

**IACHR**

**The Work,  
Education  
and Resources  
of Women:  
The Road to Equality in  
Guaranteeing Economic,  
Social and Cultural Rights**

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**



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Inter-American  
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**THE WORK, EDUCATION AND RESOURCES OF WOMEN: THE ROAD TO EQUALITY IN  
GUARANTEEING ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>EXECUTIVE SUMMARY</b> .....	vii
<b>INTRODUCTION</b> .....	1
<b>I. LEGAL FRAMEWORK: NORMS AND STANDARDS THAT APPLY TO THE PRINCIPLES OF EQUALITY AND NONDISCRIMINATION IN WOMEN’S EXERCISE OF THEIR ECONOMIC, SOCIAL, AND CULTURAL RIGHTS</b> .....	3
A. Development in law of the principle of equality and nondiscrimination in the universal and regional human rights systems.....	3
B. Recognition of economic, social and cultural rights in the universal and regional human rights systems .....	11
1. General considerations pertaining to the legal framework for the protection of economic, social, and cultural rights at the inter-American and international levels.....	12
2. The principle of “progressive realization”, the obligation to “take steps”, and the principle of non-regression.....	17
3. Obligation not to discriminate and to guarantee equality .....	22
4. Access to justice.....	25
<b>II. DISCRIMINATION AND WOMEN’S ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: DISPARITIES IN THE EXERCISE OF THE RIGHTS TO WORK, TO EDUCATION, AND TO ACCESS TO AND CONTROL OF RESOURCES</b> .....	26
A. Women’s right to work .....	27
1. General overview: principal advances and challenges .....	27
2. Body of international law specific to this topic .....	29
3. Priority issues.....	38
a. Forms of discrimination that affect women in the labor setting: the law and its enforcement .....	38
b. The wage gap and occupational segregation .....	43
c. Sexual division of labor.....	47
d. Women’s unremunerated work and its recognition in the law .....	51
e. Maternity, paternity and parental leave .....	52
f. Workplace and sexual harassment.....	58
4. The States’ immediate obligations .....	61

	<b>Page</b>
B. Women’s Right to Education .....	62
1. General overview.....	62
2. Body of international law specific to this topic .....	65
3. Priority issues.....	69
a. Equality in education and the correlation between level of education and access to the job market.....	69
b. Situation of those sectors in particular risk to human rights violations .....	72
c. The curricula .....	74
d. The situation of pregnant girls .....	76
e. Forms of violence practiced against women in the schools and mechanisms for filing complaints.....	79
f. The situation as regards to statistics and indicators .....	81
4. The States’ immediate obligations .....	81
C. Women’s right of access to and control over resources.....	82
1. General overview.....	82
2. Body of international law specific to this topic .....	87
3. Priority issues.....	94
a. Access to resources that are the fruits of remunerated work .....	94
b. Access to credit and to the financial services.....	97
c. Access to land.....	100
d. Access to and control fo inherited resources.....	104
e. Married women’s access to and control of resources .....	106
f. Access to secure housing.....	109
4. The States’ immediate obligations .....	111
<b>III. CONCLUSIONS Y RECOMMENDATIONS .....</b>	<b>113</b>
Annex – Questionnaire .....	117

## EXECUTIVE SUMMARY

1. Various instruments, decisions, and declarations of the inter-American human rights system have historically highlighted how civil and political rights are indivisible from and interdependent with economic, social and cultural rights.<sup>1</sup> They also recognize the close interrelationship between the consolidation of democracy, the elimination of poverty and the exercise of economic, social and cultural rights.<sup>2</sup> The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or the “IACHR”) has itself described poverty as “a generalized violation of all human rights, civil and political, as well as social, economic, and cultural.”<sup>3</sup>

2. A recurring theme in the inter-American system’s pronouncements on poverty is gender-based discrimination against women as both the cause and effect of poverty and indigence. The vast majority of women who turn to the inter-American human rights system as a secondary recourse to obtain justice in their respective countries are women of little means, traditionally precluded from economic and social advantages in their countries. Many of the Commission’s documents and its findings on the merits of cases submitted to it have been intended to promote the observance and guarantee of women’s rights to equality and nondiscrimination, based on the American Convention on Human Rights (hereinafter “the Convention”), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”), among other regional human rights instruments.

3. However, most of the IACHR precedents regarding women’s rights have historically focused on those forms of discrimination that challenge their exercise of civil and political rights. In this sense, the Commission has gradually recognized the need to begin to craft principles and standards on the scope of the principle of equality, and on the rights to due process and effective judicial protection in cases that involve a violation of women’s economic, social, and cultural rights.

4. Where economic, social and cultural rights are concerned, the IACHR has in the past observed how discrimination against women continues to be evident in the job market; in women’s limited access to social security; in the high rates of illiteracy among women and girls by comparison to men; in the extreme poverty and social exclusion which affects women; and in the scant political participation of indigenous and Afro-descendant women, among other relevant issues.<sup>4</sup> The Commission has also identified women as traditional victims of discrimination in their access to certain rights, and has emphasized

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<sup>1</sup> See, for example, the preambles to the American Convention and the Protocol of San Salvador; IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L./VII.110 doc. 52, March 9, 2001, para. 4; I/A Court H.R. *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 101.

<sup>2</sup> See, for example, the Preamble to the Inter-American Democratic Charter.

<sup>3</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L./VII.110 doc. 52, March 9, 2001, Chapter V, para. 17.

<sup>4</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., March 7, 2011, para. 16.

how the States need to adopt new and diverse measures to promote women's equality where social rights are concerned.<sup>5</sup>

5. For this reason, with the support of the Government of Spain the IACHR undertook a hemispheric initiative to prepare this report for the purpose of examining the various forms of discrimination that women encounter when exercising their economic, social, and cultural rights in the Americas. This hemispheric initiative has been spearheaded by the current Rapporteur for Women's Rights, Luz Patricia Mejía Guerrero.

6. Preparation of this report followed a three-year process of compiling information, again with support from the Government of Spain. That effort included the circulation of a questionnaire to Organization of American States (OAS) member states<sup>6</sup> and to civil society organizations, the academic sector, ombudspersons' offices and public defenders' offices;<sup>7</sup> working visits to specific countries;<sup>8</sup> two meetings of experts on the region;<sup>9</sup> and two thematic hearings during the sessions of the IACHR.<sup>10</sup> The information

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<sup>5</sup> 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, paras. 43-47 (Proposal submitted by the Working Group for analysis of the national reports established in the Protocol of San Salvador in compliance with the mandate established in Resolution AG/RES 2582 (XL-0-10), paras. 43-47; 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.

<sup>6</sup> The following OAS member states answered the questionnaire: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, and Venezuela. By means of communication dated July 8, 2010, the State of Paraguay announced the submission of its response to the questionnaire; response which was received at a later stage.

<sup>7</sup> The questionnaire was answered by the following entities and experts: Argentina's Office of the Public Defender General; *Campaña Mujeres Vida y Derecho* (Fanny Sánchez); Center for Reproductive Rights; Columbia Law School, Human Rights Institute; *Equipo Latinoamericano de Justicia y Género* (Natalia Gherardi and Laura Pautassi); Human Rights Watch (Marianne Mollmann); International Women's Human Rights Clinic, the City University of New York School of Law; Legal Momentum; National Network to End Domestic Violence (NNEDV); National Women's Law Center; *Oficina Jurídica de la Mujer* (Bolivia); Verónica Cruz Sánchez, Director of the *Centro las Libres*, Mexico; and the World Organization for Human Rights USA.

<sup>8</sup> The Rapporteurship on the Rights of Women organized two working visits as part of this initiative. The first was to Bolivia, June 22 to 26, 2009, and the second was to El Salvador, November 17 to 19, 2010. Both visits were made at the invitation of the respective governments and were conducted to compile information on the forms of discrimination that women encounter in exercising their economic, social and cultural rights, all with a view to compiling data for this hemispheric report. During the visits, the Rapporteurship met with high-ranking government authorities, organizations and civil society networks, international agencies and other sectors.

<sup>9</sup> The first meeting of experts - titled "*Discrimination against Women in the Area of Economic, Social and Cultural Rights*" - was organized in La Paz, Bolivia, and held on June 24, 2009. Its purpose was to identify the major advances that women have made and the challenges they still face in getting equal access to and control of resources, equal educational opportunities and equal working conditions. The information compiled at that meeting was essential to this hemispheric report, especially the information regarding what indigenous women need in order to be able to enjoy their economic, social and cultural rights. Attending the meeting were the current Rapporteur on the Rights of Women, two attorneys from the IACHR's Executive Secretariat, and a group of distinguished experts representing a variety of sectors. The experts in attendance were: Liliana Tojo of CEJIL; Mónica Mendizábal, from UNIFEM Bolivia; Karima Wanuz from Peru's Ombudsperson's Office; María Ysabel Cedano from DEMUS; Cecilia Enriquez from the CLADEM network; Griselda Sillerico from Bolivia's Ombudsperson's Office; and Marcela Alcocer, ILO National Coordinator for Employment in Bolivia.

On October 18, 2010, Washington, D.C. was the venue for a second working meeting and a workshop that the Rapporteurship on the Rights of Women conducted on "*Discrimination against Women in the Area of Economic, ...Continues*



contained in this report has been combined with the Commission's precedents on human rights and women's rights, which includes the jurisprudence of both the Inter-American Commission and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court"), thematic reports, chapters of the country reports that are dedicated to women's rights, and *in loco* and working visits organized both by the Commission and by the Rapporteurship, as well as pertinent information in the public domain and available from regional and international agencies and human rights organizations.

7. The IACHR regards this report as a first step and a contribution to the inter-American system's efforts to enhance and strengthen the States' legislation, policies, and practices to address the problem of discrimination and to ensure that women's economic, social, and cultural rights are properly respected and protected. With that end in mind, the report includes a series of general and specific recommendations for the States.

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...continuation

*Social and Cultural Rights*," an event that brought together 19 leading experts on the topic from Latin America and the Caribbean. Participants at the meeting identified the priorities with regard to economic and social rights in the region. The experts mentioned analyzed in-depth from various perspectives a number of topics that are addressed in this report. Working through panels, participants examined women's rights to: 1) education; 2) access to and control of resources; and 3) work. Lastly, the participants met in working groups to discuss these topics in order to arrive at a consensus concerning the priorities that the report should address, and to establish a number of possible recommendations for the member states.

This second meeting of experts was attended by the current Rapporteur for the Rights of Women, Luz Patricia Mejía Guerrero; the Deputy Executive Secretary of the IACHR, Elizabeth Abi-Mershed; three attorneys with the IACHR's Executive Secretariat; and a number of distinguished experts on the subject. The latter included: Tracy Robinson, Senior Lecturer, Faculty of Law, University of West Indies; Viviana Krsticevic, Executive Director of CEJIL; Paola Buendía, a Colombian expert in economic, social and cultural rights; Ramiro Ávila, a law professor from Ecuador; Laura Pautassi, a law professor in Argentina; Flavia Piovesan, a law professor from Brazil; Marianne Mollmann, Director of Advocacy in the Division of Women's Rights, Human Rights Watch; Soledad García Muñoz, Director of the Office of the Inter-American Institute of Human Rights of Mercosur; Ledi Alejandrina Moreno, Director of ORMUSA's Program in Economic, Social and Cultural Rights in El Salvador; Altigracia Balcocer, a consultant on economic, social and cultural rights in the Dominican Republic; Elsa Ancona, a consultant from Mexico; Susana Chávez, Director of Promsex in Peru; Karima Wanuz, a consultant on economic, social and cultural rights in Peru; Angela Rosa Acevedo, from the Gender Secretariat in Nicaragua's Supreme Court; Gaynel Curry, Office of the United Nations High Commissioner for Human Rights; Tara Jane Melish, professor of law at the University of Buffalo and Director of the Buffalo Human Rights Center; Eliana Cherubini, senior international consultant from Venezuela; Esther Major, Amnesty International; Faith Webster, Executive Director of Jamaica's Bureau of Women and Gender Affairs, and Patricia Provoste, consultant with ECLAC's Division for Gender Affairs.

<sup>10</sup> On March 23, 2010, during the IACHR's 138th regular session, a hearing was convened, at the Commission's initiative, on the subject of "*Discrimination against Women in the Exercise of their Economic and Social Rights in the Americas*." Present for the hearing were three experts on economic and social rights, the right to equality and women's rights in the region: Gaynel Curry, Gender and Women's Rights Advisor, Office of the United Nations High Commission for Human Rights, and Flavia Piovesan and Laura Pautassi, recognized scholars on the subject. On October 26, 2010, during the Commission's 140<sup>th</sup> regular session, a hearing was held on "*Discrimination against Women in the Exercise of their Economic and Social Rights in the Americas*," which was also convened by the IACHR through the Rapporteurship on the Rights of Women. The hearing was attended by distinguished experts on the subject of women's rights, economic and social rights and the right to equality: Cecilia Estrada, Executive Director of the *Instituto de Formación Femenina Integral* (IFFI), Bolivia; María José Chamorro, Gender Specialist at the ILO Office for Central America, Haiti, Panama and the Dominican Republic; and Nicolás Espejo, an academic and senior consultant for UNICEF. Both hearings discussed a variety of challenges and progress made with respect to women's right to access to and control of resources and the right to employment and the right to education.

8. A basic premise of this report is that discrimination against women is still engrained in the structural inequalities and inequities between men and women in the countries of this hemisphere. These problems are still pervasive in all social sectors, including the economy, education, labor, health, justice and decision-making. In many parts of the region, women have less means than men to satisfy basic needs like food, access to housing and to the specialized health services they require; they are particularly vulnerable to physical and sexual violence; and have limited options when it comes to finding decent work and having a voice in shaping public affairs in their countries. In regional and international venues, the OAS member states have themselves acknowledged how poverty, in all its manifestations, takes a particularly heavy toll on women and how women's disadvantaged access to economic resources continues to be an obstacle to promoting and protecting all their human rights.<sup>11</sup>

9. International instruments accord women a wide range of economic, social and cultural rights. These include the right to work, the right to health, the right to social security, the right education, the right to join an organization of their choosing, the right to housing, the right to food, and others. Through the mechanisms of the inter-American human rights system, the Rapporteurship has been able to single out three areas where the various forms of discrimination that women experience when exercising their economic, social and cultural rights are particularly acute: work, education, and access to and control of economic resources. It has also been observed that the failure to ensure women's rights in these areas tends to have compounded, adverse effects on the exercise of their economic, social and cultural rights and human rights in general. The Commission believes that an initial examination of the problem of discrimination, approached from these three perspectives, can open the door to a more comprehensive analysis by the universal and inter-American systems, one that probes those factors that still pose an obstacle to women's exercise of their economic, social and cultural rights. This first report, therefore, will focus on these three issues, with a view to laying the juridical and analytical groundwork for other reports that delve into other areas related to the economic, social and cultural rights of women and their right to live free of discrimination.

10. The IACHR recognizes that women's participation in the workforce has steadily increased in recent decades. This trend can be attributed to changes in the family structure and to the increasing numbers of female heads of household; the economic crisis that has gripped many countries; women's increased access to education; and other factors. However, it is important to note that even with the steady increase in the number of women in the workforce, poverty persists and indigence is on the rise, a situation that takes a disproportionately heavy toll on women.

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<sup>11</sup> See, for example, the Declaration of Nuevo León, 2004 (Summit of the Americas); the Miami Declaration of Principles (Summit of the Americas), 1994; ECLAC, Tenth Session of the Regional Conference on Women in Latin America and the Caribbean, Brasilia Consensus, July 16, 2010; ECLAC, Eleventh Session of the Regional Conference on Women in Latin America and the Caribbean, Quito Consensus, August 6 through 9, 2007; IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico City Consensus, June 10-12, 2004; United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010.

11. Within this context, the Commission recognizes the efforts made by the States to adopt measures to better enable women to join the workforce and remain on the job, which has in turn enabled them to better exercise their human rights. The vast majority of the American States have laws on the books and policies in place that recognize women's right to work and that protect the exercise of this right free of any form of discrimination, including gender-based discrimination. Many have also crafted their laws to recognize the principle of equal pay for equal work for men and women; women's right to maternity leave and other protections during pregnancy; and provisions to establish nursery schools and daycare centers. The IACHR also sees the growing trend toward prohibiting workplace harassment, sexual harassment and other forms of violence against women committed in the workplace. These initiatives not only help women get into the workforce and remain on the job, but also help improve their options within the family with respect to the care of the children and other family members. This significant set of efforts paves the way for women to be able to have a decent, respectable and quality job and career.

12. However, important protections are still missing from the rights of working women in general and from the laws, policies and programs geared to getting women into the workforce and enabling them to remain on the job. The increasing number of women entering the workforce across the Americas has still not translated into equal opportunities for women, access to a good job, and equality-based labor relations. The IACHR is troubled by the challenges that implementation of the existing laws poses, given the intransigence of problems like gender-based discrimination against women; the salary gap between men and women performing work of equal value; the prevalence of sexual harassment; and the need for measures that democratize family responsibilities so that they are shared equitably between working men and working women.

13. The Commission is also very troubled by the dilemma of groups of women whose human rights are particularly at risk, such as domestic workers, those who work in the informal sector, women working in the assembly [*maquila*] industry, indigenous women, Afro-descendant women, girls, elderly women, migrant women and others, who are not afforded the necessary protections under the legal system.

14. The increased opportunities that women are seeing in education and training are, therefore, not translating into equal job opportunities for women, promotions for women, women in management or executive positions, and equal pay for work of equal value. The laws and regulations still fall short in certain areas, such as paternity and parental leave and daycare centers and nursery schools. Women still encounter a number of entrenched obstacles in the labor market, such as the sexual division of labor, an unsatisfied demand for childcare services, occupational segregation, and others.

15. These problems are compounded by the challenges that women face in trying to secure effective judicial protection and access to justice when they file complaints of related violations –whether in the criminal-, civil- or administrative-law jurisdiction- and the absence of adequate penalties. Very few cases involving women's labor rights have made their way to the courts. Access to justice and to suitable and effective judicial remedies is a crosscutting, core principle for the protection of women's rights, and for

gauging and satisfying their economic and social rights.<sup>12</sup> This principle applies to claims alleging violations of the obligation not to discriminate and to guarantee equality in every aspect of labor, education, and access to and control over economic resources. National efforts are needed to compile the necessary data, broken down by gender, race, ethnicity and other variables, to get a complete picture of the main challenges in these three areas and devise adequate and effective public policies.<sup>13</sup>

16. The sexual division of labor directly affects women's economic independence, as it limits their earnings options and their access to and control over needed resources. It is a factor in the feminization of poverty and is exacerbated in the case of widows, broken marriages or family breakups. The sexual division of labor also severely constrains women's use of time, as they are overburdened with responsibilities. This limits their capacity to enter the labor market and rise to management and executive positions in the economic, social and political arenas. Policies and measures are needed to address this social problem and must be geared towards improving the distribution of wealth, assets, women's job opportunities, and their time. In summary, the sexual division of labor is a severe constraint on women's exercise of human rights in all economic, social, civil and political areas. Older women, who are increasing in numbers as populations are ageing, suffer the outcome of cumulative lifetime disadvantage and the absence of policies, infrastructure, services and information to keep them from falling into poverty at a time when they are particularly vulnerable.<sup>14</sup> Elderly women may face double discrimination on the basis of both gender and age. Older women are twice as likely as men to be widowed due to their generally greater longevity and the frequent practice of men marrying younger women.<sup>15</sup> In addition, older women often suffer from lack of property rights, inequitable inheritance laws and low access to education and health services. Chronic poverty is thus a critical risk factor for older women.<sup>16</sup>

17. Women's right to work –free of any form of discrimination and on an equal footing with men– must be adequately observed and ensured, as it is key to eradicating poverty and to women's empowerment and autonomy. The constraints on women's exercise of the right to work affect their exercise of all other rights, including their economic, social and cultural rights in general. It is vital that the States not only refrain from practicing discrimination and tolerating discrimination in the workplace, but that they also fulfill their obligation to create the conditions that will make it easier for women to enter and remain in the workforce. In connection with maternity specifically, the IACHR is

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<sup>12</sup> For an important reference, 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, paras. 51-54

<sup>13</sup> 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. 63.

<sup>14</sup> Amanda Heslop & Mark Gorman, *Chronic Poverty and Older People in the Developing World*, HelpAge International, CPRC Working Paper No 10, Chronic Poverty Research Centre, 5, January 2002.

<sup>15</sup> Gist Y & Velkoff V., *"Gender and Ageing"* (U.S. Bureau of the Census), (1997).

<sup>16</sup> Beales, S., 2000, *"Why we should invest in older women and men: the experience of HelpAge International"*.

recommending that the States adopt a comprehensive strategy encompassing not just maternity leave, but also paternity and parental leave, so that women's reproductive role does not become an exclusionary and discriminatory variable.

18. Another vital human right related to women's employment is the right to education. Education is essential to the full enjoyment of other rights, and especially to achieve gender equality. Nevertheless, within the region, serious inequalities persist that limit women's enjoyment of this right which particularly affect girls, adolescent girls and adult women.

19. The States of this hemisphere have undertaken major efforts to make education universal. In terms of access to education, most States in this hemisphere have either achieved or are on the verge of achieving enrollment parity. In most countries, the percentage of children completing elementary education and access to secondary, tertiary and university education have increased, especially among women. However, while considerable progress has been made toward achieving gender equality by way of education, full recognition of women's rights in the area of education is still a work in progress. Accessibility is an important factor in achieving equality in education, but is not sufficient to achieve education under conditions that are equal. The Commission also observes as fundamental that equality is guaranteed throughout the entire education of a woman. It is also vital to ensure that education has an intercultural component and perspective, reflecting and respecting the vision and diversity among women on the basis of their race and ethnicity, among other factors.

20. The Commission notes that barriers persist that the OAS member states need to address. Certain structural barriers affect boys and girls alike, such as poverty, an inadequate school infrastructure, the geographic location of the schools, the lack of adequate transportation, the cost of school books and textbooks, and others. However, these problems affect girls differently. For example, the lack of adequate sanitation facilities for girls entering puberty increases absenteeism among them; girls who have to walk long distances to get to school are exposed to dangers to their personal safety. Girls and women face other obstacles as well, such as the family's unwillingness to educate daughters, the family responsibilities that girls and teenage girls are assigned, stereotypes in the school curricula that perpetuate discrimination against women, teen pregnancy, violence against women and girls, and other problems. Women and girls who live in rural areas, indigenous women and Afro-descendant women are particularly at risk of having their human rights violated. Illiteracy in the region is highest among these same groups.

21. Indeed, one of the persistent barriers in the region is that the education that is imparted can become the main obstacle to achieving education based on equal opportunity. An education that projects stereotypical images of women's role in society serves to perpetuate the discrimination. The way that learning is imparted, through a sexist education based on "hidden curricula", means that the prejudices of the teaching staff, who receive little training in human rights and gender equality, are passed along to the students and perpetuate discriminatory gender stereotypes.

22. Another barrier that prevents girls and teenage girls from enjoying their right to education is absenteeism and dropping out of school. Teen pregnancy is a major concern, especially when the school system itself -either by law, regulation or practice- prohibits pregnant teens from continuing their studies. Furthermore, the household responsibilities that girls -particularly those in rural areas- are expected to shoulder will affect their school performance. In other cases, sexual harassment and violence against girls and teenage girls in schools and the failure to protect them from these acts are factors that will drive girls away from school, with the result that they are unable to enjoy their right to an education.

23. While in some American states the number of women who graduate from higher education has increased, they are not getting the better jobs and higher wages that men get. The IACHR reminds the States that they have undertaken an obligation not just to ensure girls' right to an education, but also to establish the social conditions that enable women to eventually achieve professional fulfillment on the basis of equal opportunity. The international consensus is that educating girls and teenage girls has a multiplier effect, both for the girls themselves and for society as a whole. As with other human rights, the right to education requires that the OAS member states respect, protect and fulfil the interrelated, core features of this right: availability, accessibility, acceptability and adaptability.

24. The obstacles to the exercise, observance, and the guarantee of the right to work and the right to education are factors contributing to the serious poverty and inequality among the women of the hemisphere. These obstacles also limit women's access to and control over economic resources. The IACHR has expressed grave concern over poverty in the Americas.<sup>17</sup> The heavy concentration of wealth and inequitable distribution of economic resources are constants in the region.<sup>18</sup> The inequalities between the sexes, groups and sectors in their access to economic resources are both a cause of and contributing factor to this poverty cycle.<sup>19</sup>

25. Given this scenario, the Commission is deeply troubled by the *de facto* and *de jure* inequality which women and other sectors that have long been targets of discrimination continue to experience.<sup>20</sup> Although anyone can become the victim of poverty, its impact is different for women because of the social discrimination they experience and the added burdens they carry, such as family and household responsibilities that limit their chances of getting the financial resources they need for their livelihood and that of their family. Because of the inequalities they experience and the difficulties they encounter in getting access to and control over economic resources, women's participation in areas vital to their human rights is very limited.

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<sup>17</sup> IACHR, *Annual Report 2008*, Introduction, paragraph 2.

<sup>18</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organisation, 2003, p. 21.

<sup>19</sup> IACHR, *Annual Report 2006*, Introduction, paragraph 5.

<sup>20</sup> IACHR, *Annual Report 2006*, Introduction, paragraph 5.

26. Both the inter-American and international human rights systems have singled out a number of obligations incumbent upon states by virtue of women's right to nondiscrimination and to equal protection in their access to and control over economic resources as the terms are understood in this report.<sup>21</sup> They have underscored a number of components of women's rights in the economic realm, not only in treaties and declarations, but also in consensus documents that have the support of the international community.

27. Taken together, these pronouncements establish the following: a) the 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 States' obligations to ensure that women have access to property, land, housing, credit and other banking assets both within and outside marriage; and d) the States' 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.

28. Information received during this project's implementation reveals forms of discrimination that women suffer -both at law and in practice- with respect to these aspects of the States' obligations *vis-à-vis* women's access to and control over economic resources; the different roles that men and women have with respect to the division, control and disposal of resources within the family and outside the home; and obstacles that women face in securing the means to obtain these resources, obstacles that are particularly acute in the labor area. These forms of discrimination are variables that contribute to women's poverty, to violations of their productive and reproductive autonomy, and to a general lack of protection where their human rights are concerned.

29. Generally speaking, in most countries the laws and policies governing issues related to access to and control over resources -within and outside marriage- do not even address the specific problems that women encounter, much less evaluate their impact. In those countries where women's rights in this area are protected by law, women are still at a social and economic disadvantage and, in practice, are the victims of discrimination when exercising their rights to property, housing, land, inheritance, and other resources. However, the lack of sex-disaggregated data on who controls and has access to various economic resources, as defined in this report, makes it difficult to get a complete picture of how matters stand in the region.

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<sup>21</sup> For purposes of this report, the IACHR interprets the term "economic resources" in three ways: First, it interprets the term in the broad sense, as including both financial assets and movable and fixed assets. These may include, *inter alia*, money, income, property, land, and housing. Second, the IACHR also interprets this expression to mean the methods and processes by which these assets are obtained, such as employment, business, credit, loans, insurance, inheritance, and legal rulings that can decide how assets are divided up. Third, the IACHR also uses "economic resources" as a cover term for state or non-state benefits -like social security- to cover events in a woman's life that can affect her economic independence and the exercise of her economic, social and cultural rights.

30. Access to, control over and distribution of land and other assets are still governed by rules, norms and customs that are embedded within various institutions of society: the family, kinship, the community, markets, and government. The IACHR has found that social and cultural factors merely reinforce gender stereotypes, thereby obstructing women's access to and control over a variety of resources. Also, as was previously observed, the sexual division of labor is a decisive factor in the gender-based inequalities that women encounter in trying to get a foothold in the labor, economic, social and political spheres, areas that directly affect their exercise of economic, social and cultural rights.

31. It is vital that States adopt immediate, deliberate and concrete measures to eliminate the obstacles standing in the way of women's access to and control over economic resources, particularly the problem of discrimination, and that they introduce measures to guarantee women's substantive equality in this sphere. Women's access to and control over economic resources has an impact on their economic role *vis-à-vis* maintenance of the household and their roles in the labor markets and in the economy in general. Furthermore, the income that women earn independently helps to sustain the wellbeing of their families and communities, reduces poverty and stimulates economic growth. Women's access to and control over resources contributes to their autonomy and empowerment, concepts that illuminate women's right to obtain their own assets, control them and negotiate their own destiny with their spouse or partner, employer, authorities and others with whom they interact. Women must have access to and control over resources if they are to fully enjoy their other basic rights, such as the right to equality and nondiscrimination. Having access to and control over resources better enables women to enjoy their right to live a life free from violence.

32. The recommendations contained in this report concern the design of state interventions and measures to ensure that women are able to exercise their right to work, their right to education, and their right to access to and control over economic resources, in conditions of equality and free from any form of discrimination. On the one hand, one group of priority obligations immediately incumbent upon States is associated with the duties not to discriminate and to ensure equality in the exercise of economic, social and cultural rights. These are the minimum obligations that the States must fulfill in order to guarantee that women are able to fully exercise their right to work, their right to education, and their right of access to and control over economic resources. On the other hand, the Commission concludes this report with a series of recommendations of a general and progressive nature, underscoring the States' obligations to adopt steps that are deliberate, concrete and oriented to implement them. The Commission emphasizes the principle of non-regression in the States' compliance with these obligations and recommendations, and underscores that access to justice is essential when human rights violations in this sphere occur and is vital to ensuring that such violations do not recur.

33. The Inter-American Commission is committed to collaborating with the States of this hemisphere in finding solutions to the problems identified. Various measures adopted to address this situation reveal an understanding and recognition of the seriousness of the existing problems and a commitment on the part of state and non-state



sectors to effectively address the many hurdles that women must still surmount in order to be able to exercise their economic, social, and cultural rights in conditions of equality.

## THE WORK, EDUCATION AND RESOURCES OF WOMEN: THE ROAD TO EQUALITY IN GUARANTEEING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### INTRODUCTION

1. A constant theme in the pronouncements issued by the inter-American human rights system has been the close interrelationship between civil and political rights on the one hand, and economic, social and cultural rights on the other.<sup>22</sup> In its preamble, the American Convention states that the ideal of free human beings “can be achieved only if conditions are created whereby everyone may enjoy [their] economic, social and cultural rights, as well as [their] civil and political rights.” The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter “the Protocol of San Salvador”) describes these rights as “an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified ....”

2. The IACHR has observed that poverty takes a particularly heavy toll on women, who are at a considerable disadvantage in the exercise of their economic, social and cultural rights. As the Commission wrote in its recent thematic report on *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*,<sup>23</sup> the obligation not to discriminate and to ensure that economic, social and cultural rights are exercised in conditions of equality is one of “immediate effect.” The report identified women as one of the sectors traditionally discriminated against and excluded from the exercise of these rights. 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 System of Human Rights*,<sup>24</sup> the IACHR affirmed that women are encountering significant obstacles in their access to justice when their economic, social and cultural rights are violated.

3. On August 2, 2010, the Commission also published a report titled *Access to Maternal Health Services from a Human Rights Perspective*, where it highlights the States’ duty to ensure women’s human rights in their access to maternal health services and identifies a number of barriers –both structural and discriminatory– that women encounter when they turn to these services.<sup>25</sup> The IACHR has issued a special appeal

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<sup>22</sup> See, for example, the preambles to the American Convention and the Protocol of San Salvador; IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser.L./VII.110 doc. 52, March 9, 2001, paragraph 4; I/A Court H.R., *Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”)*, July 1, 2009, para. 101.

<sup>23</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>24</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*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007.

<sup>25</sup> See, in general, IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010.

calling upon the States to fulfill their obligation to organize the structure of the State, including the justice system, so as to guarantee protection of all women's rights to personal integrity in their access to maternal health services under conditions of equality.<sup>26</sup>

4. The OAS Working Group created to monitor compliance with the Protocol of San Salvador has identified women as one of the social sectors subjected to a structural inequality that conditions or limits the possibility of exercising their social rights.<sup>27</sup> The Working Group –in which the IACHR participates- has underscored the obligation of nondiscrimination and the guarantee of equality as a crosscutting principle in the protection of women's economic, social and cultural rights. It has observed the following in this regard:

Although important progress has been achieved in the whole region, especially in matters of formal equality between men and women, it is still necessary that the States promote new and diverse actions for the promotion of equality, specifically in matters of social rights, which encourage the autonomy and empowerment of women, since autonomy is a basic resource to reach equality between men and women.<sup>28</sup>

5. The present report is based on the IACHR's pronouncements and the most important standards established in its merits reports<sup>29</sup> on the subject of women's rights. The principal standards include the States' immediate obligation to act with the necessary due diligence to prevent, investigate and punish any act of violence committed against women, whether by State or non-State actors; the close interrelationship between the problems of discrimination and violence against women; the obligation to ensure that effective and impartial judicial mechanisms are available for victims of sexual violence, which constitutes torture when committed by agents of the State; the States' obligation to take measures to eradicate discrimination against women and stereotyped patterns of behavior that treat women as inferiors; the obligation of all three branches of government –legislative, executive and judicial- to apply the strict letter of the law to any norms, practices and public policies that establish gender-based differences or that can have the effect of discriminating against women when enforced; in the policies they adopt to promote gender equality, the duty of States to consider the particular risk of human rights

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<sup>26</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010.

<sup>27</sup> 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, paragraph 45.

<sup>28</sup> 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, paragraph 47.

<sup>29</sup> See, for example, the IACHR's decisions on the merits in the cases of *Maria da Penha Maia Fernandes* (Brazil - 2001), *Raquel Martín Mejía* (Peru - 1996), *the González Pérez sisters* (Mexico - 2001), *Maria Eugenia Morales de Sierra* (Guatemala - 2001), *Claudia Ivette Gonzáles et al.* (Mexico - 2007), *Inés Fernández Ortega* (Mexico - 2008), *Valentina Rosendo Cantú* (Mexico - 2009), and *Karen Atala and daughters* (Chile - 2009). The Report will also refer to the judgments issued by the Inter-American Court of Human Rights related to the rights of women.

violations that women may face by virtue of their sex, coupled with their age, race, ethnic origin, economic status and other factors.

6. Another important reference for this report is the international law on economic, social and cultural rights, and on the right of women to live free from discrimination, established by instruments like the International Covenant on Economic, Social and Cultural Rights (hereinafter the "ICESCR"), the Convention for the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), and the various conventions issued by the International Labour Organisation (the "ILO"), all of which will be discussed later in this document.

7. This report is divided into three parts. The first concerns the current framework of law on the subject of the discrimination that women suffer in the exercise of their economic, social and cultural rights. This framework of law is explained and discussed from the angle of two sets of rights that apply to the subject under study: the right to equality and nondiscrimination, and economic, social and cultural rights.

8. The second part is an examination of the principal advances and challenges in the region in ensuring that women are able to exercise, free of discrimination and under conditions of equality, their rights to work, to education, and to access to and control over economic resources.

9. The report ends with a number of conclusions and general recommendations.

**I. LEGAL FRAMEWORK: NORMS AND STANDARDS THAT APPLY TO THE PRINCIPLES OF EQUALITY AND NONDISCRIMINATION IN WOMEN'S EXERCISE OF THEIR ECONOMIC AND SOCIAL RIGHTS**

10. The Inter-American Commission believes that in order to establish the scope of the obligation to respect and ensure women's economic, social and cultural rights –free of any form of discrimination–, the proper starting point is reference to two areas of international and inter-American human rights law: a) the right to equality and nondiscrimination; and b) economic, social and cultural rights. A basic premise underlying this analysis is that the duty of nondiscrimination and the right to equality are crosscutting principles for the observance and guarantee of women's economic, social and cultural rights.

**A. Development in law of the principle of equality and nondiscrimination in the universal and regional human rights systems**

11. International law establishes the obligation of States to ensure the exercise of women's human rights under conditions of equality and free from any form of discrimination. The binding principles of equality and nondiscrimination are core principles of the international system for the protection of human rights. These principles have been embodied in a variety of instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on

Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>30</sup>

12. These obligations are also embodied in the instruments of the inter-American system, such as the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”), the American Convention on Human Rights, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”), the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, and others. These instruments are vital to the observance and guarantee of women’s right to equality and nondiscrimination in the exercise of their civil, political, economic, social and cultural rights. They also reflect the importance that the OAS member states themselves attach to these obligations.

13. Specifically, Article II of the American Declaration provides that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” Article 1(1) of the American Convention establishes the general obligation of States to respect and ensure the rights established in the Convention, “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 24 of the American Convention provides that “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” Article 17 of the American Convention recognizes the equality of rights of spouses during marriage and in the event of its dissolution.

14. The main objectives of the regional human rights system and the principle of efficacy require that these guarantees be real and implemented in practice. Consequently, under Article 2 of the American Convention, where the exercise of any of these rights or freedoms is not already ensured by law and in practice, the States Parties undertake to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms. Furthermore, the American Convention requires that the domestic system provide judicial remedies that are effective and accessible to any persons alleging violations of rights protected under domestic law or under the Convention.

15. The case law of the inter-American human rights system has elaborated upon the principles of equality and nondiscrimination. Since its earliest case law on the subject, the Inter-American Court has written the following on the principle of equality:

[t]he notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the

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<sup>30</sup> See Articles 1 and 2 of the Universal Declaration of Human Rights; Articles 2(1) and 26 of the International Covenant on Civil and Political Rights; Articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights; and Article 1, Convention on the Elimination of All Forms of Discrimination against Women.

right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.<sup>31</sup>

16. While the American Convention and the International Covenant on Civil and Political Rights do not contain any definition of the term “discrimination”, the Commission, the Court and the United Nations Committee on Human Rights have used the definitions contained in the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the “CERD”) and in the CEDAW to determine what constitutes discrimination, which is:

[...] any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>32</sup>

17. The Inter-American Court has written that there is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and nondiscrimination.<sup>33</sup> For the Court, the right to equal protection of the law and the obligation not to discriminate means that States have an obligation to (i) abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights; (ii) eliminate discriminatory regulations; (iii) combat discriminatory practices, and (iv) establish norms and adopt the measures necessary to recognize and ensure the effective equality of all persons before the law.<sup>34</sup>

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<sup>31</sup> I/A Court H.R., *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55.

<sup>32</sup> See, Fourth Progress Report of the Rapporteurship on Migrant Workers and Their Families, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, IACHR, *Annual Report 2002*, March 7, 2003, paragraph 87; IACHR, Application before the Inter-American Court of Human Rights in the *Case of Karen Atala and Daughters, Chile*, September 7, 2010, paragraph 76, citing United Nations, United Nations, Human Rights Committee, General Comment 18, Non-Discrimination, 10/11/89, CCPR/C/37, paragraph 7; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 92.

<sup>33</sup> It has written the following in this regard: “States are obliged to respect and guarantee the full and free exercise of rights and freedoms without any discrimination. Non-compliance by the State with the general obligation to respect and guarantee human rights, owing to any discriminatory treatment, gives rise to its international responsibility.” See, I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC -18/03 of September 17, 2003. Series A No. 18, para. 85.

<sup>34</sup> I/A Court H.R., *Case of the Yean and Bosico Girls*, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 141, and I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 88, cited in I/A Court H.R., *Case of López Álvarez*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 170; see also *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 92. Continues...

18. The Commission has highlighted the various notions of the right to equality or equal treatment and nondiscrimination.<sup>35</sup> One conception is the prohibition against any form of arbitrary difference in treatment, with difference in treatment defined as any distinction, exclusion, restriction or preference,<sup>36</sup> while the other is the obligation to ensure conditions of true equality for groups that have historically been excluded and are at greater risk of discrimination.<sup>37</sup> Although both concepts may be present in certain cases, each warrants a different response from the State and different treatment under the American Convention.<sup>38</sup> To this must be added the fact that under the different conceptions of the right of equality, a State's actions and/or its failures to act may be related to rights enshrined in the American Convention or they may be related to any undertaking of the State that does not affect the enjoyment of Convention-protected rights.<sup>39</sup>

19. The Inter-American Court has held that the American Convention does not prohibit all distinctions in treatment.<sup>40</sup> The Court has established a difference between "distinction" and "discrimination," whereby the former are differences that are compatible with the American Convention because they are reasonable and objective, whereas the latter are arbitrary differences that have a negative effect on human rights.<sup>41</sup> Here, the IACHR has observed that distinctions based on factors explicitly mentioned in international human rights instruments like the American Convention, and status-related categories such

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Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 44; and *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54, cited in I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 185.

<sup>35</sup> Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

<sup>36</sup> See: United Nations, Human Rights Committee, General Comment 18, Non-Discrimination, 10/11/89, CCPR/C/37, para. 7; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 92; Fourth Progress Report of the Rapporteurship on Migrant Workers and Their Families, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, IACHR *Annual Report 2002*, March 7, 2003, para. 87.

<sup>37</sup> Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

<sup>38</sup> Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

<sup>39</sup> Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

<sup>40</sup> I/A Court H.R.. *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 211, citing *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paragraph 56; *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 46; and *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 89.

<sup>41</sup> I/A Court H.R.. *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 211, citing *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 84.

as sex and race, have to be “more closely scrutinized” and that in order to justify the distinction, States must be able to point to some overriding objective they are pursuing and give very substantial reasons.<sup>42</sup>

20. The Commission has also established that the laws and policies must be examined to ensure that they comport with the principles of effective equality and nondiscrimination. Any such examination must also look for the potential discriminatory impact of such measures, even when their formulation or wording appears neutral or they apply to everyone, without distinction.<sup>43</sup> A number of bodies whose function is to monitor treaty compliance have addressed the effects of indirect discrimination.<sup>44</sup> The Committee on Economic, Social and Cultural Rights (hereinafter the “ESCR Committee”) has defined indirect discrimination as “laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.”<sup>45</sup> The Committee on the Elimination of Discrimination against Women (hereinafter the “CEDAW Committee”), for its part, has observed that indirect discrimination against women occurs when a “law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure.”<sup>46</sup> In its merits reports, country reports and

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<sup>42</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 80; IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 338; IACHR, Report No.4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 36; IACHR, *Annual Report 1999, Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, Chapter V. See also, Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 88.

<sup>43</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 85; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 90. See also, I/A Court H.R., *Case of the Yean and Bosico Girls*. Judgment of September 8, 2005. Series C No. 130, para. 141.

<sup>44</sup> United Nations, Committee on Economic, Social and Cultural Rights, 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), July 2, 2009; Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, October 19, 2010; Human Rights Committee, Communication No. 998/2001, *Althammer et al. v. Austria*, August 8, 2003, para. 10.2.; Committee on the Elimination of Racial Discrimination, Communication No. 31/2003, *L.R. et al. v. Slovakia*, para. 10.4.

<sup>45</sup> United Nations, Committee on Economic, Social and Cultural Rights, 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), July 2, 2009. See also discussion in United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on *Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, October 19, 2010, para. 5.

<sup>46</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the Convention on the Elimination of Discrimination against Women*, October 19, 2010, para. 16.



thematic reports, the Commission has gradually started to define concepts like “discriminatory impact” and “indirect discrimination” as they pertain to women’s rights.<sup>47</sup>

21. The Convention of Belém do Pará is particularly pertinent for this report, because it recognizes that women’s right to live free from violence includes their right to live free from discrimination.<sup>48</sup> It asserts that the right of every woman to be free from violence includes, among others, the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.<sup>49</sup> The Convention also states that violence against women is an obstacle to the exercise and protection of women’s economic, social and cultural rights.<sup>50</sup>

22. The Convention of Belém do Pará is also emphatic about the States’ obligation to act with due diligence to prevent, investigate and punish discrimination and violence against women, both in the public and private spheres.<sup>51</sup> It holds that in their policies the States Parties have an obligation to consider the special risk women face to discrimination and violence by reason of various factors in combination with their sex, such as race, ethnicity, age or because they are socioeconomically disadvantaged.<sup>52</sup>

23. At the international level, CEDAW provides that the State and its agents have an obligation to eradicate discrimination against women in all its forms. Article 1 of CEDAW defines discrimination against women as follows: “Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” This definition includes any difference in treatment based on sex that either intentionally or in practice places women at a disadvantage, and obstructs the full recognition of their human rights, in both the public and private spheres. The CEDAW Committee has written that the definition of discrimination described in the CEDAW also includes violence against women, in all its forms.<sup>53</sup>

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<sup>47</sup> See, in general, Application with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010; IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007; IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009.

<sup>48</sup> See Articles 5 and 6.

<sup>49</sup> See Article 6.

<sup>50</sup> See Convention of Belém do Pará, Article 6

<sup>51</sup> See Convention of Belém do Pará, Article 7.

<sup>52</sup> See Convention of Belém do Pará, Article 9.

<sup>53</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 19, *Violence against Women*, U.N. Doc. HRI/GEN/1//Rev.1, p. 84, para. 11 (1994).

24. The CEDAW Committee has defined gender equality as the concept that “all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.”<sup>54</sup> States are called upon to pursue this objective by means of an immediate, comprehensive and multi-sector policy aimed at eliminating discrimination against women.<sup>55</sup>

25. The CEDAW Committee has also asserted that the States Parties to CEDAW have the obligation to respect and protect all the rights enshrined in the Convention and to ensure that they are fully respected at the national level.<sup>56</sup> The obligation to respect requires that States parties refrain from making laws, policies, regulations, programs, administrative procedures and institutional structures that directly or indirectly result in the denial of women’s equal enjoyment of their civil, political, economic, social and cultural rights.<sup>57</sup> The obligation to protect requires that States parties protect women against discrimination by private actors and take steps directly aimed at eliminating customs and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women.<sup>58</sup> The obligation to fulfill requires that States parties take steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures, among them obligations that the Committee characterizes as obligations of means and conduct and obligations of results.<sup>59</sup> Discrimination can occur through the failure of States to take necessary legislative measures to ensure the full realization of women’s rights, the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws.<sup>60</sup>

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<sup>54</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 22.

<sup>55</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 22.

<sup>56</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 6.

<sup>57</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 9.

<sup>58</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 6.

<sup>59</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 6.

<sup>60</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 10.

26. The Committee has also highlighted that the States' legal obligations under the Convention are not confined to direct and indirect discrimination.<sup>61</sup> They also include the States' obligation to act with due diligence to prevent discrimination by private actors, which includes regulation of the activities of private actors in regard to education, employment, health policies and practices, banking and housing.<sup>62</sup> It also includes the States' obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, and enterprises.<sup>63</sup> On a third level, States have an obligation to take into account the intersecting forms of discrimination that women may be struggling with by virtue of their race, ethnic origin, religion, sexual orientation, gender identity, and other factors, the premise being that not all women are affected in the same way by discrimination.<sup>64</sup>

27. Under Article 4 of the CEDAW, the States can adopt temporary measures aimed at accelerating the equal participation of women in the political, economic, social, cultural, civil or any other field".<sup>65</sup> The CEDAW Committee's definition of these measures is broad, as they encompass "a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems."<sup>66</sup> The IACHR, for its part, has written that special temporary measures may be required to achieve women's *de facto* equality with men, and that such measures are in full compliance with the principle of nondiscrimination and human rights standards.<sup>67</sup>

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<sup>61</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 13.

<sup>62</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 13.

<sup>63</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 17.

<sup>64</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the *Core Obligations of States Parties under Article 2 of the CEDAW*, October 19, 2010, para. 18.

<sup>65</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 25, *Temporary Special Measures*, UN Doc. CEDAW/C/2004/I/WP.1/Rev.1, 30 (2004), para. 18.

<sup>66</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 25, *Temporary Special Measures*, UN Doc. CEDAW/C/2004/I/WP.1/Rev.1, 30 (2004), para. 22.

<sup>67</sup> IACHR, *The Road to True Democracy: Women's Political Participation in the Americas*, 2011; IACHR, Annual Report 1999, *Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, Chapter V.

28. It is important to highlight the differences between special temporary measures and the general policies that a State must adopt to ensure women's equality. Here, the CEDAW Committee has written that:

States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and nondiscrimination, cannot be called temporary special measures.

Article 4, paragraph 1, explicitly states the "temporary" nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of "temporary" may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.<sup>68</sup>

**B. Recognition of economic, social and cultural rights in the universal and regional human rights systems**

29. In its general and specialized instruments, the inter-American human rights system has established a body of principles and provisions related to the protection of economic, social and cultural rights. Various instruments and pronouncements underscore the indivisibility and interdependence of civil and political rights on the one hand, and economic, social and cultural rights on the other, and the duty of nondiscrimination and equality in the protection of these rights.<sup>69</sup> The developments at the inter-American level to some extent mirror the international trend in the protection of this group of rights, recognized in such basic instruments as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, CEDAW and others.

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<sup>68</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 25, *Temporary Special Measures*, UN Doc. CEDAW/C/2004/1/WP.1/Rev.1, 30 (2004), paras. 19 and 20.

<sup>69</sup> See, for example, IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L./VII.110 doc. 52, March 9, 2001, para. 4.

30. In this section, the IACHR will describe, in the following order, the legal framework for the protection of economic, social and cultural rights as they pertain to women: a) general observations on the legal framework for the protection of economic, social and cultural rights at the inter-American and international levels; b) the principle of progressive realization, the duty to take steps, and the corollary duty of non-regression; c) the immediate obligation of equality and nondiscrimination; and d) access to justice. In the sections on the rights to employment, education, and access to and control over economic resources, the report will discuss specific provisions that have a bearing on these three areas of women's rights.

**1. General considerations related to the legal framework for the protection of economic, social and cultural rights at the inter-American and international levels**

Inter-American system:

31. The OAS Charter sets out important objectives, binding upon the member States and related to the economic, social and cultural rights, particularly since the amendments introduced by the Protocol of Buenos Aires. Article 3 identifies the elimination of extreme poverty as an essential part of the promotion and consolidation of representative democracy and as the common and shared responsibility of the American States. It describes justice and social security as bases of lasting peace and recognizes the fundamental rights of the individual without distinction as to race, nationality, creed or sex. Article 34 of the Charter provides that fair wages, employment opportunities, and acceptable working conditions for all, rapid eradication of illiteracy and expansion of educational opportunities for all, and reforms leading to equitable and efficient land-tenure systems, nutrition and adequate housing are among the basic objectives for the integral development of the countries of the hemisphere.

32. Pursuing the same line of reasoning, the American Declaration recognizes a variety of economic, social and cultural rights, as well as civil and political rights. It establishes women's right to protection during pregnancy and the nursing period, and children's right to protection (Article VII); the right to preservation of health and well-being (Article XI); the right to education (Article XII); the right to the benefits of culture (Article XIII); the right to work and to fair remuneration (Article XV); and the right to social security (Article XVI). The inter-American human rights system has emphasized that the American Declaration "has full legal effect and is binding for the member States of the OAS", a principle that applies in the area of economic, social and cultural rights.<sup>70</sup>

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<sup>70</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay* y, OEA/Ser./L./VII.110 doc. 52, March 9, 2001, para. 17, citing 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 July 14, 1989, Series A, No. 10.

33. For its part, the American Convention upholds these rights in its preamble and its Article 26. The latter reads as follows:

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.

34. The rights to which Article 26 of the American Convention refers are those that are derived from the economic and social provisions and provisions on education, science and culture contained in the OAS Charter and mentioned in paragraph 64 above. The case law of the Inter-American Court and the Commission has already identified the right to social security, the right to health and labor rights as economic, social and cultural rights that flow from the OAS Charter.<sup>71</sup> The doctrine has suggested that other rights that might be traced to the OAS Charter include the right to education, the right to food, the right to housing, and cultural rights.<sup>72</sup>

35. As indicated above, in Article 1(1) the American Convention sets forth the States' obligation to respect the rights recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction, without discrimination;<sup>73</sup> in Article 2, it spells out the States' obligation to adopt the domestic legislative and other measures necessary to give effect to the rights and freedoms protected under the American Convention. Here, the Court has written that while Article 26 is in Chapter III of the Convention, it also figures in Chapter I, as it is subject to the general obligations contained

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<sup>71</sup> I/A Court H.R., *Case of Acevedo Buendía et al. Case of Acevedo Buendía et al.* ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009, Series C No. 198, para. 106; IACHR, Report No. 3809, Case 12,670, Admissibility and Merits, *National Association of Ex-Employees of the Peruvian Social Security Institute et al. v. Peru*, March 27, 2009, paragraph 130; IACHR, Report No. 25/04, Petition 12,361, Admissibility, *Ana Victoria Sánchez Villalobos et al. v. Costa Rica*, March 11, 2004, paragraphs 52-70; IACHR, Report No. 27/09, Merits, Case 12,249, *Jorge Odir Miranda Cortez et al. v. El Salvador*, March 20, 2009, paras. 77 and 79; IACHR, Report No. 100/01, Case 11,381, *Milton García Fajardo et al. v. Nicaragua*, October 11, 2001, para. 95; IACHR, Report No. 121/09, Petition 1186-04, Admissibility, *Opario Lemoth Morris et al. (Buzos Miskitos) v. Honduras*, November 12, 2009, para. 50.

<sup>72</sup> Cf. Christian Courtis "*La protección de los derechos económicos, sociales y culturales a través del artículo 26 de la Convención Americana sobre Derechos Humanos*", in Christian Courtis, Denis Hauser and Gabriela Rodríguez Huerta (editors), *Protección internacional de los derechos humanos: nuevos desafíos*, Ed. Porrúa-ITAM, Mexico, 2005, pp. 8-29; Tara Melish, *Protecting Economic, Social and Cultural Rights in the Inter-American Human Rights System: A Manual on Presenting Claims*, Yale Law School & CDES, 2002, pp. 383-388. See also, Inter-American Institute of Human Rights, *Protección internacional de los derechos económicos, sociales y culturales. Sistema Universal y Sistema Interamericana*, IIDH, San José, Costa Rica, 2008.

<sup>73</sup> Article 24 of the American Convention establishes the principle of equality before the law and equal protection of the law, without discrimination. This principle applies to the States parties' entire legal system, including those laws that establish or regulate economic, social and cultural rights.

in articles 1(1) and 2.<sup>74</sup> In keeping with this principle, the IACHR has written that a violation of Article 26 implies a failure to comply with the duty to respect and ensure contained in Article 1(1) of the American Convention.<sup>75</sup>

36. The IACHR has used the American Declaration as a reference to interpret the content and scope of the social provisions mentioned in Article 26 of the American Convention; it has also used the Protocol of San Salvador.<sup>76</sup> As for the mandatory nature of Article 26, the Court has written that the content of Article 26 of the Convention was the subject-matter of an intense debate in the *travaux préparatoires* of the Convention, as a result of the States Parties' interest in several matters: a) making a "direct reference" to economic, social and cultural "rights" and to embody them in a provision that was somehow legally binding, and the mechanisms necessary for their promotion and protection; b) "granting the economic, social and cultural rights the maximum protection" compatible with the conditions peculiar to most American States; and c) the possibility of enforcing economic, social and cultural rights through the courts.<sup>77</sup>

37. The inter-American system also has an instrument especially devoted to economic, social and cultural rights, which is the Protocol of San Salvador.<sup>78</sup> The Protocol contains an extensive catalogue of economic, social and cultural rights, which includes union rights, the right to education, the right to work, the right to social security, the right to health, the right to food, the right to protections for family, children, the elderly, and the disabled.

38. Specifically, under Article 1 of the Protocol of San Salvador States Parties undertake 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 legislation, the full observance of the

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<sup>74</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, paragraph 100.

<sup>75</sup> Application the Inter-American Commission on Human Rights filed with the Inter-American Court of Human Rights in Case 12.034, "Carlos Torres Benvenuto *et al.*" against the Republic of Peru, December 3, 2001, para. 142.

<sup>76</sup> See, for example, 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. 139; Application the Inter-American Commission on Human Rights filed with the Inter-American Court of Human Rights in Case 12,034 "Carlos Torres Benvenuto *et al.*" against the Republic of Peru, December 4, 2001, para. 123.

<sup>77</sup> I/A Court H.R. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 99.

<sup>78</sup> The following American States have ratified or have acceded to the Protocol of San Salvador: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay. The countries that have signed the Protocol, but not ratified it are: Chile, Haiti, the Dominican Republic, and Venezuela. The following countries have not signed the Protocol of San Salvador: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Honduras, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the United States.

rights recognized in [the] Protocol.” Article 2 contains the States’ commitment to adopt such legislative or other measures as may be necessary to make the rights protected under the Protocol a reality. Article 3 provides that the State Parties to the Protocol “undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

39. Article 4 of the Protocol of San Salvador embodies the principle of non-regression where it provides that “[a] right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.” Article 5 provides that “[t]he State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.”<sup>79</sup>

40. The Inter-American Democratic Charter<sup>80</sup> - adopted on September 11, 2001- also contains a number of important provisions related to economic, social and cultural rights. In addition to the *consideranda* in its preamble, wherein the importance of guaranteeing the rights protected under the Protocol of San Salvador is reaffirmed, articles 4 and 9 of the Inter-American Democratic Charter provide that respect for social rights, free from any form of discrimination, is a fundamental component of the consolidation of a democracy.

41. Two other specialized instruments of the system that are relevant for the protection of the economic, social and cultural rights of sectors whose human rights are particularly at risk of violation are the Convention of Belém do Pará and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. The Convention of Belém do Pará recognizes the close relationship between women’s right to live free from discrimination and all forms of violence in the exercise of their economic, social and cultural rights, and the States’ duty to take into consideration the various forms of discrimination that a woman can experience when attempting to exercise her rights. Gender-based discrimination combines with other factors such as race, ethnicity, socioeconomic condition and others.<sup>81</sup> In Article III of the Inter-American

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<sup>79</sup> As for implementation of the provisions contained in the Protocol of San Salvador, Article 19 provides that the States undertake to provide periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol. The same article provides that the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the Protocol in all or some of the States parties, which it may include in its annual report to the General Assembly or in a special report. In the case of violations of the rights established in Article 8(a) of the Protocol (the right to form unions and join trade unions), and Article 13 (the right to education), the Protocol authorizes the presentation of individual petitions to the inter-American human rights system.

<sup>80</sup> Inter-American Democratic Charter, approved at the First Plenary Session, held September 11, 2001.

<sup>81</sup> See Articles 4, 5, and 9 of the Convention of Belém do Pará.



Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the States Parties undertake to adopt “the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society”, measures to gradually eliminate disability-based discrimination in areas such as employment, housing, education, access to justice, and others.

International system:

42. At the international level, the Universal Declaration of Human Rights recognizes a variety of economic, social and cultural rights, including the right to property (Article 17); the right to social security (Article 22); the right to form and join trade unions (Article 23); the right to rest and leisure (Article 24); the right to a standard of living adequate for health and well-being, including housing (Article 25); the right to education (Article 26), and others. Under Article 2 of that instrument, all persons are entitled to the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

43. The ICESCR<sup>82</sup> which, like the Universal Declaration, is part of the International Bill of Human Rights, contains an extensive catalogue of economic, social and cultural rights. Its preamble also asserts that “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.” The ICESCR recognizes, *inter alia*, the right to work (articles 6 and 7); the right to form and join the trade union of one’s choice (Article 8); the right to social security (Article 9); the right to food and housing (Article 11); the right to health (Article 12); the right to education (Article 13), and the right to take part in cultural life and enjoy the benefits of scientific progress and its applications (Article 15).

44. Article 2(1) of the ICESCR provides that a State Party “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” In its Article 2(2) the Covenant recognizes the States’ duty to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to sex and other factors.<sup>83</sup> In Article 3, the States Parties to the Covenant undertake “to ensure

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<sup>82</sup> At the international level, 89 States have acceded to the International Covenant on Economic, Social and Cultural Rights; 62 have ratified it; 3 have signed it, and 12 States are party to the Covenant by succession. The American States that have ratified it are: Argentina, the Bahamas, Chile, Colombia, Costa Rica, El Salvador, Guyana, Honduras, Panama, Peru, Uruguay, and Venezuela. The American States that have acceded to the Covenant are: Barbados, Bolivia, Brazil, Canada, Dominica, the Dominican Republic, Ecuador, Grenada, Guatemala, Jamaica, Mexico, Nicaragua, Paraguay, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The American States that have only signed it but not yet ratified it are: Belize, Cuba and the United States.

<sup>83</sup> According to the Committee on Economic, Social and Cultural Rights, “the notion of the prohibited ground ‘sex’ has evolved considerably to cover not only physiological characteristics but also the social  
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the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

45. The Committee on Economic, Social and Cultural Rights (hereinafter the “ESCR Committee”) is a body composed of independent experts who oversee the States Parties’ observance of the International Covenant on Economic, Social and Cultural Rights.<sup>84</sup> On December 10, 2008, the United Nations General Assembly approved the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which establishes the Committee’s competence to receive and consider individual and group communications once the Protocol enters into force.<sup>85</sup>

46. The ESCR Committee has issued a series of key general comments that define the scope of the States’ obligations, both progressive and immediate, in observing and guaranteeing economic, social and cultural rights. These will be discussed in the sections that follow.

47. Before continuing this analysis, the IACHR must underscore the point that the international obligations contained in the Universal Declaration and in the ICESCR should be read in conjunction with the obligations established in the CEDAW with regard to women and their rights in this area. While the Universal Declaration and the ICESCR recognize economic, social and cultural rights, the CEDAW establishes the scope of the principle of equality and the prohibition of gender-based discrimination with respect to these rights, and identifies the measures that the States Parties must adopt to achieve full equality and eliminate discrimination in these areas. Under the CEDAW, States undertake to eliminate, without delay, discrimination against women in specific fields relevant to their economic, social and cultural rights such as employment (Article 11); education (Article 10); health (Article 12); bank loans, mortgages, and other forms of financial credit (Article 13), civil matters (Article 15); marriage and family relations (Article 16), among others.

## **2. The principle of “progressive realization”, the obligation to “take steps”, and the principle of non-regression**

48. The inter-American and international systems have both addressed the obligation to progressively comply with the rights contained in the ICESCR, the Protocol of

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construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfillment of economic, social and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination.” Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in economic, social and cultural rights,” 2009.

<sup>84</sup> Under resolution 1985/17 of the United Nations Economic and Social Council (ECOSOC), the Committee was established to perform the oversight functions assigned to the Council in part IV of the Covenant.

<sup>85</sup> United Nations General Assembly Resolution A/RES/63/117. The Optional Protocol has been ratified by only three States: Ecuador, Mongolia and Spain. The following American States have signed it: Argentina, Bolivia, Chile, El Salvador, Guatemala, Paraguay, and Uruguay.

San Salvador and the American Convention, the obligation to “take steps” and the corollary duty of non-regression in guaranteeing these rights.

49. The ESCR Committee has clarified that the Covenant imposes a set of obligations of conduct and obligations of result.<sup>86</sup> It recognizes that a number of the States’ obligations are subject to the principle of “progressive realization” and the degree of compliance will depend on the resources that any given State has available.<sup>87</sup> However, the Covenant recognizes two aspects of the States’ immediate obligations: a) the obligation to “take steps”, set forth in Article 2(1); and b) the obligation to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind, set forth in Article 2(2).<sup>88</sup>

50. This section will focus on the individual content, and on the close relationship between the principle of “progressive realization” and the obligation “to take steps”. The following section will examine the immediate obligation to guarantee exercise of economic, social and cultural rights free of discrimination and under conditions of equality.

51. With regard to the immediate obligation to “take steps”, the ESCR Committee has held that while the full realization of the relevant rights may be achieved progressively, steps toward that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible toward meeting the obligations recognized in the Covenant.<sup>89</sup> The Committee identifies the following among the steps to be taken: the adoption and amendment of legislation; the guarantee of effective judicial remedies; and administrative, financial, educational, social and other measures.<sup>90</sup> From the obligation of the progressive realization of economic, social and cultural rights, the ESCR Committee has extrapolated a *prima facie* prohibition against the adoption of deliberately regressive measures, commonly referred to as the “non-regression principle” or “prohibition on retrogression.”<sup>91</sup>

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<sup>86</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, 1990, paragraph 1.

<sup>87</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, 1990, para. 1.

<sup>88</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, 1990, para. 1.

<sup>89</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, 1990, para. 2.

<sup>90</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties’ Obligations, 1990, paragraphs 3-5.

<sup>91</sup> On the scope of this obligation, see Christian Courtis, “*La prohibición de regresividad en material de derechos sociales, apuntes introductorios*” and, in general, the essays contained in Christian Courtis (ed.), *Ni un paso atrás. La prohibición de regresividad en material de derechos sociales*, Ed.del Puerto, Buenos Aires, 2006.

52. The IACHR, for its part, has highlighted that the progressive realization of rights, a principle upheld in Article 26 of the American Convention, has legal implications for the States: a) a corollary obligation not to reverse the achievements in the area, based on international standards;<sup>92</sup> and b) obligations for the State that are justiciable via the individual petition system recognized in the Convention.<sup>93</sup> However, the IACHR has written that not every regressive measure is incompatible with Article 26 of the American Convention, and that this obligation does not preclude the possibility that a State might impose certain restrictions on the exercise of the rights covered under that provision.<sup>94</sup> The obligation of non-regression (or non-retrogression) necessitates a detailed examination of a measure's effect on the right of an individual as opposed to its collective implications.<sup>95</sup>

53. In its judgment on the *Case of the Five Pensioners*, the Inter-American Court addressed Article 26 of the American Convention and the States' obligations as follows:

Economic, social and cultural rights have both an individual and a collective dimension. This Court considers that their progressive development, about which the United Nations Committee on Economic, Social and Cultural Rights has already ruled, should be measured in function of the growing coverage of economic, social and cultural rights in general, and of the right to social security and to a pension in particular, of the entire population, bearing in mind the imperatives of social equity.<sup>96</sup>

54. In its judgment on the recent *Case of Acevedo Buendía*, the Court also looks at the content of the obligations under Article 26, recalling the interdependence that exists between civil and political rights and economic, social and cultural rights, since they should be fully understood as human rights, without any rank and enforceable in all cases before competent authorities.<sup>97</sup> This means that the progressive implementation of the State's measures to ensure realization of economic, social and cultural rights may be

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<sup>92</sup> See, for example, the Application the Inter-American Commission on Human Rights filed with the Inter-American Court of Human Rights in Case 12,034 "Carlos Torres Benvenuto *et al.*" against the Republic of Peru, December 3, 2001, para. 133.

<sup>93</sup> 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. 139.

<sup>94</sup> 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. 140.

<sup>95</sup> 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. 139.

<sup>96</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 147.

<sup>97</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 101.

subject to accountability.<sup>98</sup> Here, a State's fulfillment of the commitments it has undertaken can be challenged before those bodies charged with deciding possible human rights violations.<sup>99</sup> In *Acevedo Buendía* the Court also addressed the corollary duty of non-regression and its justiciability.<sup>100</sup>

55. In *Acevedo Buendía*, the Court also wrote the following regarding Article 26 of the American Convention and the obligation to "adopt measures":

....the commitment requested from the State by Article 26 of the Convention consist in the adoption of measures, especially those of an economic and technical nature- insofar as there are available resources- by legislation or other appropriate means- with a view to achieving progressively the full realization of certain economic, social and cultural rights.<sup>101</sup>

56. In its country and thematic reports, the IACHR has started to establish criteria on the content of these obligations. It has written, in general, that:

... [w]hile Article 26 does not enumerate specific measures of implementation, leaving the State to determine the most appropriate administrative, social, legislative or other steps to pursue, it expresses a legal obligation on the part of the State to engage in such a process of determination and to adopt progressive measures in this sphere. The principle of progressive development establishes that such measures are to be undertaken in a manner which constantly and consistently advances toward the full realization of these rights.<sup>102</sup>

57. In its *Third Report on the Situation of Human Rights in Colombia*, the IACHR examined the Colombian State's compliance with Article 26 of the American Convention and the provisions of the Charter of the Organization of American States and

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<sup>98</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 102.

<sup>99</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 102.

<sup>100</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 102.

<sup>101</sup> I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, para. 105.

<sup>102</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser. L/V/II.96, Doc. 10 rev. 1, p. 25; IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 4; IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106. Doc. 59, rev., June 2, 2000, para. 5.

the American Declaration, and wrote that it is essential that the rights recognized in these provisions “have real effect in the daily lives of each of the inhabitants of Colombia, thereby guaranteeing minimal conditions for leading a dignified life.”<sup>103</sup> On the principle of “progressive development” (or “progressive realization”) and the principle of “non-regression”, the IACHR observed the following in that report:

The progressive nature of the duty to ensure the observance of some of these rights, as is recognized in the language of the provisions cited, does not mean that Colombia can delay in adopting all measures needed to make them effective. To the contrary, Colombia has the obligation to immediately begin the process leading to the complete realization of the rights contained in those provisions. In no way can the progressive nature of the rights mean that Colombia can indefinitely postpone the efforts aimed at their complete attainment.<sup>104</sup>

The obligation to develop these rights progressively requires at a minimum that their observance and access to them not be diminished over time.<sup>105</sup>

58. As to the relationship between civil and political rights and economic, social and cultural rights, the IACHR also stated that:

In effect, an individual who does not have adequate access to education may find his or her possibilities of political participation or his or her right to freedom of expression diminished. A person with limited or deficient access to the health system will have a diminished right to life, or that right may be entirely violated. This situation may occur in different degrees, depending on the extent of the violation of economic, social, and cultural rights; it can be argued generally that the less one can enjoy economic, social, and cultural rights, the less they will be able to enjoy civil and political rights. In this context, in a situation where there is maximum violation of economic, social, and cultural rights, civil and political rights will be violated to the hilt. This is what happens in the case of extreme poverty.<sup>106</sup>

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<sup>103</sup> IACHR, *Third report on the situation of human rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter III, para. 5.

<sup>104</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter III, para. 6.

<sup>105</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter III, para. 7.

<sup>106</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L./VII.110 doc. 52, March 9, 2001, para. 4.

### 3. Obligation not to discriminate and to guarantee equality

59. In keeping with international precedent, the IACHR has pointed out that the first obligation “with immediate effect” arising from the progressive development of economic, social and cultural rights consists of ensuring that those rights will be exercised in conditions of equality and without discrimination.”<sup>107</sup>

60. The ESCR Committee, for its part, has observed that the immediate obligation not to discriminate based on gender is essential to the enjoyment and exercise of economic, social and cultural rights.<sup>108</sup> The Committee also observed that the concept of “sex” as a prohibited ground for discrimination has evolved considerably since the adoption of the Covenant and now covers not just physiological characteristics but also the socially conceived gender stereotypes, prejudices and gender-based social roles, which have become obstacles to equal exercise of economic, social and cultural rights.<sup>109</sup> That Committee has established the close relationship between the obligation of nondiscrimination, recognized in Article 2(2) of the Covenant, and the guarantee of the equal right of men and women to the exercise of those rights, recognized in Article 3 of that instrument.<sup>110</sup>

61. The ESCR Committee has highlighted the formal (*de jure*) and practical (*de facto*) dimensions of the obligation of nondiscrimination and the right to equality.<sup>111</sup> To eliminate formal discrimination, States must ensure that their constitutions, laws and policies do not discriminate on prohibited grounds, such as sex.<sup>112</sup> To eliminate substantive or *de facto* discrimination, States must devote special attention to those groups and individuals who have historically been the victims of some form of exclusion or

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<sup>107</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. This principle has been recently advanced 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>108</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights) 2005, para. 3.

<sup>109</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 20.

<sup>110</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 3.

<sup>111</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 8.

<sup>112</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 7; United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 8.

persistent prejudice; they must immediately take the measures necessary to prevent, reduce and eliminate the conditions and attitudes that either engender or perpetuate discrimination in practice.<sup>113</sup> The State may be required to take special temporary measures in order to attenuate or suppress conditions that perpetuate discrimination.<sup>114</sup>

62. The Committee has written that the principles of nondiscrimination and equality apply, across-the-board, to all the rights contained in articles 6 to 15 of the Covenant, including the rights to work, to social security, to housing, health, education, and others.<sup>115</sup> The States parties' obligations vis-à-vis the equal right of men and women to the enjoyment of economic, social and cultural rights are on three levels: the obligation to respect, the obligation to protect and the obligation to fulfill.<sup>116</sup>

63. The obligation to *respect* requires States parties to refrain from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of economic, social and cultural rights. That obligation requires States to evaluate how the application of apparently gender-neutral legal norms and principles adversely affects the capacity of men and women to enjoy their human rights on a basis of equality.<sup>117</sup> The obligation to *protect*, on the other hand, requires States parties to take steps aimed directly at the elimination of prejudices, customs and all other practices that perpetuate the notion of the inferiority or superiority of either sex, and stereotyped roles for men and women, which includes monitoring the conduct of non-state actors.<sup>118</sup>

64. The obligation to *fulfill*, for its part, requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights

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<sup>113</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 7; United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 8.

<sup>114</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 15; United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 9.

<sup>115</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 3.

<sup>116</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 17.

<sup>117</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 18.

<sup>118</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 19.



on a basis of equality. Such steps should include making appropriate remedies available and accessible; developing monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalized individuals or groups, particularly women and girls; conducting human rights education and training programmes for judges and public officials; integrating, in formal and non-formal education, the principle of the equal right of men and women to the enjoyment of economic, social and cultural rights; promoting equal participation of men and women in development planning and decision-making, and others.<sup>119</sup>

65. The Working Group for analysis of the national reports established in the Protocol of San Salvador has observed that the first obligation with “immediate effect” derived from the economic, social and cultural rights consists of ensuring that they will be exercised in conditions of equality and without discrimination; that is, to prevent differences in treatment based on factors that are specifically forbidden in the Protocol. It requires that States

...recognize and guarantee the rights of the PSS [Protocol of San Salvador] in the same manner for all the population, using objective and reasonable distinction criteria, and avoiding arbitrary differences in treatment, especially differences in treatment based on factors that are specifically forbidden, such as race, religion or social origin. But it also requires that States recognize the existence of sectors that are at a disadvantage in the exercise of their social rights and adopt positive policies and actions to guarantee their rights.<sup>120</sup>

66. In its report on *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, the IACHR wrote that when adopting social policies and measures to ensure these rights, States must identify those sectors that have traditionally suffered discrimination in access to certain rights, such as women, indigenous peoples, Afro-descendants, and others, and “establish special or differential measures to uphold and ensure the rights of those sectors.”<sup>121</sup> Despite the progress achieved in the Americas, especially where the *de jure* equality of men and women is concerned, States still

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<sup>119</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 21.

<sup>120</sup> 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. 44. See a related analysis of this topic 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>121</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, a discussion of this topic in 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. 63.

have to take a variety of additional measures to promote equality with respect to social rights.<sup>122</sup>

67. As for social policies, the IACHR has emphasized the fact that statistics broken down by sex, race or ethnic origin are essential to an understanding of the problems of inequality.<sup>123</sup> No less important is the need to include indicators on inclusion and exclusion that reveal structural poverty or patterns of intolerance and stigmatization of social sectors, among other elements for evaluating situations of inequity.<sup>124</sup> These should be cross-referenced with information on access to productive resources or to the labor market and indicators on distribution of public budgetary and extra-budgetary resources.<sup>125</sup>

#### 4. Access to justice

68. With specific reference to access to justice, the IACHR, following the ESCR Committee's precedent, pointed out that significant dimensions of social rights are immediately enforceable before the domestic courts.<sup>126</sup> States must remove any legal, social or economic obstacles that prevent or encumber access to the courts for those seeking redress of economic, social and cultural rights.<sup>127</sup>

69. The IACHR has identified four core issues that it regards as priorities for the judicial protection of economic, social and cultural rights: 1) the obligation to remove economic obstacles to ensure access to the courts; 2) the components of due process of law in administrative proceedings concerning social rights; 3) the components of due process of law in judicial proceedings concerning social rights; and, 4) the components of effective judicial protection of individual and collective social rights.<sup>128</sup>

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<sup>122</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. As for gender equality, the IACHR holds that the concepts of autonomy and empowerment are basic prerequisites to achieve equality between the sexes and are crosscutting concepts that apply to all issues that must be addressed to comply with economic, social and cultural rights. For example, the IACHR has written that the lack of economic autonomy makes it all the more difficult for women to enter and remain in the labor market, especially poor women, and also affects their freedom to make decisions regarding their own body.

<sup>123</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. 58.

<sup>124</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. 58.

<sup>125</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. 63.

<sup>126</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. 67.

<sup>127</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*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, Executive Summary, para. 1.

<sup>128</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*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, Executive Summary, para. 3.

70. Some obligations in this area that the Commission highlighted as being relevant for women's rights are: the obligation to clear away those obstacles to access to justice that can be attributed to an individual's economic situation, and the duty to establish clear rules on the behavior of state agents, so as to avoid the exercise of improper margins of discretion in the administrative area that may foster abusive and discriminatory practices.

71. The inter-American human rights system has also begun to identify the elements that comprise the rights to due process in administrative proceedings, such as the guarantee of a hearing for a determination of one's rights; the right to be assisted by counsel; the right to put on a defense, the right to sufficient time to prepare and formalize one's arguments, to present evidence and to prior notification of the trial itself.<sup>129</sup> Some elements of judicial due process are the right to a reasoned judgment on the merits; the right to be tried within a reasonable period; the need to ensure that an appeal is processed expeditiously; and so on.

72. As for the right to effective judicial protection, the inter-American system has held that the States are obligated to provide suitable and effective mechanisms for the protection of social rights, both individually and collectively, and must establish mechanisms that ensure effective enforcement of the judgments that the judicial branch delivers.<sup>130</sup>

## **II. DISCRIMINATION AND WOMEN'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS: DISPARITIES IN THE EXERCISE OF THE RIGHTS TO WORK, TO EDUCATION, AND TO ACCESS TO AND CONTROL OF RESOURCES**

73. As was discussed in the preceding section, the international instruments recognize a range of economic, social and cultural rights for women.

74. Through the mechanisms of the inter-American human rights system, the Rapporteurship has identified three specific areas in which women encounter various forms of discrimination when attempting to exercise their economic, social and cultural rights: work, education, and matters related to their access to and control over economic resources. It has also been observed that the presence or absence of guarantees of women's rights in these three areas tends to have multiplier effect on their exercise of economic, social and cultural rights and their civil and political rights.

75. The observed obstacles in the exercise, respect, and guarantee of the right to work, to education, and to access and control of resources have the combined effect of relegating women to poverty and leaving their human rights unprotected. These

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<sup>129</sup> See, in general, 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*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007.

<sup>130</sup> See, in general, 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*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007.

obstacles create a cycle which limits permanently women's autonomy to make decisions, their bargaining power, and their role in the decision-making process. They also have a negative impact in domestic, employment, economic and social spaces.

76. Viewing the problem of discrimination against women from the angle of work, education and access to resources may lay the groundwork for the inter-American and universal systems to embark upon a more comprehensive and far-reaching analysis of the factors that still encumber women's exercise of their economic, social and cultural rights. This section, therefore, focuses on these three issues, with a view to laying the legal and analytical foundation for other reports addressing different issues related to women's economic, social and cultural rights and their right to live free of discrimination.

77. In the next section, the Commission examines the barriers and limitations that still seriously impair the exercise, observance and guarantee of women's rights to work, to education and to access to and control of resources. Each section is divided into four parts: a) a general overview; b) the international framework of human rights specific to each topic; c) an analysis of priority issues; and d) an identification of the States' minimum obligations where the matter under analysis is concerned.

78. In this analysis, the Inter-American Commission is particularly concerned over three challenges that women encounter when exercising their economic, social and cultural rights in general. Addressing these problems must be a priority for States in the design of legislation and public policies. First, the IACHR is deeply troubled by the dilemma of groups whose human rights to work, to education, and to access to and control over resources are particularly at risk of being violated. These groups include girls, Afro-descendant women, indigenous women, migrant women and women who work in certain sectors, such as the informal sector, domestic work, the assembly industry and others, where they are usually invisible or hidden as far as the existing legal and regulatory framework is concerned. Second, access to justice is a cross-cutting and basic condition for the protection of women's rights, including their rights to work, to education, and to access to and control of economic resources. Finally, national efforts are needed to compile statistics disaggregated by sex and other variables, to obtain a complete picture of the main challenges women face in these three areas and to craft adequate and effective public policies.

## **A. Women's right to work**

### **1. General overview: principal advances and challenges**

79. The Commission recognizes that in recent decades, women's participation in the labor market has significantly increased in the Americas, and has been on a steady rise since the 1980s.<sup>131</sup> Various states, non-state actors and experts attribute

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<sup>131</sup> IACHR, Hearing convened at the Commission's initiative, "*Discrimination against Women in the Exercise of Their Economic and Social Rights in the Americas*," 138<sup>th</sup> regular session, March 3, 2010; Meeting of Experts, "*Discrimination against Women in the Area of Economic, Social and Cultural Rights*," Washington, D.C., October 18, 2010.

the increase to the economic crisis that the countries have experienced and its effects on household income; the changes in family structure; the increase in the number of female heads of household; women's increased access to the educational system and other factors.<sup>132</sup> This pattern shift has been paralleled by a rethinking of the concept of "work", which has been broadened to include not just productive, remunerated work, but also unremunerated work in the home.<sup>133</sup>

80. The States have taken a number of steps to create the conditions necessary to enable women to join and remain in the workforce, thereby enabling them to better exercise their rights in this area. In their laws and policies, the vast majority of the American states recognize the right to work and the right to exercise this right free of any form of discrimination, including gender-based discrimination. Many have enacted laws recognizing equal pay for men and women for work of equal value and women's right to maternity leave and other protections during pregnancy, and have adopted standards requiring the creation of nurseries and daycare centers. More and more States are enacting laws prohibiting workplace harassment, sexual harassment and other forms of violence against women in the workplace. Such laws not only enable women to join and remain in the workforce, but also improve their options within the family as regards the care of the children and other family members. This important combination of efforts makes it possible for women to find work that is decent, dignified and of quality.

81. Nevertheless, important protections for the rights of women workers in general are still missing and there are gaps in the laws, policies and programs designed to enable women to enter and remain part of the labor force. These problems will be examined in this section. The significant increase in women's participation in the labor markets of the Americas has not yet brought about equal job opportunities for women, access to quality jobs for women, and equal terms of employment for women. Some of the factors obstructing women's access to quality jobs include the prevalence of informal work among women, in combination with long working hours, wage discrimination and the lack of public childcare services.

82. The Commission is concerned by the challenges that implementation of the laws and regulations poses, given the ways in which women are discriminated against by reason of their sex; the wage gap between men and women performing work of equal value; the prevalence of sexual harassment; and the need for measures to democratize household responsibilities so that working men and working women each shoulder their fair share of those responsibilities.

83. While women's opportunities for education and training have improved, this has not led to equal job opportunities for women, to promotions, to women in executive and higher-ranking positions, or equal pay for work of equal value. In some

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<sup>132</sup> See Colombia's reply to the questionnaire; María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organisation, 2003, etc.

<sup>133</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Women's Contribution to Equality in Latin America and the Caribbean* (2007), p. 74.

areas, the laws and regulations still make no provision for paternity and parental leave, or nurseries and daycare centers. Women still encounter a number of obstacles involving their place in the workforce, such as the sexual division of labor, the need for services to care for children and other dependants, occupational segregation, and others.

84. Proper observance and the guarantee of women's right to work –free of any form of discrimination and as men's equals- is a critical factor in eradicating poverty, empowering women, and ensuring their autonomy. The constraints on the exercise of women's right to work have repercussions on their exercise of their other human rights, including their economic, social and cultural rights in general. It is important that the States not only abstain from discriminating or tolerating discrimination of any kind in labor-related matters, but also honor their obligation to create the conditions that will better enable women to join the workforce and remain on the job.

85. The Commission will now describe the international framework for women's labor rights. It will then examine the priority issues related to the exercise of the right to work in the following order: a) types of discrimination that affect women in the workplace; b) the wage gap and occupational segregation; c) the sexual division of labor; d) the unremunerated work done by women and its recognition in the law; e) maternity, paternity and parental leave; and f) penalizing workplace harassment, sexual harassment and other forms of violence against women.

## **2. Body of international law specific to this topic**

86. As previously observed, both the international and the inter-American human rights systems have recognized women's right to work free from any form of discrimination. This section sets out a number of provisions and basic principles intended to guarantee and ensure women's exercise of this right. Reference will also be made to a number of obligations that attend the right to work, such as the right to social security and union rights.

87. Article 45 of the OAS Charter recognizes the right to work as "a right and a social duty, [which] gives dignity to the one who performs it, and ... should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working." In Article 46, the Charter calls upon the States Parties to harmonize their social legislation, especially in the labor and social security fields, so that the rights of workers are fully protected.

88. The Inter-American Charter of Social Guarantees –adopted in 1948- also contains a number of basic principles to protect workers and sets forth the minimum rights they must enjoy.<sup>134</sup> From the beginning, it makes clear that its provisions protect men and women equally. It defines labor as a social function that enjoys the special protection of

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<sup>134</sup> Article 1, Inter-American Charter of Social Guarantees, IX International Conference of American States, Bogota, 1948.

the State and recognizes the right of every worker to fair working conditions. In its provisions, it recognizes the right to equal compensation for equal work, regardless of the sex of the worker, and that the rights established to protect workers may not be renounced. It also establishes a limit on the number of hours in an ordinary work week and recognizes the worker's right to a paid rest period, his or her right of association and right to strike, and his or her right to benefits and social security. The Inter-American Charter of Social Guarantees also regulates child labor and establishes protections for domestic workers, and so on. Article 10 of the Inter-American Democratic Charter, for its part, provides that the promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, such as those recognized in the Declaration and the Conventions of the International Labour Organization.

89. Then, too, the protections afforded under the American Declaration include women's right to work. In Article XIV, the Declaration recognizes that every person "has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit." It also provides that "every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family." Also protected under the Declaration is the right to leisure time (Article XV); the right to social security that protects the individual from the consequences of unemployment, old age, and disability (Article XVI); the right of assembly and the right of association (articles XXI and XXII), and the right to property (Article XXIII), among others.

90. In articles 6 and 7, the Protocol of San Salvador protects the right to work and the conditions of employment. Article 6, on the right to work, reads as follows:

The States Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

91. Article 7 of the Protocol, on the other hand, addresses the necessity of fair, equitable and satisfactory conditions in one's exercise of the right to work, which means that States have an obligation to guarantee the following protections in their domestic laws:

- a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;
- b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;

- c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;
- d. Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;
- e. Safety and hygiene at work;
- f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;
- g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;
- h. Rest, leisure and paid vacations as well as remuneration for national holidays.

92. In Article 8, the Protocol also protects workers' right to organize trade unions, their right to join the union of their choice, and their right to strike. Article 9 recognizes workers' right to social security to protect them from the consequences of old age and disability which prevent them, either physically or mentally, from securing the means for a dignified and decent existence; this article also protects women's right to maternity leave before and after childbirth.

93. At the international level, the right to work is recognized in general terms in Article 6 of the ICESCR; the individual and collective dimension of this right is recognized in articles 7 and 8 of the Covenant. The Committee on Economic, Social and Cultural Rights regards all three dimensions as interdependent.<sup>135</sup> Article 6(1) of the Covenant requires that States recognize the right to work, which includes the right of everyone to the opportunity to earn his living by work which he or she freely chooses or accepts, and that States take appropriate steps to safeguard this right. In Article 7, the Covenant protects the right of everyone to the enjoyment of just and favourable terms of employment and safe and healthy working conditions, whereas Article 8 protects the right to organize trade

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<sup>135</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 8.



unions and to join the union of one's choosing, and the right of trade unions to function freely. Article 9 of the Covenant recognizes the right to social security, including social insurance.

94. The Committee on Economic, Social and Cultural Rights has written that the right to work is "essential for realizing other human rights and forms an inseparable and inherent part of human dignity."<sup>136</sup> That Committee has also written that *availability, accessibility, acceptability and quality* are interdependent and essential elements in the implementation of the right to work and of other economic and social rights.<sup>137</sup> The "availability" element presupposes that a State party offers specialized services to assist and support individuals in order to enable them to identify and find available employment. The "accessibility" element implies a prohibition of any discrimination in access to and maintenance of employment, its physical accessibility, and the right to seek, obtain and impart information on the means of gaining access to employment. "Accessibility and quality" protect the right of workers to just and favourable conditions of work, safe working conditions, the right to form unions and the right freely to choose and accept work.

95. The Committee has also observed that the principle of non-discrimination mentioned in articles 2(2) and 3 of the ICESCR is immediately applicable, is not subject to progressive implementation, and is directly applicable to all aspects of the right to work.<sup>138</sup> Regressive measures taken in relation to the right to work are not permissible.<sup>139</sup> Such regressive measures include, inter alia:

denial of access to employment to particular individuals or groups, whether such discrimination is based on legislation or practice, abrogation or suspension of the legislation necessary for the exercise of the right to work or the adoption of laws or policies that are manifestly incompatible with international legal obligations relating to the right to work.<sup>140</sup>

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<sup>136</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 1.

<sup>137</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 12.

<sup>138</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 33;

<sup>139</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 34.

<sup>140</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 34.

96. The ESCR Committee has written that the core obligations to ensure non-discrimination and equal protection of employment imply for the States at least the following requirements to protect the right to work:<sup>141</sup>

- (a) To ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity;
- (b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups;
- (c) To adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations. Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed.

97. Some examples of gender-based discrimination cited by the ESCR Committee in this area are the refusal to hire a woman on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on stereotypical assumptions having to do with their willingness to work; and the denial of maternity or paternity leave.<sup>142</sup>

98. Other examples of measures that the ESCR Committee has said that a State can take to guarantee the equality of men and women vis-à-vis their right to work are as follows:

- Ensure that in law and in practice, men and women have equal access to jobs at all levels and all occupations and that vocational training and guidance programs, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work.<sup>143</sup>

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<sup>141</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 31.

<sup>142</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, para. 20.

<sup>143</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 23.

- Identify and eliminate the underlying causes of pay differentials, such as gender-biased job evaluation or the perception that productivity differences between men and women exist.<sup>144</sup>
- Monitor compliance by the private sector with national legislation on working conditions; adopt legislation that prescribes equal consideration in promotion, non-wage compensation and equal opportunity and support for vocational or professional development in the workplace; reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.<sup>145</sup>
- Allow men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right.<sup>146</sup>
- Equalize, where it exists, the compulsory retirement age for both men and women; ensure that women receive the equal benefit of public and private pension schemes; and guarantee adequate maternity leave for women, paternity leave for men, and parental leave for both, among other measures.<sup>147</sup>
- Ensure that any person or group who is a victim of a violation of the right to work has access to effective judicial or other appropriate remedies at the national level.<sup>148</sup>

99. As for the problem of discrimination in the workplace, Article 11 of CEDAW provides that the States Parties shall take all appropriate measures to ensure that men and women enjoy the same rights on a basis of equality, including a) the right to work; b) the right to the same employment opportunities, including the application of the same criteria for selection; (c) The right to free choice of profession and employment; (d) the right to promotion, job security and all benefits and conditions of service; (e) the right to receive vocational training and retraining; (f) the right to equal remuneration and to equal treatment in respect of work of equal value; (g) the right to social security and the right to

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<sup>144</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 24.

<sup>145</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 24.

<sup>146</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 25.

<sup>147</sup> Committee on Economic, Social and Cultural Rights, General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 26.

<sup>148</sup> Committee on Economic, Social and Cultural Rights, General Comment 18: *The Right to Work* (Article 6 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 48.

paid leave; (h) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.<sup>149</sup> The same article sets out a series of measures that the States Parties are to take to prevent discrimination against women on the grounds of marriage or maternity.<sup>150</sup>

100. On the subject of equal pay for work of equal value, the CEDAW Committee also recommended to the States Parties of said treaty: a) ratify ILO Convention No. 100, the Equal Remuneration Convention; b) consider the study, development, and adoption of job evaluation systems based on gender-neutral criteria, and c) support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.<sup>151</sup>

101. In the case of unpaid women working in rural and urban family enterprises, the CEDAW Committee recommended that the States Parties “take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.”<sup>152</sup> For the unremunerated domestic activities of women, the Committee recommended to the States

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<sup>149</sup> See Article 11 of the CEDAW.

<sup>150</sup> Article 11 of the CEDAW provides the following in this regard:

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

See, also, Article 14 of CEDAW, which provides for special measures to protect women who live in rural areas (including a reference to their work in the non-monetized sectors of the economy).

<sup>151</sup> See Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 13 (eighth session, 1989), “Equal Remuneration for Work of Equal Value”.

<sup>152</sup> Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 16, Unpaid women workers in rural and urban family enterprises (tenth session, 1991).

Parties that they take steps to quantify and include the unremunerated domestic activities of women in the gross national product.<sup>153</sup>

102. Non-discrimination and promotion of equality are principles espoused by the International Labour Organisation (hereinafter the “ILO”). The ILO was founded in 1919, its principal function being to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. It is worth noting that the ILO has consistently held that the elimination of discrimination at work is fundamental to decent work and central to social justice.<sup>154</sup> More specifically, the 1946 ILO Declaration of Philadelphia,<sup>155</sup> -which expanded upon the objectives originally set for the ILO in its 1919 constitution- provided that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”<sup>156</sup>

103. In furtherance of its objectives, the ILO has adopted a series of international conventions on nondiscrimination and equality between working men and women. Those conventions have been opened for ratification by the ILO’s 183 member states, among them a significant number of countries in this hemisphere.<sup>157</sup> There are four conventions that the ILO regards as central to achieving gender equality in work:

- ILO Convention No. 100, Equal Remuneration (1951)
- ILO Convention No. 111, Discrimination (Employment and Occupation) (1958)
- ILO Convention No. 156, Workers with Family Responsibilities (1981)
- ILO Convention No. 183, Maternity Protection (2000)

104. ILO Convention No. 100, the Equal Remuneration Convention, provides that each member shall promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.<sup>158</sup> ILO

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<sup>153</sup> Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 17, Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product (tenth session, 1991).

<sup>154</sup> See, ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, June 18, 1998; ILO, *Time for equality at work: Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. Report of the Director-General, 2003, International Labour Office, Geneva, 2003, p. 1.

<sup>155</sup> ILO, Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), October 9, 1946, 15 U.N.T.S. 35, Can. T.S. 1946 No. 48.

<sup>156</sup> Declaration of Philadelphia, Article 2(a). See also the Declaration on Equality of Opportunity and Treatment for Women Workers, the Resolution concerning a Plan of Action with a View to Promoting Equality of Opportunity and Treatment for Women Workers, and a Resolution concerning Equal Status and Equal Opportunity for Women and Men in Occupation and Employment, adopted by the International Labour Conference, 60th session, Geneva, 1975; see ILO, Official Bulletin, Vol. LVIII, 1975, Series A No. 1.

<sup>157</sup> ILO webpage, <http://www.ilo.org/public/english/standards/relm/country.htm>.

<sup>158</sup> See Article 2 of Convention No. 100. For more information, see ILO Recommendation No. 90.

Convention No. 111 on discrimination in employment and occupation, provides that each member undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination in respect thereof.<sup>159</sup>

105. Thereafter, the ILO adopted Convention No. 156, the Workers with Family Responsibilities Convention (1981), and Convention No. 183, the Maternity Protection Convention (2000). Convention No. 156 provides that each Member “shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.”<sup>160</sup>

106. ILO Convention No. 183, the Maternity Protection Convention, provides that a) it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy, her absence on maternity leave or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing, and that b) a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.<sup>161</sup> This Convention also provides that each member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment and in access to employment, including an express provision making it unlawful to require a pregnancy test or certificate of such a test when a woman is applying for employment.<sup>162</sup> The IACHR would also point to the June 16, 2011 adoption of the ILO Domestic Workers Convention (No. 189) and accompanying Recommendation 201.<sup>163</sup>

107. The right to work is recognized in other international instruments, such as the International Covenant on Civil and Political Rights (Article 8(3)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5); the Convention on the Rights of the Child (Article 32); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (articles 11, 25, 26, 40, 52 and 54), among others.

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<sup>159</sup> See Article 2 of ILO Convention No. 111.

<sup>160</sup> ILO, C156 Workers with Family Responsibilities Convention, 1981; see also Recommendation No. 165 (ILO), which complements Convention No. 156.

<sup>161</sup> Article 8, ILO C183 Maternity Protection Convention, 2000.

<sup>162</sup> Article 9, ILO C183 Maternity Protection Convention, 2000.

<sup>163</sup> For more information, the reader is referred to [http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS\\_157891/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm)

### 3. Priority issues

#### a. Forms of discrimination that affect women in the labor setting: the law and its enforcement

108. The fact that the constitutions of the vast majority of the countries of this hemisphere now guarantee the right to equality and non-discrimination<sup>164</sup> and the right to work<sup>165</sup> is certainly progress. There are also a wide range of specific constitutional protections of the right to nondiscrimination in exercising the right to work.<sup>166</sup>

109. In their answers to the questionnaire, a number of countries reported that they have specific laws and plans to promote equal opportunity in employment as well as laws that prohibit gender-based employment discrimination.<sup>167</sup> Various laws and plans contain provisions for campaigns to promote women's access to jobs and bring about cultural change in rural and urban areas.

110. Most Labor Codes also expressly prohibit discrimination based on sex and other factors like race and ethnic origin.<sup>168</sup> States have also reported the adoption of special temporary measures with a view to facilitating women's entry into the workforce. For example, Ecuador reports that Chapter VI of the Labor Code currently in force spells out the obligations of employers and employees; Article 42 provides that employers must

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<sup>164</sup> See, for example, Brazil, Canada, Chile, Colombia, Ecuador, Guatemala, Mexico, Panama, Peru, Suriname, the United States and Venezuela.

<sup>165</sup> See, for example, Chile, Brazil, Mexico, Grenada, Peru, Ecuador, Guatemala, the Dominican Republic, and Venezuela.

<sup>166</sup> See, for example, Chile, Brazil, Peru, Ecuador, Guatemala, and Venezuela.

<sup>167</sup> See, for example, Panama - *Ley No. 4, 1999*; Saint Lucia - *The Equality of Opportunity and Treatment in Employment and Occupation Act 2001*; Mexico - *Plan Nacional de Desarrollo 2007-2012, Ley General para la Igualdad entre Mujeres y Hombres*, which contains a series of provisions on women's right to work; Peru - *Plan Nacional de Igualdad entre Hombres y Mujeres 2006-2010*, which establishes the duty to "[g]uarantee full exercise of women's economic rights," its strategic objective being to enable women to join, remain in and develop within the job market, as men's equals and with equal opportunity, and to receive equal pay and benefits for work of equal value; Guatemala - *Política Nacional de Promoción y Desarrollo Integral de las Mujeres (PNPDIM)* and the *Plan de Equidad de Oportunidades (PEO) 2008-2023*, one of whose principles is labor equity and which seeks, *inter alia*, "to increase protection and realization of women's labor rights and support the creation of decent employment opportunities that improve their quality of life," and so on.

<sup>168</sup> For example, Article 2 of Chile's Labour Code provides that "Acts of discrimination are contrary to the principles of labour law. Acts of discrimination are the distinctions, exclusions or preferences based on race, colour, sex, age, marital status, syndication, religion, political opinions, nationality, national origin or social origin and whose purpose is to nullify or alter equality of opportunities or treatment in employment and occupation." In Brazil, the labor laws (*Consolidação das Leis do Trabalho - CLT*) establish penalties for discrimination against women "in employment" (Law 5,473/68). In Colombia, the Substantive Labor Law contains a number of provisions related to eliminating job discrimination against women and upholding equal opportunity: a) it recognizes that working men and working women are equals (Article 10); it provides that the regulations governing work must give special consideration to those jobs that women cannot perform (Article 108); it reasserts that gender-based wage differences are prohibited (Article 143); it recognizes that women are prohibited from certain jobs by reason of their build, especially dangerous jobs (Article 242); and it establishes a penalty for employers who dismiss employees just shy of their retirement and provides preferential treatment for women as to the age at which they qualify for their pension (Article 267).

ensure “that a certain percentage of the workers they hire are women; the Sector Commissions of the Ministry of Labor and Employment will determine what the minimum percentage will be.” This is one of the special measures Ecuador has introduced.<sup>169</sup>

111. Most American States have also ratified ILO Conventions 100,<sup>170</sup> 111,<sup>171</sup> 183,<sup>172</sup> and 156<sup>173</sup> on equal remuneration, the prohibition of discrimination in employment and occupation, maternity protection, and workers with family responsibilities, which will be discussed later in this document.

112. However, a sizeable gap still separates the law from reality for working women, and women who want to join the labor force still face obstacles. A global report done by the ILO in 2007 observed that “Discrimination [in the field of labor] is not an exceptional or aberrant occurrence, but a systemic phenomenon, frequently embedded in the way in which workplaces operate and rooted in prevalent cultural and social values and norms.”<sup>174</sup> It is striking that even though women have become a fixture in the workforce, poverty persists and indigence is on the rise, a situation that takes a disproportionately heavy toll on women. While this project was underway, a number of experts informed the IACHR that this phenomenon is closely associated with the limited opportunities that women have for decent work.<sup>175</sup> It is troubling that in the vast majority of the countries,

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<sup>169</sup> See Ecuador’s reply to the questionnaire.

<sup>170</sup> The following countries of this hemisphere have ratified ILO Convention No. 100, the Equal Remuneration Convention, 1951: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela. The United States and Suriname have not yet ratified this instrument.

<sup>171</sup> The following American countries have ratified ILO Convention No. 111 on Discrimination (Employment and Occupation), 1958: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela. The countries that have not ratified this instrument are the United States and Suriname.

<sup>172</sup> The following American countries have ratified ILO Convention No. 183 on Maternity Protection (2000): Belize and Cuba. The countries that have not ratified this international instrument are: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

<sup>173</sup> The American countries that have ratified ILO Convention No. 156 on Family Responsibilities (1981) are Argentina, Belize, Bolivia, Brazil, Chile, El Salvador, Guatemala, Paraguay, Peru, Uruguay, and Venezuela. The countries that have not ratified this convention are: Antigua and Barbuda, the Bahamas, Barbados, Canada, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Grenada, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and the United States.

<sup>174</sup> International Labour Organisation, *Equality at Work: Tackling the Challenges* (2007), para. 27.

<sup>175</sup> IACHR, Hearing convened at the Commission’s initiative, “Discrimination against Women in the Exercise of their Economic and Social Rights in the Americas,” 138th regular session, March 3, 2010; Meeting of Experts: “Discrimination against Women in the Area of Economic, Social and Cultural Rights,” Washington, D.C., October 18, 2010.



the unemployment rate among women is considerably higher than unemployment among men, and women's participation in the job market is low by comparison to men.<sup>176</sup> The information available also indicates that no matter how high their position, women tend to stay unemployed longer than men do in the vast majority of the countries of the Americas.<sup>177</sup>

113. Many different experts –men and women alike- told the Commission that while very significant progress has been made in the laws and regulations premised on the formal equality between men and women, it is still not sufficient.<sup>178</sup> These advances must be matched by real measures on the part of the States to create the conditions and opportunities necessary for the law to be realized in practice.<sup>179</sup>

114. The IACHR is particularly concerned about those groups whose human rights in this area are especially at risk, such as domestic workers, women working in the informal sector, women working on assembly lines, indigenous women, Afro-descendant women, immigrant women, girls, and other vulnerable groups. Usually, their labor rights are not adequately protected and the laws and regulations still do not afford them the necessary protections.

115. For example, the IACHR has received information describing how unprotected the labor rights of women working in Central America's assembly industry are. During one hearing,<sup>180</sup> the Commission was told of a range of human rights violations that women working in the assembly industry experience, including having to work under hazardous, precarious and unhealthy conditions; being required to undergo pregnancy tests in order to be hired, even though this is prohibited under domestic law; being made to work double shifts, and other such violations. In the hearing, the petitioner organizations made the point that many of these women assembly line workers have very

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<sup>176</sup> For example, in its answer to the questionnaire, Chile reported that between November 2009 and January 2010, the unemployment rate for women was 9.9%, whereas it was 7.9% for men. Ecuador reported that the urban unemployment rate for women nationwide was 9.8%, as compared to 6.6% for men. Costa Rica reported that the unemployment rate in 2009 was 15.8% for women and 9.3 % for men. Colombia reported that in 2009 unemployment among women was 15.8% and 9.3% among men.

<sup>177</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Aspectos económicos de la Equidad de Género. Mujer y Desarrollo* Series No 35, Thelma Gálvez P, Santiago, Chile, June 2001, p. 31; Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montañó and Vivian Milosavljevic, ECLAC - *Mujer y desarrollo* Series No 98, Santiago, Chile, February 2010, p. 23.

<sup>178</sup> IACHR, Hearing convened at the Commission's initiative, "*Discrimination against Women in the Exercise of their Economic and Social Rights in the Americas*," 138th regular session, March 3, 2010.

<sup>179</sup> IACHR, Hearing convened at the Commission's initiative, "*Discrimination against Women in the Exercise of their Economic and Social Rights*," 140<sup>th</sup> regular session, October 26, 2010.

<sup>180</sup> IACHR, Hearing, the Situation of the Rights of Women Working in the Assembly Industry in Central America, July 18, 2007, attended by the following civil society organizations: *Concertación por un Empleo Digno en la Maquila* (CEDM); the *Grupo de Monitoreo Independiente de El Salvador* (GMIES); the *Centro de los Derechos de Mujeres* (CDM); *Equipo de Reflexión, Investigación de la Compañía de Jesús* (ERIC) in Honduras; the *Centro Nicaragüense de Derechos Humanos* (CENIDH); el *Centro para la Acción Legal en Derechos Humanos* (CALDH); and the Center for Justice and International Law (CEJIL).

little education, which makes it difficult for them to find work in the formal sector; this means that they will not get pensions and other job benefits. Many are female heads of single-parent households, and feel compelled to continue working in this sector. This dangerous situation is compounded by the fact that given their tenuous economic circumstances, most countries have very few inspectors to check working conditions and difficulty covering the expense of an administrative or court proceeding.

116. These problems are compounded by difficulties in providing effective judicial protection and access to justice when related violations are reported –whether in the criminal, civil or administrative jurisdiction- and by the lack of suitable penalties. Experts from state and non-state sectors told the IACHR that effective judicial mechanisms are needed to demand accountability on the part of the authorities, and to monitor and assess the impact of the measures taken in the area of social rights.<sup>181</sup> They also said that indicators need to be introduced to effectively measure not just the outcomes but also the progress made toward fulfillment of the States’ obligations under the Protocol of San Salvador, the American Convention and other inter-American human rights instruments.<sup>182</sup> Even today, very few cases involving women’s labor rights make it to the courts.<sup>183</sup>

117. Some of the principal challenges and types of discrimination will be discussed at greater length in this section. At this point, the principal problems will be introduced, with the comments that the States themselves made in their replies to the IACHR’s questionnaires about the challenges that need to be addressed:

The employment situation of women has improved. However, progress has been slow, with the result that the disparities with respect to men are still significant. Women must have an opportunity to lift themselves and their families out of poverty, by having decent jobs available to them, offering them productive, remunerated employment in conditions of freedom, security and human dignity. The work associated with raising a family has to be more evenly distributed, as women are still shouldering the bulk of that responsibility.<sup>184</sup>

Then, too, women’s participation in Panama’s labor market has increased considerably. Nevertheless women still do not have equal opportunity in terms of access to the labor market, despite the high levels of education that women have achieved.<sup>185</sup>

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<sup>181</sup> IACHR, Meeting of Experts: *“Discrimination against Women in the Area of Economic, Social and Cultural Rights,”* Washington, D.C., October 18, 2010.

<sup>182</sup> IACHR, Meeting of Experts: *“Discrimination against Women in the Area of Economic, Social and Cultural Rights,”* Washington, D.C., October 18, 2010.

<sup>183</sup> IACHR, Hearing convened at the Commission’s initiative, *“Discrimination against Women in the Exercise of their Economic and Social Rights,”* 140<sup>th</sup> regular session, October 26, 2010.

<sup>184</sup> Panama’s reply to the questionnaire.

<sup>185</sup> Panama’s reply to the questionnaire.

Although the number of women in remunerated jobs has increased in recent decades, their share of the remunerated job market is still far smaller than their male counterparts. This is due to many factors, such as discrimination in hiring practices, remuneration, mobility and promotions; inflexible working conditions; an inadequate supply of services like daycare centers; the lopsided distribution of family chores in the household, and other factors.<sup>186</sup>

Gender differential in status of men and women in the way they are positioned in the society and is evident in the education system, with respect to political power and decision-making as well as the labour market where women on average, are under-represented and lag behind men in the rates of employment, unemployment as well as the pattern and structure of labour force participation, the levels of remuneration, employment and conditions of labour.<sup>187</sup>

Although a body of domestic and international laws protecting women is in place, the gender gaps have not been narrowed, much less eliminated. Mechanisms have to be established to require enforcement of domestic and international norms. Specific laws and norms have to be developed and enforced, together with protocols to ensure their compliance and invoke the constitutional guarantees of persons who are victims of a violation or of a failure to respect their rights. People have to be educated about their rights and about how to report a violation of their rights.<sup>188</sup>

In recent decades, women's participation in the labor market increased from 30.30% in 1990 to 41.75% in 2008. Although this increased participation in the workforce has raised the income level of working women and their families, they still encounter difficulties in joining/rejoining the labor market and holding a job.<sup>189</sup>

In order for women to be able to enter and remain in the labor market, the laws governing the Guatemalan labor market have to be amended so as to eliminate any type of discriminatory acts against women and to introduce affirmative action measures that promote women's real and equal participation in the various economic sectors and activities.<sup>190</sup>

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<sup>186</sup> Mexico's reply to the questionnaire.

<sup>187</sup> Jamaica's reply to the questionnaire.

<sup>188</sup> Ecuador's reply to the questionnaire.

<sup>189</sup> Costa Rica's reply to the questionnaire.

<sup>190</sup> Guatemala's reply to the questionnaire.

Among the main challenges that must be overcome if women are to have access to decent jobs are the following: a) eradicate gender-based discrimination in access to employment; b) implement a work-life reconciliation policy so that man and woman share household responsibilities; c) ensure that women have better access to resources (loans, land, seed, technical advice, equipment, and the like); d) promote the creation of micro- and medium-sized enterprise, through well-crafted projects and specialized advisory services to ensure their success.<sup>191</sup>

Society has classified men and women into different roles, leaving women responsible for domestic and family-related matters. Furthermore, maternity is perceived to be a woman's responsibility rather than a social function necessary for the re-propagation of the human species. As a result, women are at a disadvantage when it comes to the possibility of building up social capital.<sup>192</sup>

#### **b. The wage gap and occupational segregation**

118. A number of experts told the IACHR that the discriminatory wage gap was one of the priority areas in which the States need to take action in labor-related matters.<sup>193</sup>

119. ECLAC has underscored this situation at the regional level, pointing out that the wage gap exists irrespective of a woman's level of education<sup>194</sup> and identified the following as some of the causes of this gap:

The wage gap sums up the effects of numerous inequalities: fewer hours of paid work, overrepresentation in low-productivity jobs, underrepresentation in senior positions and continuance of lower wages for equal work. This latter factor stems from the shortcomings (or lack) of legislation guaranteeing equal wages between 1990 and 2008, together with the cultural barriers that remain despite the inclusion of this principle in the legislation of some countries...<sup>195</sup>

120. In the past, the Commission has expressed its concern over this serious human rights problem in specific countries. For example, in 2009 the IACHR highlighted the significant wage gap between men and women in Chile, despite the fact that women

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<sup>191</sup> The Dominican Republic's reply to the questionnaire.

<sup>192</sup> Colombia's reply to the questionnaire.

<sup>193</sup> IACHR, Meeting of Experts: *"Discrimination against Women in the Area of Economic, Social and Cultural Rights,"* Washington, D.C., October 18, 2010.

<sup>194</sup> See, in general, ECLAC, *Women's contribution to equality in Latin America and the Caribbean*, X Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, August 6-9, 2007.

<sup>195</sup> ECLAC, *What Kind of State? What Kind of Equality?*, XI Session of the Regional Conference on Women in Latin America and the Caribbean, July 13-16, 2010, pp. 50-51.

are better educated than men.<sup>196</sup> In the case of Bolivia, the IACHR observed that “gender has a direct impact not only on women's occupational hierarchy but on their incomes, which may be up to 50% lower than men's incomes in both urban and rural areas, regardless of their level of education.”<sup>197</sup> Additionally, the IACHR was troubled to see that women in rural areas earned 29% of what men earned, a fact that the Rapporteurship confirmed on its visit to that country in 2009.<sup>198</sup> In Guatemala, the IACHR has observed with concern that although the number of women active in the job market has increased steadily, they are still being paid much less than their male counterparts for the same work.<sup>199</sup> It pointed out that the disparity between men and women on the pay scale has become more pronounced in the last ten years, and increases as the level of education rises.<sup>200</sup>

121. Some States acknowledged this serious problem in their replies to the questionnaire. Panama, for example, admitted that “while women are achieving higher levels of education, they are still not receiving salaries equal to those of their male counterparts.” Panama lists a number of factors underlying the wage gap, among them the sexual division of labor; the differences in the upbringing that women and men receive; and the distinction drawn between what are perceived to be masculine and feminine occupations, which are assigned unequal values and salaries.<sup>201</sup> In regional consensuses, the States have listed this serious human rights problem as one of their priorities. The IACHR has also received information about a case filed against the Wal-Mart company, currently before the United States Supreme Court, in which female employees and former employees alleged that thousands of women had been discriminated in both pay and promotions, in violation of Chapter VII of the 1964 Civil Rights Act. The Supreme Court dismissed the case on June 20, 2011, on the grounds that the plaintiffs’ claims did not have sufficient elements in common to be combined in a class action.<sup>202</sup>

122. ILO specialists have also documented how the uneven numbers of men vs. women in each segment of the workforce is a decisive factor in the wage gap separating men and women.<sup>203</sup> During this project’s implementation, the IACHR received abundant

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<sup>196</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 149.

<sup>197</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, June 28, 2007, para. 360.

<sup>198</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, June 28, 2007, para. 360.

<sup>199</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 2, December 29, 2003, para. 305.

<sup>200</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 2, December 29, 2003, para. 305.

<sup>201</sup> Panama’s reply to the questionnaire, p. 6.

<sup>202</sup> United States Supreme Court, *Wal-Mart Stores. v. Dukes et al.*, June 20, 2011.

<sup>203</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organization, 2003, p. 43.

information about the horizontal and vertical segregation that women still encounter in the labor market.<sup>204</sup> On the one hand, women have greater access to the labor market's lowest-paying jobs, which tend to draw upon the skills that they have acquired in their gender-specific role.<sup>205</sup> The IACHR has observed that women systematically account for a higher percentage of those employed in low-productivity sectors<sup>206</sup> and their earnings continue to be less than men's,<sup>207</sup> no matter how much education they have.<sup>208</sup> Women are also over-represented in informal work.<sup>209</sup> On the Rapporteurship's visits to Bolivia and El Salvador in June 2009 and November 2010, respectively, and at the meetings of experts, the absence of women in positions of power was the subject of much commentary, as was the fact that women are pigeonholed into different positions based on their gender, especially in the care and services industries.

123. However, the IACHR observes that the wage gap manifests itself even when women reach executive or high-level positions, and the gap is even more pronounced in the private sector.<sup>210</sup>

124. Some States –at varying levels of economic development- also reported on the segregation that women still encounter in work. Canada reported that despite the fact that the representation of women in non-traditional occupations is increasing, there are still differences in terms of the occupations that women perform. Women are more represented in the services sector, whereas men are heavily represented in professions of other types. In its reply to the questionnaire, Panama reported how women have been segregated into the kind of work that is least valued in society, whereas men are in positions that society holds in higher regard.

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<sup>204</sup> Vertical segregation means that in a given area of activity, women are less likely than men to be in high-level, decision-making positions. Horizontal segregation refers to the difficulty that women have in entering certain professions.

<sup>205</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organisation, 2003, pp. 42-43.

<sup>206</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montañó and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 23 [translation from Executive Secretariat].

<sup>207</sup> The information available suggests that between 1994 and 2007, the gender gap in employment income continued. Whereas in 1994 women were earning the equivalent of 65% of what men earned, their situation had improved by 2007, as they were earning 70% of what men were earning. See, Economic Commission for Latin America and the Caribbean, *Review of the Implementation of the Beijing Declaration and Platform for Action and the Outcome of the Twenty-third Special Session of the General Assembly in the Latin American and Caribbean Countries*, ECLAC – Division for Gender Affairs, LC/L.3175, p. 5.

<sup>208</sup> ECLAC, *Women's contribution to equality in Latin America and the Caribbean*, X Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, August 6-9, 2007.

<sup>209</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montañó and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 21 [translation from Executive Secretariat].

<sup>210</sup> See, for example, the reply to the questionnaire received from Argentina's Office of the Public Defender General.

125. Civil society organizations and networks have told the Commission of the effects that the chronic wage gap have had on women; for example, it has placed them in even more dire economic straits, especially in the case of female heads of household.<sup>211</sup> The IACHR was told, for example, about the wage inequality in Argentina, which was described as follows:

In recent years, the wage gap separating men and women has not been reversed; instead, the inequity persists and in some cases has become even worse, which has increased the percentage of women earning low incomes. As result, women represent the majority among low-income groups.<sup>212</sup>

126. The IACHR recognizes the fact that a number of States guarantee wage equality both in their constitutions and in a specific body of law.<sup>213</sup> For example, the ILO has documented how the Central American countries and the Dominican Republic have ratified ILO Conventions 100 and 111 and establish the principle of equality and nondiscrimination in their constitutions and policies. They have also introduced major amendments to their domestic laws to incorporate these principles. However, the labor picture in that subregion suggests that various forms of discrimination against women are still being practiced, despite the fact that women account for a significant percentage of the workforce; women tend to work in low-skilled professions, earn less than the minimum wage and continue to be responsible for the care of dependents.<sup>214</sup>

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<sup>211</sup> See, for example, ORMUSA, *Mujer y Mercado Laboral 2009: Perfil situacional de la mujer salvadoreña 1995 - 2008*.

<sup>212</sup> Reply to the IACHR questionnaire received from the *Equipo Latinoamericano de Justicia y Género* (ELA). In its reply to the IACHR questionnaire, Argentina's Office of the Public Defender General wrote that "although the applicable norms are clear, significant gender-related disparities persist in the average earnings of male and female employees."

<sup>213</sup> See for example, in Saint Lucia, the *Equality of Opportunity and Treatment in Employment and Occupation Act*, which provides that "Employers and persons acting on behalf of employers shall pay equal remuneration to men and women performing work of equal value for the employer"; in Mexico, one of the priorities of the National Development Plan 2007-2012 is "equal pay for equal work, for men and women alike"; Jamaica's *Minimum Wage Act* (2007) provides a standard salary level for both men and women; Grenada's *Employment Act* (1999) upholds the principle of equal pay for equal work; in Ecuador, Article 331 of the Constitution guarantees women equal access to employment and equal pay, while Article 4 of its Labor Code provides that "equal work requires equal pay, without discrimination on the basis of birth, age, sex, ethnic origin, color, social origin, language, religion, political affiliation, economic status, sexual orientation, health condition, disability or any other difference; specialization and experience on the job shall be taken into account for purposes of remuneration"; in Costa Rica, Law No. 2694 of November 19, 1960, recognizes the principle of equal pay; in Guatemala, Article 102 of the Constitution recognizes "equal pay for equal work performed under the same conditions, with the same efficiency and seniority"; Canada's *Human Rights Act* upholds the equal pay principle and specifically provides, *inter alia*, that "[i]t is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment, who are performing work of equal value."

<sup>214</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 1.

127. Nevertheless, the Inter-American Commission recognizes that despite the existing wage gap, women are entering the labor market in increasing numbers and the wage gap between men and women has narrowed in the last 20 years.<sup>215</sup> ECLAC, moreover, wrote that the wage gap between men and women has, over time, narrowed and women's average salary went from 69% of men's average salary in 1990, to 79% in 2008. However, the IACHR would emphasize how important it is that the States adopt legislative and policy measures to ensure wage equality in practice and to eradicate the various forms of discrimination in this area, in both the public and private sectors.

**c. Sexual division of labor**

128. Time and time again, the IACHR has observed that despite the increasing numbers of women entering the workforce, the division of family responsibilities is still uneven, which is one of the reasons why women have fewer options when it comes to entering and moving up in the workforce and finding a good job.<sup>216</sup> In the meetings organized by the IACHR, during its on-site visits to Bolivia and El Salvador, and during the hearings the Commission held, a number of experts observed how women are responsible for the care of the children and the infirm and for household chores, which means that they are unable to fully enjoy their rights in general.<sup>217</sup>

129. The IACHR reminds States of their duty to adopt measures to advance the equality of men and women within the family so that men become more involved in household matters and share the responsibility for performing these functions. Many member states identified this as a priority problem in the Americas.<sup>218</sup>

130. As the information for this report was being compiled, the IACHR was told of how the sustained increase in the employment rate among women has not been matched by an increase in the percentage of men shouldering childcare responsibilities. This problem is exacerbated by the fact that men are not being given paternity or parental leave, which means that women are left to deal with these demands on their own.<sup>219</sup> Ecuador, for example, informed the IACHR that:

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<sup>215</sup> IACHR, Meeting of Experts: “Discrimination against Women in the Area of Economic, Social and Cultural Rights,” Washington, D.C., October 18, 2010.

<sup>216</sup> IACHR, *El Camino Hacia Una Democracia Sustantiva: La Participación Política de las Mujeres en las Américas* (2011), para. 103; IACHR, *Report on The Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 56.

<sup>217</sup> IACHR, Meeting of Experts: “Discrimination against Women in the Area of Economic, Social and Cultural Rights,” Washington, D.C., October 18, 2010; IACHR, Hearing convened at the Commission's initiative, “Discrimination against Women in the Exercise of Their Economic and Social Rights in the Americas,” 138th Session, March 3, 2010; and IACHR, Hearing convened at the Commission's initiative, “Discrimination against Women in the Exercise of their Economic and Social Rights”, 140<sup>th</sup> regular session, October 26, 2010.

<sup>218</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, July 16, 2010; ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Quito Consensus*, August 6-9, 2007.

<sup>219</sup> IACHR, Hearing convened at the IACHR's initiative, “Discrimination against Women in the Exercise of Their Economic and Social Rights in the Americas,” 138th regular session, March 3, 2010.



The State, for its part, has to rethink its policies on human care (children, persons with disabilities, the elderly); at the present time, most of these responsibilities are left to women, which makes it difficult for them to get training and to find a decent job, on an equal footing with men.

131. This problem also poses a challenge in the Caribbean. ECLAC has observed the following in this regard:

Caribbean women often shoulder major responsibilities for both productive and reproductive work. Approximately a third to over a half of all households in the region are headed by women who, in many instances, have sole responsibility for the social and economic provision of children.<sup>220</sup>

132. During the project's implementation, the IACHR received statistical data revealing the impact that this problem has on women's exercise of their right to work. According to the figures compiled in the 2008 Household Survey, seven out of every ten men in the economically active age group were in the workforce, as compared to four out of every ten women.<sup>221</sup> In every country of the Americas, over half the women cite household work as the main reason why they are not working outside the home.<sup>222</sup> Unemployment is higher among women than among men.<sup>223</sup> In Costa Rica, Panama and the Dominican Republic, for example, female unemployment is almost double the rate of unemployment among men.<sup>224</sup>

133. As for the manifestations of the sexual division of labor, having examined the ECLAC reports the IACHR has established that "[s]ociety's notion of family relations is informed by a discriminatory model that lays the bulk of the responsibility for care of the family on women's shoulders. This limits their opportunities to enter the labor market. It also results in an unbalanced distribution of paid and unpaid work between women and men."<sup>225</sup> ECLAC has described the problem as follows:

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<sup>220</sup> ECLAC, Caribbean Synthesis Review and Appraisal Report in the Context of the 15<sup>th</sup> Anniversary of the Adoption of the Beijing Declaration and Platform of Action, LC/CAR/L.259, 14 May 2010.

<sup>221</sup> IACHR, Hearing convened at the IACHR's own initiative, "*Discrimination against Women in the Exercise of Their Economic and Social Rights*," 140<sup>th</sup> regular session, October 26, 2010.

<sup>222</sup> IACHR, Hearing convened at the IACHR's own initiative, "*Discrimination against Women in the Exercise of Their Economic and Social Rights*," 140<sup>th</sup> regular session, October 26, 2010.

<sup>223</sup> IACHR, Hearing convened at the IACHR's own initiative, "*Discrimination against Women in the Exercise of Their Economic and Social Rights*," 140<sup>th</sup> regular session, October 26, 2010.

<sup>224</sup> IACHR, Hearing convened at the IACHR's own initiative, "*Discrimination against Women in the Exercise of Their Economic and Social Rights*," 140<sup>th</sup> regular session, October 26, 2010.

<sup>225</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 135.

the sexual division of labour is at the heart of gender inequality, which is underpinned by a patriarchal family structure where the man is the highest authority and sole provider and there is a rigid division of tasks and responsibilities, regulated by social norms that have become ingrained over time.<sup>226</sup>

134. ECLAC has observed how women across the Americas have historically be responsible for domestic work and the care of the children, the elderly, the infirm and other members of the household, while men are the providers.<sup>227</sup> However, the challenge in the region today is that women are entering the labor market in increasing numbers, while society still expects them to shoulder the bulk of the burden of domestic work and care-giving.<sup>228</sup>

135. The sexual division of labor has a direct influence on women's economic autonomy, as it limits their options for earning income and their access to and control of necessary resources, as will be discussed later in this report. This problem is one of the factors driving the feminization of poverty and is compounded in the case of widowhood, termination of a marriage or breakup of the family.<sup>229</sup> The sexual division of labor severely limits women's use of time, as they are overburdened with the functions they are performing, limiting their ability to enter the job market and have access to executive or management positions in economic, social and political sectors. The IACHR believes that the way to address this problem is through proper policies and measures better geared toward improving the distribution of wealth, assets, job opportunities and time.<sup>230</sup> Summarizing, the sexual division of labor is a serious constraint on women's exercise of their human rights in every economic, social, civil and political sphere.

136. A number of States acknowledge that this problem prevents women from fully exercising their rights. For example, in its response the Venezuelan State said that one of its priority challenges is the "democratization of productive and reproductive work" and "the elimination of the sexual division of labor by mainstreaming women into every profession." Another priority challenge that Venezuela singled out was the lack of separation between productive and reproductive work, "which forces a woman to work 24-hour days, a triple workday divided up among her paid job, household work and

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<sup>226</sup> ECLAC, *Women's Contribution to Equality in Latin America and the Caribbean*, X Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, August 6-9, 2007, p. 55.

<sup>227</sup> ECLAC, *Women's Contribution to Equality in Latin America and the Caribbean*, X Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, August 6-9, 2007, p. 55.

<sup>228</sup> ECLAC, *Women's Contribution to Equality in Latin America and the Caribbean*, Quito, X Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, August 6-9, 2007, p. 55.

<sup>229</sup> ECLAC, *Roads Towards Gender Equity in Latin America and the Caribbean*, IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico, D.F., June 10-12, 2004 (document published in April 2006), p. 24.

<sup>230</sup> ECLAC, *Roads Towards Gender Equity in Latin America and the Caribbean*, IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico, D.F., June 10-12, 2004 (document published in April 2006), p. 24.

community work.” In its reply, Panama acknowledged that the “lack of a balance between family life and job prevents women from becoming a more active part of the job market: with two-shift and even three-shift days, a woman cannot spend overtime or work an extra shift at work, which means that she will receive a smaller pay increase. The result is that it is men who rise to the leadership and/or executive positions, precisely because their gender status allows them to put their jobs first and family life second.” Peru, for its part, informed the IACHR that one of the greatest challenges that women must overcome to enter and remain in the labor market is “to balance job with family life.”

137. The Commission appreciates the efforts that a number of States have made to include provisions in their domestic laws, requiring that nursery schools, daycare centers and other childcare services be created to assist women while they are at work.<sup>231</sup> These measures are critical to ensuring that women are able to enter, remain in and move up in the workforce. However, the IACHR would again underscore the States’ obligation to review the provisions of their domestic laws with a view to preventing and eradicating any discriminatory effect against women that the law might be creating. For example, the IACHR has received information indicating that provisions requiring businesses with a certain number of women employees to create daycare centers, may have the effect of discouraging the hiring of female employees.<sup>232</sup> The Commission is therefore recommending that the creation of daycare centers or nurseries not be determined by the number of women employees, but the total number of employees, men and women alike.

138. Under ILO Convention 156, the State must either provide or promote the organization of care services taking the needs of working mothers and fathers into account. Often schedules, costs or the quality of pre-school and school programs do not make it easier to reconcile work and family.<sup>233</sup> Then, too, many of the measures adopted by the

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<sup>231</sup> For example, in its reply to the questionnaire Ecuador reported that Article 155 of its Labor Code provides that “in permanent working businesses with fifty or more employees, the employer shall establish, either as an annex or in a facility nearby the business or place of work, a daycare center for the children of its employees; the childcare services, food, premises and equipment for this service shall be at no cost to the employee.” Guatemala pointed out that under Article 155 of its Labor Code, every employer with more than thirty women in his/her employ “shall arrange a place where mothers may safely nurse or feed their children under the age of three and leave them there during working hours, in the care of a suitable person hired and paid by the employer. The arrangement must be a simple one, within the employer’s financial means, as determined and approved by the Office of the Inspector General of the Ministry of Labor and Social Welfare.” Costa Rica, for its part, reported that community homes had been established and were run by the Social Assistance Institute; these homes offer support, food, care, stimulation and a safe environment for infants and children while their parents are away at work, studying or in training. Canada reported that the Child Care Expense Deduction (CCED) is the main source of support that working parents have for child care expenses. Under this system, parents can deduct the cost of eligible care from their income. Mexico also told the IACHR that the Program of Child Care Homes to Support Working Mothers, run by the Secretariat of Social Development (SEDESOL), is targeted at working mothers and single fathers with children between the ages of one and four. As of December 2009, 8,923 Child Care Homes were in operation nationwide, in 193 municipalities. The State also reported on the Child Care Service operated by the Instituto Mexicano del Seguro Social (Mexican Institute of Social Security – IMSS), which in 2009 helped 184 thousand mothers by providing services in 1,577 child care facilities.

<sup>232</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 157.

<sup>233</sup> ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 86.

States tend to focus on protecting maternity, without tending to other family responsibilities and care needs within the family, such as the elderly, the infirm, or the disabled.<sup>234</sup>

139. However, some States report that financial constraints prevent them from taking measures to provide childcare services while parents are at work. In its reply to the questionnaire, Dominica reported that it is not in a financial position to guarantee childcare services to working mothers and fathers, but that these services are available in the private sector. The IACHR is reminded that States have an obligation to take deliberate, concrete measures targeted as clearly as possible toward meeting their obligations in the area of economic, social and cultural rights and the right of women to live free of discrimination.

140. In general, the Commission also observes that legislation and policy geared toward protecting working men and women with family responsibilities and reconciling work and family are glaringly absent within the region. The IACHR is urging the States to ratify ILO Convention 156 on Workers with Family Responsibilities, and to adopt policies and programs geared toward both working women and working men, to promote an equitable sharing of responsibilities in the family. The existing legislation is mainly targeted at working women. Part of the States' effort should be to extend maternity leave beyond the minimum 14 weeks set in ILO Convention 183 on maternity protection; to ensure the availability of daycare centers and/or nurseries irrespective of the number of female employees; to take steps to ensure paternity and parental leave, and other measures.

#### **d. Women's unremunerated work and its recognition in the law**

141. A corollary of the existing gender-biased family, where the care of the family and domestic work fall mainly on the woman's shoulders, is the fact that a significant number of women are working in unremunerated activities whose economic value is not factored in. Women's unremunerated work is associated with the concept of a "care economy", which refers to the distribution of care services and includes both the providers and the recipients.<sup>235</sup> Recipients can be dependents—the elderly, the sick, children and others— or other people active in the labour market.<sup>236</sup>

142. ECLAC has observed that most care-giving within and outside the home, is done by women.<sup>237</sup> The growing concern about care-giving activities is linked to the rise

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<sup>234</sup> ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 97.

<sup>235</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Women's Contribution to Equality in Latin America and the Caribbean* (2007), pp. 61-62.

<sup>236</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Women's Contribution to Equality in Latin America and the Caribbean* (2007), pp. 61-62.

<sup>237</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Women's Contribution to Equality in Latin America and the Caribbean* (2007), pp. 61-62.

of certain phenomena, which include the steadily increasing participation of women in the labour market; unemployment; the economic crisis and the challenges posed by the new demographic structures. The relationship between care-giving and femininity has a long history, but ECLAC has observed that it becomes problematic when women enter the labour market while remaining responsible for providing unpaid care “as this brings to light the tension between the time needed for care activities and the time spent on paid work.”<sup>238</sup>

143. The IACHR, however, regards the measures taken by a number of States to recognize women’s unremunerated work as a step in the right direction. In its reply to the questionnaire, Ecuador told the IACHR that its Constitution recognizes women’s unpaid work of self-sustenance and care giving in the home as productive labor. Its Article 333 also provides that “[t]he State shall strive towards a labor system that works in harmony with the needs for human care-giving and that facilitates suitable services, infrastructure and work schedules; it shall, in particular, provide services for child care, care for persons with disabilities, and other services as needed for workers to be able to perform their labor activities; it shall furthermore foster the joint responsibility and reciprocity of men and women in domestic work and family obligations.” The Constitution also provides that “[s]ocial service protection shall be progressively extended to persons who are responsible for unpaid family work at home, in accordance with the general conditions of the system and the law.” Article 88 of Venezuela’s Constitution recognizes work in the home as an economic activity “that creates added value and produces wealth and social well-being.” The State reports how women who work in the home are, by law, entitled to social security.

144. The IACHR is urging the States to continue to take steps to recognize women’s unremunerated work and to grant them the same rights and benefits that attend remunerated work, especially social security benefits.<sup>239</sup>

**e. Maternity, paternity and parental leave**

145. The ILO did a global report on maternity, in which it examined the laws of 167 countries to determine whether they were compatible with ILO Convention 183. It found that the international trend is to improve maternity-related job benefits.<sup>240</sup> The Americas figure prominently in this trend.

146. The IACHR applauds the fact that the laws of almost every country in this hemisphere guarantee pregnant women job stability and offer them various types of leave

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<sup>238</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Women’s Contribution to Equality in Latin America and the Caribbean* (2007), p. 62.

<sup>239</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, Quito Consensus, August 6-9, 2007; ECLAC, IX Session of the Regional Conference on Women in Latin America and the Caribbean, Mexico City Consensus, June 10-12, 2004.

<sup>240</sup> The regions where compliance with the ILO Conventions is strongest are Central Asia and Europe; those with the poorest record of compliance are Asia and the Pacific and the Middle East.

and protections against discrimination because of gender or pregnancy. In the vast majority of the countries, the law consists of the following: a) a ban on discrimination based on gender or pregnancy;<sup>241</sup> b) a restriction of the employer's freedom to dismiss an employee during pregnancy, postpartum and during the nursing period; and c) maternity leave that covers the pre-partum period, childbirth and post-partum period. There is also case law in the region reaffirming and reinforcing the constitutional protection of maternity.<sup>242</sup> A number of countries also report having legislative measures under discussion at the national level, aimed at improving the maternity leave system.<sup>243</sup>

147. The law in almost every country in the Americas grants at least 12 weeks' maternity leave, which includes the pre-partum period, childbirth and post-partum period.<sup>244</sup> In a number of countries, like Venezuela, Chile and Cuba, the law grants the working woman 18 weeks' maternity leave at full pay.<sup>245</sup> In the case of Bolivia and Venezuela, a pregnant working woman cannot be terminated during her pregnancy or for 12 months following childbirth. In the cases of Chile and Panama, the period of protection is 12 months from the date on which the employee's maternity leave ended. Under Brazilian law, women receive leave starting 28 days prior to childbirth and for the 92 days after childbirth; period which may be extended by another 60 days, all with full pay.

148. The legislation adopted by the States typically includes a guarantee that female workers will be able to return to the same or an equivalent job once their maternity leave ends.<sup>246</sup> A number of countries have laws offering special protections in the event of health complications during childbirth or during the postpartum period,<sup>247</sup> while others extend the paid maternity leave in cases of multiple births.<sup>248</sup> There are also provisions that prohibit employers from demanding a certificate or examination to check whether the worker is or is not pregnant, and hiring, retention, promotion or mobility of female

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<sup>241</sup> See examples of Colombia, Guatemala, Haiti, Jamaica, and Uruguay. For further discussion of this topic, see ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 89.

<sup>242</sup> For a comprehensive analysis of the case law on maternity protection in Central America and the Dominican Republic, see, International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, pp. 51-62.

<sup>243</sup> In Suriname, a revision of the Civil Code is under discussion, which will include paid maternity leave. At this point in time, and given the absence of laws regulating maternity leave, the State reports that female employees who are not party to a collective labor agreement are not guaranteed this right. For now, female civil servants are entitled to 12 weeks' paid maternity leave (6 weeks before and 6 weeks after childbirth).

<sup>244</sup> For further discussion of this topic, see ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009).

<sup>245</sup> See replies to the questionnaire received from Chile and Venezuela, ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), pp. 92-93.

<sup>246</sup> ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 79.

<sup>247</sup> See, for example, Nicaragua and Panama, ILO, *Maternity at Work: A Review of National Legislation* (2010), p. 16.

<sup>248</sup> See, for example, Peru, Cuba and Nicaragua, ILO, *Maternity at Work: A Review of National Legislation* (2010), p. 16.

employees cannot be made conditional upon the absence or existence of a pregnancy.<sup>249</sup> In some countries, the law bans an employer from making pregnancy tests a requirement for hiring,<sup>250</sup> but such laws are rare. The IACHR has also been told of a group of countries that provide maternity leave in cases of adoption.<sup>251</sup>

149. As for the maternity-related measures in the region, despite the progress achieved the IACHR observes that the vast majority of the countries of the Americas are still not up to the 14-week minimum for maternity leave provided for in ILO Convention 183.<sup>252</sup> Under that Convention, cash benefits paid with respect to leave are based on previous earnings, and the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits. The great majority of the countries of the Americas are not in compliance with this provision. The IACHR would also observe that under Article 11 (2)(b) of the CEDAW, paid maternity leave must be provided, to ensure labor equality between men and women.

150. ILO Conventions 183 and 3 have underscored the point that employers should not be individually liable for the cost of maternity benefits payable to women employed by them, and that benefits should be provided through social insurance or other public funds. The ILO has also written that the principle of payment through social insurance or other public funds is important for mitigating against discrimination in the labour market, which could be more likely where employers directly bear the costs of maternity leave.<sup>253</sup> Although the majority of the countries in this hemisphere provide for maternity benefits through social insurance, public funds or mixed systems, there are still countries, such as the United States, where there is no national program featuring payments for maternity leave.

151. The IACHR is also troubled by the information received indicating that in a number of countries, paid maternity leave is an optional benefit that employers may or may not offer; maternity leave is conditional upon a variety of requirements, such as working a certain number of hours per day in order to qualify or having a certain number of

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<sup>249</sup> See, for example, Brazil's Law 9.029/95 which prohibits pregnancy testing in hiring procedures.

<sup>250</sup> See examples of Brazil, Chile, Colombia, El Salvador, Honduras and Venezuela.

<sup>251</sup> See, for example, Brazil, Canada, Costa Rica, Guatemala, Peru and Venezuela.

<sup>252</sup> A recent ILO study found that 19% of the Latin American and Caribbean countries exceed the ILO standards for the duration of maternity leave and level of remuneration. The study mentions Belize, Brazil, Chile, Costa Rica, Cuba, Panama, and Venezuela as the countries that provide at least 14 weeks' leave at full pay. The remaining countries paid less than 2/3 of the earnings for 14 weeks, or paid for a period of less than 14 weeks (like Barbados, Colombia, Ecuador, Honduras and Mexico). See ILO, *Maternity at Work: A Review of National Legislation* (2010)

<sup>253</sup> ILO, *Maternity at Work: A Review of National Legislation* (2010), p. 23. The majority of the Latin American and Caribbean countries cover these benefits through social security systems (59%) or through mixed systems (34%). Only 6% of the countries of Latin America and the Caribbean have the employer pay the full costs (i.e., Haiti and Jamaica). The United States, too, has this system.

years of service with the same employer.<sup>254</sup> Certain groups of women have traditionally been excluded from the national maternity benefits, such as domestic workers and women working in the informal sector; part-time or seasonal workers; assembly-line workers and other groups.

152. The Commission recalls that States and their branches of government – including the executive, legislative and judicial branches- have an obligation to closely examine and analyze any laws, norms and practices whose effect might be to discriminate against women. The IACHR also reminds States of their obligation to ensure that the umbrella of maternity protections is as wide as practicable, encompassing all groups of working women –including those working in the informal sector and women working as domestics- while paying particular attention to the needs of those groups of women whose human rights are especially susceptible to violation, such as girls, Afro-descendant women and indigenous women.

153. The Inter-American Commission has also received disturbing information to the effect that although a number of the labor laws in the Americas do protect working women from dismissal for reasons of maternity, this prohibition is not absolute during the prenatal, natal and postnatal periods.<sup>255</sup> For example, in the Central American countries and Mexico, a pregnant female employee may be dismissed if warranted on any of the grounds for termination established in the Labor Code; the only exception is El Salvador, where the prohibition against dismissal during pregnancy to the end of the postnatal period is absolute.<sup>256</sup> In the vast majority of the countries, if it can be shown that the dismissal was because of pregnancy, the employer has the obligation to reinstate the female employee, with certain exceptions.<sup>257</sup> In other countries, dismissal because of pregnancy is prohibited, but allowed when it is unrelated to the employee's pregnancy.<sup>258</sup> The Central American countries have also established case law that makes a pregnant

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<sup>254</sup> For example, in Grenada, maternity leave and cash benefits require a certain seniority with the same employer; in the Bahamas, maternity leave can be obtained only once every three years; and only once every two years in Trinidad and Tobago. In the United States, paid maternity leave is optional for employers. See, ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009); Institute for Women's Policy Research, Fact Sheet: *Maternity, Paternity, and Adoption Leave in the United States* (May 2011). For a general analysis of maternity leave trends in the United States and globally, see Human Rights Watch, *Failing Its Families: Lack of Paid Leave and Work-Family Supports in the US* (2011). In the United States, for example, the Family and Medical Leave Act applies only to employees who have worked for an employer for 1,250 hours in the last 12 months, and 104 hours per month, and applies only to employers who have 50 or more employees.

<sup>255</sup> ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility* (2009), p. 89.

<sup>256</sup> Meeting of Experts: "Discrimination against Women in the Area of Economic, Social and Cultural Rights," Washington, D.C., October 18, 2010. ILO, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, pp. 54-62..

<sup>257</sup> That obligation does not exist in the Dominican Republic; instead, the employer simply pays a fine. This does not constitute compliance with the provision of ILO Convention No. 183 regarding protection of a woman's employment during pregnancy.

<sup>258</sup> See, for example, Barbados, Chile, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, the Dominican Republic, Nicaragua, Panama and other countries. ILO, *Maternity at Work: A Review of National Legislation* (2010), p. 64.



employee's job stability conditional upon her informing her employer of her pregnancy and after it has been established that the female employee has not done anything that would constitute justifiable grounds for dismissal under existing labor laws, which must be done beforehand through some legal proceeding (either administrative or judicial, depending on the country).<sup>259</sup> An ILO study makes reference to the disguised forms of dismissing pregnant employees by, for example, firing them on the pretext of a business reorganization or terminating temporary contracts, all in order to avoid having to pay the employer's prenatal, natal and postnatal liabilities.<sup>260</sup>

154. It is vital that the law protects a pregnant working woman from being dismissed because of her pregnancy; but it must also protect her from any type of inferior job-related treatment or mistreatment based on her pregnancy, such as denial of promotions, suspensions or transfers.

155. Another great concern related to maternity in employment is that the vast majority of the States' efforts focus entirely on the mothers. This compounds the problem of the sexual division of labor and adds to women's work within the family. The IACHR is recommending that the States adopt a comprehensive strategy that includes not only maternity leave, but paternity and parental leave as well. It is also important that paternity-leave incentives be offered to get fathers to apply, without fear of any form of job-related retribution, given the social stigma that tends to be attached to leave of this type. The ILO has recommended that measures be taken to offer other types of leave such as paternity leave, parental leave, and adoption leave to help workers reconcile their family life and work and so that women's reproductive role does not become an exclusionary and discriminatory factor mitigating against them in their efforts to find employment.<sup>261</sup>

156. There are some truly laudable measures in this area throughout the region. In Canada, for example, in addition to the 15 weeks' paid maternity leave, the *Employment Insurance System* provides for 35 weeks of parental leave, divided between mother and father, irrespective of whether he or she is the biological or adoptive parent.<sup>262</sup> In Chile, if the mother dies, the father can avail himself of her remaining maternity leave and is protected from dismissal during that period.

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<sup>259</sup> International Labour Organization, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, pp. 54-62, analyzing the jurisprudence of Honduras, Costa Rica, and Panama that reaffirms that a pregnant employee's job stability is not absolute.

<sup>260</sup> International Labour Organization, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 58.

<sup>261</sup> ILO, *Maternity at Work: A Review of National Legislation* (2010)

<sup>262</sup> For more information, see <http://www.servicecanada.gc.ca/eng/ei/types/special.shtml>. The IACHR applauds Argentina's law under which women may request an extension of their maternity leave for a period of at least three months and a maximum of six months, although without pay. See, Reply to the questionnaire received from the *Equipo Latinoamericano de Justicia y Género* (ELA). However, the IACHR is concerned over the fact that the Labor Contract Law gives the employer the discretion to fire the woman worker once her "extended" maternity leave is over.

157. Then, too, a certain number of countries allow the father to take between two and eight days of postnatal paternity leave.<sup>263</sup> A number of countries reported on legislation either recently adopted or under discussion to ensure leave of this type. However, recognition of paternity leave in the region is still relatively rare, which the IACHR finds troubling since paternity leave is a vital measure that serves to divide responsibilities for the care of family and children between the man and woman.<sup>264</sup> The IACHR is also struck by the fact that the only country in the region that offers parental leave is Canada. Parental leave serves an important purpose as it gets the parents more directly involved in rearing their children.<sup>265</sup>

158. As for women's rights during nursing, a select group of countries ensures that working women who have newborns will have time during the workday to nurse their children during that period in their lives.<sup>266</sup> A number of countries also guarantee that nursing mothers will have a place at work where they can nurse their infants under hygienic conditions.<sup>267</sup> The IACHR applauds the regional trend to adopt these measures to ensure that women will be able to join and remain in the workforce and is urging the States to eliminate any work-related obstacle or disincentives that would discourage working women from availing themselves of their rights under these laws.

159. In a number of countries, legislation has been enacted to protect women from workplace hazards that might affect their health during pregnancy. The laws that the countries of the Americas adopt to protect pregnant women from anything that might endanger their health during pregnancy are of various types. In Mexico, for example, during pregnancy and nursing working women are not permitted to work night shifts in industrial, commercial or service establishments after 10:00 p.m.; a similar provision exists in Paraguay, but only if the woman's health is at stake; in Colombia and Honduras, it is against the law to employ pregnant women to do more than five hours of night work; in Nicaragua, women who are more than six months into their pregnancy are not permitted to work night shifts; and in Panama, pregnant women cannot be required to work at night.<sup>268</sup>

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<sup>263</sup> See examples of Argentina, the Bahamas, Brazil, Chile, Canada, Colombia, Ecuador, Guatemala, Paraguay, Peru, Uruguay and Venezuela.

<sup>264</sup> Meeting of Experts: "Discrimination against Women in the Area of Economic, Social and Cultural Rights", Washington, D.C., October 18, 2010.

<sup>265</sup> Although parental leave is not a requirement under the ILO Conventions, Recommendation 191 (which is attached to Convention 183) and Recommendation 165 (which is attached to Convention 156 on family responsibilities) contain provisions on parental leave and recommend to the States that a period of parental leave be granted, available to either parent once the maternity leave has ended.

<sup>266</sup> See, for example, Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay and Venezuela. In some countries like Colombia, a female employee can be given more than the usual two 30-minute rest periods required by law if she produces a medical certificate indicating the reasons why she requires more frequent breaks. ILO, *Maternity at Work: A Review of National Legislation* (2010), pp. 83-84.

<sup>267</sup> See, for example, Colombia, Guatemala, Honduras, Paraguay and Venezuela.

<sup>268</sup> ILO, *Maternity at Work: A Review of National Legislation* (2010), p. 73.

160. However, these provisions must not be applied in a manner that would be prejudicial to working women in practice. The language of the law must respect a woman's autonomy to decide what type of work she wishes to perform or not to perform during her pregnancy. Prohibitive, absolutist laws —referring to work considered to be unhealthy, night work, or work deemed to be hazardous in all cases- can be used as a pretext to relegate women to an inferior position in the workplace during her pregnancy and in the postnatal period. Such laws can also end up exacerbating a woman's poverty, or limit her access to the financial resources necessary at this critical juncture in her life and in the life of her family. Both the ILO and the Constitutional Court of Colombia have been critical of the paternalistic, discriminatory thinking behind this type of provision, in violation of the principles of equality and nondiscrimination.<sup>269</sup>

**f. Workplace and sexual harassment**

161. During preparation of this report, the IACHR received important information on various forms of workplace and sexual harassment that particularly affect working women's exercise of their economic, social and cultural rights.<sup>270</sup>

162. The ILO has said that workplace harassment takes a significant toll on the physical and mental health of workers<sup>271</sup> and has enumerated the following as the distinctive features of workplace harassment:

Intent: its purpose is to undermine the harassed person's self-esteem and dignity.

Repetition: workplace harassment is something that is constant, not an isolated event.

Longevity: the harassment continues for a protracted period.

Asymmetry of power: the harassment comes from another or other parties who have the capacity to cause harm.

Ultimate purpose: the ultimate purpose of the aggression is to get the harassed worker to quit her job.<sup>272</sup>

163. The ILO has documented cases in various countries of this hemisphere that illustrate how workplace harassment can be associated with maternity-related factors,

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<sup>269</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, pp. 40-41; see Judgment of the Constitution Court of Colombia C-622-97 and explanation of vote.

<sup>270</sup> Meeting of Experts: *"Discrimination against Women in the Area of Economic, Social and Cultural Rights"*, Washington, D.C., October 18, 2010.

<sup>271</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, paras. 67-73; IACHR, Hearing convened by the Commission at its own initiative, *"Discrimination against Women in the Exercise of their Economic and Social Rights,"* 140th regular session, October 26, 2010.

<sup>272</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 67 referring to the rulings of Costa Rica's Second Chamber, Resolution 2005-0655 at 2:05 p.m., August 3, 2005.

and can affect those women who choose to resist the harassment or defend themselves against it.<sup>273</sup> Some forms of workplace harassment include demoting the female employee, forcing her to take vacation, or suspending her when she returns from maternity leave. The ILO has also written that “[t]here is growing awareness that harassment and pressure at the workplace is not merely an individual human problem but is rooted in the wider social, economic, organizational and cultural context, which includes pervasive inequalities in gender relations.”<sup>274</sup> The experts who participated in the hearings held with the IACHR underscored the need for an in-depth examination of the specific features of workplace harassment of working women.<sup>275</sup>

164. The IACHR also received a variety of reports from state and non-state actors on the problem of sexual harassment. Various States reported that their laws establish penalties for sexual harassment, either directly or indirectly. In some countries, like El Salvador, Brazil, Mexico and Panama, sexual harassment is a criminal offense under their penal codes; in other countries like the Dominican Republic and Panama, sexual harassment is an offense under the Labor Code. Sexual harassment is also embodied in laws on equal opportunity, violence against women; in some countries it is grounds for dismissal.<sup>276</sup> In other countries, like Costa Rica<sup>277</sup> and Colombia,<sup>278</sup> there are specific laws on sexual harassment which also spell out the procedures for holding the offender accountable. The IACHR was also told by a number of States that bills to prohibit sexual harassment are under discussion.<sup>279</sup>

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<sup>273</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 69.

<sup>274</sup> ILO, *ABC of women workers' rights and gender equality*, International Labour Office, Geneva, 2008, p. 24.

<sup>275</sup> Meeting of Experts: “*Discrimination against Women in the Area of Economic, Social and Cultural Rights*”, Washington, D.C., October 18, 2010.

<sup>276</sup> See examples of Honduras and Chile

<sup>277</sup> In Costa Rica, the State reported that Law No. 7476 “Against Sexual Harassment in the Workplace and Teaching,” February 3, 1995, provides that employers are responsible for adopting and implementing a policy to prevent, discourage, avoid and punish behaviors constituting sexual harassment. Under this law, employers must receive and process complaints of sexual harassment, which means that they must have in place an “adequate and effective internal” procedure to set the appropriate penalties. All this must be done within three months from the date on which the harassment complaint is filed.

<sup>278</sup> Through Law 101 of 2006, Colombia has adopted measures to prevent, correct and punish workplace and other forms of harassment in labor relations. The law contemplates various types of workplace harassment and defines each one as follows: mistreatment on the job, work-related persecution, labor discrimination, obstruction of work, labor inequity and denial of labor protections. Law 1257 of 2008 includes the criminal offense of sexual harassment, in which one of the elements of the crime is abuse of one’s position in the workplace “for one’s own benefit or for the benefit of a third party for the purpose of harassing, persecuting, or otherwise physically or verbally bothering another person for sexual purposes, without his or her consent.” (Art. 29).

<sup>279</sup> In its reply to the questionnaire, Suriname reported that the Committee on Gender Legislation is currently drafting legislation regarding sexual harassment in the workplace. Dominica, for its part, reported on the urgent need to adopt legislation of this type in that country.

165. The Commission welcomes the efforts the States have made to regulate sexual harassment. However, it finds three priorities that need to be addressed. First, overall there is scant regulation of sexual harassment within the region. Second, there are significant gaps in the existing sexual harassment laws when it comes to penalties. Third, the laws that do exist to tackle this serious form of violence against women are not being enforced. As the information for this report was being compiled, a number of experts underscored the need to build up the body of sexual harassment law, to institute regulations to accompany those laws, to provide training to law enforcement personnel, and to publicize information nationwide on how to exercise one's rights under these laws. These measures are essential if women are to have access to justice when they fall victim to this type of harassment.

166. The IACHR has learned of sexual harassment cases that have made their way to domestic courts in the hemisphere, with mixed results. The ILO, for example, has documented cases in El Salvador where sexual harassment situations have been addressed via administrative proceedings, at the initiative of the Inspector of Labor. The Rapporteurship also received information about these cases during its working visit to El Salvador last year. The ILO, however, has documented the fact that in the majority of cases, the complaint filed by the alleged victim of sexual harassment has never been proven or the necessary evidence cannot be compiled, even in cases where the victim gives a very detailed account of the abuse she suffered, but which is difficult to corroborate by other means.<sup>280</sup>

167. The ILO has also documented cases in Costa Rica where sexual harassment has been prosecuted and the accused have been punished. However, in its 2008-2009 Report, the Office of the Public Defender wrote that of the cases closed in 2008, 40% of the complaints went unpunished, either because the plaintiff dropped the complaint or because the body hearing the case was unable to perceive the sexual harassment, "which in many cases was because of a misinterpretation of the circumstantial evidence that must be proved in order for the alleged harassers to face punishment."<sup>281</sup>

168. The IACHR would remind the States that under the Convention of Belém do Pará, sexual harassment is a form of violence against women that the States must investigate and punish with due diligence and without delay. Access to justice continues to be the first line of defense to protect the rights of women in this area.<sup>282</sup> Hence, States have an obligation to clear away the obstacles standing in the way of women's right to live free of violence, and to act on their positive obligation to ensure this right by protecting women from sexual harassment.

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<sup>280</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 72.

<sup>281</sup> International Labour Organisation, *Legislación y Jurisprudencia Comparadas sobre Derechos Laborales de las Mujeres: Centroamérica y República Dominicana*, San José, Costa Rica, 2011, p. 73.

<sup>282</sup> See, in general, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

#### 4. The States' immediate obligations

169. While the States are working towards the full and progressive fulfillment of their obligations with respect to women's right to work, the IACHR has singled out a number of obligations that are immediate priorities for the States with a view to respecting and ensuring women's right to live free of discrimination in this area:

- Conduct a rigorous and detailed analysis of all laws, norms, practices, and public policies whose language establishes gender-based differences, or that in practice can have a discriminatory impact on women's exercise of their right to work.
- Adopt the necessary legislative, policy-related and programmatic measures to narrow the wage gap between men and women for work of equal value, in both the formal and informal sectors.
- Adopt legislative measures to formally recognize women's unremunerated work and to grant them benefits similar to those granted for remunerated work, particularly in the area of social security.
- Adopt a comprehensive state policy to ensure women's rights during pregnancy, including a guaranteed minimum fourteen weeks' paid maternity leave, as prescribed in ILO Convention 183; adopt protections against dismissal and any other form of job-related mistreatment during pregnancy; adopt laws protecting working women during the nursing period, and adopt laws granting paternity and parental leave.
- Adopt policies that take into account the fact that laws protecting women from work-related hazards are sometimes invoked to discriminate against women in the workplace; take steps to offer work-related protections prescribed by law to women working in the informal sector, domestic workers, women working in assembly industries, indigenous women, Afro-descendant women, girls, migrant women and other groups.
- Adopt measures geared toward creating daycare centers and nurseries in the terms defined in this report.
- Adopt legislative measures to make sexual harassment a punishable offense in the criminal, civil and administrative jurisdictions, and support these measures with the regulations and training that law enforcement personnel require.
- Promote the compilation of data and figures broken down by sex, age, race, ethnicity and other factors, so as to have accurate information available with a view to adopting anti-discrimination legislation and public policy.
- Guarantee due diligence so that all cases of gender-based violence in the labor area are investigated promptly, thoroughly and impartially, and those responsible are properly punished and the victims redressed.

## B. Women's right to education

### 1. General overview

170. Education is a human right essential to the realization of other rights,<sup>283</sup> especially to achieve gender equality. However, significant inequalities persist within the region that limit the enjoyment of this right and that especially affect girls, teenage girls, and adult women.

171. The United Nations Rapporteur on the Right to Education has observed that the discrimination girls encounter in the school environment is also due to a lack of educational models that have a cultural focus and are respectful of diversity; to the long distances girls must travel to get to school; to the lack of safe transport; to the sparse recruitment of women teachers; to the absence of thorough, continual gender awareness-raising and training for male and female teachers; to the scant interest taken in attracting back and retaining pregnant teenagers and adolescent mothers; to the lack of sex education; and to the costs of registration, uniforms, food, textbooks and teaching materials that families must defray.<sup>284</sup>

172. States throughout the Americas have undertaken various efforts to ensure the universality of education. In terms of access to schools, most American states have achieved or are on the verge of achieving parity in school enrollment. In most of the countries, the rate of completion of elementary education and access to secondary, tertiary and university education have increased, especially among women. UNESCO has declared countries like Venezuela, Bolivia, Cuba, and Nicaragua territories free from illiteracy.

173. Nevertheless, although progress has been made down the road to equality between the sexes through education, much of the road has yet to be travelled. Accessibility has been an important factor to achieving equality in education, but accessibility alone will not suffice to achieve education under conditions of equality. As the UN Special Rapporteur on the Right to Education has observed, "school access alone does not offer any guarantee, and that promoting high-quality education based on the study and daily practice of human rights is essential to the mounting of an effective resistance to all forms of exclusion and discrimination."<sup>285</sup>

174. There are still barriers that the OAS member states need to address. Some are structural in nature and affect boys and girls alike, such as poverty, an

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<sup>283</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 3, December 8, 1999. Available online at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument).

<sup>284</sup> United Nations, Economic, Social and Cultural Rights, *Girls' right to education*, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006, para. 66.

<sup>285</sup> United Nations, Economic, Social and Cultural Rights, *Girls' right to education*, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006, para. 63.

inadequate school infrastructure, the geographic location of the schools, the lack of adequate transportation, the costs of schoolbooks and textbooks, and other factors. However, these challenges affect girls differently. For example, the lack of adequate sanitation facilities for girls entering puberty causes absenteeism among girls; the long distances girls have to travel to get to school puts their personal safety at risk. Similarly, girls and women are up against other barriers, such as the family's unwillingness to educate its daughters, the family responsibilities assigned to young and teenage girls, the stereotypes in the academic curricula that perpetuate discrimination against women; teen pregnancy; violence against women and girls, and other problems.

175. Likewise, girls and women who live in rural areas, indigenous women and Afro-descendant women are more likely to encounter these barriers, since they are more vulnerable. Illiteracy in the region is highest among these very groups.

176. Indeed, of all the barriers that still persist in the region, the education that is imparted may itself be the main obstacle to achieving an education under conditions of equality. The persistence of an education based on "hidden curricula", where those who teach are imparting stereotyped images of women's role in society as compared to men's, merely perpetuates social discrimination. These "hidden curricula" may also involve the use of textbooks that reinforce gender stereotypes by describing boys as the providers and girls as homemakers. This serves to perpetuate the gender inequality that education is supposed to correct. Another example is that the only figures who appear in textbooks are men; women are absent.

177. Also frequently absent from school textbooks is cultural diversity and the intercultural approach or perspective. This perpetuates the exclusion of some ethnic groups and women who are members of these groups.

178. Dropping out of school and school absenteeism are other barriers preventing young and teenage girls from enjoying their right to education. Teen pregnancy is a major concern, especially when the school, whether through laws, rules or practices, prohibits pregnant teens from pursuing their education. Then, too, the family responsibilities that girls carry in the home, especially in rural areas, will affect their school performance. In other cases, sexual harassment and violence committed against young and teenage girls in the schools and the lack of protection from these acts are other factors that will drive girls from school and in so doing deny them their right to an education.

179. It is alarming that, despite the increased numbers of women completing a higher education in some countries of this hemisphere, their university educations are not bringing them the better jobs and higher salaries that men receive. An exhaustive analysis needs to be done of what is happening to women in the job market and in the hiring of women. States must work to ensure that all girls, without discrimination, receive the kind of education that will open up opportunities for professional self-fulfillment under conditions of equality.

180. The international consensus is that educating girls and adolescent girls has a multiplier effect, both for them and for society. Worldwide, boys and girls whose



mothers have not received an education are more than twice as likely not to attend school as boys and girls whose mothers have received some type of education. In the developing countries, 75% of unschooled girls and boys are children of mothers who did not get an education.<sup>286</sup> Conversely, women who have some type of education are less likely to die in childbirth; their newborns are more likely to be healthy; they are likely to send their children to school, are better able to protect themselves and their children from HIV/AIDS, sex trafficking and sexual exploitation, and are more likely to do their full part to contribute to political, social and economic development.<sup>287</sup>

181. Like other human rights, the right to education makes it incumbent upon the OAS Member States that they respect, protect and comply with the interrelated features of this right, namely: availability, accessibility, acceptability and adaptability.

182. Recently, in a draft Declaration on Human Rights Education and Training, the United Nations Human Rights Council declared that:<sup>288</sup>

The State also has an obligation to protect and implement human rights education and training, by setting out the legal framework for the action of other public or private entities, including schools and universities, ensuring the professional training of trainers, establishing minimum guarantees and promoting best practices, particularly in the areas of non-discrimination and true equality.

The State has a particular responsibility for ensuring the effective enjoyment of the right to human rights education and training by vulnerable groups, by mobilizing its resources according to the criteria of accessibility, acceptability, adequate funding and suitability of the education and training.

183. Until the States regard the education of girls and women as a human right rather than a service and recognize that discrimination is one of the constraints on the exercise of this right, efforts in the struggle for equality in the education of girls will fall short of the mark. Because of the relationship between the right to education and other human rights, a comprehensive approach to education will require a collaborative effort with other sectors involved, such as the labor sector, justice and health.

184. This demands adequately funded public policies and monitoring measures to evaluate their effectiveness. The IACHR has received information indicating

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<sup>286</sup> UNICEF, *Gender Achievements and Prospects in Education, the GAP Report*, available online at [http://www.ungei.org/gap/pdfs/unicef\\_gap\\_low\\_res.pdf](http://www.ungei.org/gap/pdfs/unicef_gap_low_res.pdf)

<sup>287</sup> UNICEF, *Gender Achievements and Prospects in Education, the GAP Report*, available online at [http://www.ungei.org/gap/pdfs/unicef\\_gap\\_low\\_res.pdf](http://www.ungei.org/gap/pdfs/unicef_gap_low_res.pdf); See also, United Nations, Economic, Social and Cultural Rights, *Girls' right to education*, Report of the Special Rapporteur on the Right to Education, V. Muñoz Villalobos, February 8, 2006, para. 39.

<sup>288</sup> United Nations, Human Rights Council, *United Nations Draft Declaration on human rights education and training*, January 27, 2010, A/HRC/AC/4/L.2, paras. 17 and 18.

that the investment in education in some States of this hemisphere is still insufficient. While the majority of American States guarantee a free, public education, at least through primary school, another challenge for the States is finding how to ensure that young and teenage girls are able to complete their higher education in those countries where it is not guaranteed.

185. The IACHR believes that better accountability mechanisms in which the State plays a role need to be developed. This includes the executive and legislative branches of government, as well service providers like the schools, families and students. The problem of discrimination in education is not just a problem of the school; it is a problem that involves all members of society.

186. In the next section, the IACHR will present the legal framework that applies to the right to education. It then goes on to analyze priority issues in the following order: a) equality in education and the correlation between level of education and access to the job market; b) the situation of those groups whose human rights are particularly vulnerable to violation; c) the curricula; d) the situation of pregnant girls; e) forms of violence practiced against women in the schools and mechanisms for filing complaints; and f) the situation as regards statistics and indicators.

## **2. Body of international law specific to this topic**

187. The right to education is widely recognized in a variety of international and inter-American human rights instruments.

188. Within the inter-American human rights system, Article 49 of the OAS Charter provides that the Member States shall exert the greatest efforts to ensure the effective exercise of the right to education. Under the terms of the Charter, elementary education shall be compulsory and offered at no charge; middle-level education shall be extended progressively to as much of the population as possible, while higher education shall be available to all. Article XII of the American Declaration recognizes that every person has the right to an education, which should be based on the principles of “liberty, morality and human solidarity” that will prepare that person “to attain a decent life, to raise his standard of living, and to be a useful member of society.” The American Declaration also provides that the “right to education includes the right to equality of opportunity” in every case and that every person has the right to receive, free, at least a primary education.

189. For its part, the Inter-American Democratic Charter builds upon this principle by establishing the close link between education, democracy and the eradication of poverty. It describes education as “an effective way to promote citizens’ awareness concerning their own countries and thereby achieve meaningful participation in the decision-making process.” It also underscores the fact that a quality education must “be available to all, including girls and women, rural inhabitants, and minorities.”<sup>289</sup>

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<sup>289</sup> See preamble and Article 16 of the Inter-American Democratic Charter.

190. In its Article 13(3), the Protocol of San Salvador describes the purposes of education and recognizes that the following must be done to achieve the full exercise of this right:

- a. Primary education should be compulsory and accessible to all without cost;
  - b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
  - c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
  - d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;
  - e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.
4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.
5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

191. In its Article 16, the Protocol of San Salvador also recognizes that every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

192. The Universal Declaration of Human Rights, the ICESCR, the CEDAW, and other international instruments also recognize the right to education and the obligations it implies for the State. In Article 26, the Universal Declaration of Human Rights protects the right to education and provides that education "shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."

193. The ICESCR recognizes this principle in its Article 13, and provides the following for each level of education with a view to achieving the full realization of this right: a) Primary education shall be compulsory and available free to all; b) secondary education, including technical and vocational secondary education, shall be made generally available and accessible to all “by every appropriate means” and by the progressive introduction of free education; c) Higher education shall be made equally accessible to all, “on the basis of capacity, by every appropriate means,” and in particular by the progressive introduction of free education; and d) Fundamental education shall be encouraged or intensified “as far as possible” for those persons who have not received or completed the whole period of their primary education. The ICESCR also provides that parents and, when applicable, legal guardians may choose for their children schools other than those established by the public authorities, provided they conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. The ICESCR also states that the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

194. The ESCR Committee has written that education “is both a human right in itself and an indispensable means of realizing other human rights. It is also the “primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”<sup>290</sup> Education plays a decisive role in women’s emancipation and in the advancement of human rights in general. The Committee identifies certain key elements for the exercise of the right to education, which include the following:<sup>291</sup>

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

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<sup>290</sup> Committee on Economic, Social and Cultural Rights. General Comment 13: *The Right to Education* (Article 13 of the International Covenant on Economic, Social and Cultural Rights), 1999, para. 1.

<sup>291</sup> Committee on Economic, Social and Cultural Rights. General Comment 13: *The Right to Education* (Article 13 of the International Covenant on Economic, Social and Cultural Rights), 1999, para. 6.

- (i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);
  - (ii) Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);
  - (iii) Economic accessibility - education has to be affordable to all. [...] whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;
- (c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents;
- (d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

195. The ESCR Committee has also observed that in keeping with the principle of equality and the obligation not to discriminate against women, States Parties must adopt the same admission criteria for boys and girls at all levels of education. States parties should ensure, in particular through information and awareness-raising campaigns, that families desist from giving preferential treatment to boys when sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favorable conditions to ensure the safety of children, in particular girls, on their way to and from school.<sup>292</sup> The Committee has underscored the point that the prohibition against discrimination and the obligation to protect equality before law, recognized in the Covenant, apply fully and immediately to all aspects of education, at all levels.<sup>293</sup>

196. In its Article 10, the CEDAW establishes the States’ obligation to take all appropriate measures to eliminate discrimination against women in order to “ensure to them equal rights with men in the field of education.” In keeping with the principle of equal treatment and nondiscrimination, the States are obliged to make available to women: a) the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; b) access to the same curricula, and teaching staff with qualifications of the same standard; c) the elimination of any stereotyped concept of the

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<sup>292</sup> Committee on Economic, Social and Cultural Rights, General Comment 16, *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (Article 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 30.

<sup>293</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment 13, *The Right to Education* (Article 13 of the Covenant), December 8, 1999, para. 31.

roles of men and women at all levels and in all forms of education; this may involve the revision of textbooks and school programmes and the adaptation of teaching methods; d) the same opportunities to benefit from scholarships and other study grants; e) the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes; f) the reduction of female student drop-out rates; g) the same opportunities to participate actively in sports and physical education; and h) access to specific educational information to help to ensure the health and well-being of families.

197. These obligations, whose purpose is to eliminate discrimination in the exercise of the right to education, are echoed in other international instruments, such as the Convention on the Rights of the Child<sup>294</sup> and the Convention on the Elimination of All Forms of Racial Discrimination.<sup>295</sup> Other international instruments contain similar provisions, such as the Convention against Discrimination in Education.<sup>296</sup> It contains a general prohibition of discrimination in this area and prohibits, *inter alia*, depriving any person or group of persons of “access to education of any type or at any level”; limiting any person or group of persons to education of an inferior standard; establishing or maintaining separate educational systems or institutions for persons or groups of persons, or inflicting on any person or group of persons conditions which are incompatible with the dignity of man.”<sup>297</sup>

### **3. Priority issues**

#### **a. Equality in education and the correlation between level of education and access to the job market**

198. The following are figures that reflect the status of girls’ right to education in the Americas. While achieving “parity” is an important factor to be considered in terms of access to education, it is a quantification of the enrollment of girls and adolescent girls in the schools and as such does not reflect the progress made toward achieving true gender equality.

199. The IACHR did not have access to gender-disaggregated figures on enrollment in pre-primary education. Between 1999 and 2007 the gross enrollment ratio in Latin America and the Caribbean increased by 17%. It was up by 50% in Ecuador, Mexico, Nicaragua and Panama, but was down by over 25% in Chile, Costa Rica and Guatemala. In other words, enrollment has increased considerably in Latin America and the Caribbean as a whole, albeit with variations among the countries. According to the revised information, the principal barriers to access to childcare and early-childhood

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<sup>294</sup> Articles 28 and 29.

<sup>295</sup> Articles 5 and 7.

<sup>296</sup> Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session. In Article 1(2) the Convention states that “the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.”

<sup>297</sup> Article 1.1.

education are the families' poverty and the low educational level of the parents, without factoring in other variables like age, disparity between the sexes or domicile.<sup>298</sup>

200. The net enrollment ratio (NER) in primary education in Latin America and the Caribbean is quite high, at 94%.<sup>299</sup> The increase in primary education has been matched by an increase in gender parity. According to UNESCO, 25 of the 36 Latin American and Caribbean countries for which 2007 figures are available have achieved parity. In 9 of the 11 remaining countries, it is girls who are at the disadvantage in the disparity in primary education. These countries include Bolivia, Brazil, Chile, Guatemala and the Dominican Republic.<sup>300</sup> On the other hand, not all children who enroll in school complete their schooling, as the enrollment figure drops to 85% by the end of the primary cycle. Statistics show that girls are more likely to finish the primary cycle.

201. In the case of secondary education, the net enrollment ratio rose to 70%; in this cycle, the NER among girls is higher (73%) than among boys (68%).<sup>301</sup> However, there are great disparities among the countries. Guatemala and Nicaragua, for example, have a net enrollment ratio of 38% and 43%, respectively; others, like Cuba, have a ratio of 87%.<sup>302</sup> Furthermore, the enrollment ratio drops as the children grow older. The enrollment ratio in the 14-18 age bracket drops to 50%, pointing up the fact that there are a number of obstacles that keep male and female adolescents alike from staying in school.

202. According to the information received, in every education cycle, boys are more likely than girls to drop out of school. However, some countries like Bolivia, Guatemala and Peru are trending in a different direction, since the disparity in these countries gives the advantage to boys at every cycle, although the difference narrows in secondary education.<sup>303</sup> This trend is much more evident in indigenous populations in rural areas.

203. Although adolescent boys are more likely to drop out of school starting in secondary education, the reasons why they drop out of school are not the reasons why girls drop out of school. Hence, each of the two situations calls for a different approach and analysis. According to the information received, the reasons why adolescent boys drop out

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<sup>298</sup> UNESCO, *EFA Global Monitoring Report 2010, Regional Overview: Latin America and the Caribbean*.

<sup>299</sup> IACHR, Hearing on "*Discrimination against Women in the Exercise of their Economic and Social Rights*," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010; United Nations, UNESCO, *EFA Global Monitoring Report 2010, Regional Overview: Latin America and the Caribbean*.

<sup>300</sup> UNESCO, *EFA Global Monitoring Report 2010, Regional Overview: Latin America and the Caribbean*; IACHR, Hearing on "*Discrimination against Women in the Exercise of their Economic and Social Rights*," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010.

<sup>301</sup> IACHR, Hearing on "*Discrimination against Women in the Exercise of their Economic and Social Rights*," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010.

<sup>302</sup> IACHR, Hearing on "*Discrimination against Women in the Exercise of their Economic and Social Rights*," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010.

<sup>303</sup> IACHR, Hearing on "*Discrimination against Women in the Exercise of their Economic and Social Rights*," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010.

of school have more to do with getting an early start on their status as “economic provider”, whereas adolescent girls drop out of school because of family responsibilities and care of the household.

204. Various sources consulted indicated that while access to secondary education and university education is still a challenge for women, important progress has been made in this area in most Latin American countries and some Caribbean countries. According to ECLAC, global figures would suggest that women outweigh men in the percentage of graduates from higher education. Among young people, the percentage of women with 13 or more years of study was 10.5% in 1994, and the percentage of men was 9.6%. In 2007, the percentages increase to 17% in the case of women and 13.4% in the case of men, which indicates that women stay in school longer than men.<sup>304</sup> For example, figures supplied by the Government of Panama show that in terms of enrollment in postgraduate education, in 2005 women accounted for 64% and men 36%; which is the equivalent of 1.78 women for every man enrolled in postgraduate studies. In the case of Canada, in 2007-2008 women accounted for approximately 57.5% of those enrolled in university studies, 55% in postgraduate studies and 46% in doctoral programs.<sup>305</sup>

205. Despite these advances, women do not have the same degree of access to the labor market in either Latin America or the Caribbean, particularly when it comes to good, better paying jobs. This suggests the presence of other factors that are barriers to women’s entry into the labor market under conditions of equality with men. For example, although women in the United States are highly educated, they earn 70 cents an hour less than men.<sup>306</sup> In its report on “The Rights of Women in Chile: Equality in the Family, Labor and Political Spheres,” the IACHR observed that women in Chile are highly educated, even more educated than men. Even so, that education does not translate into jobs that carry greater responsibility or better pay. The IACHR expressed its concern at the alarming salary gap between men and women performing the same job, which becomes even more pronounced the higher one goes up the ladder of responsibility.<sup>307</sup>

206. Some States in this hemisphere, like Argentina and Bolivia, recognize the gap between the increase in the number of female professionals who graduate from higher education and their underrepresentation in the labor market, and that they are not getting the better, higher-paying jobs that men get.<sup>308</sup> Given this situation, an in-depth analysis is needed of the practice of public and private enterprises when it comes to hiring women,

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<sup>304</sup> ECLAC, Division of Gender Affairs, *Review of the Implementation of the Beijing Declaration and Platform for Action and the Outcome of the Twenty-third Special Session of the General Assembly in Latin America and the Caribbean Countries*. See, also, UNESCO, *EFA Global Monitoring Report 2010, Regional Overview: Latin America and the Caribbean*.

<sup>305</sup> Canada’s reply to the questionnaire.

<sup>306</sup> Meetings of experts organized by the IACHR as part of this project.

<sup>307</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 133.

<sup>308</sup> Replies received from Argentina and the Plurinational State of Bolivia, to the questionnaire sent out by the IACHR.



the entrenched discriminatory social patterns that influence hiring practices when it comes to women, and other factors that may be limiting women's access to the labor market, such as maternity and society's expectations of women's role as care-giver.

207. Another situation that needs to be examined is that of young and adolescent girls who do not finish their education and who, although not employed, are working in the home. This is a high-risk group who can fall through the cracks where statistics are concerned and who require special attention.

**b. Situation of those sectors in particular risk to human rights violations**

208. Despite progress made in the countries in terms of access to education among the population in general, the figures hide the reality of some groups of girls and women who are in a particular situation of risk to violations of their human rights, such as those who live in poverty, who live in rural areas, indigenous women and girls, and Afro-descendant women and girls.

209. In Central America, 25% of persons over the age of 15 are illiterate. These are mainly women and adolescents who are disadvantaged, indigenous and/or live in rural areas.<sup>309</sup> In Peru, of the total number of illiterate persons, 75% are women; in rural areas, 37% of the women are illiterate.<sup>310</sup> Figures supplied by Ecuador indicate that the highest illiteracy rates are among the indigenous population; within that group, 31.5% of women are illiterate and 17.5% of men. Among the *mestizo* population, 7.6% of women are illiterate and 5.6% of men. Among the Afro-Ecuadoran population, 7.8% of women are illiterate and 6.8% of men. In Guatemala, the daughters of disadvantaged indigenous families enter school, on average, one year later than the daughters of indigenous families who are not disadvantaged. They are also more likely to drop out of school.<sup>311</sup> Figures supplied by Panama indicate that in 2003, illiteracy among males nationwide was 6%, while it was 7.6% among women; the illiteracy rate among indigenous women was 53.3%, more than double the rate among indigenous men, which was 23.4%.<sup>312</sup> Panama has observed that education indicators in both urban and rural areas suggest that obstacles still stand in the way of achieving equity and equal opportunity for women. It also observed that while comparatively speaking, the percentage of indigenous girls in enrollment figures is better than the percentage for boys, indigenous women and girls continue to be the more vulnerable groups because of the lack of educational options that fit their cultural and

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<sup>309</sup> United Nations, Economic, Social and Cultural Rights, *Girls' right to education*, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006, para. 46.

<sup>310</sup> Rosa María Mujica and Jose María García, *Las niñas somos importantes, Experiencia de Promoción de Equidad de Género en las escuelas rurales de Quispicanchi*, Instituto Peruano de Educación en Derechos Humanos y la Paz, 2006, p. 13.

<sup>311</sup> United Nations, UNESCO, *EFA Global Monitoring Report 2010, Regional Overview: Latin America and the Caribbean*; IACHR, Hearing on "Discrimination against Women in the Exercise of their Economic and Social Rights," convened by the IACHR at its own initiative, 140th regular session, October 26, 2010, available online at <http://www.IACHR.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=120&page=2>.

<sup>312</sup> Panama's reply to the questionnaire.

socioeconomic milieu.<sup>313</sup> Mexico has observed that the isolation and marginalization of broad sectors, a problem that is particularly acute in the smaller communities, have prevented education programs from reaching a larger portion of the population. In communities with less than 2500 people, the illiteracy rates are extremely high and the gender gap is wider than it is for the nation as a whole.

210. Women and girls in a situation of poverty, who live in rural areas, and those pertaining to indigenous peoples and Afrodescendent communities encounter specific barriers to access and remain in school.<sup>314</sup> One such barrier is the school itself and its geographic location. For example, some local schools are either inadequate or far away. Both the distance and the cost of transportation continue to pose obstacles that affect access to the school and the ability to remain in school. The additional costs that must be incurred for school supplies and textbooks are another obstacle that will determine whether they are able to enroll and remain in school. The lack of adequate infrastructure in schools, such as adequately equipped and functioning bathrooms, will affect young and adolescent girls, particularly when they enter puberty.

211. Then, too, girls and women in rural areas and indigenous girls and women are up against cultural barriers when their families believe that the investment made in educating their daughters is not worth the cost, or when these girls have family and caregiver responsibilities that they have to perform.

212. Women and girls who are members of an ethnic minority and speak a language different from the language in which education is imparted are up against yet another barrier. This situation is compounded when the curricula is insensitive to cultural diversity. This may be a factor that induces girls to drop out of school. In rural and/or remote areas, the quality of the education being imparted has to be evaluated, as it will be one of the factors determining whether young and adolescent girls acquire the skills they need to be able to do well in life. The IACHR has received information indicating that in remote areas, there is sometimes a shortage of teachers.

213. The States acknowledge this situation, particularly those that have plans and programs to address the issues identified in this section. Even so, those plans and programs are not being fully carried out and therefore are more a statement of intent. As a result, intercultural education is still an unfulfilled goal.

214. A number of States in this hemisphere have recognized these problems and how important it is that the particular needs of these groups are addressed. They have also observed that the principal differences in educational achievement between the urban and rural areas can be traced to a number of factors, among them the fact that the educational supply is greater in urban areas and access in rural areas is limited by the fact that the population to be served is so disperse. Other factors include cultural patterns

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<sup>313</sup> Panama's reply to the questionnaire.

<sup>314</sup> IACHR, Thematic Hearing, 143rd regular session, *Access to Education of Indigenous, Afrodescendent and Women Living in Rural Areas*, October 25, 2011.

that, in the case of girls, translate into a higher dropout rate or higher absenteeism because they shoulder family responsibilities at a younger age than girls in urban areas.

215. To make certain that girls have access to and are able to remain in school, particularly indigenous girls and/or girls living in rural areas, a transportation system to get the girls to school needs to be in place. A system must be developed that is suited to their milieu and circumstances, thereby helping to improve their school performance and attendance so that they are able to complete their education. This also includes flexible school hours and school calendars. Another important measure, particularly for girls living in rural areas, is an analysis of the daily workload that families expect young and adolescent girls to carry. The IACHR has received information about absenteeism among adolescent girls when they begin to menstruate. States must be prepared to provide comprehensive care to pubescent girls, which should cultivate in them a positive image of their sexuality.

216. Peru, for example, reported that it has a law titled the Law to Promote the Education of Young and Adolescent Girls in Rural Areas (Law 27558), under which the State is required to develop educational policies that are responsive to the needs of young and adolescent girls in rural areas. The Plurinational State of Bolivia created the *Bono Juancito Pinto* (a school voucher program), one of whose purposes is to keep young people in school. The program seeks to get boys and girls to enroll in and complete primary school; it awards a cash grant of Bs. 200 to every boy and girl who is enrolled in a public school and attends regularly from the first to eighth grades; the cash grant helps the family cover the expense of study materials, transportation, education and other expenses that a family incurs to send its children to school. Guatemala indicated that it is working to ensure that girls remain in school by implementing a scholarship program for girls who do not have economic resources, and through cash benefits paid to families who take their children for medical checkups and to school. Panama has a number of programs to strengthen education in rural areas.<sup>315</sup> In October 2009, Argentina introduced a per-child universal social security cash transfer system for all children from 0 to 18 years of age. In order to continue to receive the cash transfer and the 20% increase in welfare payments, families must keep their children vaccinated and in school.

### c. The curricula

217. The curricula and school textbooks used in education are perhaps the greatest challenge that all the countries of the region face if they are to eradicate discrimination and ensure an effective education under conditions of equality. Indeed, there is no place where inequality is more in evidence than in the structure of the curriculum. The textbooks and the curricula can perpetuate the stereotypes that are the barriers to achieving gender equality. The knowledge and values that the curricula teach must be free of anything that can be construed as discrimination based on sex, gender,

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<sup>315</sup> The Government of Panama highlighted the Ministry of Education's Supplemental Food Program, the School Nutrition Program, and Food Solidarity Program, the United Families Program, and others.

age, religion, social status, and so on. An education that is not based on a human rights approach will tend to convey the ingrained gender inequalities.

218. This problem necessitates an overhaul of books and school textbooks littered with images that perpetuate the roles traditionally assigned to men and women, or texts that do not include women at all. This also necessitates a review of school textbooks that portray women as passive subjects and men as those who make history. The language used in the education system has to be checked: both the language used in teaching and the language used in school textbooks, which may be sexist or discriminatory. A stereotype-free education is a challenge that no State in this hemisphere has completely conquered. The Plurinational State of Bolivia has acknowledged that the State is still facing the challenge of mainstreaming the gender perspective into its school textbooks.<sup>316</sup> Panama mentioned Law 4 of 1999, which establishes standards designed to protect the right of women and girls to education under conditions of equality and equity.<sup>317</sup>

219. A number of studies indicate that some forms of education continue to reinforce cultural patterns that have women understand the world through narrative learning but not constructivist learning.<sup>318</sup> The evidence from some countries suggests that boys perform better in areas like mathematics, while girls do better in the social sciences.<sup>319</sup> According to ECLAC, this tendency to specialize in certain areas may lead to wage and salary differences down the road. Furthermore, the fact that more boys than girls get into the sciences may be because families and teachers are encouraging boys to pursue these areas of study. Although this kind of analysis is important for boys and girls in Latin America, there are no reliable sources of data available.<sup>320</sup>

220. Several organizations spoke about a hidden curriculum, understood to mean the “combination of routine practices in the educational system that, although neither overt nor explicit, are nonetheless part of customary teaching habits, both in terms of attention paid to the student and the teachers’ observations and evaluations.”<sup>321</sup> As the IACHR sees it, the States are not yet undertaking a comprehensive analysis of education.

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<sup>316</sup> Bolivia’s reply to the questionnaire.

<sup>317</sup> Article 17 of 1999 Law 4 provides that “the public policy that the Panamanian State will pursue in the area of education to achieve equal opportunities for women, includes: updating the study profiles, plans and programs to expunge the sexist and androcentric bias and content from school texts and teaching materials, from the pre-school level through university. Teachers must also be educated in the gender component, to ensure that it is applied throughout the teaching-learning process at the various levels of the educational system.”

<sup>318</sup> IACHR, Hearing convoked by the Commission at its own initiative “*Discrimination against Women in the Exercise of their Economic and Social Rights*,” 140<sup>th</sup> regular session, October 26, 2010.

<sup>319</sup> The Government of Jamaica indicated that girls perform better than boys in English, while boys perform better in mathematics.

<sup>320</sup> ECLAC, *Series Mujer y Desarrollo, Trabajo, educación y salud de las niñas en América Latina y el Caribe: indicadores elaborados en el marco de la plataforma de Beijing*, Daniela Zapata Sapiencia, April 2007, pp. 24-25.

<sup>321</sup> ECLAC, *La educación de las mujeres: de la marginalidad a la coeducación. Propuestas para una metodología de cambio educativo*. July 1998 [translation from Executive Secretariat].

Hence, teachers continue to convey biased stereotypes, drawn from their own perceptions of the social roles that they believe men and women should and do perform.

221. Educators play a vital role in this process, as they are the direct source of the education that the students receive. Therefore, one of the priorities for the States must be to make certain that teachers receive proper training and that teachers at all levels of the education system are educated about human rights and that they neither harbor nor impart prejudice and stereotypes.

222. Another issue that has a close bearing on gender equality in education has to do with the composition of the teaching staff. Experts on the subject agree that States must guarantee parity in the composition of the teaching staff and work to ensure that women are better represented in the education system's hierarchy and decision-making positions.<sup>322</sup>

#### **d. The situation of pregnant girls**

223. The high rate of teen pregnancy is a serious problem in the region. Every year, around 2 million girls between the ages of 15 and 19 become mothers, and every year approximately 54,000 babies are born to girls under the age of 15.<sup>323</sup> The statistics show that the high rates of pregnancy among teenagers have not significantly tapered off since 1990, despite the drop the overall birthrate in the region.<sup>324</sup> The IACHR has previously observed that early pregnancy poses a number of risks: apart from the obvious health risks is the increased risk of unsafe abortions and the interruption of schooling.<sup>325</sup>

224. Pregnancy during adolescence is one of the main factors underlying the school dropout rate among girls and in most cases the girls never go back to school. The IACHR has received information indicating that pregnant adolescents drop out of school because of the discrimination they experience from other students or the pressure exercised by other parents to get them expelled from school. In other cases, the discrimination is practiced by the teachers themselves and/or the school, invoking laws, policies and/or practices that force them to quit school to avoid "setting a bad example." In other cases, the repeated absences mean that they are not attending school on a regular

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<sup>322</sup> Meetings of experts organized by the IACHR.

<sup>323</sup> Pan American Health Organization, *Health in the Americas 2007, Volume I – Regional*, Scientific and Technical Publication No. 622, 2007, p. 145. Available online at: <http://www.paho.org/hia/vol1regionalingcap2.html>.

<sup>324</sup> United Nations, *The Millennium Development Goals Report 2007*, Available online at <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf>.

<sup>325</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, December 29, 2003, see Chapter V, The Rights of Women, para. 318. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003eng/TOC.htm>.

basis<sup>326</sup> and thus not completing the school year; there no special systems in place to address this situation.

225. Not every country in the region takes the same approach to this problem. A number of countries, like Argentina<sup>327</sup> and Peru<sup>328</sup>, have laws to ensure that pregnant adolescents will remain in school. Other countries like Ecuador<sup>329</sup> have provisions in their laws to protect the pregnant teen from discrimination. In other cases, like Panama,<sup>330</sup> it is compulsory that pregnant teens continue their studies. In Venezuela, the State reported on its Organic Law for Protection of Children and Adolescents, Article 57 of which prohibits any school from punishing a child or adolescent girl for being pregnant.

226. The Plurinational State of Bolivia, for its part, reported that nothing in the law prohibits pregnant adolescents and youth from remaining in school and pursuing their studies. However, it does acknowledge that expulsion of pregnant adolescents is common practice in educational institutions that are unaware of the commitments the State has made, such as the National Equal Opportunity Plan.

227. The Canadian Government observed that when adolescents drop out of school for personal reasons, such as motherhood, the likelihood that they return is some 30%. The IACHR notes that Argentina's National Education Act (26,206) provides that schools must have rooms for nursing.<sup>331</sup>

228. In a number of Caribbean countries, pregnant teenagers are required to drop out of school. The IACHR received information from Saint Lucia indicating that pregnant adolescents are not permitted to continue their studies while pregnant, but they are given the option to return to school once they have their children.<sup>332</sup> Jamaica indicated that pregnant students do not attend school, but changes have been introduced in the

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<sup>326</sup> ECLAC, Division of Gender Affairs. *Review of the Implementation of the Beijing Declaration and Platform for Action and the Outcome of the Twenty-third Special Session of the General Assembly in the Latin American and Caribbean Countries* (2000).

<sup>327</sup> Argentina has its National Education Law No. 26,206, Article 81 of which provides that the jurisdictional authorities will take the necessary measures to ensure that pregnant students have access to and are able to remain in school and continue their studies after their child is born, thereby avoiding any form of discrimination against them, in keeping with Article 17 of Law 26,061.

<sup>328</sup> Peru has its Child and Adolescent Code, Law No. 27337, Article 14 of which recognizes the right of the pregnant child or adolescent to begin or pursue her studies, which the educational official at the school must guarantee. Whatever measures a specific case requires must be taken, thereby avoiding that the pregnant child or adolescent falls victim to any kind of discrimination.

<sup>329</sup> Ecuador has a National Teen Pregnancy Prevention Plan, which protects student victims of discrimination because of pregnancy. Ecuador's Child and Adolescent Code prohibits measures that discriminate against teenage girls because they are either pregnant or mothers.

<sup>330</sup> Panama's Law No. 29 (2002) guarantees the health and education of pregnant adolescents. The law makes it compulsory for them to continue their studies, and ensures that they are able to do so by a system of modules and another method adapted to fit each school in which a pregnant minor is reported.

<sup>331</sup> The Argentine State's reply to the questionnaire.

<sup>332</sup> Saint Lucia's reply to the questionnaire.

Education Code of the Ministry of Education so that, through the Women's Centre of Jamaica Foundation, pregnant teens and teenage mothers can return to the school system.<sup>333</sup> In the case of Grenada, the State reported that pregnant teens do not continue their regular studies; instead, they are assigned to the Programme for Adolescent Mothers so that they are able to continue their studies and receive special attention. When more than three months have passed since the birth of her infant and she has completed the program, an adolescent mother may return to school. In Dominica, the government reported that while the law prohibits discrimination in the educational system, in practice pregnant teens drop out of school because of pressure from their peers and, in some cases, from the parents of the other students. The government of Trinidad and Tobago indicated that it does not have a specific law, but plans and projects are being conducted to ensure that teenage mothers complete their studies.<sup>334</sup>

229. The high rate of teen pregnancy in the region is very much a function of the fact that adolescents are taught little about their sexuality, and comprehensive sex education is simply not taught. The IACHR has received information indicating that when adolescent girls enter puberty, the lack of sanitary napkins and suitable hygienic facilities in the schools will be a factor contributing to their absenteeism.

230. While no studies are available, experts on the subject have pointed to that failure of existing policies to ensure that adolescent mothers will be able to return to school once they have had their babies.

231. Various organizations dedicated to protecting human rights have underscored the States' duty to guarantee, without prejudice or discrimination, the right of all women and girls to information, education, and services on sexual health.<sup>335</sup> The CEDAW Committee has specifically emphasized the States' obligation to provide the necessary information and services on HIV/AIDS and other sexually transmitted diseases, including information and advice on all methods of family planning.<sup>336</sup> With specific reference to access to reproductive information, the Committee on the Rights of the Child has written that States should provide adolescents with information on the dangers of early pregnancy. It has also commented that pregnant girls and adolescents should have access to health services that are sensitive to their rights and particular needs.<sup>337</sup> This requires an intercultural approach, in order to better understand the social and cultural factors pervasive in these contexts.

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<sup>333</sup> Jamaica's reply to the questionnaire.

<sup>334</sup> Trinidad and Tobago has a Programme for Adolescent Mothers, their partners, and children, which offers nursery services, counseling, courses, information and nutrition.

<sup>335</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 24, *Women and Health*, para. 28.

<sup>336</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 24, *Women and Health*.

<sup>337</sup> United Nations, Committee on the Rights of the Child, General Comment No. 4.

232. Based on the principles of equality and nondiscrimination that permeate the inter-American system, the States have an obligation to ensure that every pregnant adolescent is able to continue her studies, and that every adolescent mother is able to return to school to complete her studies. Therefore, the IACHR is urging every State within the region to adopt all measures necessary to eliminate any form or type of discrimination, be it in law, policies and/or practices that have the effect of discriminating against pregnant adolescents and affecting their right to education. In keeping with their international obligations, the IACHR is urging the States to establish monitoring systems to prevent these situations in future and to implement the measures necessary to ensure that adolescent mothers are able to return to school to complete their studies once they have given birth to their children.

**e. Forms of violence practiced against women in the schools and mechanisms for filing complaints**

233. Girls and women are more likely than men to experience discrimination and violence in school, a situation that if not addressed will be one of the factors that determines both whether they go to school and whether they stay in school. Discrimination against girls in school invites various forms of violence against them.

234. The forms of violence that women and girls experience can be of various types, ranging from corporal punishment to rape. Sexual harassment is another form of discrimination against women that is common in schools and that can lead to violence.

235. A number of international organizations and civil society organizations have compiled information that portrays the urgency of the problem of violence against girls and women in schools.<sup>338</sup>

236. According to Amnesty International, a study done in the United States found that in the public schools, 83% of the girls from the eighth to eleventh grade (from 12 to 16 years old) experienced some form of sexual harassment.<sup>339</sup> It also observed that in Latin America, sexual harassment in school is a widespread problem in the Dominican Republic, Honduras, Guatemala, Mexico, Nicaragua, Panama and other countries.<sup>340</sup> The United Nations' *World Report on Violence against Children*<sup>341</sup> asserts that sexual abuse, physical and psychological violence, and sexual harassment are forms of violence which occur in all settings. Sexual abuse of girls and boys is most common within the home, but also frequently occurs in schools and other educational settings. The report also observes

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<sup>338</sup> See also, IACHR, Thematic Hearing, 143rd regular session, *Sexual Violence in Educational Institutions in the Americas*, October 24th, 2011.

<sup>339</sup> Amnesty International, *Violence against girls in schools: key facts*. Available online at: <http://www.amnesty.org/en/key-facts/violence-against-girls>

<sup>340</sup> Amnesty International, *Violence against girls in schools: key facts*. Available online at: <http://www.amnesty.org/en/key-facts/violence-against-girls>.

<sup>341</sup> Paulo Sergio Pinheiro, *World Report on Violence against Children*, p. 7, available online at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)



that girls suffer considerably more sexual violence than boys, and their greater vulnerability to violence is in large part a product of the influence of gender-based power relations that are deeply rooted within society.

237. The organization *Save the Children* has stressed the point that girls are particularly at risk of sexual abuse in schools from both peers and teachers. Sexual demands are often accompanied by threats of physical punishment, force, manipulation or promises of better grades or financial rewards. It also observes that few teachers have sufficient training to teach about sexuality, sexual abuse and child rights.<sup>342</sup> *Human Rights Watch* has observed that in addition to corporal punishment in the schools, which is still allowed in many countries, girls are at particular risk of sexual violence from both teachers and male students, and may be fondled, verbally degraded, assaulted and raped.<sup>343</sup>

238. According to the experts consulted on this matter, one of the main reasons why these forms of discrimination and violence against girls and women in schools are not being addressed is that the problem is still underreported in the Americas. Most victims do not file complaints for fear of reprisals and opt instead to quit school. In some cases there is virtually no chance that any complaint will actually be filed: victims may have no idea where to turn because they do not know which state entities are charged with protecting the public against acts of discrimination and violence; the legal systems necessary to guarantee the security and integrity of the complaint may not be in place; also, victims may fear that they will be stigmatized if they file a complaint.

239. The IACHR received information indicating that in some Caribbean countries and in a number of communities in Latin America, when girls are victims of acts of violence in school, the family of the victim opts to negotiate a sum of money with the assailant in exchange for not reporting him. The IACHR urges that practices of this type be eradicated as they are violations of the human rights of girls and adolescent girls.

240. The information received suggests that the States' approach to this problem is not the same in all cases. Some States, like Guatemala and Argentina, have elaborate judicial systems to process complaints in cases alleging discrimination against girls and women. In the specific case of sexual abuse, most States in this hemisphere do have laws to protect victims from violence. However, the IACHR observes that it is not entirely clear what legal mechanisms children, adolescents, and their families have to report the various forms of discrimination and violence they suffer.

241. The Plurinational State of Bolivia reported that Article 10 of Law 2026, which is the Bolivian Child and Adolescent Code, provides that every professional and civil servant has an obligation to report crimes against sexual freedom. In El Salvador, the

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<sup>342</sup> Save the Children, *10 essential learning points. Listen and Speak out against Sexual Abuse of Girls and Boys, Based on Country Reports from Save the Children in Canada, Colombia, Brazil, Nicaragua, Syria, South Africa, Mozambique, Rwanda, Uganda, Bangladesh, Nepal, Spain and Romania*. Available at: [http://www.crin.org/docs/resources/publications/violence/Save Alliance Global Submission.pdf](http://www.crin.org/docs/resources/publications/violence/Save%20Alliance%20Global%20Submission.pdf)

<sup>343</sup> Human Rights Watch, *Easy Targets: Violence against Children Worldwide*, September 1, 2001, available at: <http://www.hrw.org/sites/default/files/reports/violence2001.pdf>

Ministry of Education has put together a set of norms called “Steps to reporting cases of sexual violence in the school” to ensure the students’ physical and mental safety. Included in this document are amendments to the Teaching Career Act that concern the principal and accessory penalties for acts that violate sexual freedom, and the procedures to be followed in the administrative and criminal jurisdictions.

242. The challenge for the States is how to establish policies that not only protect girls and adult women from any form of discrimination and violence in school and centers of higher learning, but also to ensure that the aggressors are properly investigated and punished. Furthermore, the States have to adopt the measures necessary to ensure that girls and adult women who are victims of discrimination and violence are not prevented from pursuing their studies.

**f. The situation as regards to statistics and indicators**

243. According to a variety of sources consulted, including the information supplied by the States, the kinds of statistics and indicators that can shed light on the status of women’s right to education are lacking. While observatories have been established in some countries, they do not have the kinds of budgets that would enable them to effectively measure the progress that women and girls have made where this right is concerned.

244. The information reviewed indicates that girls and adolescent girls from different linguistic groups and different geographic areas, who live in rural areas or are indigenous or Afro-descendant, are the groups that the States need to target most. Although the States themselves recognize as much, the information available is not sufficient; the statistics and specific indicators that can track the particular situation of these groups are not there.

245. The IACHR observes that some States have figures, disaggregated by sex, that have to do with accessibility or school enrollment. This is a first step towards measuring the number of girls who enter school. However, a more in-depth analysis of gender will necessitate other measurements, such as statistics on adolescent pregnancies, school dropout rates, absenteeism, violence and other barriers preventing young and adolescent girls from being able to fully exercise their right to an education. Also still lacking are statistics and indicators gauging success in implementing programs in the education sector conducted from the gender perspective.

**4. The States’ immediate obligations**

- Guarantee free public education up to the level prescribed by law and adopt measures to enable women to complete higher studies.
- Eliminate any form of discrimination against pregnant teens and ensure that they are able to remain in school until they complete their studies.

- Examine and eliminate any form of stereotype that adversely affects the ability of young and adolescent girls to enjoy their right to education. Ensure that any discriminatory bias based on sex, gender, age, social status, religion, and so forth, is expunged from the schoolbooks, textbooks, and curricula used to impart education.
- Establish policies and programs to develop intercultural education, paying particular attention to the barriers that especially vulnerable young and adolescent girls encounter.
- Develop and apply human rights indicators that make it possible to identify and tackle the causes of the discrimination that affects young and adolescent girls' exercise of their human rights.

### **C. Women's right of access to and control over resources**

#### **1. General overview**

246. The IACHR has expressed deep concern over poverty in the Americas.<sup>344</sup> The high concentration of wealth and the inequitable distribution of economic resources are constants in the region.<sup>345</sup> The inequalities between the sexes, groups and sectors where their access to economic resources is concerned, are both a cause of and factor contributing to the vicious poverty cycle.<sup>346</sup> The IACHR has observed that:

Although over the past few years there has been a consolidation of economic recovery and poverty and indigence indicators have declined in some countries, continue to confront problems of structural unemployment, social marginalization, and inaccessibility to basic social services.<sup>347</sup>

247. Given the circumstances, the IACHR is very concerned over the *de facto* and *de jure* inequality of women and of other sectors that have long suffered discrimination.<sup>348</sup> Although poverty is a struggle for anyone, it affects women differently given the social discrimination they endure and the added burdens they carry, such as their family responsibilities. This limits their chances of getting the economic resources needed to support themselves and their families. Although women continue to join the labor market and the educational sector, the strides they have made in these areas are still in their early stages. The ILO has observed that "women are unique among the poor, as they

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<sup>344</sup> IACHR, *Annual Report 2008*, Introduction, para. 2.

<sup>345</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organization, 2003, p. 21.

<sup>346</sup> IACHR, *Annual Report 2006*, Introduction, para. 5.

<sup>347</sup> IACHR, *Annual Report 2006*, Introduction, para. 5.

<sup>348</sup> IACHR, *Annual Report 2006*, Introduction, para. 5.

spend most of their time in unpaid activities and are economically dependent on male providers; those who work for pay are, for the most part, concentrated in a small range of occupations, mainly low-paying jobs in the informal sector.”<sup>349</sup> Moreover, the unequal treatment that women endure and their limited access to and control of economic resources are some of the reasons why they have such a low profile in areas vital to their human rights in general, and specifically in political and social affairs.

248. For purposes of this report, the IACHR identifies three aspects of the expression “economic resources”. The first is a broad interpretation of the expression that includes assets of a financial nature as well as those classified as “immoveable” and “moveable” assets.<sup>350</sup> These may include money, income, property, land, housing, and others. The second aspect to this expression are the methods and procedures by which to obtain these assets, such as employment, business, credit, loans, insurance, inheritance and court rulings that can affect the distribution of assets. The third aspect of the expression ‘economic resources’ includes state and non-state benefits –such as social security- to cover those events in the life of a woman that can affect her economic autonomy and the exercise of her economic, social and cultural rights.<sup>351</sup>

249. The inter-American and international human rights systems have both identified a number of obligations that attend women’s right to nondiscrimination and equal treatment under the law in their access to and control of economic resources as defined above. They have underscored a number of elements of the scope of women’s rights in the economic area, not just in treaties and declarations but also in consensus documents that have the backing of the international community.

250. Taken together, these conventions, declarations, and consensus documents establish: a) the close link between the eradication of poverty and the

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<sup>349</sup> María Elena Valenzuela, *Desigualdad de género y pobreza en América Latina*, International Labour Organization, 2003, p. 26.

<sup>350</sup> The United Nations defines “economic resources” as the direct factors of production such as “immoveable” assets, including land, housing, common pool resources and infrastructure, as well as “moveable” assets, such as productive equipment, technology and livestock. Financial resources refer to money-based resources, including government expenditures, private financial flows and official development assistance, as well as income, credit, savings and remittances. See United Nations, *World Survey on the Role of Women in Development Report of the Secretary-General. Women’s control over economic resources and access to financial resources, including microfinance*, A/64/93, June 12, 2009, para. 1.

<sup>351</sup> On this third element, the Committee on Economic, Social and Cultural Rights has written that the right to social security encompasses the right to access and maintain benefits, “whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.” Social security has a redistributive character and thus plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion. See, United Nations, Committee on Economic, Social and Cultural Rights, General Comment 19, *The right to social security*, paragraphs 2 and 3. The Commission has included the right to a pension as an integral part of the right to social security, encompassed within the scope of Article 26 of the American Convention. See, 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.

protection and exercise of all women's rights; b) the States' obligations to ensure equal treatment of spouses in a marriage and of partners in a *de facto* union, in the administration of assets and other property, and to protect women if the marriage or *de facto* union is dissolved; c) the States' obligations to ensure women's access to property, land, housing, credit and other bank assets, both within and outside of marriage; and d) the States' obligations to ensure women's access to work as a vital source of income and a means to preserve their economic autonomy and their economic rights in related areas such as social security.

251. The distinction between "access" and "control" of economic resources is relevant in determining the scope of the States' obligations in this area. "Access" is the capacity to use something, while "control" denotes the ability to decide how the resource will be used and the benefit derived therefrom.<sup>352</sup> The IACHR was informed about the relevance of the distinction between 'access to' and 'control' of resources is relevant where gender is concerned, as the capacity to use something does not necessarily mean that one can decide how the resource will be used and what benefit will be derived from it. For example, women may earn money, but not have the power to decide how to spend it.<sup>353</sup> The Commission was also informed of how important it is that women have equal access to the distribution of resources, free of discrimination; this obligation implies access to legal remedies and to decision-making processes that determine the distribution of assets.<sup>354</sup>

252. During this project's implementation, the IACHR received information describing forms of discrimination that women suffer both in law and in practice, and related to these three aspects of the States' obligations with respect to women's access to and control of economic resources; the division, control and disposition of these resources within the family and outside the home, between women and men; and obstacles to procuring the means to obtain these resources, a problem that is particularly severe in the area of work, as explained in the previous section. 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.

253. A particularly disturbing problem is that in most countries, the law and public policy regulating matters pertaining to access to and control over resources –both within and outside of marriage- do not address the specific dilemma that women are facing

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<sup>352</sup> For a more in-depth discussion, see ECLAC, Division of Gender Affairs, *Series Mujer y Desarrollo, "Mujeres Emprendedoras en América Latina y el Caribe: Realidades, Obstáculos y Desafíos"*, Santiago, Chile, January 2010.

<sup>353</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Series Mujer y Desarrollo Number 93, Mujeres emprendedoras en América Latina y el Caribe: realidades, obstáculos y desafíos*, Lidia Heller, Division of Gender Affairs, Santiago, Chile, January 2010, p. 8.

<sup>354</sup> For example, it has been observed that women are not just at a disadvantage vis-à-vis men in the range and type of businesses they embark upon, but are also at a disadvantage regarding the sources of power that the business gives access to. Economic Commission for Latin America and the Caribbean (ECLAC), *Aspectos económicos de la equidad de género*, Thelma Gálvez P, ECLAC - *Series Mujer y desarrollo* No. 35, Santiago, Chile, June 2001, p. 8.

or evaluate its impact.<sup>355</sup> In those countries where the rights of women in this sphere are protected by law, women are still at an economic and social disadvantage and, in practice, the victims of discrimination in the exercise of their rights to property, housing, land, inheritance, and so on. However, a comprehensive picture of the region as a whole is difficult to capture, since gender-disaggregated data on the control of and access to various economic resources, as defined in this report, are not available.<sup>356</sup>

254. Access to and control and distribution of land and of other assets is still determined by rules, norms and customs that are embedded in various institutions in society — family, kinship, community, markets and government.<sup>357</sup> The IACHR has found that social and cultural factors reinforce gender stereotypes, and in so doing obstruct women's access to and control over a variety of resources.<sup>358</sup> As previously discussed, the sexual division of labor is a decisive factor in the inequalities and unequal treatment that women endure by virtue of their sex, obstructing their access to the labor, economic, social and political spheres, areas that directly affect their exercise of their economic, social and cultural rights.

255. The States must adopt immediate, deliberate and concrete measures to eliminate the obstacles that restrict women's access to and control over economic resources, particularly the problem of discrimination and the need to take steps to ensure women's true equality in this area. Women's access to and control of both economic and financial resources have important implications for women's economic roles in sustaining household livelihoods, in labour markets and in the wider economy.<sup>359</sup> Women's independent earnings improve the well-being of families and communities, reduce poverty and stimulate economic growth.<sup>360</sup> Higher incomes for women and better access to and control over their resources also translate into better health and nutrition for children.<sup>361</sup>

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<sup>355</sup> Meeting of experts "*Discrimination against Women in the Area of Economic, Social and Cultural Rights*," convoked by the Inter-American Commission on Human Rights and held in Washington, D.C., October 18, 2010.

<sup>356</sup> United Nations General Assembly, *World Survey on the Role of Women in Development, Report of the Secretary-General. Women's control over economic resources and access to financial resources, including microfinance*, A/64/93, Sixty-fourth session, June 17, 2009, para. 173.

<sup>357</sup> United Nations General Assembly, *World Survey on the Role of Women in Development, Report of the Secretary-General. Women's control over economic resources and access to financial resources, including microfinance*, A/64/93, Sixty-fourth session, June 17, 2009, para. 179.

<sup>358</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Aspectos económicos de la equidad de género*, Thelma Gálvez P, ECLAC - Series *Mujer y desarrollo* No. 35, Santiago, Chile, June 2001, p. 8.

<sup>359</sup> United Nations General Assembly, *World Survey on the Role of Women in Development Report of the Secretary-General. Women's control over economic resources and access to financial resources, including microfinance*, A/64/93, Sixty-fourth session, June 17, 2009.

<sup>360</sup> The International Bank for Reconstruction and Development/The World Bank, *Women, Business and the Law, Measuring Legal Gender Parity for Entrepreneurs and Workers in 128 Economies*, 2010, Washington, D.C. p. 5.

<sup>361</sup> The International Bank for Reconstruction and Development / The World Bank, *Women, Business and the Law, Measuring Legal Gender Parity for Entrepreneurs and Workers in 128 Economies*, 2010, Washington, D.C. p. 5.

256. Women's access to and control over resources contributes to their autonomy and empowerment;<sup>362</sup> concepts that better illuminate the right of women to earn their own income, control it and negotiate how it will be spent with others, including their partners, employers, authorities and other persons with whom they interact. In the report titled *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, the IACHR observed that "[t]he concepts of independence and empowerment (...) should certainly be a part of the agenda for curbing gender and social inequalities. Independence is a core requirement for attaining equality between men and women. Accordingly, it is a crosscutting concept in all matters concerning the realization of economic, social and cultural rights."<sup>363</sup>

257. The IACHR reiterates that women's access to and control over resources are essential elements for women to fully enjoy their basic human rights, such as the right to equality and nondiscrimination.<sup>364</sup> It also helps women enjoy their right to live a life free of violence.<sup>365</sup>

258. The Commission reminds States that women's access to and control over resources depends in large measure on the existence of proper laws as the formal underpinnings of their rights. It also depends on whether measures and programs are in place geared towards eliminating biased practices and notions about women's inability to exercise rights of this type.

259. The IACHR begins this section with an examination of the body of laws pertaining to women's access to and control over economic resources. It then proceeds to analyze a number of priority issues, in the following order: a) access to resources that are the fruits of remunerated work; b) access to credit; c) access to land; d) access to and control over inherited resources; e) married women's access to and control over resources; and f) access to secure housing.

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<sup>362</sup> In this instance, the term 'autonomy' is understood to mean "the degree of freedom a woman has to be able to act of her own free will and not that of others." For women to be fully empowered, they must be given access to and control over resources and assets to enable them to make effective use of space, rights, organization and talents, in competition with other actors. See, Economic Commission for Latin America and the Caribbean (ECLAC), *Mujeres emprendedoras en América Latina y el Caribe: realidades, obstáculos y desafíos*, Lidia Heller, ECLAC - Series *Mujer y desarrollo* No. 93, Santiago, Chile, January 2010, pp. 12 and 13.

<sup>363</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, July 19, 2008, para. 57.

<sup>364</sup> United Nations Development Fund for Women (UNIFEM), *Gender Justice: Key to Achieving the Millennium Development Goals*, UNIFEM, p. 8. Available online at <http://www.ungei.org/resources/files/MDGBrief-English.pdf>.

<sup>365</sup> For example, the Commission on Human Rights has found that women's lack of resources, coupled with their lack of other housing options, makes it difficult for them to leave abusive family situations and may force them to live with their batterers. Commission on Human Rights. See, "*Economic and social policy and its impact on violence against women*", E/CN.4/2000/68/Add.5 (56th session).

## 2. Body of international law specific to this topic

Inter-American System:

260. As previously observed, in its various instruments the inter-American system regards the protection of women's rights –free of any form of discrimination- as being element to the eradication of poverty, the general protection of human rights, and the consolidation of democratic regimes.

261. A clear example is the OAS Charter, whose Article 34 reads, in part, as follows:

The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: (...)

b) Equitable distribution of national income;

d) Modernization of rural life and reforms leading to equitable and efficient land-tenure , increased agricultural productivity, expanded use of land, diversification of production and improved processing and marketing systems for agricultural products; and the strengthening and expansion of the means to attain these ends;

g) Fair wages, employment opportunities, and acceptable working conditions for all;

h) Rapid eradication of illiteracy and expansion of educational opportunities for all; (.....)

262. Within the inter-American system, instruments like the American Declaration, the American Convention and the Protocol of San Salvador establish important obligations in respect of the rights associated with the social distribution of economic resources, such as the right to property, the right to work, and the right to social security, the right to maternity leave and others. These have to be examined as an interrelated body of rights on this subject. The Commission highlights in particular the prohibition of discrimination by reason of economic status contained in the American Convention (Article 1(1)); the duty to adopt the domestic legislative and other measures necessary to give effect to those rights (Article 2); the right to private property (Article 21); the right to equality before the law and equal protection of the law (Article 24); the obligation to ensure the equality of rights and the adequate balancing of responsibilities of the spouses during marriage and in the event of its dissolution (Article 17(4)), and other important rights.



263. For its part, in case reports, country reports and thematic reports the IACHR has addressed the specific rights of women vis-à-vis access to and control of their economic resources. For example, in the case of *María Eugenia Morales de Sierra*,<sup>366</sup> the IACHR's finding was that articles 1, 2, 17 and 24 of the American Convention were violated because the provisions of Guatemala's Civil Code on the subject of domestic relations vested certain authorities exclusively in the husband, based on his role as provider and income earner, while the woman, given her role as wife, mother and homemaker, was given sole responsibility for the care of the children and home. The Commission wrote that far from ensuring the "equality of rights and adequate balancing of responsibilities" within marriage, the afore-cited provisions of the Civil Code institutionalize imbalances in the rights and duties of the spouses.<sup>367</sup> The Commission held that the articles of the Civil Code being challenged:

have a continuous and direct effect on the victim in this case, in contravening her right to equal protection and to be free from discrimination, in failing to provide protections to ensure that her rights and responsibilities in marriage are equal to and balanced with those of her spouse, and in failing to uphold her right to respect for her dignity and private life.<sup>368</sup>

264. In its report on the rights of women in Chile –published on March 27, 2009- the IACHR stressed its concern over Chilean legislation in family matters and how in its language and practice it perpetuates various forms of discrimination against women.<sup>369</sup> The Commission stressed its particular concern over the conjugal property regime in force in Chile, which makes husband and wife unequal in the administration of property within the community.<sup>370</sup> It also underscored the need to recognize that the partners in a *de facto* union have equal rights when it comes to control of assets.<sup>371</sup>

265. In its thematic report on *Access to Maternal Health Services from a Human Rights Perspective*, the IACHR expressed deep concern over the fact that one of the main obstacles that women encounter in their access to maternal health services are the costs associated with health care.<sup>372</sup> Paying for the service becomes a decisive factor when the woman chooses whether or not to go for health care services when some dangerous

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<sup>366</sup> IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

<sup>367</sup> IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

<sup>368</sup> IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 52.

<sup>369</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 60.

<sup>370</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 96.

<sup>371</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 65.

<sup>372</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II.Doc. 69, June 7, 2010, para. 30.

symptom occurs during pregnancy or birth; this takes a particularly heavy toll on disadvantaged women.<sup>373</sup>

International system:

266. Key international instruments like the Universal Declaration of Human Rights, the ICESCR, and the CEDAW also require the States Parties to ensure that men and women enjoy the same human rights, including the right to nondiscrimination in the exercise of all the economic rights protected under those instruments.

267. Article 11(1) of the ICESCR, for example, recognizes the right of every person to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. When read in combination with Article 3, which guarantees equality, the ESCR Committee has interpreted Article 11(1) to mean that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access the resources necessary to do so.<sup>374</sup>

268. The ESCR Committee has written that the right to housing should be seen as the right to live somewhere in security, peace and dignity, and should be interpreted in combination with other rights protected under the Covenant.<sup>375</sup> The Committee has also written that the concept of “adequate housing” implies a) legal security of tenure; b) availability of services, materials, facilities and infrastructure; c) affordability; d) habitability; e) accessibility; f) location; and g) cultural adequacy.<sup>376</sup>

269. The United Nations Special Rapporteur on Adequate Housing has also addressed the specific situation of women as regards protection of their right to housing, and concluded that States still need to strengthen national legal and policy frameworks for protecting women’s rights to adequate housing, land and inheritance, and provide avenues for redress where violations occur.<sup>377</sup> The Rapporteur also singled nine other elements that should be taken into account to determine whether housing is adequate: access to land, water and other natural resources; freedom from dispossession, damage and destruction; access to information; participation; resettlement, restitution, compensation,

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<sup>373</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II.Doc. 69, June 7, 2010, para. 30.

<sup>374</sup> Committee on Economic, Social and Cultural Rights. General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights), 2005, para. 28.

<sup>375</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, *The right to adequate housing*, 1991, para. 7.

<sup>376</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, *The right to adequate housing*, 1991, para. 8.

<sup>377</sup> United Nations Economic and Social Council, Commission on Human Rights, 62nd Session, *Economic, Social and Cultural Rights, Women and Adequate Housing*, 2006, Summary.

non-refoulement and return; privacy and security; access to remedies; education and empowerment; and freedom from violence against women.<sup>378</sup>

270. On women specifically, the Special Rapporteur singled out the following as the priorities for protecting women's right to adequate housing: a) recognizing violence against women as a form of discrimination that prevents them from fully exercising their right to housing; b) the multiple forms of discrimination that women suffer; c) the need to incorporate women's concerns in property restitutions and restorations of assets upon the return of internally displaced persons; d) groups of women who are especially exposed to discrimination in their exercise of their right to housing, such as victims of domestic violence, female heads of household, refugee and migrant women, among other groups; e) the persistent poverty, which has forced women and other groups to live in places and under conditions that are both unsuitable and unsafe, and that in itself constitutes a form of violence against women, and f) the prevalence of a culture of silence regarding the prevalence of violations of women's right to an adequate housing and land.<sup>379</sup>

271. CEDAW, too, contains a number of provisions concerning women's access to and control over economic resources. In the preamble, the States Parties express concern that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs. The definition of discrimination against women in Article 1 of that Convention is any distinction, exclusion or restriction of human rights in the economic sphere; under Article 3, States Parties are to take all appropriate measures, including legislation, to ensure the full development and advancement of women in the economic field, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Article 13 of CEDAW provides that the States shall take all appropriate measures to eliminate discrimination against women in the exercise of their rights in the economic sphere, including: the right to family benefits and the right to obtain bank loans, mortgages and other forms of financial credit.

272. Article 16 of CEDAW prohibits any form of discrimination against women in matters related to marriage and family relations and ensures the spouses a number of rights: the same rights and responsibilities during marriage and at its dissolution; the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. In its General Recommendation 21, the CEDAW Committee points out that when a women cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied her legal autonomy.<sup>380</sup> The Committee also wrote that the form and concept of the family can vary from State to State, and that whatever

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<sup>378</sup> United Nations Economic and Social Council, Commission on Human Rights, 62nd Session, *Economic, Social and Cultural Rights, Women and Adequate Housing*, 2006, para. 11.

<sup>379</sup> United Nations Economic and Social Council, Commission on Human Rights, 62nd Session, *Economic, Social and Cultural Rights, Women and Adequate Housing*, 2006, para. 11.

<sup>380</sup> CEDAW Committee, General Recommendation 21, *Equality in Marriage and Family Relations*, para. 7 (1994).

form it takes the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.<sup>381</sup>

273. More specifically, Article 14(2)(h) of the CEDAW concerns the rights of women from rural areas to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications. Other provisions of the same Convention make it apparent that the right to housing is closely linked to the right to property and to land, as well as access to credit.

Action priorities singled out by international consensus:

274. To obtain a comprehensive grasp of the legal framework pertaining to women's access to and control of economic resources, the provisions of the human instruments have to be examined jointly, along with a range of statements of international consensus containing significant commitments that the States have undertaken in this area.

275. Recently, the United Nations Secretary-General underscored how women's equal access to and control over economic and financial resources is critical for the achievement of gender equality and the empowerment of women and for equitable and sustainable economic growth and development.<sup>382</sup>

276. The international community has undertaken far-reaching commitments and, at various international and regional conferences on women's issues, has identified the priorities where this human rights problem is concerned. In the Platform for Action that came out of the Fourth World Conference on Women, States around the world recognized that the empowerment of women is a critical factor in the eradication of poverty and recommended an internal analysis, from a gender perspective, of national policies and programmes so as to promote more equitable distribution of productive assets, wealth, opportunities, income and services.<sup>383</sup>

277. Women's access to and control of economic resources also figured prominently in the global process to identify and fulfill the Millennium Development Goals. Promoting equality between the sexes and women's empowerment is one of the eight Millennium Development Goals. At the 2000 Millennium Summit, the States resolved to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable,<sup>384</sup> a goal that was reaffirmed at the 2010 Millennium Development Goal Summit.

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<sup>381</sup> CEDAW Committee, General Recommendation 21, *Equality in Marriage and Family Relations*, para. 13 (1994).

<sup>382</sup> United Nations General Assembly, *Report of the Secretary-General, World Survey on the Role of Women in Development. Women's control over economic resources and access to financial resources, including microfinance*, A/64/90, Sixty-fourth session, June 12, 2009, para. 1.

<sup>383</sup> *Report of the Fourth World Conference on Women*, Beijing, September 4-15, 1995, Chapter I, Resolution 1, Annex II, paras. 49 and 58(b).

<sup>384</sup> United Nations Millennium Declaration, Resolution 55.2, para. 20.

278. In the Quito Consensus adopted in 2007, the Latin American and Caribbean States recognized that women’s unequal access to resources in the region continued to be an obstacle to the promotion and protection of all human rights of women, and that “the elimination and reduction of political, economic, social and cultural inequalities should therefore figure among the principal objectives of all development proposals.”<sup>385</sup> In the Brasilia Consensus, adopted in 2010, the States also recognized the “feminization of poverty”, the significant contribution that women in all their diversity make to the productive and reproductive dimensions of the economy, and how economic autonomy for women is born out of the interrelationship between economic independence, sexual and reproductive rights, a life free from violence, and political parity. They pledged to adopt a number of measures in this regard.<sup>386</sup>

279. A number of these consensus documents –the outcome of global conferences- identified key elements of the States’ obligations to ensure women proper access to and control of economic resources, free of any form of discrimination, including the following:

- Formulate and implement public policies to broaden sustainable access for women to land ownership and access to water, other natural and productive resources, sanitation and other services, and financing and technologies.<sup>387</sup>
- Adopt the measures necessary for attribution of economic value to the unpaid domestic work performed by women and for enactment of legislation that extends female domestic workers the same rights as those of other workers and to establish regulations that protect them.<sup>388</sup>
- Ensure women’s access to productive assets, including land and natural resources, and access to productive credit, in both urban and rural areas.<sup>389</sup>
- Promote the economic and financial autonomy of women by means of technical assistance, by fostering entrepreneurship, associations and co-operatives and integrating women’s networks into economic and productive processes and local and regional markets.<sup>390</sup>

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<sup>385</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Quito Consensus*, August 9, 2007.

<sup>386</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>387</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Quito Consensus*, August 9, 2007.

<sup>388</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>389</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>390</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010 .

- Adopt an approach of gender, race and ethnic equality and the corresponding measures in relation to economic, fiscal and tax policy, agrarian reform, and access to ownership of land, housing and other productive assets, in order to ensure the equitable distribution of wealth.<sup>391</sup>
- Implement measures aimed at eliminating the specific constraints faced by women in accessing formal financial services, including savings, credit, insurance, and money-transfer services.<sup>392</sup>
- Empower women, in particular women living in poverty, through, inter alia, social and economic policies that guarantee them full and equal access to all levels of quality education and training and vocational training, including technical, managerial and entrepreneurial training.<sup>393</sup>
- Ensure access to education and successful schooling of girls by removing barriers and promoting supportive policies to end discrimination against women and girls in education.<sup>394</sup>
- Ensure that women benefit from policy measures to generate full and productive employment and decent work for all, and closing wage gaps between women and men, recognizing women's unpaid work, including care work.<sup>395</sup>
- Undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.<sup>396</sup>
- Develop and improve sustainable and adequate social protection and/or insurance schemes, including pension and savings schemes that meet basic minimum needs, and recognize leave periods for care-giving in the calculation of respective benefits.<sup>397</sup>
- Take action to improve the numbers and active participation of women in all political and economic decision-making processes.<sup>398</sup>

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<sup>391</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>392</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>393</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(c).

<sup>394</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(b).

<sup>395</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(d).

<sup>396</sup> See United Nations, Committee on the Status of Women, *Official Documents of the Economic and Social Council*, 2008, Supplement No. 7 (E/2008/27) Chapter I, Section A.

<sup>397</sup> See, United Nations, Committee on the Status of Women, *Official Documents of the Economic and Social Council*, 2005, Supplement No. 7 (E/2005/27 and corr.l), Chapter I, Section D, Resolution 49/08, para. 7.

<sup>398</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(f).

- Facilitate access by women to affordable microfinance, in particular microcredit, which can contribute to poverty eradication, gender equality and the empowerment of women.<sup>399</sup>
- Promote and protect women's equal access to adequate housing, property and land, including rights to inheritance.<sup>400</sup>
- Adopt appropriate constitutional, legislative and administrative measure to make it easier for women to get equal access to credit and productive resources, free of any form of discrimination.<sup>401</sup>

### 3. Priority issues

#### a. Access to resources that are the fruits of remunerated work

280. Labour markets are the means through which many women and men meet their own needs and those of their dependants and invest in the future.<sup>402</sup> Although the labour market is not the only vehicle by which resources are distributed among persons, the consensus is that it is the most important and will determine other distributions,<sup>403</sup> which is particularly relevant for low-income households.

281. During implementation of this initiative, the IACHR received pertinent information pointing up the difficulties that women across the Americas continue to encounter vis-à-vis access to and control of resources that are the fruits of remunerated work. As observed previously in this report in the section on the right to work, the sexual division of labor is still prevalent and has had a variety of consequences in terms of women's access to decent and respectable jobs.<sup>404</sup> One of the factors frequently associated with this problem is women's unremunerated reproductive functions within the home, which limit their chances of self-advancement outside the home. Even so, with a few exceptions, women's unremunerated work within the home is still not represented in either statistics or the law.<sup>405</sup> The obstacles obstructing women's entry into the labor

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<sup>399</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(j).

<sup>400</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(k).

<sup>401</sup> United Nations, General Assembly, Resolution 65/1, *Keeping the Promise: United to Achieve the Millennium Development Goals*, October 19, 2010, para. 72(l).

<sup>402</sup> World Survey on the Role of Women in Development, Women's Control over Economic Resources and Access to Financial Resources, including Microfinance 2009, Department of Economic and Social Affairs, Division for the Advancement of Women, p. 1.

<sup>403</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Aspectos económicos de la equidad de género*, Thelma Gálvez P, ECLAC - Series Mujer y desarrollo No. 35, Santiago, Chile, June 2001, p. 17.

<sup>404</sup> Meeting of experts "Discrimination against Women in the Area of Economic, Social and Cultural Rights", convoked by the Inter-American Commission on Human Rights and held in Washington, D.C., October 28, 2010.

<sup>405</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Aspectos económicos de la equidad de género*, Thelma Gálvez P, ECLAC - Series Mujer y desarrollo No. 35, Santiago, Chile, June 2001, p. 11.

market and their access to good jobs –and the remuneration that would follow- are discussed at greater length in the chapter on labor rights in this report.

282. In recent decades, one of the factors that has had the greatest impact on women's access to resources that are the fruits of remunerated work has been the steady movement towards a globally integrated economy.<sup>406</sup> This phenomenon has brought about significant changes in the modes of production and evolution of employment; in the link between the State and social structures, and in the relations between countries and the international community. These changes have had tangible consequences for every aspect of a woman's life.<sup>407</sup>

283. From the information available, it would appear that the benefits and risks of globalization have also been distributed unequally within countries. The impacts of globalization differ profoundly depending on whether they affect urban rather than rural areas, commercial farmers rather than smallholders, or men rather than women, those particularly in rural areas.<sup>408</sup> Women appear to have been disproportionately affected by the trade policies and barriers that globalization has ushered in.<sup>409</sup>

284. Among the strides identified, the IACHR observes that the free-trade policies have, in part at least, been positive for some women and have bolstered their empowerment by creating new opportunities to join the workforce and providing women the opportunity to change up the jobs they have traditionally performed and get better salaries.<sup>410</sup> Economic activity has been a crucial means by which women, particularly poor women, have gained access to the public domain and have been empowered to take on new roles.<sup>411</sup> This process itself has induced some States to adjust their laws to conform to international standards in the area of employment and human rights.

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<sup>406</sup> United Nations General Assembly, *World Survey on the Role of Women in Development Report of the Secretary-General. Women's control over economic resources and access to financial resources, including microfinance*, A/64/93, Sixty-fourth session, June 17, 2009, para. 53.

<sup>407</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Economía y Género. Bibliografía seleccionada*, Flavia Marco, ECLAC - Series *Mujer y desarrollo* No. 37, Santiago, Chile, October 2001, p. 9.

<sup>408</sup> United Nations Food and Agriculture Organization, *Gender and Development, Gender: Key to Sustainability and Food Security, Plan of Action*, Rome, Italy, 2003, p. 7. Available online at: <http://www.fao.org/docrep/005/y3969e/y3969e00.htm>

<sup>409</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montaña and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 32.

<sup>410</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montaña and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 27.

<sup>411</sup> United Nations Development Fund for Women (UNIFEM), *The Progress of the World's Women 2008/2009: Who Answers to Women? Gender and Accountability*, p. 55. Available online at: <http://www.unifem.org/progress/2008>.



285. At the same time, however, the IACHR received information indicating that globalization –particularly the liberalization of trade– has created additional disadvantages for women who were already in difficulty. Globalization tends to work to the advantage of large-scale commercial farming, to the detriment of subsistence agriculture by small farmers in low-income countries, most of whom are women. Such women already have limited access to resources, markets, training and decision-making opportunities.<sup>412</sup> The same effect has been reported in the case of products from abroad that are either inexpensive or subsidized and have destroyed the opportunities to work and earn income among small producers and small entrepreneurs in rural and urban areas.<sup>413</sup>

286. The available information has pointed up the fact that trade policies do not alter the occupational compartmentalization and gender biases that, as a rule, leave women in the least desirable jobs,<sup>414</sup> part-time work, temporary jobs and on-and-off jobs. Women are more likely to opt for jobs of this kind because they are the ones responsible for the care of family and home.

287. The IACHR also received information pointing out that the interdependence between economic and social policies frequently goes unnoticed, as does the impact of the economic crisis on women’s remunerated and unremunerated work. Because the labor market is the principal vehicle by which people become economically active and the principal source of income, the misalignments that occur in the labor market take a heavy toll on access to goods and services and the social protections

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<sup>412</sup> United Nations Food and Agriculture Organization, Gender and Development, *Gender: Key to Sustainability and Food Security, Plan of Action*, Rome, Italy, 2003, p. 7, available online at <ftp://ftp.fao.org/docrep/fao/005/y3969e/y3969e00.pdf>.

<sup>413</sup> Tamayo, Giulia, De la Cruz, Carmen and Antolín, Luisa, *Globalización y derechos económicos y sociales de las mujeres*, Jornadas Feministas Córdoba 2000. *Feminismo es ... y será. Servicio de Publicaciones Universidad de Córdoba*, Spain, 2001, pp. 261 and 262, cited in Sara Elisa Rosales, *El vínculo entre mujer, economía y pobreza*, Colección Cuadernos de Desarrollo Humano Sostenible 20, United Nations Development Programme (UNDP), Tegucigalpa, Honduras, November 2003, p. 7.

<sup>414</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montañó and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 27 [translation ours]. Experts on the subject told the IACHR that one effect of economic liberalization has been to create low-paying jobs; women sometimes work under conditions where little or no attention is paid to labor laws, social security laws or human rights laws. Here, the IACHR was told that the trend is “toward increasing women’s employment in the industrial sector and in agribusiness, under labor conditions that in many cases are violations of their rights.” Tamayo, Giulia, De la Cruz, Carmen and Antolín, Luisa, *Globalización y derechos económicos y sociales de las mujeres*, Jornadas Feministas Córdoba 2000. *Feminismo es ... y será. Servicio de Publicaciones Universidad de Córdoba*, Spain, 2001, pp. 261 and 262.

for women.<sup>415</sup> The information obtained indicates that as social services decline, unremunerated work and work in the informal sector tend to increase among women and, of course, offer little in the way of labor protections.<sup>416</sup>

288. Economic globalization and trade liberalization have brought new challenges vis-à-vis the observance of international obligations regarding women's access to remunerated work.<sup>417</sup> The States have a duty to redirect the current development model, so that it makes the well-being of persons the centerpiece of its priorities, taking into account their gender, ethnic origin and social condition; the States must constantly evaluate the different impacts and effects that the macroeconomic policies implemented in the countries of the region have on women.<sup>418</sup>

**b. Access to credit and to other financial services**

289. The available information suggests that the improvement in women's economic circumstances through access to financial resources enables them to design, expand, diversify and improve their life plan. Certain financial services are particularly important for women in order to facilitate their access to and control of resources, such as credit, savings and money transfers.

290. The Commission received information suggesting that women's access to formal financial services is very inadequate in most countries of region, and that they continue to have difficulty getting credit.<sup>419</sup> Generally speaking, women receive less credit

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<sup>415</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *La crisis económica y financiera. Su impacto sobre la pobreza, el trabajo y el tiempo de las mujeres*, Sonia Montaña and Vivian Milosavljevic, ECLAC - Series *Mujer y desarrollo* No 98, Santiago, Chile, February 2010, p. 23. Social protection refers to the policy measures and programs that alleviate poverty and vulnerability, protect workers and reduce people's exposure to the risks associated with poor health, disability, old age, and unemployment. While most countries offer some type of social insurance for the elderly, few cover everyone, irrespective of their employment history.

<sup>415</sup> United Nations Development Fund for Women (UNIFEM), *Gender Justice: Key to Achieving the Millennium Development Goals*, UNIFEM, p. 10. Available online at <http://www.ungei.org/resources/files/MDGBrief-English.pdf>

<sup>416</sup> Tamayo, Giulia, De la Cruz, Carmen and Antolín, Luisa, *Globalización y derechos económicos y sociales de las mujeres*, Jornadas Feministas Córdoba 2000. Feminismo es ... y será. Servicio de Publicaciones Universidad de Córdoba, Spain, 2001, pp. 261 and 262.

<sup>417</sup> For example, in its response to the questionnaire, Jamaica told the IACHR that the conditions of the global economy have posed serious challenges for the Jamaican economy and for its chances of accomplishing its own gender-equity goals.

<sup>418</sup> Presentation by Cecilia Estrada, Executive Director of the *Instituto de Formación Femenina Integral* (IFFI) and Bolivia's Coordinator of Women's Issues, at the hearing on the "Discrimination against Women in the Exercise of their Economic and Social Rights in the Americas." Inter-American Commission on Human Rights, 140th regular session, October 26, 2010, Washington, D.C.

<sup>419</sup> Economic and Social Council, *Review of the implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General Assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals. Report of the Secretary-General*, February 8, 2010, para. 32. Available online at: <http://www.pes.org/fr/system/files/UN-doc-PES-Women.pdf>

and in smaller amounts than men.<sup>420</sup> The available information also reveals that the studies and evaluations done on this issues are limited in scope and only provide gender-disaggregated information on levels of participation and amounts awarded, without explaining why women are left at a disadvantage.<sup>421</sup>

291. The IACHR observes that one reason why women have difficulty getting credit is that no laws or policies are in place that specifically promote equality of opportunity<sup>422</sup> and whose language takes account of the differences between men and women in respect to their credit needs and the conditions they must meet to get credit.<sup>423</sup> Furthermore, the information received suggests that banks and commercial institutions – most of which are in the private sector in this region- tend to demand rigorous conditions and terms before granting credit, terms and conditions that many women cannot meet. And so women have difficulty qualifying for loans because their work is not considered “income producing” in the market and they do not own property that they can offer as collateral.<sup>424</sup> On the positive side, the IACHR was told about the creation of Venezuela’s Women’s Development Bank (BANMUJER) in 2001 and its practice of granting credit and loans to women. Bolivia’s BancoSol has programs for low-income women. The Commission is urging the States to examine, from a gender perspective that takes the users’ specific needs into account, the practices followed by banks and commercial institutions in granting credit.

292. Another factor explaining why women have difficulty getting credit are cultural practices and stereotypes the limit women’s access to resources of this type.<sup>425</sup> Experts on the subject told the IACHR that in several countries of the region, women face additional obstacles, as they must have authorization from their partners in order to apply

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<sup>420</sup> For example, Ecuador found that women get less access to credit than men do, and the amounts they receive are considerably less than what they ask for and what men receive. Ecuador’s reply to the questionnaire on “Forms of Discrimination that Restrict Women’s Full Exercise of their Economic, Social, and Cultural Rights”, which the IACHR sent out in May 2010. Jamaica’s response to the questionnaire states that a study conducted on the subject of lending to women found that although women represent two thirds of the number of small businesses (65%), they receive a little less than half of government loans (49%). In the micro sector, women receive 62% of the smallest loans, but their percentage share drops as the size of the loan increases, which is indicative of their limited ability to qualify for larger loans.

<sup>421</sup> Zúñiga Eaglehurst, Muriel, *Acceso al crédito de las mujeres en América Latina*, ECLAC/GTZ Project “Gender-oriented Labour Market Policy”, Santiago, Chile, March 2004, p. 32.

<sup>422</sup> Ballara, Marcela, *et al.*, *Policies to strengthen the contribution of women to agriculture and food security*, Inter-American Institute for Cooperation on Agriculture IICA, October 2010, San José, Costa Rica, p. 11

<sup>423</sup> Guatemala’s reply to the questionnaire.

<sup>424</sup> Ballara, Marcela, *et al.*, *Policies to strengthen the contribution of women to agriculture and food security*, Inter-American Institute for Cooperation on Agriculture IICA, October 2010, San José, Costa Rica, p. 11. For example, Jamaica told the IACHR that access to credit is limited by a lack of mobility, illiteracy, and lack of resources among poor women; there is also a presumption that poor women are not credit-worthy.

<sup>425</sup> Jamaica told the IACHR that Jamaican law and traditions have created obstacles to women’s financial independence. Although Jamaican women can be property owners, the stereotypes restrict women’s access to land and they find it difficult to get mortgages.

for loans.<sup>426</sup> Other obstacles that many women come up against when applying for credit are complex procedures, a lack of information, the cost of the financial transactions, and the fact that household and job responsibilities leave women little time to go through the process of applying for a loan.

293. The IACHR applauds the fact that in various States of the region, women's access to credit has improved thanks to microcredit programs,<sup>427</sup> which have been a common response to women's lack of access to formal financial services and an important instrument in women's economic empowerment. The information available points out that "informal lending agencies address the particular needs of women micro-entrepreneurs, providing them with easy access to and control of income-producing resources. The services offered are suited to the activities in which women engage, and for the most part ask for group or personal collateral, offer repayment terms that keep pace with the increase in the microentrepreneurs' income, and provide permanent attention."<sup>428</sup> The IACHR is urging the States to develop microfinance programs that especially take into account the situation of women living in poverty and those living in remote and rural areas, who tend to have even more difficulty securing loans.

294. Women, especially poor women, need access not only to microcredit but also to a broader range of formal financial services, including savings, insurance, money transfers and advisory services.<sup>429</sup> Also, the efforts must work to promote women's empowerment. The IACHR was told about a number of efforts underway in the countries of the region to tackle this problem. Venezuela is a good example, as it has established BANMUJER, a lending institution targeted at women producers and entrepreneurs, its purpose being to extend microcredit and to be instrumental in creating microenterprise and cooperatives. It also provides advice and training for developing investment projects and other activities aimed at women's economic independence and empowerment.<sup>430</sup>

295. The IACHR is urging the States to regulate the financial system to ensure that women's needs and their repayment capacities are given more weight than physical collateral; that lending requirements are loosened up to allow for group or collective

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<sup>426</sup> IACHR, Hearing convened at the Commission's own initiative, "*Discrimination against Women in the Exercise of their Economic and Social Rights*," 140th regular session, October 26, 2010.

<sup>427</sup> Jamaica, for example, told the IACHR that the government has made more funds available for loans to micro-, small-, and medium-sized businesses in the vulnerable sectors, loans that can be made to women and their families. Some programs have even financed as much as 60% of the total, while in other cases the figure has been as high as 76.1%. Jamaica's reply to the questionnaire on "Forms of Discrimination that Restrict Women's Full Exercise of their Economic, Social, and Cultural Rights", which the IACHR sent out in May 2010.

<sup>428</sup> Zúñiga Eaglehurst Muriel, *Acceso al crédito de las mujeres en América Latina*, ECLAC/GTZ Project "Gender-oriented Labour Market Policy", Santiago, Chile, March 2004, p. 33.

<sup>429</sup> Economic and Social Council, *Review of the implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General Assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals. Report of the Secretary-General*, February 8, 2010, para. 39. Available at: <http://www.pes.org/fr/system/files/UN-doc-PES-Women.pdf>.

<sup>430</sup> Venezuela's reply to questionnaire.

collateral; that data is disaggregated by sex, race and ethnicity, and that systems of indicators are established to monitor the progress that financial systems have made in terms of the clients being served; procedures for securing loans should be reviewed, and the high costs associated with financial transactions reduced.

### c. Access to land

296. Women's access to and control of land and productive resources contributes to their empowerment and improves their bargaining position within the home and in their community. The right to own property can give women a "backup position".<sup>431</sup> But, when women are denied equal property rights, their social, economic and political status can also decline.<sup>432</sup> Giving women greater access to land can have multiple benefits for themselves, their families and their communities, both in the form of productivity gains and welfare benefits, which include the health and education of their children.<sup>433</sup>

297. It has been reported that in no country in this region do women and men have equal access to land resources.<sup>434</sup> Studies in many parts of the world show that gender inequality is substantial for women.<sup>435</sup> In the Americas, however, little data is available that factors in the gender variable. The information compiled suggests that the existing statistics on the subject are unreliable, and that occasionally one can only infer what percentage of the principal farmers working farm holdings are women.<sup>436</sup> The fact that so few countries of the region have compiled data disaggregated by sex, showing which member of the family is the legal owner of the land, is indicative of the lack of attention given to the question of land ownership and its distribution by gender.<sup>437</sup>

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<sup>431</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Entender la pobreza desde la perspectiva de género*, ECLAC - Series Mujer y desarrollo No. 53, Santiago, Chile, January 2004, p. 30.

<sup>432</sup> United Nations, *Women's Role in Agriculture and in Rural Welfare: Access to Land and Resources*, Lastarria-Cornhiel, Susana, United Nations Division for the Advancement of Women, United Nations Economic Commission for Europe, United Nations Development Programme, Expert Group Meeting on "The impact of the implementation of the Beijing Declaration and Platform for Action on the achievement of the Millennium Development Goals", United Nations Office at Geneva, EGM/BPFA-MDG/2009/EP.1, 3 November 2009, p. 3.

<sup>433</sup> United Nations General Assembly, *Women's control over economic resources and access to financial resources, including microfinance, World Survey on the Role of Women in Development*, A/64/93, Sixty-fourth session, June 17, 2009, para. 178.

<sup>434</sup> United Nations Food and Agriculture Organization (FAO), *Rural women's access to land in Latin America*, Available online at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm)

<sup>435</sup> United Nations General Assembly, *Women's control over economic resources and access to financial resources, including microfinance, World Survey on the Role of Women in Development*, A/64/93, Sixty-fourth session, June 17, 2009, para. 181.

<sup>436</sup> Deere, Carmen Diana and León, Magdalena, *Methodological Problems Involved in Measuring the Distribution of Land Ownership by Gender*, in "The Gender Asset Gap: Land in Latin America", *World Development*, Vol. 31, No. 6, June 2003: 925-947 (Page 4).

<sup>437</sup> For example, one study on access to land in Honduras, conducted by the UNDP, found that gender-disaggregated figures on property ownership are virtually non-existent. Sara Elisa Rosales, *El vínculo entre mujer, economía y pobreza*, Colección Cuadernos de Desarrollo Humano Sostenible 20, United Nations Development Programme (UNDP), Tegucigalpa, Honduras, 2003, p. 15. Moreover, according to information supplied by Peru, the 2005 census in that country found that 74% of women living in rural areas were engaged in agriculture;

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298. A number of challenges in the countries of the region require priority attention in order to ensure that women have access to and control of land. According to the replies received from various States, one of the main reasons why women continue to be assigned a secondary role as landowners<sup>438</sup> are the discriminatory customs that prevent them from taking *de facto* possession of the land and other productive assets<sup>439</sup> and the fear of changing relations within the family and deviating from the cultural norms that identify men with property ownership.<sup>440</sup>

299. The IACHR observes that in many countries women do not control the land that they depend upon for their livelihood. This happens even in countries where the laws guarantee the right to land.<sup>441</sup> Even though formal recognition of women's rights to access to and control over resources is progress, the amendments introduced in the laws do not necessarily translate into "real rights," given the resilience of long-standing social norms favoring men's rights in land.<sup>442</sup>

300. The United Nations Food and Agriculture Organization (FAO) identified a number of institutional obstacles hindering women's access to land, among them a lack of tools designed with a gender perspective to strengthen women's role as producers; the lack of updated surveys disaggregated by gender; the relative lack of personnel in the agrarian sector who are aware of the gender perspective; the unavailability of precise statistics reflecting the true contribution of women to the agricultural sector; and the lack of programs ensuring men's and women's equal participation in the production process and access to productive resources.<sup>443</sup>

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although the total number of individual women farmers recorded in the 2005 census had, on average, a plot of land, only 4.7% of them had duly registered property titles. Peru's reply to the questionnaire on "Forms of Discrimination that Restrict Women's Full Exercise of their Economic, Social, and Cultural Rights," which the IACHR sent out in May 2010.

<sup>438</sup> The Plurinational State of Bolivia, for example, told the IACHR that "the resources and assets required for production and productivity are still not accessible to most rural and indigenous women, because their talents as producers are not appreciated; [they are precluded] from the mechanisms for gaining access to land, credit, technology, technical assistance, technical and productive training and other factors like inheritance, more because of uses and customs than the law."

<sup>439</sup> Jamaica, for example, told the IACHR that there are a number of obstacles that women must overcome to gain access to land: laws that clash with traditional and religious land systems, which do not reflect the local reality; cultural norms and practices; government policies that exclude or marginalize women when it comes to distributing land; and the biased application of gender-neutral laws.

<sup>440</sup> United Nations General Assembly, *Women's Control over Economic Resources and Access to Financial Resources, including Microfinance, World Survey on the Role of Women in Development, A/64/93*, Sixty-fourth session, June 17, 2009, para. 188.

<sup>441</sup> See, <http://www.ungei.org/resources/files/MDGBrief-English.pdf>, p. 9.

<sup>442</sup> United Nations General Assembly, *Women's Control over Economic Resources and Access to Financial Resources, including Microfinance, World Survey on the Role of Women in Development, A/64/93*, Sixty-fourth session, June 17, 2009, para. 188.

<sup>443</sup> United Nations Food and Agriculture Organization (FAO), *Rural women's access to land in Latin America*, Available online at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm).

301. The IACHR also received information about other types of obstacles that limit women's access to and control of land, such as the failure to register as the property owner and to get formal title to the land because of a lack of information about the legal procedures to be followed; the lack of identification papers;<sup>444</sup> and the bureaucracy, inefficiency and prohibitive cost of the procedures.<sup>445</sup> In some countries, the property deed is made out in name of the person who files the claim and, as a general rule, it is the man who presents himself at the appropriate office, both for cultural reasons and because, under the civil code in some countries, it is the man who represents the home.<sup>446</sup>

302. Finally, the Commission was informed that with the free market and globalization, large tracts of land have been privatized. This has had effects on men and women in the region. However, it has taken a disproportionate toll on women, given their precarious circumstance and the lack of social policies to address their needs according to the roles they play in society.<sup>447</sup>

303. Because assets have for so long been concentrated in men's hands, greater efforts will have to be deployed to change social norms and thereby narrow the gap between *de jure* and *de facto* gender equality.<sup>448</sup> This is critical to an egalitarian and equitable distribution of property and to achieve full gender justice from a human rights perspective. The IACHR applauds the efforts of some States, like Ecuador<sup>449</sup> and Bolivia,<sup>450</sup> where women's right to property is recognized in the constitution. It also applauds their efforts to institute the practice of joint certification of conjugal property,<sup>451</sup> and to

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<sup>444</sup> According to Bolivia, despite the fact that it has undertaken a policy to distribute land to women, the State is still facing the challenge of increasing the number of women who have identification papers.

<sup>445</sup> IACHR, Hearing convened by the IACHR at its own initiative, "*Discrimination against Women in the Exercise of their Economic and Social Rights*," 140th regular session, October 26, 2010.

<sup>446</sup> United Nations Food and Agriculture Organization (FAO), *Rural women's access to land in Latin America*, Available online at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm)

<sup>447</sup> IACHR, Hearing convened by the IACHR at its own initiative, "*Discrimination against Women in the Exercise of their Economic and Social Rights*," 140th regular session, October 26, 2010.

<sup>448</sup> De León, Magdalena, *La propiedad como bisagra para la justicia de género*, Panel 3: Women's economic empowerment: access to technologies and to productive and financial assets, XI Session of the Regional Conference on Women in Latin America and the Caribbean, Brasilia, July 13 to 16, 2010, p. 7.

<sup>449</sup> Article 324 of the Constitution reads as follows: "The State shall guarantee equal rights and opportunities to women and men in access to property and in making decisions concerning the administration of conjugal property."

<sup>450</sup> Art. 395: *Distribution shall be in accordance with the policies on sustainable rural development and on women's right to access to, distribution and redistribution of land, without discrimination based on marital status or conjugal union.* Article 401: *The State has an obligation (...) to promote policies aimed at eliminating any form of discrimination against women in their access, tenure and inheritance of land.* There is also a body of secondary norms: laws and decrees that elaborate upon this right.

<sup>451</sup> In Guatemala, the land sale program run by the State through a mortgage bank requires that joint property titles be issued, showing the name of the wife and the husband. For a more lengthy discussion see, United Nations General Assembly, *Women's control over economic resources and access to financial resources, including microfinance*, *World Survey on the Role of Women in Development*, A/64/93, Sixty-fourth session, June 17, 2009, para. 194.

eliminate the rule requiring the husband's consent in matters pertaining to ownership of land,<sup>452</sup> all with a view to making women equal partners in decisions of this type. The IACHR welcomes this information, which shows that in recent years, government policies on land distribution and redistribution have been set in motion; these are positive measures aimed at overcoming women's long-standing inequality in access to property and effective control of the land.<sup>453</sup>

304. Throughout much of the XX century in Latin America, land reforms were introduced, in a variety of circumstances and contexts.<sup>454</sup> In general terms, these land reforms were in the form of programs that distributed the land of large landholders to estate workers and tenants, members of cooperatives or individual farmers.<sup>455</sup> The various agrarian laws provided that the land was being expropriated for the sake of social justice or in the national interest.<sup>456</sup>

305. The information obtained shows that in the Latin American countries the family was taken as the reference for the farm unit, and the head of household was regarded as the direct beneficiary of agrarian reform measures and strategies,<sup>457</sup> in societies where gender stereotypes and prejudices assigned women the role of reproduction and men the role of head of household. Various experts point out that the general conclusion to be drawn from the experience in Latin America is that rural women were left out of these benefits.<sup>458</sup> However, in the years that followed, some agrarian laws

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<sup>452</sup> For a more general analysis, see, Economic and Social Council, *Review of the implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General Assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals. Report of the Secretary-General, February 8, 2010, para. 29. Available at: <http://www.pes.org/fr/system/files/UN-doc-PES-Women.pdf>*

<sup>453</sup> Information supplied during the presentation by Cecilia Estrada, Executive Director of the *Instituto de Formación Femenina Integral* (IFFI) and Bolivia's Coordinator of Women's Issues, concerning the policy now in effect in Bolivia, which presentation was given during the hearing on "Discrimination against Women in the Exercise of their Economic and Social Rights," Inter-American Commission on Human Rights, 140th regular session, October 26, 2010, Washington D.C.

<sup>454</sup> "Although most countries of the region have carried out some kind of agrarian reform, radical changes in the structure of land tenure were only effective in Bolivia, Cuba, Chile, Mexico, Nicaragua and Peru." United Nations Food and Agriculture Organization (FAO), *Rural Women's Access to Land in Latin America*, Available at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm)

<sup>455</sup> United Nations, *Women's Role in Agriculture and in Rural Welfare: Access to Land and Resources*, Lastarria-Cornhiel, Susana, United Nations Division for the Advancement of Women, United Nations Economic Commission for Europe, United Nations Development Programme, Expert Group Meeting on "The impact of the implementation of the Beijing Declaration and Platform for Action on the achievement of the Millennium Development Goals", United Nations Office at Geneva, EGM/BPFA-MDG/2009/EP.1, 3 November 2009, p. 5.

<sup>456</sup> Deere, Carmen Diana, *et al*, *Género, Propiedad y Empoderamiento: tierra, Estado y mercado en América Latina*, TM Editores, UN Facultad de Ciencias Humanas, Género, Mujer y Desarrollo, Bogotá Colombia, 2000, p. 86.

<sup>457</sup> United Nations Food and Agriculture Organization, *Rural Women's Access to Land in Latin America*, available at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm)

<sup>458</sup> Researchers have found that the purpose of these reforms was to benefit peasant families. "However, because they assumed that the process was gender-neutral, the process ended up being biased and benefitted mainly the male heads of household (...) As a result, women's participation in these processes ranged  
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recognized women's equal right to be beneficiaries in the agrarian reform process.<sup>459</sup> For example, in the 1990s, a number of new agrarian codes abolished the concept of 'male head of household' as the principal beneficiary of the State-run land distribution and deeding programs.<sup>460</sup>

306. Finally, where land acquisition is concerned, women continue to have fewer chances of successfully competing as buyers on the real estate market.<sup>461</sup> The IACHR was informed that one explanation is the income difference between men and women, a function of their opportunities for employment and the pay they receive in rural areas. In the agricultural market, men are permanent workers and women are temporaries; even in cases where men and women are performing the same job, women are likely to receive less pay. These factors affect women's savings capacity and, by extension, their participation as buyers on the land market.<sup>462</sup>

307. During the meetings of experts organized as part of this project, the IACHR was told that most women do not own property that can be used as collateral, with the result that they cannot qualify for the bank loans that would enable them to acquire more land, housing or other property. UNIFEM - now part of UN Women - observes that without land to put up as collateral, women often cannot access other financial services like insurance and savings accounts, which would enable them to accumulate assets and mitigate poverty.<sup>463</sup>

#### **d. Access to and control of inherited resources**

308. One issue raised by various sectors during this project's implementation was inheritance as an important vehicle for women's access to land, housing and other economic resources. However, the IACHR received information about various forms of

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from insignificant or low, to a maximum of one third of the beneficiaries." Deere, Carmen Diana, *et al*, *Género, Propiedad y Empoderamiento: tierra, Estado y mercado en América Latina*, TM Editores, UN Facultad de Ciencias Humanas, Género, Mujer y Desarrollo, Bogota Colombia, 2000, p. 128.

<sup>459</sup> For example, Mexico's 1971 agrarian reform law was a pioneer in this area, as it provided that the future beneficiaries would be men or women who were Mexicans by birth.

<sup>460</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Las Prácticas de Herencia de Tierras Agrícolas: Una razón más para el éxodo de la juventud?*, Martine Driven, ECLAC – Series No. 135 Desarrollo Productivo, Santiago, Chile, December 2002, p. 27.

<sup>461</sup> De León, Magdalena, *La propiedad como bisagra para la justicia de género*, Panel 3: Women's economic empowerment: access to technologies and to productive and financial assets, XI Session of the Regional Conference on Women in Latin America and the Caribbean, Brasilia, July 13 to 16, 2010, p. 9.

<sup>462</sup> De León, Magdalena, *La propiedad como bisagra para la justicia de género*, Panel 3: Women's economic empowerment: access to technologies and to productive and financial assets, XI Session of the Regional Conference on Women in Latin America and the Caribbean, Brasilia, July 13 to 16, 2010, p. 9.

<sup>463</sup> <http://www.ungei.org/resources/files/MDGBrief-English.pdf>, p. 9. Panama told the IACHR the following: "The land tenure system makes access to credit conditional upon this asset. Because of this and the traditional concepts of gender, just 6.7% of farm credit goes to women. The vast majority of loans (92.3%) go to men."

discrimination at law and in practice that obstruct women's exercise of their rights in this area.

309. Regarding the right of inheritance, in the event of death or desertion by the husband or companion, agrarian laws and civil codes do not fully and unconditionally recognize the right of a married woman or common-law wife to inherit land. Furthermore, under some laws –as in the case of Cuba, Honduras and Nicaragua- in the event of a land reform beneficiary's death, inheritance of the land parcels so awarded falls to the surviving spouse or companion. In those countries, however, a woman who lives with her companion may benefit from the reform as long as her relationship is recognized by a competent authority. Unfortunately –according to what the IACHR learned- few couples go through such a formality.<sup>464</sup> More generally, while some marital property regimes are based on recognition of the equal contributions of each spouse to the marital assets, irrespective of whether employment outside the home is undertaken, and thus allow testamentary disposition of only half the marital property, other regimes are not so protective of the spouse who works inside the home, traditionally the wife. In such regimes, the wife may lose most or all of the marital property upon the death of the husband.

310. As for inheritance by descendants, the information the IACHR compiled indicates that there is no law in any Latin American country that draws a distinction between men and women.<sup>465</sup> According to research done on the subject, the legal tradition in the region is that all legitimate sons and daughters inherit equally from their parents if the deceased has not left a will,<sup>466</sup> which suggests a trend toward more equal treatment of brothers and sisters. Nevertheless, the IACHR received information indicating that in some peasant societies, where land's value is not measured in just economic terms, the inheritance systems give priority to the elder or younger son, in order to ensure that the family asset remains in the family and to ensure the security of the elderly parents.<sup>467</sup>

311. The Commission learned of other practices that point to inequalities between men and women based on gender stereotypes. An example is the practice of bilateral inheritance where both the sons and daughters inherit from both parents in more

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<sup>464</sup> United Nations Food and Agriculture Organization (FAO), *Rural Women's Access to Land in Latin America*, available at: [http://www.fao.org/sd/2001/PE0601a\\_en.htm](http://www.fao.org/sd/2001/PE0601a_en.htm)

<sup>465</sup> The International Bank for Reconstruction and Development / The World Bank, *Women, Business and the Law. Measuring Legal Gender Parity for Entrepreneurs and Workers in 128 Economies*, Washington, D.C. 2010.

<sup>466</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Las prácticas de herencia de tierras agrícolas: ¿una razón más para el éxodo de la juventud?*, Martine Dirven, ECLAC – Series 135 Desarrollo Productivo, Santiago, Chile, December 2002, p. 27.

<sup>467</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Las prácticas de herencia de tierras agrícolas: ¿una razón más para el éxodo de la juventud?*, Martine Dirven, ECLAC – Series 135 Desarrollo Productivo, Santiago, Chile, December 2002, p. 27.

or less equal parts, although the sons tend to fare better in terms of the size and quality of the parcel they inherit.<sup>468</sup>

**e. Married women's access to and control of resources**

312. Many married women throughout history have encountered constraints on their access to their own resources and conjugal property. In the *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, the Commission found that:

certain countries possess, in greater or lesser measure, laws that restrict and/or discriminate against the civil rights of women in marriage with respect to the administration of assets of each spouse or other types of assets; in representation of the conjugal home or head of household; in the exercise of parental authority; in establishing the conjugal domicile, or the possibility of remarriage; in the need for express or tacit authorization of the husband to work and open a business; or in the right to ownership of property.<sup>469</sup>

313. In the same report, the IACHR recommended that the States “eliminate the serious restrictions placed on women as a result of the conferral of conjugal representation or head of household status on the husband, and the limitation of the role of women to the domestic sphere. These restrictions include: the authority of the husband to prevent his wife from exercising a profession or trade, or operating a business, when that is considered to be harmful to the interests and care of the children and other domestic obligations; the designation of the husband as administrator of conjugal assets (...).”<sup>470</sup>

314. As previously observed, in its decision on the merits of the case of *Maria Eugenia Morales de Sierra*, the IACHR established violations of articles 1, 2, 17 and 24 of the American Convention, by virtue of the fact that the provisions of Guatemala's Civil Code concerning domestic relations assigned certain responsibilities exclusively to the husband, by virtue of his role as provider, while the woman, as wife, bore exclusive responsibility for the care of the children and the home. The Commission's finding was that far from ensuring the “equality of rights and adequate balancing of responsibilities” within marriage, the provisions in question institutionalized imbalances in the rights and

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<sup>468</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Las prácticas de herencia de tierras agrícolas: ¿una razón más para el éxodo de la juventud?*, Martine Dirven, ECLAC – Series 135 Desarrollo Productivo, Santiago, Chile, December 2002, p. 28.

<sup>469</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998. Conclusions. Analysis of the information received from the member states and nongovernmental organizations.

<sup>470</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998. Recommendations.

duties of the spouses.<sup>471</sup> The Commission also expressed its concern over the serious consequences of discrimination against women and the stereotyped notions of their roles in their access to and control of economic resources within marriage and the exercise of other women's rights.<sup>472</sup> It underscored the link between women's right to live free from violence and their right to live free of constraints on their access to and control of economic resources within the institution of marriage.

315. The laws governing marriage and inheritance must be amended to comport with the principle of equality and nondiscrimination against women. The law plays a critical role in determining women's access to land, housing and other types of property.<sup>473</sup> It also determines how well the women will fare in the event of their husband's death or the dissolution of the marriage.<sup>474</sup>

316. According to the information the IACHR received, in most Latin American countries the system used is the participation-of-profits regime in which any property acquired by the couple during marriage (wages, returns, earnings, and so on) are the couple's common property.<sup>475</sup> Under the participation-of-profits regime, the property acquired before marriage or inherited after marriage is controlled by the spouse who acquired or inherited it, and upon dissolution of the marriage the profits are divided up according to what each spouse contributed to the common property.<sup>476</sup>

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<sup>471</sup> IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44. Under Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, States Parties shall take all appropriate measures to ensure equal rights to men and women in all matters relating to marriage and family relations, in particular with respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

<sup>472</sup> IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 39. Ultimately, the State of Guatemala amended the corresponding provisions of the Civil Code to introduce equal legal recognition of the reciprocal duties of both spouses within marriage, and reformulated the corresponding articles of the Civil Code so that domestic law would comport with the provisions of the American Convention and to give effect to the rights and freedoms that the American Convention guarantees to María Eugenia Morales de Sierra.

<sup>473</sup> United Nations, *2009 World Survey on the Role of Women in Development, Women's Control over Economic Resources and Access to Financial Resources, including Microfinance*, Department of Economic and Social Affairs, Division for the Advancement of Women, United Nations, New York, 2009, p. 43.

<sup>474</sup> United Nations General Assembly, *Women's Control over Economic Resources and Access to Financial Resources, including Microfinance, 2009 World Survey on the Role of Women in Development*, A/64/93, Sixty-fourth session, June 17, 2009, para. 185.

<sup>475</sup> Deere, Carmen Diana and León, Magdalena, *Methodological Problems Involved in Measuring the Distribution of Land Ownership by Gender*, in *"The Gender Asset Gap: Land in Latin America"*, *World Development*, Vol. 31, No. 6, June 2003: 925-947. (p. 6). The main exceptions in Latin America are Costa Rica, Honduras and Nicaragua, where the legal system in marriage is division of property, and El Salvador where the system is one of absolute community property, in which property acquired prior to marriage or inherited after marriage becomes part of the community property.

<sup>476</sup> The Commission has learned that "[i]n much of Latin America, however, the implicit recognition of women's contributions through domestic labour ensures that, with the dissolution of their marriage, they retain their own individual property as well as half of the common property." United Nations General Assembly, *Women's Control over Economic Resources and Access to Financial Resources, including Microfinance, 2009 World Survey on the Role of Women in Development*, A/64/93, Sixty-fourth session, June 17, 2009, para. 186. The Commission applauds the fact that Jamaica introduced amendments to the law to recognize that the management  
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317. Recently, the IACHR expressed concern over the situation in Chile, where the property regime is such that unless a woman contracting marriage states otherwise, her husband will be the head of the conjugal partnership, under the so called *regimen de la sociedad conyugal*.<sup>477</sup> Under this system, the husband is the head of the partnership, with extensive authorities as sole administrator of his own property, the common property and the property of his wife.<sup>478</sup>

318. In the case of Sonia Arce Esparza (Chile),<sup>479</sup> filed with the IACHR, the petitioners argued that various articles of Chile's Civil Code concerning spousal rights and obligations in the administration of property under the conjugal partnership regime, were in violation of various articles of the American Convention. The petition was declared admissible in respect of articles 1, 2, 17, 21, 24 and 25 of the American Convention.<sup>480</sup> The IACHR appreciates the fact that in April 2007, the Executive Branch made the bill to amend those articles of the Civil Code a matter of urgency, in compliance with the Friendly Settlement Agreement signed in this case during the Commission's 127th session. In that friendly settlement, the State agreed to amend the legislation then in force to bring it in line with its international obligations of nondiscrimination against women, so that each spouse would be accorded equal rights and obligations. Thus far, however, that bill has not been approved and adopted into law, which perpetuates the discrimination that Chilean women suffer in the family.

319. As was highlighted in the Report on the Situation of the Rights of Women in Chile,<sup>481</sup> the IACHR is deeply troubled by the slow passage of the bills agreed to under the Friendly Settlement and feels compelled to insist that the Executive Branch and the Legislature should cooperate on approval and passage of these bills. Measures must be taken to expedite the approval process, which includes the crafting of multi-sector, preventive public policies, the pertinent regulations, an appropriation sufficient to

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of the household and performance of household duties can be regarded as a contribution towards the acquisition of property during marriage, determined by the contribution that each spouse makes towards acquisition of the property and in accordance with his or her intentions. For its part, Trinidad and Tobago reported that persons living together in *de facto* unions have the right to petition the Superior Court to decide the ownership of property in the event of dissolution of the union. Replies received from Jamaica and Trinidad and Tobago to the questionnaire.

<sup>477</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009.

<sup>478</sup> At the present time, a woman does not independently control her own property, property she owned before being married; nor does she independently control 50% of the conjugal partnership and the inheritances, legacies and donations made to her.

<sup>479</sup> IACHR, Report No. 59/03, Petition 71/01, *Sonia Arce Esparza* (Chile), October 10, 2003.

<sup>480</sup> IACHR, Report No. 59/03, Petition 71/01 *Sonia Arce Esparza* (Chile), October 10, 2003.

<sup>481</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009.

implement the law and its regulations properly, and measures to train public officials and heighten their awareness of the issue.<sup>482</sup>

320. In their replies to the questionnaire, a number of Latin American and Caribbean states and Canada described the measures they had taken to amend their laws so as to prohibit gender-based discrimination against women and to recognize the equality of the spouses within marriage. Changes have been introduced to recognize the authority of both spouses to enter into contracts and freely administer each one's own property, and to allow both spouses to administer the community property or to elect an administrator by mutual agreement to manage the community property.<sup>483</sup>

**f. Access to secure housing**

321. Women's access to secure housing enhances their independence and economic security. Being the owner of housing can also offer a woman protection in the event of divorce, separation or her husband's death, and improves her bargaining position inside the home and elsewhere, in her community, and in her society.

322. Various sources have observed that housing can also be a factor in the ability to find and keep a job, since poor physical accessibility makes it difficult for women to get to their place of work. The same is true of women's access to places of study or health care services. Housing is not just a place to live; it also represents a potential workplace or place to earn income; it can be put up as collateral for a mortgage, and can be disposed of in the event of an emergency.

323. The IACHR was informed that many women throughout the Americas do not have access to adequate housing. Women's right to secure housing is more than just having a roof over their head; it includes their right to life free from violence and in security, peace, and dignity.<sup>484</sup>

324. For a full understanding of the right to adequate housing –and of the obligations the States bear in this area- one must also understand what women who are

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<sup>482</sup> IACHR, *Report on The Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 95.

<sup>483</sup> In some cases, such as Guatemala, the law was amended to expressly recognize the State's international obligation under international human rights instruments, including the United Nations Convention for the Elimination of All Forms of Discrimination against Women. In the case of Panama, the Family Code includes a provision to the effect that any stipulation contrary to law or good custom, or that limited the spouses' equal rights and duties, would be considered null and void.

<sup>484</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 4*, para. 8. According to the Committee, in order for a shelter to constitute adequate housing, it must offer legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy. In addition to the seven criteria that the Committee established, the Special Rapporteur has identified nine additional elements of adequate housing, which he applies consistently in his work, one of which is freedom from violence against women. Commission on Human Rights, *Women and adequate housing*, Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, E/CN.4/2006/118, 62<sup>nd</sup> session, February 27, 2006, para. 11.

victims of violence inside the home experience. If one's housing is adequate, that means that the occupants are living in security, peace and dignity; situations where those conditions are not present are contrary to the legal interpretation of the law and a violation of it.<sup>485</sup> The lack of adequate housing can expose a woman to various forms of violence and, conversely, violence against women can lead to the violation of women's rights to adequate housing.<sup>486</sup> For example, a study conducted in Argentina, Brazil and Colombia found that economic dependence and not having a place to live except the home shared with the aggressor is one of the main reasons why more women are unable to break away from violent relationships.<sup>487</sup>

325. The IACHR received information from a variety of sources about the critical factors that affect a woman's right to adequate housing in the countries of the region. One of the main factors is that women have less access to the formal labor market; another is the salary gap. The result is that women have less chance of acquiring adequate housing. In many cases, the problem is insecurity of tenure because the woman does not have title to the property; other problems include the lack of land tenure, regulations, and bureaucratic obstacles and requirements that limit women's access to housing programs. Other structural problems identified include cultural and traditional practices that discriminate against women, and the increase in poverty and unemployment.

326. The IACHR is troubled by the information received concerning the lack of adequate laws to protect women's equal rights to housing, land and property and the lack of policies to ensure that credit and housing subsidies are available to women. A decisive factor in the lack of adequate housing for women has been their scant involvement in monitoring and controlling the processes through which housing policy is made. The Commission is also concerned about the more precarious situation of indigenous and Afro-descendant women and girls, and other groups of women who encounter additional difficulties in accessing housing because of the structural discrimination they endure.<sup>488</sup>

327. Furthermore, as the majority of the questionnaire replies received from the States indicated, figures disaggregated by sex are scarce concerning the tenure and

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<sup>485</sup> Paglione, Gulia, *Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing*, *Human Rights Quarterly* 28, (John Hopkins University: 2006), p. 126.

<sup>486</sup> Commission on Human Rights, *Women and Adequate Housing. Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination*, Miloon Kothari, E/CN.4/2006/118, 62<sup>nd</sup> session, February 27, 2006, para. 32.

<sup>487</sup> Centre on Housing Rights and Evictions – COHRE, *A Place in the World: The Right to Adequate Housing as an Essential Element of a Life Free from Domestic Violence, The Cases of Argentina, Brazil and Colombia*, COHRE International Secretariat, Geneva, Switzerland, 2010, p. 39.

<sup>488</sup> E/CN.4/2006/118 paragraph 30. The report indicates that other groups/categories of women may be more at risk than others of becoming homeless, facing violence or suffering from the consequences of inadequate housing and living conditions. Such groups often include victims of domestic violence, widowed, elderly, divorced or separated women, female-headed households, women forcibly separated from their children, women victims of forced evictions, indigenous and tribal women, women with disabilities and women in conflict/post-conflict situations, women from ethnic and national minorities, including refugees, migrant women workers, women from descent- and work-based communities, domestic women workers, sex workers, and lesbian and transgender women .

ownership of housing. That lack of gender-disaggregated data on housing makes it impossible to adopt effective legal and program-based measures that help women gain access to housing.

328. The IACHR is gratified that some States have adopted specific norms to help protect the right to housing in the case of women victims of domestic violence.<sup>489</sup> However, it is disturbing that some countries of the region do not have provisions to protect women who are victims of domestic violence, especially when the owner of the housing is the aggressor and in the period when protection or restraining orders are being implemented to protect a woman from imminent dangers.

329. The IACHR received information to the effect that the right to have access to adequate housing is not expressly recognized in the law. In this regard, the Special Rapporteur on the Right to Adequate Housing has observed that gender-neutral laws are interpreted and implemented in ways that discriminate and disadvantage women.<sup>490</sup> The State of Bolivia also mentioned that legal provisions that are gender neutral regarding the persons to whom land titling programs are directed, have little impact and do little to eliminate discrimination against women in the exercise of their economic rights.<sup>491</sup>

330. The IACHR is urging the States to expressly recognize women's right to have access to adequate housing. It is also urging the States to craft housing policies with a human-rights and gender focus, and to institute measures that enable them to immediately address the situation of those women who are in dire circumstances.

#### **4. The States' immediate obligations**

331. In compliance with its international commitments in the area of gender equality, the States must ensure women's equal access to and control over economic and

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<sup>489</sup> The IACHR received information indicating that in the United States, enactment of the *Reauthorization of the Federal Violence Against Women Act* introduced new legal protections for women victims of domestic violence where their right to housing was concerned. These protections were amendments to (1) clarify that victims of domestic violence would not be evicted by landlords or denied the right to housing because they were victims of domestic violence. The law expressly states that "[a]n incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence"; (2) ensure that the victims' needs are considered in local planning processes; 3) create a new federal subsidy program to help housing authorities deal with the problem of domestic violence; 4) create a new federal subsidy program to cooperate with the local community in the long-term development of an affordable housing plan for victims of violence; and 5) issue regulations on temporary housing for victims of violence. Reply to the questionnaire received from Columbia Law School, Human Rights Institute, International Women's Human Rights Clinic, The City University of New York School of Law; Legal Momentum; National Network to End Domestic Violence (NNEDV); World Organization for Human Rights USA.

<sup>490</sup> Commission on Human Rights, *Women and Adequate Housing*. Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, E/CN.4/2006/118, 62<sup>nd</sup> session, February 27, 2006, para. 11.

<sup>491</sup> Bolivia's reply to the questionnaire.



financial resources. The following are among the priority measures that the States must adopt:

- The IACHR observes that the States have an obligation to adopt legislative measures, to amend the law where necessary, and to create the conditions that will enable women to have full access to and control over their economic resources, unencumbered by any form of discrimination. They must also prohibit discrimination by private parties. States also have an obligation to devote priority attention to the disadvantaged, to indigenous women and to Afro-descendant women who live in rural areas and those who are in dire circumstances, who tend to face more difficulties in gaining access to and control over resources.
- The States must rigorously review any laws and policies that might have a discriminatory impact on women in terms of their access to and control over economic resources –both within and outside of marriage- in the terms analyzed in this report.
- The States must determine the social costs of their economic, financial and trade policies and address the consequences of the fact that women far outnumber men in low-paying, unstable jobs, in the unstructured economy, and in unpaid work, the result of which has been an inequality in access to and control of resources.
- The States must ensure that economic, financial and trade policies are formulated from the gender perspective that will guarantee women's access to quality goods and resources. Hence, any analysis of budgets and social expenditures must take gender into account as decisive to ensuring that public resources will be marshaled and spent in times of crisis. The States must also create the vehicles and conditions to ensure that women truly participate in the formulation of those policies and in the preparation of gender-sensitive budgets; a process which may entail highlighting certain categories where the beneficiaries are women.
- The States have an obligation to prevent, punish and eradicate gender violence, which also has implications for women's full enjoyment of their economic and social rights, especially their access to and control over resources. The States must guarantee to women victims of domestic violence the necessary legal remedies, precautionary measures and temporary shelters to ensure a life free of violence that is responsive to the victim's emergency and her vulnerability.
- The IACHR is recommending that the States guarantee adequate and effective judicial remedies to enable women to report violations of their right of access to and control over economic resources.

- The IACHR is urging States to adopt measures that allow women to report forms of gender-based violence perpetrated with the objective, or that by result, impede the women's access and control of economic resources. The Commission recommends that States include in their legislation norms oriented to guarantee the right of women to live free from violence, including the creation of reporting mechanisms; ensuring the availability of precautionary measures and their adequate implementation; and the creation of housing alternatives when a woman leaves her home due to a situation of domestic violence, such as shelters. These measures should serve to protect women from acts of domestic violence committed inside their homes, even when their partners or their families are the owners.

### **III. CONCLUSIONS Y RECOMMENDATIONS**

332. The IACHR reiterates that the States need to act swiftly and without delay to address the obstacles and barriers to the exercise, observance, and the guarantee of women's economic, social and cultural rights. The missing protections that women do not now enjoy and that would ensure their access to employment, education and resources, have compounded adverse consequences for their human rights in general and violate every aspect of their autonomy. Furthermore, there is a close interrelationship between the respect for and guarantee of women's economic, social and cultural rights and their full exercise of their civil and political rights.

333. The IACHR regards this report as an initial step in the inter-American system's efforts to improve and strengthen the States' laws, policies and practices that address the problem of discrimination and that are intended to ensure that women's economic, social and cultural rights are properly respected and protected.

334. The recommendations contained in this report are intended to influence the shape of the projects and measures the States undertake to ensure women's exercise of the right to work, the right to education, and their right of access to and control over economic resources, under conditions of equality and free of any form of discrimination.

335. On the one hand, the IACHR has included in the preceding section one group of immediate obligations related to women's exercise of their right to work, their right to education and, their right of access to and control of economic resources. These obligations are closely interrelated to the obligation to properly ensure women's equality and their right to nondiscrimination in the exercise of their economic, social and cultural rights, and are the minimum steps that States must take to advance women's rights. The IACHR also concludes this report with a number of general recommendations, to be implemented progressively. It underscores the States' obligation to take deliberate, concrete, and oriented steps to carry out those recommendations. The IACHR highlights the principle of non-regression in the fulfillment of all these obligations and recommendations, and singles out access to justice as a fundamental principle when violations of human rights in this area occur.

336. The Inter-American Commission reiterates its commitment to cooperate with the American States in seeking solutions to the problems identified. Several measures adopted to address this situation reveals an understanding and acceptance of just how serious these problems are and the commitment of the members of the state and non-state sectors to deal effectively with the many barriers that women still encounter when they endeavor to exercise their economic, social and cultural rights under conditions of equality.

#### General Recommendations

1. The States must devise coordinated and multidisciplinary strategies to ensure women's access to resources, a decent job, and an education, oriented to guarantee their economic and social empowerment through the effective exercise of their rights.
2. The IACHR recommends that the States adopt programs to collect data disaggregated by gender, race and ethnicity, and indicators with this intersectional perspective, that enable them to measure the progress made towards the fulfillment of their obligations.
3. The IACHR urges the States to introduce indicators that measure how differently the economic crisis affects women and men in terms of their access to and control over resources, their participation in the labor market, and in education. The goal is to take immediate steps to mitigate the negative effects on women, especially those who are most at risk of having their human rights violated.
4. The IACHR is urging the States to adopt laws and public policies on labor, education, and economic issues that reflect the link between their economic, social and cultural rights, and their civil and political rights. The particulars of the population to be served should be taken into account, especially the unique characteristics and needs of girls, indigenous women, Afro-descendant women, migrant women, women with disabilities, among others at particular risk of their human rights violations.
5. The IACHR is recommending that the States that have not yet done so consider ratification of ILO Conventions 100, 111, 183, 103, 3, and 156.
6. The IACHR is recommending the adoption of measures to ensure that women are able to enter and remain part of the labor force and that girls and women are able to enroll and remain in school at all levels, coupled with measures for effective implementation and monitoring.
7. The IACHR is urging the States to conduct campaigns to raise awareness with a view to: a) inducing change in socio-cultural patterns that discriminate against women; b) creating the conditions so that women

are able to enter nontraditional professions, and c) informing women of their labor rights and options.

8. Promote efforts to compile information on unremunerated work and work in the informal sector, and the specific needs of the women engaged in work of this type.
9. Increase the public budget for education and make certain that the policies and programs implemented address the particular needs of diverse groups of girls and women, indigenous women, Afro-descendants, and those who live in rural areas.
10. Promote the hiring of women teachers at all levels of education.
11. Promote the establishment and use of gender-disaggregated statistics and gender-sensitive indicators. Prepare structural benchmarks, process-related benchmarks and results benchmarks for the various levels of education, to measure the progress made in terms of women's access to education and in terms of the girls and women remaining in the education system. Include accountability mechanisms.
12. Work with the teachers and make them sensitive to gender issues and human rights at the various levels of the educational system. Review the content of the formal curriculum and take steps to ensure that teachers are not advancing a hidden curriculum contrary to gender equality and to an intercultural perspective.
13. Review the gender perspective and mainstream it into curriculum content at all levels of the education system. Include sex education in the curriculum for the basic education of girls and women.
14. Adopt and deploy suitable systems to enable young and adolescent girls to report physical and sexual violence (including sexual harassment and rape) within the school and properly punish the responsible parties.
15. Involve women in the preparation of education plans and take girls' opinions into account.
16. The IACHR is recommending that the States intensify their efforts, through legal measures and programs, to increase women's access to quality goods and resources that will be instrumental in ensuring women's full productive employment and a decent job, access to credit and other economic resources like land, productive resources and housing, taking the gender perspective into account.
17. The IACHR is urging the States to recognize and explicitly address how interdependent economic, financial, and trade policies are with social

policies; and the impact they have on women's rights. The IACHR is recommending that the States build social objectives into their economic, financial, and trade policies, and establish specific lines of activity that address the situation of women.

18. The IACHR is recommending that the States ensure that women are represented in every sphere and at all levels, which includes the formulation of economic, financial, and trade policies. It also recommends that systems are introduced to enable women's organizations and human rights organizations to participate effectively in devising those measures.



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS  
 COMISION INTERAMERICANA DE DERECHOS HUMANOS  
 COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS  
 COMMISSION INTERAMÉRICAINNE DES DROITS DE L'HOMME



## **Rapporteurship on the Rights of Women**

### **Forms of Discrimination that Restrict Women's Full Exercise of their Economic, Social, and Cultural Rights**

#### **Introduction**

This questionnaire has been prepared as part of the work plan of the Rapporteurship on Women's Rights ("Women's Rapporteurship" or "Rapporteurship") of the Inter-American Commission on Human Rights ("IACHR" or "Commission"), with a view to gathering information on the main advances and challenges faced by women in different countries with respect to the exercise of their economic, social, and cultural rights, particularly with regards to employment; education; and access to, and control over resources, among other areas of the economic, social and cultural rights of women. The information gathered will be analyzed in a report containing specific recommendations for the member states of the Organization of American States, aimed at enhancing and strengthening the legislation, policies, and practices to address the problem of discrimination and to guarantee that the economic, social, and cultural rights of women are duly respected and protected.

The binding principles of equality and non discrimination are core principles of the inter-American human rights system and its instruments, such as the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belém do Pará"). Consequently, the States have obliged to guarantee the exercise of women's human rights under equal conditions and free of all forms of discrimination. The Protocol of San Salvador likewise contains a long list of human rights, including the right to work, labor union and social security rights, the right to health, the right to food, the right to education, among others. Article 3 of the Protocol of San Salvador establishes the obligation of the State parties to guarantee the exercise of these rights without discrimination of any kind.

In the past, the Inter-American Commission on Human Rights has addressed discrimination against women in the exercise and enjoyment of their civil and political rights through individual petitions and reports on these issues. However, it is impossible to address civil and political rights without also addressing economic, social, and cultural rights, given the interdependence and integral nature of those rights. With that in mind, the Inter-American Commission has been focusing on other forms of discrimination that go beyond the sphere of civil and political rights and touch on economic, social, and cultural rights. An example of that new focus can be seen in *Access to Justice as a Guarantee of*

*Economic, Social, and Cultural Rights. A Study of the Standards Adopted by the Inter-American Human Rights System*, prepared by the IACHR as a contribution to guarantee economic, social, and cultural rights in the region. Recently, the IACHR also published a document entitled *Guidelines for Preparing Progress Indicators in the area of Economic, Social, and Cultural Rights*.

Although significant progress has been made in the region, particularly with regards to formal equality between men and women, States still need to promote new and diversified actions to promote equality and equity, particularly with respect to economic, social, and cultural rights. In the course of its work in the inter-American human rights system, the IACHR, through its Rapporteurship on Women's Rights, has noted with concern how discrimination against women is manifested to a particularly glaring extent in the structural inequities between men and women in the economic, educational, labor, health, justice, and decision-making spheres.

To gain more insight into the current realities, the Rapporteurship will conduct a diagnostic assessment of the obstacles that women still face throughout the Hemisphere in the effective protection of their economic, social, and cultural rights, without discrimination of any kind. The Rapporteurship is especially interested in generating standards, from a human rights perspective, that can guide State actions to overcome the hurdles that women still face to achieve the effective protection in the exercise of these rights without discrimination. In that framework, the Rapporteurship will focus on (i) employment; (ii) education; and (iii) women's access to resources, and their control over them, in equal conditions with men.

Replies to this questionnaire should be forwarded to the following address by June 10, 2010, at the latest:

Inter-American Commission on Human Rights  
Organization of American States  
1889 F Street, N.W.  
Washington, DC 20006  
[cidhoea@oas.org](mailto:cidhoea@oas.org)

*Information requested:*

This **questionnaire** seeks to elicit quantitative and qualitative information on the main advances and challenges faced by women with respect to the exercise of their economic, social, and cultural rights, particularly as regards employment; education; and access to, and control over, resources, in equal conditions with men, within the broader context of discrimination against women and from a human rights perspective. Thus, you are invited to submit reports and specific assessments of this area, graphs, and statistical and budgetary data, as well as other material. It is requested that the information includes insight into the situation at both the national and local, urban and rural levels. In federal countries, information is needed for all states and provinces. You are invited to submit information on the specific situation of women in groups that are particularly exposed to

violence and discrimination, such as afro-descendent women, indigenous women, girls, elderly women, and others.

**QUESTIONNAIRE**  
**Forms of Discrimination that Restrict Women's Full Exercise**  
**of their Economic, Social and Cultural Rights**

**Section One: Employment**

- 1) Specify the principal provisions in the national and/or local legal framework, policies and programs that address equality of opportunity with respect to:
  - a. Access to employment
  - b. Equal pay
  - c. Measures of protection in the access to social security.
  
- 2) Specify the principal provisions in the national and/or local legal framework that protect women workers during pregnancy and breastfeeding and against sexual harassment and abuse at the workplace.
  
- 3) Indicate whether labor statistics are compiled systematically at the national and/or local level. If they are, please provide statistics for the following:
  - a. The labor situation in the country as a whole. Include data disaggregated by sex, age, race, ethnicity, and type of work performed.
  - b. The situation of women in the social security system. The number of women enrolled in the system and their age of retirement compared to that of men.
  - c. The level of unemployment, disaggregated by sex, age, race, and ethnicity.
  - d. The situation of informal labor in the country, with data disaggregated down by sex, age, race, and ethnicity.
  - e. Number of female domestic workers, including female immigrants.
  
- 4) Please specify:
  - a. Who are entitled under labor law to reproductive licenses (paternity or maternity leaves) and how are these rights exercised in practice.
  - b. Legislative measures and/or programs provided by the State to take care of children whose parents are at work (e.g., establishment of child care or day nursery facilities).
  - c. Legislative measures and/or programs provided by the State to take care of seniors.
  
- 5) Laws, policies, and measures pursued by the State to facilitate and promote women's access to the labor market. Include in your reply:
  - a. The main challenges women face to enter and stay in the labor market.
  - b. Specific measures designed to promote access to employment by low-income women, such as indigenous women and women of African descent.



- c. Existing mechanisms to address the labor needs and protection of migrant women.
  - d. Regulations governing the treatment of domestic workers.
  - e. In the answers to items (b), (c), and (d), indicate which monitoring systems are in place to verify compliance.
- 6) Indicate what mechanisms are available under domestic law for women victims of discrimination in the labor sphere.

## **Section Two: Education**

- 1) Specify the principal provisions in the national legal framework that protect the right to education on fair and equal conditions. Include any laws that specifically protect the right to education of women and girls.
- 2) Provide information on:
  - a. The illiteracy rate, disaggregated by sex, age, race, ethnicity, and region (urban/rural).
  - b. The number of pupils enrolled in public schools, by gender, in all levels of education (primary and secondary schools, high schools, colleges and universities).
  - c. Evaluations of the quality of public education, by gender and region.
  - d. Number of pregnant students in public schools.
- 3) Access to free education:
  - a. Indicate up to what grade/level free education is provided.
  - b. Describe measures or policies pursued by the State to foster and guarantee women's access to primary, secondary and higher education.
- 4) Provide statistics on school drop out rates, disaggregated by sex, age, race, ethnicity, and region, and indicate what steps are taken to re-enroll girls and adolescents who drop out and/or abandon school.
- 5) Identify the main – structural, economic, cultural, and social – challenges:
  - a. for girls to attend school;
  - b. to guarantee that girls complete their school studies;
  - c. to address the issue of illiteracy among adult women;
  - d. to protect pregnant students from all forms of discrimination.
- 6) Describe what mechanisms are available under domestic law to denounce sexual harassment in schools and/or academic training institutions and other forms of discrimination against women.
- 7) Indicate what mechanisms are available under domestic law for women victims of discrimination in the educational sphere.

**Section Three: Access to, and control of, resources on equal conditions**

- 1) Indicate whether laws differentiate between the legal capacity of men and women, both inside and outside marriage, to enter into contracts, administer property, purchase land and/or housing, and gain access to credit.
  - a. How do existing laws, policies, and practices guarantee equality between men and women regarding the various aspects of the right to adequate housing, the right to land, and the right to take out bank loans, mortgages, and other forms of financial credit?
  - b. What programs and/or policies is the State pursuing to promote women's ownership of homes and land, as well as their access to credit and technology? In your reply, specify any measures adopted with respect to the protection of women living in rural areas.
- 2) Describe the legal provisions regarding the division of property in the event of divorce and inheritance taxes and say whether they protect men and women on equal terms.
- 3) Provide statistics on housing and land, broken down by gender (forms of urban/rural property, households headed by women, homeless people, access to basic services, etc.)
- 4) Identify the main – structural, social, and cultural – challenges impairing equal access by women to housing, land, credit, and technology.
- 5) Identify the main – structural, social, and cultural – challenges impairing equal access by women to social programs.
- 6) Indicate what mechanisms are available under domestic law for victims of discrimination in the area of access to, and control of, resources.