 2007, p. 191.

<sup>440</sup> United Nations, Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 33.

<sup>441</sup> IACHR, *The situation of people of African descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 17.

<sup>442</sup> See Telles, Edward et al. (2014) *Pigmentocracies: Ethnicity, Race, and Color in Latin America*. The University of North Carolina Press.

<sup>443</sup> Morrison Judith, *Race and Poverty in Latin America*, *Addressing the development needs of African descendants*.

377. Despite the difficulty of finding statistical data depicting the situation of poverty among Afro-descendent people and groups at the regional level, the World Bank has maintained that the Afro-descendent population in Latin America represents, on average, half of the region's poorest people.<sup>444</sup> ECLAC has also stated that “[i]n the four countries for which information is available, the Afro-descendent population is more heavily concentrated in quintile I than the non-Afrodescendent population”.<sup>445</sup>
378. Based on income-based poverty, in Colombia, according to data from the 2005 national census, 60 percent of Afro-Colombians were in a situation of poverty while this figure was 54.1 percent for the rest of the population.<sup>446</sup> In Ecuador, the income-based poverty rate is 30.8 percent for Afro-Ecuadorians, while this percentage is 23.3 percent at the national level and 17.1 percent for the white population.<sup>447</sup> In the United States, 2014 Census Bureau statistics<sup>448</sup> show significant disparities in income-based poverty among racial groups: in 2014, 22.3 percent of African-American households reported incomes of less than US\$15,000 while the national average is 12.6 percent.
379. Poverty among Afro-descendent people may be addressed based on the notion of “racialized geographies”,<sup>449</sup> which assumes that areas with a high concentration of Afro-descendants in the region are found in generally separated geographic areas that coincide with areas of marginalization and poverty – areas with a larger housing shortage, that are less accessible, and more exposed to crime and violence<sup>450</sup> – which indicates a pattern of geographic separation among ethnic-racial groups.
380. In Brazil, an important factor in this inequality is that the racial composition of the Brazilian population varies by region, with whites in the south, an area of higher economic development; and the Afro-dependents in the north.<sup>451</sup>

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<sup>444</sup> Fernando Frazão/Abr (2014), *Beyond the soccer fields, racism is the enemy of millions of Latin Americans*.

<sup>445</sup> ECLAC, *Social Panorama of Latin America 2016*, p. 35.

<sup>446</sup> Rodríguez, César et al. (2009), *Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians*, Bogota: Universidad de los Andes, Facultad de Derecho, Centro de Investigaciones Sociojurídicas CIJUS. Ediciones Uniandes. p. 59.

<sup>447</sup> Response of the State of Ecuador to the questionnaire. p. 5

<sup>448</sup> United States Census Bureau. Income and poverty in the U.S. (2014) Table A-1. *Household by total money income, Race, and Hispanic Origin of Householder 1967-2014*.

<sup>449</sup> IACHR, *The situation of people of African descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 44. See: *Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians*, pp. 50-51

<sup>450</sup> IACHR, *The situation of people of African descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 45

<sup>451</sup> Telles, Edward (2006) *Race in Another America: The Significance of Skin Color in Brazil*. Princeton University Press.

In Colombia, there is a correlation between the percentage of the black population in a region and poverty rates and other indicators of well being, as evidenced by the serious situation of poverty in the Pacific region<sup>452</sup> where Afro-descendants are the majority.<sup>453</sup>

381. Based on the Durban Declaration and Programme of Action,<sup>454</sup> the United Nations Office of the High Commissioner for Human Rights has recognized that people of African descent are among the most marginalized groups as a consequence of the historical legacy of the transatlantic slave trade and persistent forms of contemporary discrimination.<sup>455</sup> Basically, the current situation of poverty among people of African descent is due in part to an inter-generational legacy of disadvantages<sup>456</sup> that began with slavery and continued with legal or de facto racial segregation, whitening policies,<sup>457</sup> and geographic racial segregation.
382. A variety of race-based discrimination currently impedes Afro-descendants' equal access to quality education and employment,<sup>458</sup> adequate housing, decent health services, and the full enjoyment of their right to territory.<sup>459</sup> The United Nations Special Rapporteur on Contemporary Forms of Racism, Mutuma Ruteere, has stressed that poverty is inextricably linked to discrimination and racism.<sup>460</sup> The intersection between poverty and racism is due to the historic legacy of de facto or de jure discriminatory regimes that "have left a large number of racial and ethnic groups...trapped in conditions of 'chronic deprivation of resources' with limited choices and vulnerable to multiple violations of their rights."<sup>461</sup> Along the same lines, the IACHR, in its

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<sup>452</sup> The 2014-2015 incidence of poverty indicates that the Pacific region is the poorest in Colombia. National Administrative Department of Statistics, DANE, Pobreza monetaria y multidimensional en Colombia 2015, p. 23.

<sup>453</sup> Rodríguez, César et al. (2009), op. cit., p. 51.

<sup>454</sup> See: United Nations, Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, September 8, 2001.

<sup>455</sup> United Nations, Programme of activities for the International Decade for People of African Descent, para. 4.

<sup>456</sup> United Nations, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance. A/68/333. August 19, 2013, para. 21

<sup>457</sup> Telles, Edward et al. (2014) Pigmentocracies Ethnicity, Race, and Color in Latin America. The University of North Carolina Press, p. 15

<sup>458</sup> See: Cárdenas Juan Camilo et al. (2013) Discriminación Racial en el Trabajo: Un Estudio Experimental en Bogotá. Observatorio de Discriminación Racial, Centro de Estudios de Derecho, Justicia y Sociedad –Dejusticia-. Bertrand, Marianne and Sendhil Mullainathan. 2004. Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination. American Economic Review 94 (4): 991- 2013.

<sup>459</sup> See: IACHR, 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.

<sup>460</sup> United Nations, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance. A/68/333. August 19, 2013.

<sup>461</sup> *Ibid.*, para. 20

2011 *Report on The Situation of People of African Descent in the Americas* reiterated that the Afro-descendant population is marked by a history of invisibility, exclusion, and social and economic disadvantages that impair the enjoyment of their fundamental rights.<sup>462</sup>

383. One difficulty in determining the social and economic conditions of the Afro-descendent population and to designing appropriate policies is the lack of reliable statistical information.<sup>463</sup> Although the States of the Americas have made progress in incorporating the ethnic-racial variable into the compilation of statistical data, the IACHR emphasizes that the lack of regional statistics persists and reiterates the importance of including the variable of ethnic-racial identification in all the States' statistical data collection systems.
384. The IACHR also believes the States should implement appropriate mechanisms to promote the self-identification of the region's Afro-descendent population.<sup>464</sup> Despite the absence or insufficiency of the information available, it is possible to analyze the exercise of some rights as indicators for evaluating the dimensions and characteristics of the situation of poverty of people of African descent.
385. With respect to the right to education, the available information provides evidence that racial discrimination against Afro-descendent people is a determinant in the limited enjoyment of this right and in the precarious avenues for social mobility among this group.<sup>465</sup> Recent studies based on a methodology of collecting data on skin color such as the method used in PERLA<sup>466</sup> confirm a correlation between skin color and educational achievement in 23 Latin American countries. Persons with fair skin color have more years of study than persons with dark skin color. In countries like Brazil, Colombia, Ecuador, Honduras, and the Dominican Republic, the difference is between 1.5 and 2 points.<sup>467</sup> The available information provides evidence that the infrastructure and quality of education in majority Afro-descendent areas is deficient as a consequence of geographic and residential segregation. On the other hand, the IACHR observed the precarious conditions of Afro-descendents in the education systems of the

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<sup>462</sup> IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 21.

<sup>463</sup> *Ibid.*, para. 44.

<sup>464</sup> *Ibid.*, para. 38.

<sup>465</sup> Cárdenas, Juan Camilo et al. (2012) *Equidad en la Diferencia: Políticas de Movilidad Social de Grupos de Identidad*. Misión de Movilidad Social y Equidad.

<sup>466</sup> See: *Project on Race and Ethnicity in Latin America*.

<sup>467</sup> Telles, E. & Steele, L. 2012. *Pigmentocracy in the Americas: How is educational attainment related to skin color*. In *Americas Barometer Insights*: Nashville: Vanderbilt University, p. 4

region. For example, during the IACHR's visit to the state of Florida in September 2015, the Commission found multiple violations to which Afro-descendent children are exposed in the schools.

386. Multiple obstacles persist in the Americas for the effective enjoyment of various components of the right to health among Afro-descendent people. With respect to the coverage and availability of health service, there are clear disparities. In the United States, while 7.6 percent of whites are without health coverage, 11.8 percent of African-Americans are without such coverage.<sup>468</sup> In Brazil, Colombia, Ecuador and Nicaragua, infant mortality among Afro-descendants exceeds the rate for the rest of the population by several points.<sup>469</sup> Moreover, there is no intercultural approach to medical treatments and policies in the region that specifically addresses the diseases that affect Afro-descendent people the most, or that provides them with specific medication.<sup>470</sup> On the other hand, direct racial discrimination is also a constant in the delivery of health services to Afro-descendants.<sup>471</sup>
387. With regard to the right to work, at the regional level, the Afro-descendent population's unemployment rate in 2013 (6.5 percent) was higher than that of the total population (5 percent).<sup>472</sup> The available information indicates that the Afro-descendent population occupies the lowest rungs on the job ladder and mostly performs informal and low-skilled tasks.<sup>473</sup> The differences in occupational levels have effects on access to social security and health, and informal employment bars Afro-descendent people from minimum health coverage and pension system membership,<sup>474</sup> leading to asymmetries in income, access to food, and housing.
388. The situation of Afro-descendent children and adolescents is of deep concern to the IACHR. Afro-descendant children and adolescents have higher rates of hunger starting in early childhood. In Colombia, at the national level, 5.9 percent of children under the age of five went without food for at least one day in the week before the 2005 Census was conducted. This percentage is doubled in the Afro-Colombian population at the national

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<sup>468</sup> United States Census Bureau. [Health Insurance Coverage in the United States: 2014](#).

<sup>469</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2009) [Afrodescendientes en América Latina : del reconocimiento estadístico a la realización de derechos](#). Santiago, Chile.

<sup>470</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, paras. 21 and 52.

<sup>471</sup> See: Krieger, Nancy and Sidney, Stephen. [Racial discrimination and blood pressure: the CARDIA study of young black and white adults](#). American Journal of Public Health. October 1996. Vol. 86; No. 10.

<sup>472</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2015) [Social Panorama of Latin America](#). p. 32

<sup>473</sup> Ibid., p. 34

<sup>474</sup> Ibid., p. 36

level.<sup>475</sup> The figures indicate that four out of every ten children do not have guaranteed access to safe drinking water, and that two out of every ten are severely deprived in this area. By country, the highest percentages are seen in Ecuador (67.1%), Honduras (58.9%), El Salvador (58.8%), and Belize (53.3%).<sup>476</sup> The figures are lower but equally significant in Brazil and Colombia where nearly 40 percent of these children endure moderate or severe deprivation.

389. The childhood mortality rate for every 1,000 live births is also higher for Afro-descendants. In Ecuador, the rate is 46.7 percent but 36.2 percent for the rest of the population; in Nicaragua, the rate is 46.6 percent but 35.1 percent for the rest of the population.<sup>477</sup>
390. The situation of Afro-descendent women also reflects the intersection of race and gender inequities, as these women are lowest on the scale in terms of educational, occupational, and income levels.<sup>478</sup> For example, according to statistical information available in Brazil, among salaried domestic workers, the percentage of Afro-descendent women (18.6%) exceeds the number of women who are not Afro-descendant by eight percentage points.<sup>479</sup> In addition, the prevalence of various diseases is higher among Afro-Brazilian women.<sup>480</sup> In various countries of the region, such as Brazil and Ecuador, the percentage of Afro-descendent women who have prenatal checkups is substantially lower.<sup>481</sup>
391. The difficulties encountered in obtaining titles to, using and administering the lands of Afro-descendent communities in various countries of the Americas, have had a strong impact on the enjoyment of basic rights, including access to minimum water supply services, electricity, and basic sanitation.<sup>482</sup> In Colombia, for example, the forced displacement that disproportionately affects the Afro-descendent population is an obstacle to

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<sup>475</sup> National Administrative Department of Statistics DANE. 2005 National Census.

<sup>476</sup> ECLAC and UNICEF (2012) Pobreza infantil en pueblos indígenas y afrodescendientes. Santiago de Chile.

<sup>477</sup> Pan American Health Organization and others (2013). La salud de los pueblos indígenas y afrodescendientes en América Latina, p. 30.

<sup>478</sup> Information submitted by civil society representatives during the thematic hearing on the Human Rights Situation of Afro-descendant Women in Brazil, held during the IACHR's 156th regular session, April 7, 2016.

<sup>479</sup> ECLAC (2015) Social Panorama of Latin America, p. 37.

Pan American Health Organization and others (2013). La salud de los pueblos indígenas y afrodescendientes en América Latina, p. 41

<sup>481</sup> *Ibid.*, p. 47

<sup>482</sup> IACHR, 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. 278.

guaranteeing the right to territory.<sup>483</sup> Consequently, the situation of poverty of this segment of the population has deteriorated.<sup>484</sup> In Brazil, too, the lack of legal guarantees of entitlement to land and the use of, and access to, natural resources has triggered food insecurity and poverty in the Quilombola population.<sup>485</sup>

392. In line with the concept of multidimensional poverty according to which deprivations of basic freedoms are associated not only with the lack of economic income but also with the systematic deprivation of access to other goods, the IACHR considers it a matter of concern that, generally speaking, the social and demographic indicators in various countries of the region reveal a profound gap between ethnic-racial groups, placing the Afro-descendant population at the bottom of the scale in terms of the effective enjoyment of their rights.
393. The situation of poverty endured by Afro-descendants in the region can be perceived in terms of the standards of the Inter-American human rights system as a situation of structural racial discrimination, understood as the set of both de jure and de facto rules, routines, patterns, attitudes, and behavioral guidelines that make way for a generalized situation of inferiority and exclusion against a group of persons. These are perpetuated over time and even from one generation to the next, not as isolated, sporadic, or episodic cases, but rather as a situation of discrimination due to the consequence of a historic, socioeconomic, and cultural context.<sup>486</sup>

## **E. Migrants**

394. Human mobility, whether international or internal migration, is a multidimensional phenomenon that can happen voluntarily or not. The

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<sup>483</sup> See: Asociación de Afrocolombianos Desplazados –AFRODES– and Global Rights (2011) *Bicentenario: Nada que celebrar! Informe sobre los DDHH de las comunidades afrocolombianas en el marco de la “celebración” de los doscientos años de vida republicana en Colombia.*

<sup>484</sup> Rodríguez, César et. al. (2009), *Raza y Derechos Humanos en Colombia: informe sobre discriminación racial y derechos de la población afrocolombiana*. Bogotá: Universidad de los Andes, Facultad de Derecho, Centro de Investigaciones Sociojurídicas CIJUS. Ediciones Uniandes, p. 85

<sup>485</sup> See: The Rappaport Center for Human Rights. University of Texas (2008) *Between the Law and Their Land: Afrobrazilian Quilombo Communities’s struggle for Land Rights.*

<sup>486</sup> See: Committee on the Elimination of Racial Discrimination, *General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent*, 79th session, CERD/C/GC/34. October 3, 2011; IACHR, *The situation of people of African descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011; Stavenhagen Rodolfo, *El derecho de sobrevivencia: la lucha de los pueblos indígenas en América Latina contra el racismo y la discriminación*, IDB/IIHR, 2001; Pelletier, Paola, *La “discriminación estructural” en la evolución jurisprudencial de la Corte Interamericana de Derechos Humanos*, Revista del Instituto de Derechos Humanos No.60, July-December 2014.



former occurs when a person migrates voluntarily, absent any type of coercion. Meanwhile, forced migration refers to those situations in which an individual is compelled to migrate because his or her life, safety, or liberty has been threatened due to different forms of persecution based on race, religion, nationality, membership in a specific social group, or because of their political opinions.

395. Other causes of forced migration include armed conflict, widespread violence, human rights violations, serious disturbances of a country's public order, and natural or manmade disasters. Over the years, the Inter-American Commission has identified poverty as well as the deprivation of economic, social, and cultural rights as factors that drive people to migrate, both inside their countries<sup>487</sup> and internationally.<sup>488</sup>
396. Poverty has two contradictory effects on the migration of individuals. On the one hand, poverty creates incentives for people to migrate as a strategy for survival; on the other hand, poverty also limits or impedes a person's ability to migrate because the associated costs are too high, in particular when it comes to attempts to migrate via ordinary channels.<sup>489</sup> Specifically, the Commission observes that migration may not be an option available to people living in extreme poverty.<sup>490</sup> In the case of forced migration, individuals are starting from a position of loss, including the loss of property, family, and community, as well as in terms of physical and emotional health.<sup>491</sup>
397. Many of the primary irregular migrant movements in the region are comprised of persons in a situation of poverty. Along these lines, individuals who live in extreme poverty and in highly vulnerable situations tend to be those most affected by violence and forced displacement, both internally and internationally, in the countries of the Northern Triangle (El Salvador, Guatemala, and Honduras) and in Mexico. According to the Internal

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<sup>487</sup> See, IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 553.

<sup>488</sup> See, *inter alia*, IACHR, [Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System](#). OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, paragraphs 4, 9, 17, and 19; IACHR, [Report on the Situation of Human Rights in the Dominican Republic](#). OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, paras. 96 and 529; IACHR, [Refugees and Migrants in the United States: Families and Unaccompanied Children](#). OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, paras. 2, 111, and 112; IACHR, [Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico](#). December 31, 2013, para. 53.

<sup>489</sup> Waddington, Hugh and Sabates-Wheeler, Rachel, [How Does Poverty Affect Migration Choice?: A Review of Literature](#). Development Research Centre on Migration, Globalization and Poverty. Sussex: 2003, p. 4.

<sup>490</sup> *Ibid*, p. 18.

<sup>491</sup> Jacobsen, Karen, "Livelihoods and forced migration," and Fiddian-Qasmiyeh, Elena; Loescher, Gil; Long, Katy; and Sigona, Nando (Eds.), [The Oxford Handbook of Refugee and Forced Migration Studies](#). Oxford: Oxford University Press, 2014, p. 99.

Displacement Monitoring Centre (IDMC), the proportion of people forced to leave violent cities in those countries is four to five times greater than the number who abandon non-violent cities in similar socioeconomic situations.<sup>492</sup>

398. The existing correlation between poverty, inequality, violence, and migration explains why most migrants who pass through Mexico are originally from the Northern Triangle of Central America. The high levels of inequality and poverty that prevail in a number of these countries are key factors that force many individuals to migrate even when they are aware of the dangers that migration might pose to their lives and safety.
399. A large number of the people who have been forced to migrate from those countries are individuals who were living in poverty and were no longer able to withstand the demands they faced from the ‘maras’ gangs, drug cartels, and criminal organizations such as payment of a war tax, rent, or human trafficking via forced recruitment for purposes of sexual exploitation, prostitution, exploitive work, or illicit ends.<sup>493</sup>
400. Another of the key migratory dynamics in the region has to do with the migration of Haitians. Historically, poverty has been one of the main factors causing Haitian migrants to leave. In addition, the January 2010 earthquake made poverty in Haiti much worse, prompting Haitians to flee to other countries in the region such as the United States, the Dominican Republic, Brazil, and the Bahamas.<sup>494</sup> More than 20,000 Haitian migrants were estimated to have entered Brazil by late 2013, with more than half of them having entered irregularly.<sup>495</sup>
401. The serious humanitarian crisis facing Venezuela due to the scarcity of food and medication has compelled many Venezuelans to migrate to other countries in the region. In an interview with a Colombian newspaper, one member of a Venezuelan family of 19 that moved to the municipality of Ponedera, in Colombia’s Atlántico Department stated: “We do what we can, but at least here my children aren’t crying from hunger.”<sup>496</sup>

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<sup>492</sup> Internal Displacement Monitoring Centre, *New humanitarian frontiers: Addressing criminal violence in Mexico and Central America*. Geneva, 2015, p. 8.

<sup>493</sup> Cantor, David James, *The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico*. Refugee Survey Quarterly, Oxford: Oxford University Press, 2014, p. 46.

<sup>494</sup> See, IACHR, *Press release 55/14: IACHR Expresses Deep Concern over Deaths and Disappearances of Migrants in Shipwrecks in the Caribbean Sea*. Washington, May 14, 2014;

<sup>495</sup> See, IACHR, *Hearing on the Human Rights Situation of Haitian Migrants in the Americas*. 149<sup>th</sup> Regular Session, October 31, 2013. Video available at: [www.youtube.com/watch?v=4leVpUHDvvrQ](http://www.youtube.com/watch?v=4leVpUHDvvrQ)

<sup>496</sup> Guerrero, Alison (El Heraldo), *El impacto del éxodo venezolano en la Costa colombiana* [The impact of the Venezuelan exodus on the Colombian coast]. Barranquilla, August 21, 2016.

402. In visits made in recent years to Mexico,<sup>497</sup> Colombia,<sup>498</sup> Honduras,<sup>499</sup> the United States,<sup>500</sup> and the Dominican Republic,<sup>501</sup> the Commission has received multiple accounts from migrants who stated that living in poverty, a lack of opportunities, as well as their desire for a better life for themselves and their families were the main reasons they migrated from their countries. Different people mistakenly refer to many of these individuals as economic migrants.
403. In the Commission's view, the severity of the poverty many of these people endured forced them to migrate irregularly as a survival strategy to enable them and their families to preserve their lives and integrity in more dignified conditions.
404. The Commission has also noted that in recent decades, different States in the region have been progressively implementing policies aimed at limiting the right to free circulation. Added to other policies designed to curtail migration that were already being put in place by the United States, Mexico, Honduras, and Guatemala, the Commission has witnessed how other States in the region have implemented measures such as requesting visas and from nationals of countries previously not required to have them,<sup>502</sup> the closing or higher securitization of borders.<sup>503</sup>
405. The lack or inadequacy of regular channels to enable many people to migrate—mainly individuals living in vulnerable situations and poverty—leads to irregular migration and the illegal smuggling of migrants. Illegal migrant smuggling is an industry that has arisen as a result of the barriers and impediments many people face when deciding to migrate. Accordingly,

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<sup>497</sup> See, IACHR, Situation of Human Rights in Mexico. OEA/Ser.L/V/II.Doc. 44/15, December 31, 2015; and IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. December 31, 2013.

<sup>498</sup> See, IACHR, Preliminary Observations from the IACHR's Visit to Colombia's Border with Venezuela. September 28, 2015.

<sup>499</sup> See, IACHR, Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc.42/15, paras. 357-367.

<sup>500</sup> IACHR, Refugees and Migrants in the United States: Families and Unaccompanied Children. OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, paragraphs 2, 111, and 112.

<sup>501</sup> IACHR, Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, paragraphs 96 and 529.

<sup>502</sup> See, Ecuador, Ministry of Foreign Relations and Human Mobility, Comunicado oficial: Requerimiento de visa de turismo para ciudadanos cubanos [Official statement: Requirement of tourist visa for Cuban citizens]. Quito, November 26, 2015.

<sup>503</sup> See, IACHR, Press release 112/16: IACHR Deeply Concerned about the Situation of Migrants in Colombia Close to the Panama Border. Washington, August 8, 2016; IACHR, Press release 102: IACHR Expresses Concern regarding Detentions and Deportations of Cuban Migrants in Ecuador. Washington, July 26, 2016; IACHR, Press release 146/15: IACHR Expresses Deep Concern regarding Situation of Cuban Migrants on the Costa Rica-Nicaragua Border. Washington, December 8, 2015; IACHR, Press release 100/15: IACHR Expresses Concern over Arbitrary Deportation of Colombians from Venezuela. Washington, August 28, 2015. See also, IACHR, Preliminary Observations from the IACHR's Visit to Colombia's Border with Venezuela. September 28, 2015.

the Commission believes that States should activate channels to enable individuals to migrate legally and safely, especially those who have limited financial resources or are living in poverty.

406. To this end, States can make use of programs such as those focused on humanitarian admittance, family reunification visas, student scholarships, work mobility programs, and private sponsorship, among others. These types of measures would likewise prevent migrants from having to take hazardous routes or rely on migrant traffickers or end up becoming victims of human trafficking.
407. The Commission has also received abundant information on how persons living in situations of poverty are more susceptible to becoming victims of human trafficking for purposes of labor and/or sexual exploitation, in the countries of the region.<sup>504</sup> The IACHR has learned about indigenous peoples and Afro-descendent communities suffering racial, ethnic, social, or other types of discrimination and that also live in poverty, making them more likely to become targets for different forms of human trafficking, forced labor, and exploitation.

## ***F. Persons Deprived of Liberty***

408. The Commission notes that the impact of poverty and extreme poverty on the situation of persons deprived of liberty is a two-way process. According to the findings of several studies, on the one hand, social exclusion may encourage a propensity to commit crimes leading to jail sentences, while on the other hand, time served in prison worsens living conditions for poor individuals deprived of their liberty and of their families who see their exclusion and vulnerability exacerbated.<sup>505</sup>
409. The statistics map out violence in the territory show that the highest rates of violent crimes are usually found in large cities. The areas particularly hit by a lack of security and violence is poor outlying neighborhoods that have limited access to basic services and little State presence. These are places with populations living in vulnerable situations, whose rights are not guaranteed, and who are members of social groups that have traditionally suffered exclusion and discrimination. Low levels of development, a lack of

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<sup>504</sup> See, IACHR, [Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco](#). OEA/Ser.L/V/II. Doc. 58, December 24, 2009, paragraphs 15, 29, 33, 36, 86, 103, 104, 139, and 185.

<sup>505</sup> *Fundación Paz Ciudadana and Fundación San Carlos de Maipo*, [Study on the levels of exclusion faced by persons deprived of liberty], 2016, p. 20.

opportunities, and scarce institutional presence in these areas pave the way for the rise and expansion of groups dedicated to committing crimes and of criminal organizations.<sup>506</sup>

410. The United Nations Development Program has indicated that the explanation for the increase in violence and insecurity in the region is multidimensional and includes job insecurity, persistent inequity, and inadequate social mobility.<sup>507</sup> Accordingly, different combinations of these socioeconomic factors in specific contexts produce environments of vulnerability that curtail legitimate possibilities for social advancement. Such environments and in the context of consumption-based economic growth, are fertile ground for the emergence of individuals or groups willing to challenge the legitimate order by opting for crime as a way of life.<sup>508</sup>
411. A study conducted by *Fundación Paz Ciudadana* found that before incarceration, most inmates surveyed in Chilean jails had faced major disadvantages in connection with family, education, and health, in tandem with poor job prospects. In particular, it confirmed that in comparison with the population as a whole, inmates experienced higher rates of poverty, of having been in the care of third parties (and of their parents), and of having relatives who had also been convicted of crimes.<sup>509</sup> For example, when comparing the findings of this study with parameters of the general population, those surveyed showed higher rates of illiteracy (7.3% versus 4.8%) and unfinished schooling (86% versus 45.7%).<sup>510</sup>
412. Similarly, Argentina reported that the prison population totaled 72,693 by December 31, 2015. Of that total, 33,482 inmates were from the Province of Buenos Aires, where poverty indices are higher and there are more social groups that have historically been excluded and discriminated against. The data likewise show that 28% of the prison population failed to complete their basic education and only 38% finished elementary school. As for employment, 45 percent of the prison population was unemployed at the time of detention while 40% had some kind of informal part-time job.<sup>511</sup>

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<sup>506</sup> IACHR, Report, Violence, Children and Organized Crime, November 11, 2015, paragraph 4.

<sup>507</sup> United Nations Development Programme, Regional Human Development Report 2013-2014; Citizen Security with a Human Face: evidence and proposals for Latin America, November 2013, p. 15.

<sup>508</sup> Ibid.

<sup>509</sup> *Fundación Paz Ciudadana and Fundación San Carlos de Maipo*, Study on the levels of exclusion faced by persons deprived of liberty, 2016, p. 20.

<sup>510</sup> Ibid., p. 10.

<sup>511</sup> Ministry of Social Development of Argentina, Input for the Preliminary Report on “Poverty, Extreme Poverty, and Human Rights in the Americas” of the IACHR, February 6, 2017, p. 23.

413. Detention conditions for inmates who are poor or extremely poor in the region's prisons are worse than those for the rest of the prison population. This is because poor prisoners face greater difficulties in accessing services or benefits that are normally available, but that are subject to the payment of fees demanded by other inmates or even by the prison authorities themselves.
414. In its *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, the Commission expressed concern relating to the fact that prison authorities demand inmates pay fees or perform other acts in order to receive visits or to have access to public phones or mail.<sup>512</sup>
415. In its *Report on the Situation of Human Rights in Mexico*, the IACHR indicated that prison staff demand improper payments from persons deprived of their liberty in order to access services and basic goods, such as food, water, and health. They are also required to pay a regular fee in order to avoid being beaten and abused in detention centers.<sup>513</sup> Likewise, in his visit to Paraguay, the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment was informed about the payment of bribes for goods and normally accessible daily activities like sitting under a tree, as well as the payment of substantial sums for the use of a private room for conjugal visits.<sup>514</sup>
416. According to the Office of the Ombudsman of the Plurinational State of Bolivia, the shortage of beds in Bolivian prisons and the gap between supply and demand for such beds set market forces in motion such that a living space of approximately two square meters takes on a nearly equal, or higher, value than its equivalent in any Bolivian city, up to US\$800. The Ombudsman's Report indicates that inmates who lack the means to make such payments have to perform services—from cleaning latrines to security tasks—in a sort of forced labor system.<sup>515</sup>
417. Regarding national legislations establishing a fee in order to access the system of electronic monitoring, the IACHR observes that such legislation adversely affects those who lack economic means and fails to take into account the “financial savings” for the State derived from avoiding the daily

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<sup>512</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, paragraph 584.

<sup>513</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, December 30, 2015, paragraph 334.

<sup>514</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission of Paraguay, A/HRC/7/3/Add.31, October 2007, paragraphs 68 and 72.

<sup>515</sup> Office of the Ombudsman of the Plurinational State of Bolivia, *Inmates without a sentence: current situation of persons in pretrial detention in Bolivian penitentiaries*, 2016, p. 7.

cost of holding the detainee in a detention center.<sup>516</sup> This measure is discriminatory inasmuch as it falls outside the reach of individuals living in poverty or having a low income. The Commission has further noted that the use of bail has a widespread and disproportionate effect on persons belonging to more economically vulnerable groups.<sup>517</sup>

418. The Commission also observes that in other cases, legal fees have a stronger impact on communities that do not use, or only partially use, money such as certain indigenous communities. In Mexico, for example, civil society has indicated that both circumstantial and material factors like poverty persist and have serious consequences when it comes to the deprivation of liberty of indigenous persons lacking the monetary resources to pay bail, the amounts of which generally do not exceed 2,000 Mexican pesos (approximately US\$100).<sup>518</sup>
419. On the other hand, according to the Office of the Ombudsman of the Plurinational State of Bolivia, a sample of nearly 2,000 survey respondents indicated that 55 percent of them have not requested a hearing to review their pretrial detention because they have been detained for less than one year and because they lack the funds to cover such proceedings, namely, to pay attorney fees, and notifications, etc.<sup>519</sup>
420. This situation is even worse when it comes to indigenous women. According to an earlier study by the Office of the Ombudsman in Bolivia, all the indigenous women surveyed were in pretrial detention and in most cases this was because of a lack of information. Whether because of the language they spoke or because they were poor, they were abandoned by their counsel, and therefore remained in pretrial detention longer due to a lack of legal advice.<sup>520</sup> According to the study, lack of both resources and options for these women to keep their children with them in prison, these children are frequently assigned to Children's Institutions, under the provincial governments.<sup>521</sup>
421. The IACHR observes that, in addition to the risk faced by women deprived of liberty, their time in prison has severe consequences on their children and

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<sup>516</sup> Institute for Legal Defense, letter addressed to IACHR Executive Secretary, Emilio Álvarez Icaza, April 7, 2016, paragraph 11.

<sup>517</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, December 30, 2013, para. 10.

<sup>518</sup> *Coalición por los derechos de las personas privadas de libertad en el Sistema Penitenciario Mexicano, Informe EPU sobre sistema penitenciario en México*, 2013, para. 32.

<sup>519</sup> Office of the Ombudsman of the Plurinational State of Bolivia, *Inmates without a sentence: current situation of persons in pretrial detention in Bolivian penitentiaries*, 2016, p. 33.

<sup>520</sup> *Ibid.*, p. 134.

<sup>521</sup> *Ibid.*, p. 143.

persons under their care, such as persons with disabilities and older persons. The deprivation of liberty of women brings serious consequences for children, since generally their care is assigned to the closest relative, which sometimes results in the separation of brothers and sisters, and requires in the majority of cases the intervention of social services to aid in the children's welfare or even their institutionalization.<sup>522</sup>

422. A serious problem in the region is precisely the lack of public policies aimed at promoting rehabilitation and social readaptation of persons sentenced to prison terms. In light of the limited financial resources available to the majority of persons deprived of liberty, and the fact that their imprisonment places them at a high risk of severing their links with their community, it is essential that States adopt public policies of an integral nature, oriented to their social readaptation and personal rehabilitation. Otherwise, there is a risk of perpetuating a cycle of social exclusion and criminal recidivism.<sup>523</sup>
423. In this context, and following the standards set by the United Nations Mandela Rules, the IACHR calls on States to put in place within state or private organs the services necessary for persons formerly deprived of liberty to receive effective post penitentiary assistance, with a view to decreasing prejudice against them, and to contributing to their social reintegration.<sup>524</sup>

## **G. Persons with Disabilities**

424. According to the World Health Organization and the World Bank, more than one billion people—or approximately 15 percent of the global population—are currently living with some type of disability.<sup>525</sup> Specifically, according to ECLAC around 12 percent of the population in the region, approximately 66 million people, has a disability.<sup>526</sup> Despite the fact that these figures represent a high number of people with disabilities, estimates put this number even higher in light of how difficult it is to obtain this type of information, primarily because of the differences that exist in census and data collection methods.<sup>527</sup>

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<sup>522</sup> IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, 11 November 2015, para. 479.

<sup>523</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II. Doc. 64, December 31, 2016, paras. 609 and 610.

<sup>524</sup> See, in this regard, UN, *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), E/CN.15/2015/L.6/Rev.1, May 21, 2015.

<sup>525</sup> World Health Organization and World Bank Group, *World Report on Disability*, 2011, p. 7.

<sup>526</sup> ECLAC, *Notes, Disability in Latin America and the Caribbean – Public Policy Challenges*.

<sup>527</sup> United Nations, *Enable*, Factsheet on Persons with Disabilities.



425. Historically, persons with disabilities have faced serious physical and social obstacles to the full exercise of their rights.<sup>528</sup> During recent decades there has been significant progress in the protection of the rights of this population, thanks mainly to the adoption in 2006 of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”),<sup>529</sup> which calls for a paradigm shift with respect to the treatment of persons with disabilities.
426. Based on this paradigm shift, persons with disabilities are no longer seen as “mere objects of protection,” but rather as “subjects of rights and obligations.” The IACHR nevertheless notes that, despite the significant progress made internationally, there continues to be a major gap in terms of the effective enforcement of such rights domestically, and that individuals living with disabilities continue to face serious hurdles to the full enjoyment of their rights.
427. Persons living with disabilities are more likely to experience adverse socioeconomic situations like lower education levels, worse health conditions, and high rates of unemployment. According to the World Bank, the relationship between poverty or extreme poverty and disabilities is a two way process. On the one hand, poverty may increase the risk of developing a disability, while on the other hand, a disability may increase the risk of falling into poverty due to factors like unemployment or lower salaries and increases in the cost of living.<sup>530</sup> Moreover, if gender, age and ethnic origin factors are added to disabilities, poverty and social exclusion are exacerbated.
428. During a meeting of the States Party to the new Convention held in New York in June 2015, the UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, indicated that more than 80 percent of people with disabilities in the world are poor and that this situation is not limited to developing countries.<sup>531</sup>
429. According to the UN Special Rapporteur, poverty disproportionately affects persons with disabilities and the additional costs of living with a disability constitute an “insurmountable obstacle” to the exercise of their rights. Along these lines she indicated that the “gap between persons with and without

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<sup>528</sup> IACHR, Press release 145/14, [IACHR Urges States to Ensure Full Exercise of Human Rights of Persons with Disabilities](#), Washington, DC, December 2, 2014.

<sup>529</sup> United Nations, [Convention on the Rights of Persons with Disabilities](#), adopted by the United Nations General Assembly on December 13, 2006.

<sup>530</sup> World Bank, Disability: Overview, latest update, October 30, 2015.

<sup>531</sup> United Nations News Centre, More than 80 percent of persons with disabilities are poor, according to the UN rapporteur, note from June 9, 2015.

disabilities who live below the poverty line or are at risk of falling into poverty is alarming and should be urgently addressed.”<sup>532</sup>

430. Poverty and extreme poverty are environmental and social risk factors that have an impact on the development of a disability, to the degree that they may determine the health conditions for its development or the lack of access to preventative measures. In this regard, according to the *World Report on Disability* by the World Bank and WHO, certain environmental factors such as low birth weight and a lack of essential nutrients like iodine and folic acid have an impact on the incidence and prevalence of health conditions associated with disabilities.<sup>533</sup>
431. A lack of financial resources can impede access to health centers and, hence, whether a person receives preventive services and treatment.<sup>534</sup> A joint study conducted by UNICEF and the University of Wisconsin found that children in homes that fall into the three poorest quintiles in most countries are at higher risk of developing disabilities than other children.<sup>535</sup>
432. The Commission observes that having a disability increases the likelihood of living in poverty because the discrimination that comes with living with this condition may lead to social exclusion, marginalization, a lack of schooling, and unemployment, in addition to the fact that all of these factors increase the risk of poverty. A joint study by ECLAC and the United Nations Population Fund (UNPF) found that the educational and labor outlook for persons with disabilities in Latin America confirms the inequality that affects this group of people.<sup>536</sup>
433. With respect to education, a report by the International Disability Rights Monitor (IDRM) indicates that in Colombia, only 0.32 percent of students have a disability. The figures are similar in Argentina (0.69%) and in Mexico (0.52%), while Uruguay and Nicaragua report slightly higher percentages (2.76% and 3.5%, respectively). When comparing the estimated population of children with disabilities to the number of children matriculated in the

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<sup>532</sup> UN Presentation by the Special Rapporteur on her first report to the General Assembly, 70<sup>th</sup> Session, New York, October 27, 2015.

<sup>533</sup> World Bank and World Health Organization, *World Report on Disability*, 2011, p. 41.

<sup>534</sup> United Nations Children’s Fund (UNICEF), University of Wisconsin, *Monitoring child disability in developing countries: results from the multiple indicator cluster surveys (English only)*, 2008, p. 40.

<sup>535</sup> Ibid.

<sup>536</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Latin American and Caribbean Demographic Centre (CELADE) and United Nations Population Fund (UNFPA), *Las personas con discapacidad en América Latina: del reconocimiento jurídico a la desigualdad real [Persons with Disabilities in Latin America: From legal recognition to real inequality]*. April 2011, p. 16.

education system, it is clear that only between 20 percent and 30 percent of children with disabilities attend school.<sup>537</sup>

434. In the case of Mexico, the results of the 2014 National Survey on the Demographic Dynamic (ENADID, for its acronym in Spanish) show that 46.5 percent of the 3 to 29 year old population with disabilities, attend school, which is lower than that of the population without disabilities (60.5%).<sup>538</sup> In the particular in connection with school attendance levels, 23.1 percent of the population with disabilities has had no schooling, which is a considerably higher figure than that seen among persons without disabilities (4.8%). The predominant level of education for those with disabilities is elementary school (44.7%), followed by secondary school (15.3%); in the case of higher education, the percentage of the population without disabilities is triple that of the population with disabilities (5.7%).<sup>539</sup>
435. One of the main problems faced by persons with disabilities in the region is unemployment and marginalization from the labor market. According to a study undertaken by IDRМ, approximately 70 percent of persons with disabilities in the region are unemployed or excluded from the work force.<sup>540</sup> Among the factors listed by the study are a lack of training, lack of accessibility in the work place, lack of accessible transportation, and the continued economic problems that afflict the region as well as companies' resistance to hiring people with disabilities despite the fact that the laws in several of the region's countries provide for incentives for those that do, as well as minimum quotas in the case of employment in the private and public sectors.<sup>541</sup>
436. The United Nations Committee on the Rights of Persons with Disabilities has expressed concern over the high rates of unemployment and underemployment of persons with disabilities in Peru, amounting to nearly

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<sup>537</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 15.

<sup>538</sup> National Institute for Statistics and Geography (INEGI), Estadísticas a propósito del Día Internacional de las Personas con Discapacidad [Statistics on the occasion of the International Day of People with a Disability], December 1, 2015, p. 9.

<sup>539</sup> According to information provided by the Working Group on Disability and Rights of the National Human Rights Coordinating Office, in Peru there is a need for policies to support access by children and adolescents with disabilities to quality education in ordinary schools, thereby ensuring that educational inclusiveness is a priority across the educational system. There is also a need to expand admission by youth with disabilities to after-school educational and training programs, bearing in mind that the older the child the fewer the educational opportunities provided, especially for women (Working Group on Disability and Rights of the National Human Rights Coordinating Office, Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights, 2017, p.2).

<sup>540</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 16.

<sup>541</sup> Ibid.

60 percent and 35.3 percent, respectively.<sup>542</sup> In that respect, the IACHR points to the job quotas for persons with disabilities established by the Peruvian State: 5% in government institutions and 3% in private sector companies. The Commission also notes that according to the first national study on disability in Chile, conducted in 2004, 48.1 percent of the total population above the age of 15 was gainfully employed, while only 29.2 percent of the population with disabilities in that same age range had paid employment.<sup>543</sup>

437. A second national study undertaken in 2015 indicated that participation in the labor force by persons without disabilities was 69 percent, while it was 56 percent for persons with disabilities, and 24.3 percent for persons with severe disabilities.<sup>544</sup> In Mexico, the economic participation of people with disabilities in 2014 was 39.1 percent; this was equivalent to more than 25 percentage points less than the population without disabilities.<sup>545</sup>
438. Most of the employment rates in the region for persons with disabilities are similar. In Uruguay, according to a specialized survey conducted in 2003 and 2004, the employment rate for persons with disabilities over the age of 14 was 19.6 percent compared to 62.4 percent general employment.<sup>546</sup> In 2003, the population with disabilities in Nicaragua had an employment rate of 36 percent compared to a general rate of 54 percent.<sup>547</sup>
439. Access to healthcare for persons with disabilities is also of concern given that in much of the region, access to health insurance is dependent upon an individual's employment status and hence, high unemployment rates can deprive this group of coverage.<sup>548</sup> According to the International Disability Rights Monitor, for example, 84 percent of persons with disabilities in

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<sup>542</sup> Committee on the Rights of Persons with Disabilities, Study of the reports submitted by the States party in accordance with Article 35 of the Convention "Final Observations," Peru, CRPD/C/PER/CO/1, May 16, 2012, paragraph 40.

<sup>543</sup> National Disability Fund (FONADIS), Primer estudio nacional de la discapacidad e informes regionales – ENDISC 2004 [First National Disability Study and Regional Reports – ENDISC 2004], April 2005, p. 50.

<sup>544</sup> Government of Chile – Ministry of Social Development, Segundo Estudio Nacional de la Discapacidad 2015: Un nuevo enfoque para la inclusión [2015 National Disability Study: A new approach to inclusion], January 26, 2016, section on "General Results for the Adult Population," p. 34.

<sup>545</sup> *Instituto Nacional de Estadística y Geografía (INEGI)*, Estadísticas a propósito del Día Internacional de las Personas con Discapacidad, December 1, 2015, p.12.

<sup>546</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Latin American and Caribbean Demographic Centre (CELADE) and United Nations Population Fund (UNFPA), *Las personas con discapacidad en América Latina: del reconocimiento jurídico a la desigualdad real* [Persons with Disabilities in Latin America: From legal recognition to real inequality]. April 2011, p. 18.

<sup>547</sup> *Ibid.*

<sup>548</sup> International Disability Rights Monitor (IDRM), *Regional Report of the Americas*, International Disability Rights Monitor 2004, p. 17.

Ecuador lack healthcare coverage while in Chile only 7 percent have private health insurance.

## **H. LGBTI Persons, Groups and Communities**

440. There is a strong link between poverty, exclusion and violence based on prejudice. In its 2015 *Report on Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*, the Commission examined the intersection between, on the one hand, violence based on prejudice for reasons of sexual orientation, and poverty on the other. Structural discrimination against lesbian, gay, bisexual, trans and intersex (LGBTI) persons<sup>549</sup> in the region may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination.<sup>550</sup>
441. The United Nations High Commissioner for Human Rights<sup>551</sup> has stated that discrimination against lesbian, gay, bisexual and trans persons (LGBT)<sup>552</sup> is often exacerbated by other factors such as poverty.<sup>553</sup> Further, the OHCHR also cites studies conducted in the Americas region suggesting that the rates of poverty, lack of housing and food insecurity are higher among LGBT individuals. In addition, the World Bank has documented the negative impact of violence and discrimination based on prejudice (referred to as “homophobia”) on the economic growth and development of countries.<sup>554</sup>

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<sup>549</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42, citing Lucas Paoli Itaborahy, [LGBT people living in poverty in Rio de Janeiro](#), (London, Micro Rainbow, 2014); and Gary J. Gates, [Food Insecurity and SNAP \(Food Stamps\) Participation in LGBT Communities](#), Williams Institute, February 2014.

<sup>550</sup> IACHR, [Report on Violence against LGBTI persons in the Americas](#), OAS/Ser.L/V/II.rev.1 doc. 36. Rev 2, November 12, 2015, Chapter 5, paras. 369 et seq. In that report, the IACHR recommended to OAS member states that, inter alia, they: (1) adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and continue to devote efforts and resources to eradicating poverty; (2) take measures to address discrimination based on sexual orientation, gender identity, and sex characteristics when designing and implementing actions and program to tackle poverty, and (3) ensure that state programs for low-income, homeless or unemployed people are accessible by LGBTI persons.

<sup>551</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42.

<sup>552</sup> *Ibid.*, citing Lucas Paoli Itaborahy, [LGBT people living in poverty in Rio de Janeiro](#), (London, Micro Rainbow, 2014); and Gary J. Gates, [Food Insecurity and SNAP \(Food Stamps\) Participation in LGBT Communities](#), Williams Institute, February 2014.

<sup>553</sup> *Ibid.*, citing various reports by the Human Rights Committee, the Committee on the Rights of the Child, and the CEDAW Committee.

<sup>554</sup> *Ibid.*, citing M.V. Lee Badgett, [The economic cost of stigma and the exclusion of LGBT People: a case study of India](#), World Bank Group, 2014.

442. The Commission has received information from civil society organizations indicating that LGBT persons - especially trans persons and trans persons from racial minority groups<sup>555</sup> - are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence. The IACHR notes that the factors of discrimination and exclusion that affect LGBT persons are many, and are also closely linked to their high rates of poverty.
443. The discrimination affecting LGBT persons in the societies of the region places them in a cycle of exclusion that tends to culminate in poverty because of their lack of access to services, opportunities and social benefits, and that in some cases, begins at an early age. In light of this, the IACHR has held that discrimination and violence against children and young people with non-normative sexual orientation and gender identities begins at home and in school, where the family, members of the community, teachers and school authorities disapprove of their sexual orientation and/or gender identity.<sup>556</sup> LGBT persons are expelled from their families and schools,<sup>557</sup> and in some instances cannot obtain even minimum wage jobs.<sup>558</sup>
444. As a result, LGBT persons often face poverty, social exclusion, and high rates of homelessness.<sup>559</sup> This pushes them into the informal economy or into criminal activity.<sup>560</sup> Some LGBT persons in such situations engage in sex work or in survival sex,<sup>561</sup> which is the exchange of sex for money, food, shelter or other material goods needed for survival.<sup>562</sup> As a result, LGBT persons living in poverty are vulnerable to police harassment and profiling, and consequently to higher rates of criminalization<sup>563</sup> and imprisonment.<sup>564</sup>
445. The UN Special Rapporteur on extreme poverty and human rights has stated that in order to address the rates of poverty affecting LGBTI persons, States must include the dimension of sexual orientation and gender identity in social programs, gather precise statistical data on the number of LGBTI persons in the country as a pre-requisite for developing an effective policy;

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<sup>555</sup> Open Society Foundation, Transforming Health: International Rights-Based Advocacy for Trans Health, 2013, p. 11.

<sup>556</sup> IACHR, Press Release No. 049/15, Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights, May 13, 2015.

<sup>557</sup> Ibid.

<sup>558</sup> Spade, Dean. The Laura Flanders Show GRITTV, 2015.

<sup>559</sup> IACHR, Press Release No. 049/15, op. cit.

<sup>560</sup> Spade, Dean. Interview on the Laura Flanders Show, op.cit.

<sup>561</sup> Ibid. See also, Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex, 2015.

<sup>562</sup> Urban Institute, "Surviving the Streets of New York", February 2015.

<sup>563</sup> Spade, Dean. Interview on the Laura Flanders Show, op.cit.

<sup>564</sup> Ibid.

offer an alternative to the male/female option in surveys and census forms; guarantee gender identity change processes that do not require a court authorization, and establish a specialized institution to examine, together with the groups involved, all social or other policies that need to be amended to take account of the specific needs of LGBTI persons and ensure equal treatment.<sup>565</sup>

446. According to information presented by civil society organizations to the IACHR, trans persons in the region face high rates of exclusion from income-producing opportunities and social welfare programs, which often relegate them to unemployment. As a consequence these persons resort to sex work,<sup>566</sup> and face “a chronic lack of access to educational and health services, job opportunities and decent housing,”<sup>567</sup> which means that they suffer severe poverty for most of their lives.<sup>568</sup>
447. It must also be stressed that this situation is exacerbated when discrimination based on gender identity is combined with other risk factors such as race and ethnicity. For example, according to the Diversencia Foundation, trans Latina persons in the United States are five times more likely to live in extreme poverty than the general Latino population (28% compared to 5%).<sup>569</sup>
448. 90 percent of trans women in Latin America and the Caribbean engage in sex work as a means of survival, and as a result, face direct or indirect criminalization.<sup>570</sup> Equally, exclusion makes it difficult for them to have access to the health care system and to medically supervised, quality body transformations - necessary their identity —which results in health complications, or even death. Thus, the cycle of poverty and exclusion in

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<sup>565</sup> United Nations Human Rights Council, [Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile](#), A/HRC/32/31/Add.1, April 8, 2016.

<sup>566</sup> Baral, SD., Beyrer., C., and Poteat., T. [Human Rights, the Law, and HIV among Transgender People. Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law](#), July 7-9, 2011, p. 6.

<sup>567</sup> Cabral, Mauro and Hoffman, Johanna. IGLHRC, [They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty](#), 2009, p. 5.

<sup>568</sup> Ibid.

<sup>569</sup> Fundación Diversencia, [Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights](#), January 31, 2017, para 1.

<sup>570</sup> Redlactrans, [Report on the Economic, Social and Cultural Rights of the Transgender Population of Latin America and the Caribbean \(Informe sobre los Derechos Económicos, Sociales y Culturales de la Población Transgénero de Latinoamérica y el Caribe\)](#), presented at a public hearing during the 154 period of sessions of the IACHR, March 16, 2015.

which trans women live makes them more vulnerable to preventable premature death and to violence by state and non-state agents.

449. This cycle in which they are immersed is also related to the low life expectancy of trans women in the region, which, as indicated by civil society organizations and corroborated by the IACHR by means of the Registry of Violence<sup>571</sup> is, in general terms, thirty-five years of age
450. The Commission notes the positive impact on the lives of trans persons of laws that recognize their gender identity. It notes, nonetheless, that despite the positive effects of these laws and the efforts made by a number of states of the region to implement them, the mere fact that they exist does not provide a solution nor guarantee trans individuals the full exercise of their rights or access to the various social services.
451. Initiatives have been taken in the region by several OAS Member states to secure greater inclusion of trans persons in the job market and in education. In September 2015, Argentina adopted Law No. 14.783, which establishes a minimum quota of at least one percent of public sector jobs in the Province of Buenos Aires for trans persons.<sup>572</sup> In May 2016, a law was passed on job quotas for trans persons in Rosario.<sup>573</sup> In April 2016, the Legislative Assembly of Mexico City called on the Chief Executive to instruct his government departments to hire at least 1 per cent of trans persons as part of their staff.
452. Part of the cycle of poverty affecting LGBT persons is characterized by the difficulty they have in obtaining housing, which makes them more vulnerable to discrimination and to becoming victims of violence. In this respect, in the United States, civil society organizations estimate that 20-40 percent of homeless youth are part of the LGBT community. They are at particularly high risk of being forced into prostitution.<sup>574</sup> Approximately 40-50 percent of homeless youth living on the streets of New York City identify themselves as LGBT. Most were expelled from their homes because of their

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<sup>571</sup> IACHR, [Registry of Violence against LGBT Persons](#), January 2013, March 31, 2014.

<sup>572</sup> IACHR, Press Release No. 122/15, [IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons](#), October 30, 2015.

<sup>573</sup> La Izquierda Diario (Left Voice), [Trans Job Quota Law passed for Rosario \(“Se aprobó la ley de cupo laboral trans para Rosario”\)](#), May 20, 2016.

<sup>574</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, [Trafficking in Persons Report 2014: The Vulnerability of LGBT individuals to Human Trafficking](#), 2014.



sexual orientation or gender identity, or ran away to escape violence within their families.<sup>575</sup>

453. According to a civil society report, young people who identified as LGBT in Jamaica make up nearly 40 percent of the country's youth population that is homeless.<sup>576</sup> In addition, the IACHR notes with concern that LGBT persons experience discrimination and violence in shelters and community care homes for street people. It considers that the high rates of homelessness among LGBT persons are due in large part to the fact that housing and shelter systems are generally not appropriate or safe for LGBT persons.<sup>577</sup>
454. The IACHR notes the structural inequalities facing LGBTI persons when they obtain, or try to obtain, health care services. The socioeconomic situation of fathers and mothers of intersex sons and daughters in Mexico may determine whether or not doctors reveal to the family that their son or daughter is intersex. According to one study in Mexico,<sup>578</sup> when doctors perceive a more "equal" relationship between themselves and their patients and families, they strive to translate medical terminology into layperson's terms and fully explain the boy's or girl's intersex or possible intersex status. However, in other hospitals or with respect to other patients where this perception of an equal relationship is not present, doctors tend not to communicate an intersex diagnosis to fathers or mothers because the parents lack an "advanced education".
455. According to this study, there is a pervasive belief amongst medical staff that lower socioeconomic status or the limited education of fathers, mothers or relatives are insurmountable barriers to understanding an intersex diagnosis. This hinders an effective and open dialogue with families about boys and girls who were born intersex, which in turn affects informed consent regarding genital surgery and medical interventions.<sup>579</sup>
456. The poverty, discrimination and exclusion that adversely affect LGBTI persons in the region are related to obstacles to having safe, high quality

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<sup>575</sup> Funders for Lesbian and Gay Issues, Out for Change: Racial and Economic Justice Issues in Lesbian, Gay, Bisexual and Transgender Communities, 2005, p. 10.

<sup>576</sup> Human Rights Watch, Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica, 2014, p. 45, citing statistics provided by Caribbean Vulnerable Communities.

<sup>577</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJiglBllbU>. See also Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex, 2015.

<sup>578</sup> Alcántara Z., Eva. Pobreza y condición intersexual en México: Reflexiones y preguntas en torno al dispositivo médico (Poverty and Intersex Status in Mexico: Reflections and Questions about Medical Solutions), Córdoba, Mexico: Anarres Editorial, 2009, pp. 16-30.

<sup>579</sup> Ibid.

education systems available to them. The Commission has been informed that discrimination in schools would appear to be the cause of school dropout. In a study conducted in 2014 by a civil society organization, half of those surveyed said that they stopped going to school because they had been discriminated against on the basis of their trans identity.<sup>580</sup> Civil society organizations in Argentina have informed the Commission that in schools, discrimination by peers or bullying is experienced in seven out of ten cases, and that four out of ten trans persons said they had been discriminated against by teachers and school authorities.<sup>581</sup> Moreover, according to the information available, 72% of LGBTI persons in Bolivia drop out of secondary school.<sup>582</sup>

457. States have an obligation to ensure that their education policies are specially designed to modify social and cultural patterns of conduct, to counteract prejudices and customs, and to eradicate practices based on stereotypes of LGBTI persons that may legitimize or exacerbate violence on account of prejudice.<sup>583</sup> The Commission urges the States of the region to adopt measures to ensure that LGBT persons remain in the formal education system and receive technical training that will enable them to enter the job market, thus ensuring their economic stability, reducing levels of poverty, improving their quality of life and raising their life expectancy.

## ***I. Older Persons***

458. In recent years, the IACHR has monitored how older persons face various forms of discrimination on a daily basis, are often excluded from the labor market, encounter multiple obstacles in accessing public and private services, are presented in the media through stereotypes and suffer diverse specific forms of violence, all together in a context of vulnerability and exclusion. In turn, these forms of discrimination increase the tendency for older persons to find themselves in a situation of poverty, which generates a vicious circle that perpetuates the problem.

459. Poverty represents the main obstacle to the effective enjoyment of the human rights of older persons, in particular with regard to economic, social

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<sup>580</sup> Redlactrans and Fundación Huésped, [Ley de identidad de género y acceso al cuidado de la salud de las personas trans en Argentina](#) (Gender identity law and access to health care by trans persons in Argentina), April 2014, p. 15.

<sup>581</sup> Ibid., fig. 11.

<sup>582</sup> Fundación Diversencia, Comments on the Preliminary Report on Poverty, Extreme Poverty, and Human Rights, January 31, 2017, para. 3.

<sup>583</sup> IACHR, Press Release No. 92/13, [The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings](#), November 22, 2013.

and cultural rights. They are especially vulnerable to poverty since their capacity to generate income tends to be lower with advancing age. Likewise, older persons live in conditions of financial uncertainty, as they are less likely to recover from a loss of income or expenses caused by medical services.<sup>584</sup>

460. This situation is aggravated in cases of persons who had been marginalized in the workplace during their economically active life. The incidence of poverty around older persons often affects women, people with disabilities, people of African descent, members of national, ethnic, religious or linguistic minorities, indigenous peoples, peasant communities, people living on the streets and refugees, among others.<sup>585</sup>
461. According to figures from the World Health Organization (WHO), it is estimated that by 2050 there will be more than 2 billion people aged 60 or more, that is, more than 20% of the world population.<sup>586</sup> At present, in Latin America and the Caribbean, the population aged 60 years or over is made up of some 76 million people, but it is estimated that it will reach 147 million in 2037 and 264 million in 2075.<sup>587</sup> As far as the United States and Canada are concerned, it is estimated that there will be about 115 million older persons by 2060.<sup>588</sup>
462. According to a consultation carried out in 2013 by the United Nations High Commissioner for Human Rights on the promotion and protection of the rights of older persons, the main concerns regarding the human rights of older persons include care, awareness of the reality and rights of older persons, health, pensions, discrimination, abuse and work.<sup>589</sup>
463. The IACHR notes that, as a result of the policies and laws on labor flexibility, as well as on social security and pensions that have been implemented in recent years in the region, the situation of poverty faced by older persons has worsened. As a result of poor coverage of social security systems, older persons have been forced to continue working in precarious conditions to

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<sup>584</sup> ECLAC, Meeting of Experts on Population and Poverty in Latin America and the Caribbean, November 14-15, 2006, Sandra Huenchuan and José Miguel Guzmán: *Seguridad económica y pobreza en la Vejez: Tensiones, Expresiones y Desafíos para Políticas*, 2013.

<sup>585</sup> UN General Assembly, Human Rights Council, Resolution adopted by the Human Rights Council 24/20, The Rights of Older Persons, A/HRC/RES/24/20, October 8, 2013.

<sup>586</sup> WHO, [Ageing and Life-course, Facts about Ageing](#).

<sup>587</sup> ECLAC, Challenges to the Autonomy and Interdependent Rights of Older Persons (LC/CRE.4/3/Rev.1), Santiago, 2017, p. 11.

<sup>588</sup> IACHR, IACHR calls states to combat discrimination against older persons, October 4, 2017.

<sup>589</sup> Office of the UN High Commissioner for Human Rights (OHCHR), "Public consultation on the human rights of older persons".

survive, even after they have passed their retirement ages.<sup>590</sup> Additionally, many older persons do not receive income of any kind, which places a significant burden for their maintenance on their families and their social networks.<sup>591</sup>

464. The fact that a large number of older persons live in poverty entails the violation of other human rights, such as homelessness, malnutrition, treatable illnesses, lack of access to drinking water and sanitation, the unaffordable cost of medicines and treatments, as well as insecurity regarding their income.<sup>592</sup> The poverty situation of older persons also raises differences in the provision of services between urban and rural areas and, within cities, between the periphery zones and the central areas.<sup>593</sup>
465. As the Commission has observed in recent years, large migratory movements are taking place in the region. As a result, many older persons are often left behind, with the responsibility for the care of grandchildren or other close relatives who are usually children and adolescents. This work as caregivers is not usually recognized; their income is usually not predictable, aggravating their poverty situation by having to take care of themselves and other persons who also lack higher incomes.<sup>594</sup>
466. The IACHR welcomes the fact that the Inter-American Convention on the Protection of the Human Rights of Older Persons, in force since December 2016, constitutes an unprecedented achievement as the first international treaty in this area. The new convention addresses old age from a human rights perspective, recognizing the older person as a rights holder and their important current and potential contribution to the pursuit of common well-being, cultural identity, diversity of their communities, human, social and economic development and the eradication of poverty.
467. The Convention establishes the obligation of States to protect and promote the rights of older persons, respecting their intrinsic dignity. Article 6 addresses the right to life and dignity; Article 7 focuses on the right to independence and autonomy; and Article 12 provides for long-term care services.<sup>595</sup>

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<sup>590</sup> ECLAC Meeting of Experts on Population and Poverty in Latin America and the Caribbean, November 14-15, 2006, Sandra Huenchuan and José Miguel Guzmán: *Seguridad económica y pobreza en la Vejez: Tensiones, Expresiones y Desafíos para Políticas*, 2013.

<sup>591</sup> Ibid.

<sup>592</sup> General Assembly, Report of the Secretary General, Follow up on the Second World Assembly on Ageing, A/66/173, July 22, 2011, para. 9.

<sup>593</sup> Ibid., para. 11

<sup>594</sup> Ibid., para. 12

<sup>595</sup> ECLAC, Challenges to the Autonomy and Interdependent Rights of Older Persons (LC/CRE.4/3/Rev.1), Santiago, 2017, p. 87.

468. The Convention also reaffirms the right to equality and non-discrimination (Article 5); to community participation and integration (Article 8); to security and to a life without any type of violence (Article 9); to provide their free and informed consent on health issues (Article 11); to the right to personal liberty (Article 13); to the right to social security (Article 17); to economic, social and cultural rights (Articles 18 to 21); to recreation, leisure and sports (Article 22); to the right to property (Article 23); the right to a healthy environment (Article 25); to rights to accessibility and personal mobility (Article 26); to political rights (Article 27), of assembly and association (Article 28); and access to justice (Article 31).
469. Some countries in the region have promoted public policies and laws to promote and protect the human rights of older persons, promoted by the Regional Intergovernmental Conference on Aging and the Rights of Older Persons in Latin America and the Caribbean.<sup>596</sup> Despite these advances, important challenges still exist in the situation experienced by older persons, especially with regard to poverty.
470. The IACHR notes that economic security is fundamental to enable older persons to meet the objective needs they have and that may arise as time passes. It is also extremely important to ensure that people can make autonomous decisions about the issues that concern them. The Commission emphasizes the importance of the role that companies play in ensuring the effective enjoyment of the human rights of older persons, especially in relation to their economic development and social inclusion.

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<sup>596</sup> ECLAC, Regional Inter-Governmental Conference on Ageing and the Rights of Older Persons in Latin America and the Caribbean.



CHAPTER 4  
PUBLIC POLICIES, POVERTY AND  
HUMAN RIGHTS





## PUBLIC POLICIES, POVERTY AND HUMAN RIGHTS

471. The States of the Americas have made a significant commitment to reduce poverty and extreme poverty by adopting a series of regulations, decrees, national plans, and public policies. This process has gone hand in hand with growing recognition of the central role of human rights in public policy planning instruments.<sup>597</sup>
472. This Chapter refers to the principal public policy tools in the area of the fight against poverty. Opportunities and trends as well as considerations regarding those mechanisms from a human rights perspective will be identified, without analyzing in detail all poverty reduction social programs.
473. This approach must be understood in terms of two complementary dimensions. On the one hand, human rights standards and principles provide guidelines or a road map for designing, implementing, and evaluating public policies. On the other, States must develop public policies aimed at realizing those rights. The Commission will refer, in particular, to the progress made and key challenges associated with the main measures implemented by States to reduce poverty, and to fiscal policy as a tool for combating it.

### ***A. Measures Adopted by States to Reduce Poverty***

474. The IACHR has received information regarding a series of programs under way in recent years in the region aimed at reducing poverty and extreme poverty. Among them, the most frequently used in Latin America and the Caribbean are those known as Conditional Transfer Programs in which the monetary transfer or service provided implies a “conditionality” or “co-responsibility” to be met by the recipients.<sup>598</sup> These conditions mainly relate to education and health, such as enrolling children in school, attendance at a certain percentage of classes and medical check-ups, among others.

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<sup>597</sup> ECLAC. The rights-based approach to social protection in Latin America: From rhetoric to practice. This report highlights the fact that development plans in the region use rights-oriented language or establish the observance of human rights as a central focus or crosscutting theme.

<sup>598</sup> ECLAC, Conditional cash transfer programs: the recent experience in Latin America and the Caribbean. 2011.

475. For example, Belize is implementing the *Building Opportunities for Our Social Transformation* program targeting five population groups (pregnant women, children up to four years of age, children of school age, adults over 60 years old, and persons with physical disabilities.), with conditionalities relating to healthcare for all these groups as well as education for school-age children and adolescents.<sup>599</sup>
476. In Bolivia, the “Bono Juancito Pinto” program delivers a benefit to the mother, father, or guardian conditional upon certifying school attendance of at least 80%. There is also a “Juana Azurduy de Padilla” program in which the conditions to be met include attendance at pre-natal check-ups, giving birth at a health center, attending educational activities, and compliance with nutritional recommendations.<sup>600</sup>
477. The main monetary transfer program in Brazil is the “Bolsa de Familia” program (Beca Familia), in which a transfer of income is subject to enrolling and keeping children and adolescents from 6 to 17 years of age in public education programs, health care for pregnant women, breastfeeding mothers or breastfeeding and children up to 7 years of age for pre-natal check-ups, vaccination, and nutritional supervision.<sup>601</sup>
478. Similarly, Colombia informed the Commission about its “Familias en Acción” program, which “consists of a conditional and periodic direct cash transfer to supplement income and improve the health and education of children under 18 in families living in poverty and vulnerable situations.”<sup>602</sup>
479. In Central America, Honduras indicated that it has a “Bono Vida Mejor” program for families living in extreme poverty, which consists of cash transfers conditional upon certain health, education, and nutrition requirements.<sup>603</sup> For its part, Panama reported various programs, including the “Red de Oportunidades” program, consisting of monetary transfers

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<sup>599</sup> Ministry of Human Development, Social Transformation and Poverty Alleviation of Belize, Belize’s Co-responsibility Cash Transfer Program: Building Opportunities for Our Social Transformation.

<sup>600</sup> In connection with the preparation of this report, the IACHR visited the State of Bolivia. During the visit, the Commission met with State authorities, which provided relevant information regarding the poverty reduction programs adopted and progress made.

<sup>601</sup> Reply by the State of Brazil to the IACHR questionnaire: Poverty and Human Rights in the Americas. Note No. 133 of April 14, 2016.

<sup>602</sup> Reply by the State of Colombia to the IACHR questionnaire: Poverty and Human Rights in the Americas. Note No. 311/2016 of April 14, 2016.

<sup>603</sup> Reply by the State of Honduras to the IACHR questionnaire: Poverty and Human Rights in the Americas. Note No. 179-DGPE/DPM-16 of April 6, 2016.

subject to prenatal check-ups for pregnant women and health and growth check-ups for children under 5.<sup>604</sup>

480. In short, the programs vary from one State to another and from the information received it transpires that some focus on persons living in poverty, while others target the extremely poor or destitute. Some programs are said to have been designed on the basis of geographical criteria, in order to cover remote areas with scant social services or higher poverty indices. Other types of programs are oriented to capacity building.
481. The available information shows that social policies in the region reflect an increasing tendency to grasp the multidimensional nature of the poverty problem, progressively seeking to incorporate comprehensive satisfaction of economic, social, and cultural rights, from a perspective based on the provision of services at different stages in life. In particular, social policies have focused on individuals, groups, and collectives that, historically, have suffered discrimination.
482. At the same time, the Commission takes notes of certain criticism regarding the possibility of imposing conditions in exchange for services provided by States. In particular, it has been argued that “the imposition of conditions undermines the very basis of human rights, by requiring that people living in poverty must demonstrate (by fulfilling conditions) that they are “deserving” of their right to social security”<sup>605</sup>, whereas human rights are inherent to the human being.
483. Similarly, the Working Group on the Protocol of San Salvador has pointed out that, although Conditional Transfer Programs have brought important relief to extreme poverty, and poverty to a lesser extent, they frequently involve a high degree of institutionality, and need to be revised in order to move forward with universal measures that are respectful of human rights as a whole.<sup>606</sup>
484. Other challenges relating to the conception of transfer programs relate to lack of effective participation in their design and implementation; the differentiated impact of the transfer conditionality for women; alleged corruption and political manipulation of public funds earmarked for these programs; difficulties associating with maintaining the programs due to budgetary constraints; the need to extend coverage; administrative expenses of verifying compliance with the conditions; the effect of possible

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<sup>604</sup> Reply by the State of Panama to the IACHR questionnaire: Poverty and Human Rights in the Americas. Note No. AJDH-MIRE2016-21792 of March 30, 2016.

<sup>605</sup> ECLAC. The rights-based approach to social protection in Latin America: From rhetoric to practice. 2014, p. 27.

<sup>606</sup> Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador. Notes to be incorporated into the document on Poverty and Extreme Poverty in the Americas. 2017.

consequences of sanctions for failure to comply with conditions; and the lack of statistics and information regarding the programs, among others.

485. In light of the above, the IACHR wishes to emphasize the need for public poverty reduction policies to include a comprehensive human rights approach at every stage: design, planning, implementation, and evaluation. For that, it is vital to strengthen institutional, legal, and regulatory frameworks by recognizing economic, social, cultural, and environmental rights, with its institutionality and the transparent determination of its specific scope.<sup>607</sup>
486. Bearing in mind the UN Guiding Principles on Extreme Poverty and Human Rights, the IACHR considers that three principles are especially important for overcoming the main challenges these programs face: 1) citizen participation; 2) complete, prior, and accessible information; 3) and accountability.<sup>608</sup>
487. Regarding the first aspect, the IACHR emphasizes that it is necessary to guarantee the broadest possible social participation of individuals, groups, and collectives targeted by these programs and of the civil society organizations representing them. The principle of participation is vital in this context and requires establishing a mechanism for identifying the needs and priorities at the local and community levels of persons living in poverty.<sup>609</sup> When their participation in decision-making and in the design and implementation of policies is not facilitated and assured, their needs and interests may not be reliably taken into consideration. Thus, “Participation, when undertaken with a rights foundation, provides an opportunity for people living in poverty to be active agents in their own destiny.”<sup>610</sup>
488. As the former United Nations Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, pointed out “rights-based participation aims to be transformative rather than superficial or instrumental. It promotes and requires the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation and evaluation of policies that affect them”.<sup>611</sup> Accordingly,

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<sup>607</sup> On this, see United Nations, Report of the Special Rapporteur on extreme poverty and human rights, Professor Phillip Alston. A/HRC/32/31. April 28, 2016.

<sup>608</sup> United Nations, *Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council on September 27, 2012. General Assembly, A/HRC/21/39, July 18, 2012, paras. 37-47.*

<sup>609</sup> Víctor Abramovich, *Los Estándares Interamericanos de Derechos como Marco para la Formulación y el Control de las Políticas Sociales*, p. 33.

<sup>610</sup> United Nations. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/23/36. March 11, 2013, para. 21.

<sup>611</sup> *Ibid.*, para. 17

sufficiently powerful structures must be established in order to ensure active, free, informed and advantageous participation that is not perceived as mere procedure but rather has a real impact.<sup>612</sup>

489. As for access to information, the Commission concurs with the view of the Working Group on the Protocol of San Salvador that adequate access to public information is a key tool for guaranteeing citizen participation in public policies to implement economic, social, and cultural rights. Hence the need for complete, prior, accessible, and culturally appropriate information providing whatever materials are needed to evaluate and monitor those policies and decisions that directly affect citizens.<sup>613</sup> Likewise, “States have to make every effort to ensure easy, prompt, effective and practical access to information which might be of public interest, [...] putting in place necessary procedures [...]”.<sup>614</sup>
490. Thirdly, the IACHR considers that policies and programs implemented by States must have built-in accountability mechanisms for avoiding possible abuses or manipulation. In that sense, the Commission shares Magdalena Sepúlveda’s view that, in order to protect against possible abuses and poor management, cash transfer programs must have disclosure mechanisms in place regarding each stage of implementation.
491. In that way, the beneficiaries and society as a whole can access information regarding the programs’ design and the extent to which the authorities comply with their obligations.<sup>615</sup> Accountability requires that the population have access to procedures and institutions for reparation as well as mechanisms for ensuring that the Government respects the right of access to information, the right to participation, and other applicable rights.<sup>616</sup>
492. Finally, the Commission considers that States must make sure that a gender perspective is built into all its human rights-based public policies and social programs. That constitutes a key step on the path to forging societies free of discrimination that respect and guarantee all women’s rights. In order to ensure the effective and sustainable progress of women’s rights, it is also necessary to evaluate periodically the impact of the measures adopted.

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<sup>612</sup> United Nations, *Guiding Principles on Extreme Poverty and Human Rights*, op.cit., para. 37.

<sup>613</sup> OAS, *Progress Indicators in respect of Rights Contemplated in the Protocol of San Salvador*, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 43.

<sup>614</sup> United Nations. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/23/36. March 11, 2013, para. 28.

<sup>615</sup> Ibid., para. 44.

<sup>616</sup> Ibid., para. 65.

## **B. Fiscal Policy to Combat Poverty**

493. Poverty and extreme poverty cannot be addressed and eradicated without a broad framework of redistribution policies that reduce the region’s extreme socioeconomic inequality. While economic growth does play a key part in poverty reduction, in and of itself it is not enough to eradicate it and to generate structural changes ensuring equity.<sup>617</sup> Moreover, far from establishing specific fiscal policies, human rights obligations and treaties set certain limits on States’ discretion when formulating such policies.
494. Bearing in mind the obligation of States to use available resources to progressively achieve the realization of ESCR, it is not possible to analyze States’ efforts to eradicate poverty without examining their fiscal policy, understood as the policy to collect and allocate public resources.<sup>618</sup> It is worth noting that in October 2015 during its 156<sup>th</sup> period of sessions, the IACHR for the first time held a thematic hearing on the relationship between “Fiscal Policy and Human Rights”. In April 2016, during the 157<sup>th</sup> period of sessions, it also conducted a dialogue on “Fiscal Policy and Human Rights in Times of Austerity,” sponsored by its ESCR Unit.
495. The IACHR considers that, in analyzing the relationship between fiscal policy and poverty, three factors need to be mentioned. First, low levels of revenue collection impair the capacity to reduce social and regional inequalities. Despite the fact that tax revenue is the principal component of the region’s total income, this revenue has been insufficient due to the low tax burden and the regressive profile of some of the most important taxes in these countries – together with numerous tax deductions, exemptions, and legal loopholes, as well as tax evasion, avoidance, and similar practices.<sup>619</sup>
496. Moreover, as ECLAC has pointed out, “[e]nhancing the efficiency of tax collection requires a re-examination of tax holidays, exemptions and deferrals that are of disproportionate benefit to the better-off sectors of society.”<sup>620</sup> The low levels of tax collection have a disproportionate impact on the poorest segments of the population and they constitute an obstacle to the financing of policies and programs.<sup>621</sup> For that reason, the IACHR

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<sup>617</sup> CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP. Comments on the Preliminary Report “Poverty, Extreme Poverty, and Human Rights” of the IACHR. February 2017, pp. 2-3.

<sup>618</sup> *Ibid.*, p. 4.

<sup>619</sup> *Ibid.*, pp. 5-6.

<sup>620</sup> ECLAC. The rights-based approach to social protection in Latin America: From rhetoric to practice. 2014, p. 68.

<sup>621</sup> *Ibid.*, p. 67.

considers that States need to take appropriate steps to conduct a comprehensive analysis of fiscal policies.<sup>622</sup>

497. Second, there have been indications that the existence of regressive tax regimes prevents fiscal policy from playing a greater part in poverty reduction. While tax systems in Latin America apply 9% of distributive improvements, in the OECD the figure is 17% and in the European Union 15%.<sup>623</sup> It is important to note that “the impact of fiscal policy and of regressive tax systems can be seen in the inequalities between social groups, age groups, indigenous, Afro-descendent, and non-indigenous groups, and between inhabitants of rural and urban areas.”<sup>624</sup>
498. Thus, in several countries in the region the poor are not beneficiaries of the tax system but net payers. As the former UN Rapporteur on extreme poverty and human rights pointed out, “[o]verall, high tax rates for goods and services and low rates for income, wealth and property bring about inequitable and discriminatory outcomes.”<sup>625</sup>
499. A third factor curtailing the role of fiscal policy in combating poverty is insufficient and poorly distributed social expenditure. While Latin America has made considerable headway with increasing the level and progressivity of social expenditure, it is still low by international standards. For instance, social expenditure in the region is equivalent to 15% of GDP, 60% less than the OECD average.<sup>626</sup> Furthermore, as mentioned earlier, social programs and policies sometimes lack a human rights approach, and have not necessarily enhanced the enjoyment of rights.
500. With regard to this, the Commission notes progress both in constitutional recognition of social rights and in the adoption of a rights-based approach to social protection, in Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Mexico, Paraguay, Peru, Uruguay,

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<sup>622</sup> United Nations. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28. 22 May 2014. Para. 62. CESR, ACIJ, CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP. Comments on the Preliminary Report “Poverty, Extreme Poverty, and Human Rights” of the IACHR. February 2017, p.10.

<sup>623</sup> OECD. Government at a Glance: Latin America and the Caribbean 2017, p. 35.

<sup>624</sup> CESR, ACIJ, CELS, Fundar, Dejusticia, Grupo Faro, IBP, INESC, Fiscal Policy and Human Rights in the Americas: Mobilizing Resources to Secure Rights. Thematic Report prepared for the Thematic Hearing on Fiscal Policy and Human Rights, 156th period of sessions of the Inter-American Commission on Human Rights (IACHR), Washington D.C., October 2015, p. 8.

<sup>625</sup> United Nations. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28. 22 May 2014. Para. 47.

<sup>626</sup> CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP. Comments on the Preliminary Report “Poverty, Extreme Poverty, and Human Rights” of the IACHR. February 2017, p. 7.

Venezuela,<sup>627</sup> among others. Moreover, the adoption of a rights-based approach to social protection is vital, because “the introduction of social protection programmes makes it easier to give effect to a series of human rights, above all those relating to the enjoyment of minimum essential levels of ESCR.”<sup>628</sup>

501. The IACHR wishes to emphasize that the above-mentioned rights to participation, accountability, transparency, and access to information are fundamental principles fully applicable to fiscal policies. Thus, they must be implemented in the entire policy cycle from budget preparation and tax codes or expenditure allocation through to monitoring and evaluation of outcomes.<sup>629</sup>
502. On the other hand, it is clear that human rights principles provide a basic framework for the core functions of fiscal policy and taxation. In that sense, from a human rights perspective, the following principles and obligations are particularly relevant for fiscal policy:<sup>630</sup> securing essential minimum levels; mobilization of the maximum amount of resources available for progressive realization of ESCR; the progressive realization and non-regressive nature of those rights; and the principle of equality and non-discrimination.<sup>631</sup>

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<sup>627</sup> ECLAC. Towards universal social protection: Latin American pathways and policy tools.

<sup>628</sup> ECLAC, The rights-based approach to social protection in Latin America: From rhetoric to practice. 2014, p. 16.

<sup>629</sup> United Nations. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28. 22 May 2014. Para. 20.

<sup>630</sup> CESR, ACIJ, Dejusticia, Fundar, CELS, INESC, IBP. Comments on the Preliminary Report “Poverty, Extreme Poverty, and Human Rights” of the IACHR. February 2017, pp. 8-14.

<sup>631</sup> See UN, ESCR Committee. Final Observations on the Sixth Period Report of the United Kingdom of Great Britain and Northern Ireland. E/C.12/GBR/CO/6, para. 17.



CHAPTER 5  
ACCESS TO JUSTICE



## ACCESS TO JUSTICE

503. Persons living in poverty and extreme poverty generally face greater obstacles to gaining access to justice, and also lack the means to facilitate the effective management of claims connected with the enforcement of their rights. Policies designed to provide legal services for persons without means are intended as mechanisms to balance material inequality impairing the effective protection of these persons' interests.
504. It is important to clarify the scope of States' duties, and the principles guiding the organization and provision of this type of service, as essential tools for ensuring the exercise of human rights by excluded sectors or persons living in poverty.
505. The Inter-American System of Human Rights has recognized its essential role in ensuring the right of access to justice as a fundamental guarantee in the enforcement of the rest of civil and political, economic, social and cultural rights.<sup>632</sup>
506. The right of access to justice is specifically established in Articles 8 and 25 of the American Convention on Human Rights and Article XVIII of the American Declaration on the Rights and Duties of Man. The organs of the Inter-American System acknowledge it in the system of individual petitions, annual reports, thematic and country reports and, in particular, the Advisory Opinions issued by the Court.<sup>633</sup>
507. International human rights law has developed standards on the right to have judicial and other remedies that serve as suitable and effective grievance mechanisms against the violation of fundamental rights. In that sense, States

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<sup>632</sup> IACHR, [Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights](#), para. 49.

<sup>633</sup> Similarly, Article 7, numerals c, d, e, f, g of the Convention of Belém do Pará states that the States Parties are obliged to include criminal, civil, administrative and other norms in their domestic legal system to prevent, punish and eradicate violence; to adopt measures to restrict the aggressor, to abolish existing laws, as well as regulations and modify customary practices that "support the persistence or tolerance of violence against women"; to establish fair and effective legal procedures for women who have been subjected to violence, including, among others, protective measures, a timely trial and effective access to such procedures and to "establish judicial and administrative mechanisms that guarantee women victims of violence to a fair and effective reparation and compensation means."

have a positive obligation to organize their institutions in such a way that all persons can avail themselves of those remedies. To that end, States should remove any regulatory, social, or economic obstacles that prevent or limit the possibility of access to justice,<sup>634</sup> and also ensure access to information and, under certain circumstances, the legal advice they require.

508. The IACHR has noted that Afro-descendants, indigenous peoples and in particular women living in poverty often encounter additional barriers to gaining access to justice. Together with their lack of economic resources, these barriers double the discrimination, preventing them from gaining access to effective judicial remedies against discrimination or human rights violations to which they have been subjected.<sup>635</sup>
509. The Commission shares the views of the former UN Rapporteur on Extreme Poverty and Human Rights, when indicating that access to justice is crucial to tackling the root causes of poverty, exclusion and vulnerability. It is necessary to provide a simple, prompt, effective and economical remedy, both administratively and judicially, such that will guarantee the effectiveness of programs and of the social rights assistance of persons living in poverty.<sup>636</sup>
510. It is common for the unequal economic or social situation of litigants to be reflected in an unequal possibility of defense at trial. A first element in connection with the scope of the right of access to justice are the economic or financial obstacles in gaining access to the courts, and the positive obligation of the State to remove those obstacles in order to ensure an effective right to a hearing by a court.<sup>637</sup> The obligation to provide free legal counsel is thus fundamental in ensuring due process guarantees and equality before the courts to persons living in poverty.
511. Advisory Opinion No. 11/90 of the Inter-American Court of Human Rights (OC-11/90)<sup>638</sup> was the first occasion on which the Court referred to the need to remove obstacles to access to justice based on an individual's economic

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<sup>634</sup> I/A Court H.R., Advisory Opinion Nº 11/90, August 10, 1990. Exceptions to the exhaustion of domestic remedies; I/A Court H.R., Case of Fairén Garbí and Solís Corrales, of March 15, 1989, Series C, No. 6, para. 93.

<sup>635</sup> IACHR, Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights, para. 86. See also, Access to justice for women victims of violence in the Americas, op. cit., paras. 211, 212. Also, UN, Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, August 9, 2012, para. 18.

<sup>636</sup> UN, Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, August 9, 2012, para. 5.

<sup>637</sup> IACHR, Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights, para. 48.

<sup>638</sup> I/A Court H.R., Exceptions to the exhaustion of domestic remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11.

status.<sup>639</sup> The Court reaffirmed the prohibition on discriminating on the basis of economic status, and found that “if a person who is seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigence), prevents him from so doing because he cannot afford either the necessary legal counsel..., that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law”.<sup>640</sup>

512. In Advisory Opinion 18/03 on the “Juridical Condition and Rights of the Undocumented Migrants”,<sup>641</sup> the Court found that the failure to provide a free public legal aid service for people without means - when necessary to effectively access remedies - is a violation of due process. In that opinion, the Court set the standard as follows:

The right to judicial protection and judicial guarantees is violated for several reasons: owing to the risk a person runs when he resorts to the administrative or judicial instances, of being deported, expelled or deprived of his freedom, and by the negative to provide him with a free public legal aid service, which prevents him from asserting the rights in question.<sup>642</sup>

513. For the last two decades, the IACHR has referred to the importance of providing free legal services in order to comply with the American Convention.<sup>643</sup> The Commission has noted that a litigant who does not have the means to hire the services of an attorney of his choice must wait a long

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<sup>639</sup> The IACHR submitted a request to the I/A Court H.R. for an advisory opinion enquiring, among other issues, whether the requirement of the exhaustion of internal legal remedies applies to an indigent who, because of economic circumstances, is unable to avail himself of the legal remedies within a country. *I/A Court H.R., Advisory Opinion OC-11/90*, op. cit., para. 2.

<sup>640</sup> *I/A Court H.R., Advisory Opinion OC-11/90*, op. cit., para. 22. On this point, it may be said that this jurisprudence extends also to violation of fundamental rights recognized by the Constitution or the law as stipulated in Article 25(1) of the Convention. Further, despite recognizing the positive obligation of the State to guarantee access to justice, the Court only went so far as to say that “the circumstances of a particular case or proceeding--its significance, its legal character, and its context in a particular legal system are factors that bear on the determination of whether legal representation is or is not necessary for a fair hearing.” (*Advisory Opinion OC-11/90*, para. 28).

<sup>641</sup> *I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03* of September 17, 2003. Series A No. 18. On May 10, 2002, Mexico submitted to the I/A Court H.R. a request for an advisory opinion on the “[...] deprivation of the enjoyment and exercise of certain labor rights [of migrant workers,] and its compatibility with the obligation of the American States to ensure the principles of legal equality, non-discrimination and the equal and effective protection of the law embodied in international instruments for the protection of human rights; and also with the subordination or conditioning of the observance of the obligations imposed by international human rights law, including those of an *erga omnes* nature, with a view to attaining certain domestic policy objectives of an American State.”

<sup>642</sup> *I/A Court H.R., Advisory Opinion OC-18/03*, op. cit., para.126.

<sup>643</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*, April 24, 1997, (OEA/Ser.L/V/II.96).

time for a public defender to become available—which runs clearly counter to the provisions of the American Convention, specifically Articles 1.1, 8 and 24. Claimants must be represented by legal counsel that can argue their case and ensure effective access; therefore the number of public defenders available to advise them should be increased, so that this service may be within the reach of all who need it.<sup>644</sup>

514. The IACHR has established the obligation to provide free legal services to persons without means,<sup>645</sup> and has specified a number of criteria for determining their applicability to specific cases. Thus, the Commission has indicated the following factors as pertinent to this determination: a) the resources available to the person concerned, b) the complexity of the issues involved, and c) the significance of the rights affected.<sup>646</sup>
515. The Commission has also identified certain remedies requiring the provision of free legal counsel as indispensable in light of the American Convention and other treaties. In its Merits Report in the case of *Whitley Myrie*, the IACHR found that the State must provide effective access to constitutional motions, which include providing free legal counsel when persons lack the means to bring an action on their own.<sup>647</sup>
516. Women may face serious difficulties in accessing free legal assistance in criminal or civil matters. This particularly affects women living in poverty who are victims of crimes such as domestic violence. Thus, in its report *Access to justice for women victims of violence in the Americas*, the IACHR again highlighted the need to alleviate situations where there is economic disadvantage and the consequent obligation to increase the provision of free legal counsel.<sup>648</sup>
517. In 2007, the Commission approved its report *Access to justice as a guarantee of economic, social, and cultural rights*, where it warned that the lack of free

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<sup>644</sup> See [Report on the Situation of Human Rights in Ecuador](#), Op. Cit., Chapter III. It is also useful to cite here the recent report on [violence and discrimination against women in the armed conflict in Colombia](#). Among the conclusions and recommendations on the question of administration of justice, that report stated the need to “increase access to free legal aid counsel for women victims of violence and discrimination”. Cf. IACHR, [Violence and discrimination against women in the armed conflict in Colombia](#), October 18, 2006 (OEA/SER.L/V/II., doc. 67), Chapter VI, para. 51.

<sup>645</sup> See IACHR, [Report on Terrorism and Human Rights](#), October 22, 2002 (OEA/Ser.L/V/II.116), para. 236, in which the Commission reaffirmed the need to ensure free legal counsel services in all proceedings to determine rights, specifically establishing that: “...both the Commission and the Inter-American Court have observed in this respect that in criminal proceedings and those relating to rights of obligations of a civil, labor, fiscal or any other nature, an indigent has the right to legal counsel free of charge where such assistance is necessary for a fair hearing...”.

<sup>646</sup> IACHR, [Report on Terrorism and Human Rights](#), October 22, 2002 (OEA/Ser.L/V/II.116), para. 341.

<sup>647</sup> IACHR, [Report N° 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica](#), October 12, 2004, paras. 67-70.

<sup>648</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), 2007, para. 182.

legal advice may not be the only economic obstacle to gaining access to justice. The legal costs of the judicial proceedings themselves are also a point to be considered here.<sup>649</sup> In its judgment in the *Cantos* case,<sup>650</sup> the Inter-American Court held that:

This provision of the Convention [8.1] upholds the right of access to the courts. It follows that States shall not obstruct persons who turn to judges or the courts to have their rights determined or protected. Any domestic law or measure that imposes costs or in any other way obstructs individuals' access to the courts and that is not warranted by what is reasonably needed for the administration of justice must be regarded as contrary to Article 8(1) of the Convention (...).<sup>651</sup>

518. The Court addressed, among other points, whether the amount that the Argentine courts required as a filing fee,<sup>652</sup> was incompatible with the rights set out in Articles 8 and 25 of the American Convention, in light of the fact that the petitioner had been denied access to the benefit of litigating without costs. The judgment stated that:

the amount set in the form of filing fees and the corresponding fine are, in the view of this Court, an obstruction to access to the courts. They are unreasonable, even though in mathematical terms they do represent three percent of the amount of relief being claimed. This Court considers that while the right of access to a court is not an absolute and therefore may be subject to certain discretionary limitations set by the State, the fact remains that the means used must be proportional to the aim sought. The right of access to a court of law cannot be denied because of filing fees....<sup>653</sup>

519. With a view to overcoming this type of economic obstacle, the IACHR has begun to set out the scope of a State's obligations, both in terms of judicial proceedings and in relation to procedures of an administrative nature. It so stated in the *Case of Yean and Bosico*, in which the IACHR expressly discussed

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<sup>649</sup> I/A Court H.R., *Advisory Opinion, OC-11/90*, cit., paras. 29 and 30.

<sup>650</sup> I/A Court H.R., *Case of Cantos v. Argentina. Judgment of November 28, 2002*. Series C No. 97.

<sup>651</sup> I/A Court H.R., *Case of Cantos v. Argentina. Judgment of November 28, 2002*. Series C No. 97, para. 50.

<sup>652</sup> I/A Court H.R., *Case of Cantos v. Argentina. Judgment of November 28, 2002*. Series C No. 97, para. 53.

<sup>653</sup> I/A Court H.R., *Case of Cantos v. Argentina Judgment of November 28, 2002*. Series C No. 97, para. 54.

the need to set limits on the cost of proceedings, in order to prevent violation of fundamental human rights.<sup>654</sup>

520. Moreover, since most people living in poverty are usually living outside urban areas, and many others live in marginal areas or remote inaccessible places, the lack of affordable judicial systems constitutes a significant economic obstacle to access to justice. Thus, for example, the IACHR has indicated that the scarcity of courts and state support means that victims must draw on significant economic and logistical resources of their own in order to file complaints and participate in court proceedings.<sup>655</sup> The Inter-American Commission has noted the importance of effective community resources—such as justices of the peace and community ombudspersons—with the necessary mechanisms and resources.

521. In the same report *Access to justice for women victims of violence in the Americas*, focused in particular on the difficulties facing Afro-descendant women:

Afro-descendant women who live in marginalized, rural areas in small, tightly clustered social groups that still preserve their languages, traditions and customs and sometimes even their own systems of justice, will have to contend with problems of geographic accessibility, an inability to communicate with judicial authorities in their own languages, a knowledge of the process, and a lack of economic means. These are the very same problems that indigenous women face. And like indigenous women, Afro-descendant women will have to contend with discrimination on two levels: one based on their gender and the other based on their race. (...)Theirs is not unlike the situation of Afro-descendant women in urban areas, where the difficulties they will face in availing themselves of effective judicial remedies, have to do with their economic disadvantage and skin color. In those areas where the economic factor and social exclusion have been conquered, the difficulties are generally related to skin color.<sup>656</sup>

522. The Inter-American Court has also referred to the vulnerabilities that restrict access to justice by persons with disabilities, and by children and adolescents. In the *Case of Furlán v. Argentina*, a fourteen year-old boy was

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<sup>654</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. the Dominican Republic*, Judgment of September 8, 2005 Series C, No. 130.

<sup>655</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 180.

<sup>656</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paras. 211 and 212. See also IACHR, *Violence and discrimination against women in the armed conflict in Colombia*, October 18, 2006 (OEA/Ser. I/V/II., doc. 67), Chapters IV and V. F.



hit on the head by a crossbeam while he was playing on an abandoned military training circuit. The boy's father filed suit to obtain reparation for damages his son had suffered, but the excessive delay in the handling of the civil suit for damages against the State disproportionately affected the victim, who – due to his disability – depended on a timely response from the judicial authorities to obtain medical treatment.

523. In its analysis, the Court indicated that “the link between the disability on the one hand, and poverty and social exclusion on the other, is direct and significant”.<sup>657</sup> Bearing in mind the importance of recognizing the particular needs of certain segments of society, such as children and adolescents and people with disabilities, the Court found that if the passage of time has a relevant impact on the judicial situation of the individual, it is imperative that the proceedings should be carried out diligently.<sup>658</sup>
524. Given that most of the awards and social assistance geared to persons living in poverty are generally resolved in the administrative sphere, it is imperative to ensure access to justice and effective judicial protection of rights. The majority of these current social policies or programs lack a rights-based approach, and instead are organized and delivered as “charity measures” or “assistance benefits”.<sup>659</sup> In this context, the conduct of public administrations has traditionally leaned towards political selectivity with some degree of institutional control.<sup>660</sup>
525. The lack of effective judicial remedies against the negative consequences of social policies in, for example, health care, housing, education, social security and work, or else against administrative decisions concerning social welfare or migratory procedures, means that individuals cannot obtain relief if their human rights are violated. This becomes an obstacle to access to justice for persons living in poverty and who are disproportionately affected by these policies.<sup>661</sup>
526. Another aspect examined in the cases of the Inter-American System is the existence of clear criteria on due process of law in judicial proceedings, in cases concerning the determination of economic, social and cultural rights. There is a direct connection between the suitability of available judicial remedies and the real possibility of demanding compliance with this group of rights. On this matter, both the Court and the IACHR have identified those

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<sup>657</sup> I/A Court H.R., *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, paras. 72, 201 and 194.

<sup>658</sup> Ibid.

<sup>659</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), op. cit., para. 95.

<sup>660</sup> Ibid.

<sup>661</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), September 7, 2007, para. 31.

elements that comprise the right to due process set out in Article 8(1) of the American Convention relating to proceedings of a social nature with differential characteristics from other criminal or civil proceedings.

527. The Inter-American System has identified the principle of equality of arms as an integral part of due process, and has developed standards for its observance and assurance. This principle is highly significant given that the types of relationships governed by social rights usually give rise to and presuppose conditions of inequality between the parties to a dispute (workers and employers) or between the beneficiary of a social service and the State providing that service. This inequality generally translates into disadvantages in the framework of judicial proceedings.
528. The Inter-American Commission has noted that the particular circumstances of a case may determine that guarantees additional to those explicitly set out in human rights instruments are necessary to ensure a fair trial. This includes recognizing and correcting any real disadvantages that the parties to a proceeding might have, thereby observing the principle of equality before the law and the prohibition of discrimination.<sup>662</sup>
529. The right to effective judicial protection of social rights requires States to provide suitable and effective judicial mechanisms for the protection of those rights, in both their individual and collective dimensions. Traditionally, judicial remedies established in the legal system have been conceived for the protection of classic civil and political rights. Some countries of the continent have established simple and prompt judicial remedies to protect rights in serious and urgent cases. However, often these judicial remedies do not function adequately to protect social rights.
530. Sometimes, this is due to the limitations of groups or collectives of victims to file such remedies; or to bureaucratic delays in judicial proceedings that render them ineffective. In some cases, there have also been difficulties in pursuing these remedies due to the exclusion of some social rights - not considered as fundamental rights - from protection, or because of the imposition of excessive procedural requirements for admission.
531. The Inter-American System has sought to establish some basic principles to be met by these remedies for urgent protection in order to comply with the American Convention. The right to effective judicial protection also requires that judicial procedures intended to protect social rights should not impose conditions or obstacles that would render them ineffective. In certain cases, there are major obstacles and restrictions on the enforcement of final judgments against States, particularly with respect to judgments that

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<sup>662</sup> Ibid., paras. 15-20.

recognize social security rights. The tendency to invoke emergency laws in this area limits the States' possibility of discharging financial obligations and tends to grant exorbitant privileges to the administration vis-à-vis the individuals whose rights have already been recognized by the courts.

532. Article 25 of the American Convention establishes the duty of States to provide a simple, prompt and effective remedy for the protection and assurance of human rights. Thus, the organs of the System have drawn up standards on the scope of that obligation in the area of economic, social and cultural rights. Both the IACHR and the Court have identified the need to provide procedural measures to ensure the immediate—and even precautionary or preventive—protection of social rights, even though the merits of the question may require a more prolonged analysis.
533. The IACHR has found that the right to effective judicial protection requires that court-ordered provisional decisions be implemented. Accordingly, failure to implement such measures may also constitute a violation of this right. The Inter-American Commission has also established a relevant standard in relation to what can be demanded from victims when seeking compliance with judicial decisions in their favor. It has indicated that States should ensure immediate compliance with such judicial decisions, without demanding that victims bring additional actions of a criminal, administrative or any other nature in order to secure enforcement.
534. In parallel, the IACHR has also been emphatic about the need to ensure enforcement of administrative decisions. Thus, it considers it necessary for the Administration to have in place effective mechanisms for ensuring compliance with orders issued by the administrative authorities.



CHAPTER 6  
**CONCLUSIONS AND  
RECOMMENDATIONS**



## CONCLUSIONS AND RECOMMENDATIONS

535. During the last two years of studies, meetings, visits and consultations to prepare the current Report, a number of concerning statistics have emerged indicating that poverty and extreme poverty are increasing in the hemisphere.
536. According to ECLAC, poverty has increased 4.1% in 2015 in comparison with the previous year. If these figures are confirmed, there is a regression in the path followed in recent years, when the region showed the world's highest achievements in this area. The tendency is alarming. The region is moving in the opposite direction to the Sustainable Development Goals (2015-2030), adopted by the United Nations, that established as Goal No.1 the eradication of poverty.
537. The 2016 and 2017 figures are still being processed, but other United Nations agencies – such as FAO and UNDP – has also expressed similar concerns.
538. The IACHR considers that the release of the final version of this Report is timely, within the framework of the 1st Forum of the Inter-American System of Human Rights, held in Washington, D.C., in December 2017.
539. The IACHR offers the OAS Member States, the multilateral organizations and civil society organizations of all countries an analysis and recommendations to face this issue with strategies, policies, programs and action in order to prevent the regression in an area so fundamental to ensure respect for human rights of the populations of the region.
540. The IACHR regards this report as a further step forward in the efforts of the Inter-American System of Human Rights to confront poverty and extreme poverty in the Americas through enhancement and strengthening of the laws, policies, and practices of States for tackling the problem and ensuring that the human rights of people living in poverty and extreme poverty are properly respected and protected.
541. Based on the information received through IACHR's various working mechanisms and, in particular, from information collected in response to the questionnaire issued for this report, dialogue and consultations with states, civil society, and experts on the subject, and observation visits carried out

for that purpose, the IACHR notes with concern that the persisting situation of poverty and extreme poverty constitutes a serious obstacle for the effective enjoyment of human rights in the OAS member states.

542. In the on-site visits conducted for this report, the IACHR found that persons living in poverty face geographic, financial, cultural, and social obstacles to exercise their rights. In many regions, persons living in poverty are located far from their places of work, communal spaces, and markets, and have difficulty accessing basic services, such as clean drinking water, quality health care, schools, and government entities that provide social services. Also, they sometimes must travel long distances along poorly-maintained roads, infrastructure and highways endangering their own lives and those of their children.<sup>663</sup>
543. The obstacles faced daily by individuals, groups, and collectives living in poverty compound one another generating inadequate or even dangerous working conditions, a lack of housing and squalid living conditions, a poor diet, the risk of preventable diseases, violence, unequal access to justice, and low or nil participation in decisions on matters that concern them, and many other deprivations and scarcities. All these factors severely affect the effective enjoyment of their human rights.
544. In particular, the Commission observes that such obstacles are exacerbated in the case of groups that have historically been discriminated against, such as women, children, and adolescents, indigenous peoples, Afro-descendent populations, migrants, persons deprived of liberty, persons with disabilities, the LGBTI population, and older persons.
545. The IACHR concludes this Report with a series of recommendations on the obligation of States to adopt specific steps for their compliance in order to move forward with the eradication of poverty and extreme poverty in the Americas.

## RECOMMENDATIONS

### 1. Equality and non-discrimination

Legislative, executive, and judicial bodies must analyze and amend all laws, rules, practices and public policies establishing differential treatment based on social condition, or that might have a discriminatory impact in the terms

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<sup>663</sup> IACHR, Visits to Bolivia, Guatemala, Paraguay and Guyana. During these visits, the delegation was able to see how geographical distances represent a disproportionate obstacle for people living in poverty.



defined in this Report. They must also take whatever measures and actions are needed, including the use of objective and reasonable criteria to ensure genuinely equal conditions for individuals, groups, and collectives that live in poverty. They must also eliminate discrimination stereotypes related to poverty in society. A gender-based approach must be a cross-cutting criterion indispensable for assessing compliance with all measures to combat poverty.

## 2. Progressive realization and non-regression

States should refrain from adopting policies, measures and legal rules that – without adequate and justifiable grounds – worsen the situation of the population’s economic, social and cultural rights. The State has the duty to account for how available resources have been employed to a maximum degree to progressively achieve full effectiveness of these rights.

## 3. Access to Justice

States must design a comprehensive and coordinated policy - backed up with adequate public funding – to ensure that persons living in poverty and extreme poverty have full access to adequate judicial protection. They must establish instances and judicial remedies that are adequate and effective in rural, marginalized and economically disadvantaged areas, in order to ensure full access to effective judicial protection. They must also increase the number of state counsel available. They must remove the sociocultural discriminatory patterns that hinder full access to justice.

## 4. Accountability

Public policies for eradicating poverty and extreme poverty in the Americas should be sustainable and subject to constant evaluation and accountability mechanisms in a framework that allows broad public participation and transparency. They must establish effective accountability procedures, based on internal and external control mechanisms, for all officials with responsibilities in relation to poverty eradication policies, which will help to strengthen democratic institutions and transparency in public office. There should also be mechanisms in place to vigorously combat impunity and corruption.

## 5. Human Rights Approach

All public policies to combat poverty must be comprehensive, cross-cutting, and based on a human rights approach. This approach must be present in the design, implementation and evaluation of social, fiscal, economic, commercial, tax, and environmental policies and, in general, for all programs or measures adopted by the State in its strategies to achieve that objective.

The public policy currently under implementation by the States of the hemisphere must be continued and their reach widened. Special programs giving priority to extreme poverty must be incorporated. Fiscal policies must become an effective tool to overcome poverty.

## 6. Democratic Participation

States must develop coordinated and intersectoral strategies articulating issues such as health, nutrition, work, housing, education and social security, in order to ensure democratic participation and empowerment of person living in poverty and extreme poverty. States must establish platforms to consult those persons who gain access to public policy programs for the enjoyment of their rights and to take into account their experiences and perspectives in order to satisfy the human rights-based approach.

## 7. Right to Information and Freedom of expression

States must adopt programs for compiling statistics disaggregated by gender, age, race and ethnicity, poverty and extreme poverty situations, along with systems of indicators with an intersectional focus, that serve to produce consistent diagnostics to face the challenges derived from this problem. They must promote access to and use of digital media and technologies so that persons living in poverty can disseminate their own contents and receive other relevant content. They must progressively close the digital divide between the population with access to digital technology and the sectors that still have no access, especially in terms of Internet access and use of mobile phones.

## 8. Women

Programs and policies for the eradication of poverty must incorporate a gender perspective and address the structural nature and different dimensions of poverty that women face, particularly indigenous women, Afro-descendent women, pregnant adolescents, migrant women, as well as human rights defenders and women living in rural areas.

Women must have, on an equal basis, the opportunities needed to have access to income and improve their economic situation. Programs for education and awareness on co-responsibility in the care of children and home care must be established, without affecting their income autonomy. Specific measures for the acknowledgement of the economic and social contribution of women that carry out unpaid work at home, in the family, or in the community, must be adopted.

States must ensure that women have full access to appropriate maternal health care, including comprehensive sex education programs at all levels in

the educational system and in health centers geared to prevention and to care of their integrity, along with policies to prevent violence against women.

#### 9. Children and Adolescents

In the best interests of children and adolescents, States must give priority to the impact that poverty has on them. The IACHR recommends strengthening social policies to protect families and to widen the coverage, as well as those of the national systems of protection of children and their local services. The IACHR emphasizes, especially, the importance of strengthening the inclusion of poverty reduction strategies in the education and health systems.

States must establish public policies with an intersectional approach to prevent sexual violence against girls, taking into account the whole set of factors that combine to exacerbate their exposure to risk: sex, age, race, ethnicity, sexual orientation, gender identity and, in many cases, poverty, as well as other factors. Young and adolescent girls face a special risk of sexual violence in the family, at school, in health centers, among other places. Taking into account these considerations, States must analyze and modify their protocols to provide appropriate attention in cases of child pregnancy and prevent any form of revictimization, violence and cruel and degrading treatment.

#### 10. Indigenous Peoples

In order to overcome poverty and extreme poverty of indigenous communities in Americas, the IACHR recommends the adoption of multidimensional measures to close inequality gaps between indigenous and non-indigenous communities in terms of the impact of poverty and extreme poverty. The right to territory for indigenous communities is a central pillar in the sustainability of their basic conditions of nutrition and also for the strengthening of their culture and ancestral traditions. Whenever these are fractured, indigenous communities enter disintegration processes that worsen their conditions of poverty.

#### 11. Afro-descendants

States must adopt affirmative action measures to prioritize the inclusion of Afro-descendants in all areas of the labor market, as well as in education at all levels, in both public and private spheres. The IACHR also urges States to adopt an ethnic-racial awareness approach in social policies to combat poverty, so as to address the particular situation of Afro-descendants, especially women and children. The obstacles in achieving equality and the high levels of poverty of Afro-descendants in the entire region will continue

unless States implement through the media national social campaigns on a permanent basis to combat racism in all its forms.

## 12. Migrants

The rules and standards of international human rights law contemplate the special protection needs of migrants forced to leave their countries of origin because of death threats, threats to their families, or in order to seek dignified employment. As regards development of standards, the organs of the Inter-American System have progressively moved forward in the development of concepts such as the right to a life with dignity, in addition to identifying various forms of cruel, inhuman and degrading treatment. These new standards should be taken into account at the moment of establishing whether the migration of persons living in poverty has taken place as a consequence of the violations of these standards. The use of concepts such as the right to a life with dignity and the prohibition of cruel, inhuman and degrading treatment could be grounds to prevent the return or deportation of migrants in situations of poverty.

## 13. Persons Deprived of Liberty

States must adopt the necessary measures to provide legal assistance to persons in pretrial detention or serving a sentence and prevent that due to their economic status, they are deprived of revision mechanisms of all benefits established by applicable legislation. Identifying infectious diseases in the prison context is also a priority, as well as regulating visitations in a manner so as to promote the family ties of persons deprived of liberty and ensure that they are maintained, regardless of inmates' socioeconomic status.

The use of alternative measures to preventive detention must respect the criteria of material equality. It is advisable to introduce programs providing employment to persons who have been deprived of their liberty in order to contribute to their social rehabilitation and protection from poverty.

Taking into account the differentiated impact faced by women deprived of liberty, as well as their children, States must apply a gender-based perspective in the design, implementation and follow-up of policies for the reduction of the use of preventive detention, and promote the use of alternative measures to the deprivation of liberty.

## 14. Persons with disabilities

Any strategy in connection with disability must be based on the change of paradigm where persons with disabilities must cease to be regarded as “persons needing protection” and must instead be treated as “holders of

rights and obligations". States must ensure that persons with disabilities and the organizations that represent them be consulted for the purposes of conducting a systematic review of laws, policies, and programs in light of a human rights-based approach. All laws or programs promoting distinctions, restrictions, or denial of rights of persons with disabilities must be modified in order to ensure their full right to labor, education, housing, food security, cultural life, health, social security and all dimensions required for overcoming conditions of poverty.

#### 15. LGBTI Groups

Sexual orientation and gender identity must be present in national information-gathering systems, public policies, and social programs for overcoming poverty. States must adopt guarantee measures, including legislative changes, ensuring social protection to trans, lesbian, gay, bisexual, and intersex persons, with particular emphasis on access to education, housing, work, health, social security and their right to protection from violence, always in consultation with civil society organizations and individuals particularly affected.

State authorities must establish budgetary measures to assign to each one of these public policies appropriate resources, thus ensuring their effectiveness in overcoming poverty for this historically discriminated sector of the population.

#### 16. Older persons

The IACHR calls all States to ratify the Inter-American Convention on the Protection of the Human Rights of Older Persons; to adopt legislative reforms and create institutional mechanisms for the protection of the human rights of this historically discriminated sector of the population; to establish specific capacity-building programs for civil servants; to launch media campaigns to raise awareness in society; to refrain from annulling acquired rights in the area of social security; to provide guidance to statistical agencies in the production of disaggregated data for this age group; and to ensure that all health, education, culture, labor, housing policies as well as other relevant issues, consider the specific challenges facing older persons.

