



**REDESCA**

Special Rapporteur for Economic,  
Social, Cultural and Environmental Rights

**IACHR**

Inter-American  
Commission on  
Human Rights

COMPENDIUM

# **Economic, Social, Cultural and Environmental Rights**

Interamerican Standards



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Compendium on Economic, Social, Cultural and Environmental Rights

## Inter-American Standards

**Special Rapporteurship on Economic, Social, Cultural and  
Environmental Rights**  
**REDESCA**

**Soledad García Muñoz**  
Special Rapporteur on Economic, Social, Cultural and Environmental Rights  
Inter-American Commission on Human Rights

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Approved by the Inter-American Commission on Human Rights on 31 December 2021.

#### Article 30

*The member states, inspired by the principles of inter-American solidarity and cooperation, undertake to join efforts to ensure that international social justice prevails in their relations and that their peoples attain integral development, which are indispensable conditions for peace and security. Integral development encompasses the economic, social, educational, cultural, scientific and technological fields, in which the goals that each country defines to achieve it must be attained.*

#### **Charter of the Organization of American States**

Approved at the Ninth International Conference of the Americas  
Bogotá, Colombia, 1948

*That the peoples of the Americas have dignified the human person and that their national constitutions recognize that the principal purpose of the juridical and political institutions that govern life in society is the protection of the essential rights of man and the creation of circumstances that allow him to progress spiritually and materially and to attain happiness.*

#### **American Declaration of the Rights and Duties of Man (Preamble)**

Approved at the Ninth International Conference of the Americas  
Bogotá, Colombia, 1948

#### Article 26. Progressive Development

The States Parties undertake to adopt measures, both domestically and through international cooperation, especially economic and technical, to achieve progressively the full realization of the rights derived from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, to the extent of available resources, by legislation or other appropriate means.

#### **American Convention on Human Rights**

San José, Costa Rica, 1969

Considering the close relationship between the enforcement of economic, social and cultural rights and civil and political rights, inasmuch as the different categories of rights constitute an indissoluble whole based on the recognition of the dignity of the human person, and therefore require permanent protection and promotion in order to achieve their full enforcement, without ever justifying the violation of some for the sake of the realization of others;

#### **Additional Protocol to the American Convention on Economic, Social, Cultural and Environmental Rights -Protocol of San Salvador- (Preamble)**

San Salvador, El Salvador, 1988

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CHAPTER 1  
**INTRODUCTION**

## INTRODUCTION

### *A. Objective*

1. Economic, social, cultural and environmental rights ("ES CER") are basic rights for everyone to be able to live with dignity. Their development through the different actions of the States is essential to comply with the obligations that weigh on them in terms of respect and guarantee, and that allow people to realize and enjoy their human rights. These rights are interrelated, interdependent and indivisible from civil and political rights, which have been universally recognized through various declarations and conventions.
2. In the Inter-American system, economic, social, cultural and environmental rights have been recognized in various instruments. For example, the American Convention on Human Rights (hereinafter, the "American Convention" or the "ACHR"), makes express reference to them in its article XXVI in line with its article I. The American Declaration on the Rights and Duties of Man (hereinafter, the "American Declaration" or "ADRDM") The American Declaration of the Rights and Duties of Man includes them in articles XI, XII, XIII, XIV, XV and XVI, while 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" or the "Additional Protocol"). Other regional instruments, including the Charter of the Organization of American States, also refer to economic, social, cultural and environmental rights.
3. The Inter-American Commission on Human Rights (hereinafter "IACHR", "Commission" or "Inter-American Commission") has as its principal function the promotion and protection of human rights in the Americas. It carries out these functions through country visits, the preparation of reports on the human rights situation in a given country or on a particular issue, the adoption of precautionary measures or requests for provisional measures to the Inter-American Court of Human Rights (hereinafter the "Court" or "Inter-American Court"), the processing and analysis of petitions through the individual case system, and advisory services and technical cooperation with the States.
4. During the 146th regular period of sessions, in November 2012, the IACHR decided to create a Unit on Economic, Social and Cultural Rights (ESCR Thematic Unit). Among the objectives of the Work Plan of the aforementioned ESCR Unit are the development of international standards for the interpretation of Inter-American human rights instruments in relation to economic, social and cultural rights; and the search to expand the jurisprudence of the Inter-American system in this area.
5. In 2014, the IACHR adopted the decision to create a Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (hereinafter, "REDESCA"), which became operational at the end of August 2017. Through this decision, the Commission sought to strengthen its institutional structure to deepen and broaden the work it has been doing in the promotion and protection of ESCER, with the implementation of an office with functional independence and its respective work plan that allows it to address priority situations in the hemisphere on the subject. This decision was reflected in the IACHR Strategic Plan 2017-2021,

being the second Special Rapporteurship created by the IACHR and a step of great significance in the history of human rights in the region<sup>1</sup>.

6. Like the Rapporteurship for Freedom of Expression (RELE), REDESCA was created as a permanent office with functional independence. Its first head was selected in an inter-American<sup>2</sup> public competition and was confirmed by the IACHR for a second term of office after completing her first three years in office<sup>3</sup>. The Commission underscores the fundamental importance that the creation and work carried out by REDESCA has had on the strengthening and integral fulfillment of the IACHR's hemispheric mandate<sup>4</sup>, as reflected in this Compendium.
7. The Inter-American Commission and REDESCA have maintained constant monitoring of the human rights situation in the various countries of the hemisphere, with an increasing focus on economic, social, cultural and environmental rights thanks to the work carried out by the Office of the Special Rapporteur. From this monitoring function, different state practices can be observed that represent progress in the recognition and implementation of economic, social, cultural and environmental rights; however, there are also important challenges of various kinds to ensure respect for and guarantee of ESCER. These challenges have been exacerbated by the COVID-19 pandemic, with the consequent health, economic and social crisis that is seriously affecting the right to health and other ESCER in the Americas.
8. One element that is particularly relevant in this context is the adoption, within the framework of the universal human rights system, of the Sustainable Development Goals, which set out a series of objectives that States will seek to achieve by 2030.<sup>5</sup> It is important to note that a significant number of these goals are based on economic, social, cultural and environmental rights that have been internationally recognized in conventional and declaratory instruments. By virtue of this, these goals should be understood as a global effort that is aligned with the progressive realization of economic, social, cultural and environmental rights.
9. For the Commission and its REDESCA, the teaching and understanding of economic, social, cultural and environmental rights are necessary to advance towards their strengthening and consolidation as fully recognized rights in the Americas. On understanding of economic, social, cultural and environmental rights are necessary to advance towards their strengthening and consolidation as fully recognized rights in the Americas. Therefore, by systematizing the interpretative parameters that the IACHR has developed through its various mechanisms, this compendium aims to be a tool that contributes to the improvement and strengthening of legislation, practices and public policies that States must adopt in accordance with their Inter-American treaty obligations.
10. In this sense, this compendium is the first document that presents the relevant norms and includes fragments of jurisprudence, as well as reports and other documents issued by the IACHR on economic, social, cultural and environmental rights. To this end, reference is made

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<sup>1</sup> IACHR, Strategic Plan 2017-2021, p. 35.

<sup>2</sup> IACHR, IACHR selects Soledad García Muñoz as Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER), CP No. 090/17. July 5, 2017.

<sup>3</sup> IACHR, The IACHR renews mandate of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights. CP No.047/20. February 19, 2020.

<sup>4</sup> IACHR, The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (DESCA) presents report on its results in 2018 and together with the IACHR calls for commitment to its strengthening. CP. No 048/19. February 27, 2019.

<sup>5</sup> United Nations, Sustainable Development Goals, Doc A/70/1

not only to the Protocol of San Salvador, but also to the American Convention on Human Rights itself, the Charter of the Organization of American States, and the American Declaration on the Rights and Duties of Man, in addition to other Inter-American instruments.

11. This compendium gathers and systematizes relevant excerpts from the reports and documents published on the subject through the different mechanisms of the IACHR. It is important to emphasize that this document is not exhaustive, but rather systematizes the most recurrent or relevant criteria, without pretending to cover all of them. It takes examples of decisions that contain current and representative criteria, without being a final closed compendium. This first edition covers mainly decisions and documents on ESCER adopted by the IACHR up to September 2021.
12. Another objective of this tool is to promote the implementation of Inter-American standards on economic, social, cultural and environmental rights, particularly through their identification and visibility. The above contributes to the implementation of the Commission's strategic objectives according to its Strategic Plan 2017-2021, as well as the objectives of the Strategic Map 2018-2021 of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, regarding the development and promotion of Inter-American standards for the effective realization of such rights.
13. The REDESCA of the IACHR has prepared this compendium with the same scope and vocation of the precedents of the Commission, with the purpose of providing a technical cooperation tool available to individuals and institutions that use the system, state operators of public policies, judges, parliamentarians and other state officials, civil society, social movements, the private sector, academia, experts and other relevant actors.

## ***B. Structure***

14. This compendium is divided into three substantive chapters, in addition to this introduction and a section on general conclusions.
15. The first of the substantive chapters presents the normative framework and the general obligations of the States in the area of economic, social, cultural and environmental rights, providing a conceptual approach to the characteristics of these rights and their development at the normative and institutional level in the inter-American regional sphere.
16. The third chapter compiles outstanding pronouncements and decisions developed by the IACHR and its REDESCA on economic, social, cultural and environmental rights. Organized in alphabetical order, it systematizes and indicates the source of the pronouncements. On the other hand, the fourth chapter presents a representative sample of those made by the IACHR regarding groups in situations of vulnerability.

## ***C. Methodology***

17. This compendium was prepared based on the review, systematization and analysis of the interpretive criteria developed by the IACHR in the area of economic, social, cultural and environmental rights throughout its history. With respect to labor rights, this compendium

updates the standards contained in the 2020 Compendium on Labor and Trade Union Rights, and should therefore be analyzed in conjunction with that document.

18. In order to present and consolidate the vast amount of information on this issue in a single instrument, the compendium focused on the analysis of specific pronouncements of the IACHR and REDESCA in relation to economic, social, cultural and environmental rights. To this end, a substantive and detailed review was made of the country, thematic and annual reports issued by the IACHR and REDESCA; of the precautionary measures, merits reports and cases sent to the Inter-American Court of Human Rights; and of the resolutions and press releases issued by the Commission and REDESCA, with the criterion of substantive development in terms of content or recommendations on the right in question taking precedence in all of them.
19. Likewise, it is important that the standards addressed in this compendium be considered in conjunction with the diagnoses, standards and recommendations formulated in the framework of other Commission documents, particularly those that recognize the differentiated and/or aggravated impact on the rights of people in vulnerable situations, especially those living in poverty and extreme poverty.
20. Thus, this compendium compiles the pronouncements and decisions of the IACHR and REDESCA on the subject, grouping them both by right concerned and by the instrument in which the normative development is contained. This document includes the main existing developments up to September 2021, constituting a first systematization that, without claiming to be exhaustive, broadly reflects the state of progress in the promotion and protection of ESCER through the various mechanisms of the IACHR, providing a basis that also makes it possible to regularly update the information provided.
21. The Compendium contains the selected paragraphs verbatim after referencing the document to which they belong. Such texts are reproduced without footnotes, which can be consulted in the original source.



## CHAPTER 2

# NORMATIVE FRAMEWORK AND GENERAL OBLIGATIONS OF STATES REGARDING ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN SYSTEM

## **NORMATIVE FRAMEWORK AND GENERAL OBLIGATIONS OF STATES REGARDING ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN SYSTEM**

### ***A. Normative evolution of ESCER in the Inter-American System***

22. Economic, social, cultural and environmental rights are currently undergoing a phase of recognition and consolidation, as a result of the specific actions developed by both the Commission and the Inter-American Court of Human Rights. In this sense, there has been a normative and institutional evolution that in the last two decades has favored the visibility and recognition of these rights, as well as their direct justiciability before the organs of the Inter-American system.
23. The Charter of the Organization of American States (hereinafter "the Charter" or "OAS Charter"), adopted in 1948 and amended in 1967, as the founding instrument of the regional organization, included in 1948 various references to economic, social, cultural and environmental rights. Thus, Articles 34, 45, 46, 47, 48, 49, 50, 51 and 52 recognized, *inter alia*, the rights to food (through the production of inputs), education, social security, health, adequate housing, as well as cultural and labor rights. The American Declaration of the Rights and Duties of Man, adopted that same year, also referred to various rights, including the preservation of health and well-being, education, the benefits of culture, work and fair remuneration, rest and leisure, and social security.
24. This was complemented by a conventional instrument in 1969, with the adoption of the American Convention on Human Rights. In its Article 26, the "Pact of San José" refers to the OAS Charter, establishing the commitment of the States Parties to the progressive development of economic, social, educational, scientific and cultural standards, to the extent of their capabilities. This provision, and the American Convention itself, were reinforced in 1988 by the Additional Protocol on Economic, Social and Cultural Rights, a conventional instrument that establishes the obligation of the States Parties to adopt measures in accordance with available resources to achieve the progressive realization of the rights set forth therein. These rights include labor rights, health, social security, a healthy environment, education, cultural rights and food as explicitly recognized prerogatives.
25. In addition, other regional treaties and declarations have addressed various economic, social, cultural and environmental rights, which has given rise to the creation of an Inter-American conventional and declaratory regime on the subject.
26. The Inter-American instruments on ESCER generate obligations to meet the basic needs of human development, based on the principles of equality and non-discrimination, whose respect and guarantee are as enforceable as those relating to civil and political rights, including the right to effective individual or collective judicial protection of those rights<sup>6</sup>. Thus, the ESCER must be ensured by all States in the region, with special attention to the most vulnerable groups.

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<sup>6</sup> IACHR, Access to Justice as a Guarantee of Economic, Social, Cultural and Environmental Rights. Estudio de los estándares fijados por el Sistema Interamericano de Derechos Humanos, 2007 paras. 324-339.

27. Economic, social, cultural and environmental rights are provided for in the American Declaration, in Articles XI, XII, XIII, XIV, XV and XVI, in general in Article 26 of the American Convention on Human Rights and, in greater detail, in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural and Environmental Rights (Protocol of San Salvador).
28. In addition, the Charter of the Organization of American States contains provisions concerning the integral development and well-being of the inhabitants of the hemisphere with respect to the application of mechanisms and principles for the full realization of the aspirations of their life projects. In Article 45, the OAS Charter explicitly mentions labor rights, trade union rights, social security and health, as well as principles and mechanisms to which the States agree to devote their best efforts<sup>7</sup>.
29. The Charter promotes an institutional framework for these issues to be addressed from an integral perspective. That is why, in the first place, it establishes that human beings have the right to achieve their material well-being and spiritual development, among other provisions related to the Right to Work and the Right to Education. Similarly, through the Protocol of Buenos Aires, the OAS Charter incorporates, in Article 34, the measures that provide the basic goals for integral development, including acceptable working conditions for all, expansion of opportunities in the field of education, adequate housing, among others.
30. As in the OAS Charter<sup>8</sup>, the American Declaration makes no distinction between the rights enumerated in its text. Economic, social, cultural and environmental rights are present in the Declaration, as well as civil and political rights, pointing out that in the Inter-American System all human rights are interdependent and indivisible<sup>9</sup>. For its part, the Inter-American Democratic Charter (2001) highlights the importance of reaffirming, developing, perfecting and protecting ESCER. In the same vein, the Social Charter of the Americas <sup>10</sup>(2012) maintains that the "promotion and observance of economic, social, cultural and environmental rights are inherent to integral development, economic growth with equity and the consolidation of democracy in the States of the Hemisphere".
31. In turn, the American Convention on Human Rights considers in its preamble the incorporation into the OAS Charter of "broader norms on economic, social and educational rights" and that it "shall determine the structure, competence and procedure of the bodies responsible for this matter"<sup>11</sup>. The Convention has a general commitment to the implementation and protection of

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<sup>7</sup> In its pertinent part the Charter in the text of Art. 45 reads as follows: "man can only achieve the full realization of his aspirations within a just social order, accompanied by economic development and true peace (...)", for example letter b) of the article reads as follows: "(b) Work is a right and a social duty, confers dignity on those who perform it and must be performed under conditions which, including a system of fair wages, ensure life, health and a decent standard of living for the 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; (...)", Organization of American States.)", Organization of American States, Charter of the Organization of American States, Signed in Bogota in 1948 and amended in Buenos Aires in 1967, by the Cartagena Protocol in 1985 and subsequent ones.

<sup>8</sup> I/A Court H.R., Advisory Opinion No. OC-10/89, July 14, 1989, para. 44.

<sup>9</sup> Id. at 106. Articles XI to XVI of the American Declaration of Human Rights.

<sup>10</sup> Organization of American States, Social Charter of the Americas, OEA/Ser.P AG/doc-.542/12 rev.1, adopted on June 4, 2002.

<sup>11</sup> OAS, American Convention on Human Rights, Preamble.

ESCR through Article 26<sup>12</sup>, which aims to progressively achieve "the full realization of the rights derived from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, within available resources, by legislative or other appropriate means."<sup>13</sup>

32. Considering the importance of ESCR, the OAS member states adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which entered into force on November 16, 1999.
33. The Protocol reaffirms the integrality of all human<sup>14</sup> rights, emphasizing that "all rights inherent to the human person constitute an indissoluble whole which finds its basis in the recognition of the dignity of the human person"<sup>15</sup>. The text enshrines the protection of various rights such as the right to work; fair, equitable and satisfactory working conditions; trade union rights; the right to social security; the right to health; the right to food; the right to education; the right to the benefits of culture; among others. Likewise, the Protocol of San Salvador enshrines the principle of equality and non-discrimination; and the obligation to adopt domestic measures to progressively achieve the full realization of the rights set forth in its text<sup>16</sup>. In this way, the Protocol of San Salvador indicates more clearly the obligations of the States in relation to ESCR, recognizing, in its text, the contentious jurisdiction of the Inter-American System for the direct supervision of articles 13 (right to education) and 8.1.a (trade union rights). In addition, the obligations established in the Protocol are supervised through the review of State reports sent to the Working Group of the Protocol of San Salvador, through a monitoring system provided for in Article 19 of said treaty.
34. In this regard, the Working Group of the Protocol of San Salvador monitors progress in the creation and implementation of public policies and other measures related to existing obligations under the Protocol. For its evaluations, the Working Group has developed indicators that determine the level of compliance by States with their obligations under the Protocol<sup>17</sup>. The monitoring system combines structural, progress and outcome indicators, adopting a methodology based on a human<sup>18</sup> rights approach.
35. So far, the Working Group has established two groupings of the rights contained in the Protocol. The first grouping<sup>19</sup> includes the rights to health, social security and education. The second

<sup>12</sup> Elizabeth Salmón, "Economic, Social, Cultural and Environmental Rights in the Inter-American System: Article 26 of the American Convention on Human Rights and The Road to a Social Reading of Civil and Political Rights", German Development Cooperation: GIZ, 2010, p. 30.

<sup>13</sup> OAS, American Convention on Human Rights, Article 26.

<sup>14</sup> Florentín Meléndez, "Los derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano de Protección a los Derechos Humanos", Cuadernos Electrónicos No. 5, Derechos Humanos y Democracia, available at [http://observatoriopoliticasocial.org/wordpress/wp-content/uploads/2014/03/5\\_-La-protecci%C3%B3n-de-los-derechos-sociales-por-las-Defensor%C3%ADas..pdf](http://observatoriopoliticasocial.org/wordpress/wp-content/uploads/2014/03/5_-La-protecci%C3%B3n-de-los-derechos-sociales-por-las-Defensor%C3%ADas..pdf).

<sup>15</sup> Organization of American States, "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights", San Salvador (November 17, 1988), Preamble.

<sup>16</sup> Art. 2 and 3 Protocol of San Salvador

<sup>17</sup> Accordingly, the IACHR was asked to propose indicators to measure the progress -or eventual regression- of the States, which were included in the first document of indicators of the system, the "Guidelines for the elaboration of Progress Indicators in the area of economic, social, cultural and environmental rights" (CP/doc.4250 corr.1).

<sup>18</sup> Working Group of the Protocol of San Salvador, "Indicadores de Progreso para la Medición de Derechos contemplados en el Protocolo de San Salvador", 2nd Ed. P. 2

<sup>19</sup> OAS, Indicadores De Progreso Para Medición De Derechos Contemplados En El Protocolo De San Salvador: Primer Agrupamiento de Derechos, OEA/Ser.L/XXV.2.1, December 16, 2011.

grouping of rights<sup>20</sup> consists of the right to work and trade union rights, the right to adequate food, the right to a healthy environment and the right to the benefits of culture.

36. The Commission underscores the importance of the work carried out by the Working Group and its valuable contributions in the observations it presents to the States, the creation of indicators and the collection of data on the situation of ESCR in the region<sup>21</sup>. The Commission has been a key actor in the establishment and consolidation of the Group, whose work is complementary to the work of the IACHR and in particular of its REDESCA, whose head is a member of the Working Group on its behalf.

### ***B. Interpretative development on ESCER in the Inter-American Human Rights System***

37. The parameters of application that relate to economic, social, cultural and environmental rights have been developed over time by the organs of the Inter-American System, demonstrating a positive and growing synergy between the Inter-American Commission and Court towards the protection of such rights. In particular, the Commission and REDESCA note that such rights have historically been integrated into the evaluation, promotion and protection of human rights by the IACHR through its various mechanisms<sup>22</sup>.
38. Through its contentious function, the IACHR Court has taken these rights into account, examining them, at first, indirectly, under the analysis of violations of civil and political rights such as the right to life, personal integrity and property<sup>23</sup>; reiterating their enforceability and the applicability of the obligations of respect and guarantee.<sup>24</sup>
39. Ecuador, although the Court did not directly apply the provision of Article 26 to the specific case, it recognized, *inter alia*, that health is a fundamental human right and indispensable for the adequate exercise of other human<sup>25</sup> rights. Subsequently, in the case of *Gonzales Lluy v. Ecuador*, the Inter-American Court determined how the State had discriminated against and inhibited the enjoyment of the right to education of the victim in the case by not guaranteeing her access to the educational system because she was a person living with HIV<sup>26</sup>. In this case, the IACHR applied for the first time the Protocol of San Salvador, which empowers it to supervise compliance with the obligations of States with respect to this specific right. The Court

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<sup>20</sup> OAS, *Indicadores De Progreso Para Medición De Derechos Contemplados En El Protocolo De San Salvador: Segundo Agrupamiento de Derechos*, OEA/Ser.L/XXV.2.1, November 5, 2013.

<sup>21</sup> Organization of American States, Working Group of the Protocol of San Salvador, "Indicadores de Progreso Para la Medición de Derechos Contemplados en el Protocolo de San Salvador," OEA/Ser.D/XXVI.11 (2015). P. 32

<sup>22</sup> See, *inter alia*, IACHR. Report No. 100/01. Case 11.381, Milton García Fajardo et al. v. Nicaragua, October 11, 2001, paras. 94-101; IACHR, Merits Report No. 27/09, Case No. 12.249, Jorge Odir Miranda Cortez et al. v. El Salvador, March 10, 2009, para. 105; IACHR. Access to Justice as a Guarantee of Economic, Social, Cultural and Environmental Rights: A Study of the Standards Set by the Inter-American Human Rights System. OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007; IACHR. Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69, June 7, 2010; IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, Sept. 7, 2017.

<sup>23</sup> IACHR Court. Case of *Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149; Case of *Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261; Case of "Five Pensioners" v. Peru. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98.

<sup>24</sup> I/A Court H.R., Case of *Acevedo Buendía et al. v. Peru*, Judgment of July 1, 2009, para. 100.

<sup>25</sup> I/A Court H.R., Case of *Suárez Peralta v. Ecuador*. Case of *Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 132.

<sup>26</sup> I/A Court H.R., I/A Court H.R., Case of *Gonzales Lluy et al.* Case of *Gonzales Lluy et al. v. Ecuador* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 252, 256, 265, 274, and 291.

also found that the existence of a regulation that did not allow the payment of pensions, and therefore the enjoyment of the right to social security, to same-sex couples violated the right to equality and non-discrimination<sup>27</sup>.

40. Subsequently, the Court advanced the autonomy of these rights by declaring a direct violation of Article 26 of the ACHR in the case of *Lagos del Campo v. Peru*<sup>28</sup>. In this judgment, the Court derived the protection of the right to work within the framework of the Inter-American System, particularly with respect to labor stability and the right not to be unjustly deprived of employment<sup>29</sup>; materializing the access to international justice of ESCER in the ISHR in a direct and autonomous manner.
41. REDESCA recognized the historic importance of this ruling, stating that it "not only sets one of the most important precedents in regional jurisprudence on the subject; it also advances globally in strengthening a vision of comprehensive and joint protection of human rights, overcoming divisions and politically constructed categories that interfere with the respect and guarantee of the dignity of the human person"<sup>30</sup>. It also stated that: "The possibility of legally and bindingly demanding respect for and guaranteeing ESCER through the organs of the Inter-American System will make it possible to progressively develop and define the content of each of these rights and the obligations of the States Parties in relation to them, facilitating the formulation of appropriate public policies and establishing regional standards and guidelines for their effective enjoyment and realization, especially with respect to the most vulnerable populations."<sup>31</sup>
42. The IACHR Court continued to deepen and develop with increasing clarity its interpretation on the application of Article 26 of the ACHR and the obligations of the States for the realization of ESCER by applying this provision in subsequent decisions, both in the contentious and advisory spheres, particularly in relation to the rights to health<sup>32</sup>, social<sup>33</sup> security and a healthy<sup>34</sup> environment. Thus, for example, in the *Poblete Vilches* case, in which the IACHR Court ruled for the first time on the right to health in an autonomous manner, establishing that this right is protected by Article 26 of the Convention<sup>35</sup>. Along these lines, in the judgment of the *Cuscul Pivaral et al.* case related to the protection of the right to health of persons living with HIV in Guatemala, the Court stated that "a literal, systematic and teleological interpretation leads to

<sup>27</sup> IACHR Court. Case of *Duque v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 26, 2016. Series C No. 310, para. 125.

<sup>28</sup> IACHR Court. Case of *Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 34.

<sup>29</sup> I/A Court H.R., Case of *Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143.

<sup>30</sup> REDESCA, Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights welcomes historic decision of the IACHR Court on justiciability of ESCR. CP No D181/17, November 15, 2017.

<sup>31</sup> *Ibid.*

<sup>32</sup> I/A Court H.R., Case of *Poblete Vilches et al.* Case of *Poblete Vilches et al. v. Chile*. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349; I/A Court H.R., Judgment of March 8, 2018. Case of *Cuscul Pivaral et al. v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359

<sup>33</sup> IACHR Court. Case of *Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375; I/A Court H.R., Judgment of March 6, 2019. Case of *Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración Tributaria (ANCEJUB-SUNAT) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2019. Series C No. 394.

<sup>34</sup> IACHR Court. Environment and human rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

<sup>35</sup> I/A Court H.R., Case of *Poblete Vilches et al.* Case of *Poblete Vilches et al. v. Chile*. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, para. 105.

the conclusion that Article 26 of the American Convention protects those rights that derive from the economic, social and educational, scientific and cultural norms contained in the OAS Charter<sup>36</sup> and reiterated the competence to review both obligations of immediate enforceability and those of progressive nature of the ESCR<sup>37</sup>. Subsequently, it ruled on the right to health of persons deprived of liberty and the right to social security, particularly in the area of social security for the elderly, as an integral part of the ESCR protected at the inter-American level in an autonomous and direct<sup>38</sup> manner.

43. For its part, the IACHR has also reaffirmed and exercised its competence to rule on possible violations of Article 26 of the American Convention and the ESCR contained in the American Declaration within the framework of the system of individual petitions and cases, and has emphasized the interdependence and indivisibility of economic, social, cultural and environmental rights with respect to civil and political<sup>39</sup> rights.
44. In general terms, the Commission has emphasized that Article 26 of the ACHR establishes obligations on the States Parties to achieve the progressive development of the social rights derived from the OAS Charter. Thus, the Commission has indicated that it is first necessary to establish whether the right at issue in the case is derived "from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States," as referred to in the text of Article 26. Given that the purpose of the OAS Charter was not to individualize rights but to constitute an international organization, the IACHR has indicated that it is necessary to resort to auxiliary texts to identify the rights that derive from the provisions of that instrument. Once this has been established, it is necessary to determine whether the State in question failed to comply with the obligation to "progressively achieve" the full realization of such right, or with those general obligations to respect and guarantee it. In this second level of analysis, it is necessary to take into consideration the nature and scope of the obligations required of the State, both progressive and immediate, under Articles 1(1), 2 and 26 of the Convention, as well as the contents of the right in<sup>40</sup> question.
45. In light of the above, the Commission has indicated that Article 26 of the American Convention imposes various obligations on the States that are not limited to a prohibition of regression, which is one of the correlates of the obligation of progressivity, but cannot be understood as

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<sup>36</sup> I/A Court H.R., Case of Cuscul Pivaral et al. v. Guatemala. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 97.

<sup>37</sup> I/A Court H.R., Case of Cuscul Pivaral et al. v. Guatemala. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 98.

<sup>38</sup> IACHR Court. Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395; Inter-American Court. Case of Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración Tributaria (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2019. Series C No. 394. I/A Court H.R., Case of Muelle Flores v. Peru. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375.

<sup>39</sup> IACHR. Resolution No. 12/85, Case No. 7615 (Yanomami Community), Brazil, March 5, 1985; IACHR. Merits Report No. 50/16. Undocumented Workers (United States) November 30, 2016; IACHR. Merits Report No. 25/18. Employees of the Fire Factory in Santo Antonio de Jesus and their family members (Brazil), March 2, 2018; IACHR. Merits Report No. 64/18. Opario Lemoth Morris et al. (Buzos Miskitos) (Honduras), May 8, 2018; IACHR. Merits Report No. 110/18. Paola del Rosario Albarracín Guzmán and family members (Ecuador), October 5, 2018; IACHR. Merits Report No. 107/18, Martina Rebeca Vera Rojas (Chile), October 5, 2018, inter alia.

<sup>40</sup> IACHR, Report No. 25/18, Case 12.428. Admissibility and Merits. Employees of the Fire Factory in Santo Antonio de Jesus and their family members. Brazil. March 2, 2018, paras. 127 et seq. and IACHR, Report No. 110/18, Case 12.678 Merits. Paola del Rosario Albarracín Guzmán and next of kin. October 5, 2018, paras. 103 et seq.

the only obligation justiciable in the inter-American system under this norm. Thus, the Commission affirms that taking into account the interpretative framework of Article 29 of the American Convention, Article 26 seen in the light of Articles 1.1 and 2 of the same instrument, at least the following immediate and enforceable obligations can be inferred: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination to economic, social, cultural and environmental rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of the rights incorporated in said article and iv) offer suitable and effective remedies for their protection<sup>41</sup>.

46. In relation to the enforceable and immediate components of the obligation to take steps or adopt measures, the IACHR recalls that the Committee on ESC rights has indicated, for example, that the adoption of measures by themselves are not limited or conditioned to other considerations; therefore, although the achievement of the effective realization of rights may be gradual, the adoption of measures or measures for such purposes must be deliberate, concrete and oriented as clearly as possible to their fulfillment. The State also has basic obligations that must satisfy essential levels of such rights, which are not subject to progressive development, but are of an immediate<sup>42</sup> nature.
47. The Commission and REDESCA emphasize that the direct justiciability component of the ESCER is a highly relevant advance for the guarantee of human rights in their integrality and indivisibility; they also recognize that access to Inter-American justice in this regard is making it possible to consolidate the protection of these rights for their beneficiaries in an increasingly visible and solid manner; At the same time, it allows addressing serious situations of affectation or threat to the dignity and human rights of individuals with greater assertiveness, particularly taking into account social inequality, poverty, and the intervention of non-state actors in their realization. Without prejudice to this, they also underscore the importance of States effectively applying the standards related to progressivity, non-regression, immediate obligations or recommendations related to such rights; as well as the analysis of the legal content and particularities of the same identified and developed by the Commission and its REDESCA in the Inter-American context within its other mechanisms for the promotion and protection of human rights.
48. The Commission and REDESCA consider that the Inter-American standards on ESCER demonstrate that all human rights must be understood and protected in an integral manner, without establishing unnecessary hierarchies and making them enforceable before those authorities that are competent to do so. Accordingly, this compendium is an approach to the development of monitoring, interpretative and jurisprudential application of ESCER in the region based on the growing work of the IACHR in this area.
49. The following excerpts from the REDESCA press release reinforce the above notions.

### ***Press Release***

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<sup>41</sup> IACHR, Report No. 25/18, Case 12.428. Admissibility and Merits. Employees of the Fire Factory in Santo Antonio de Jesus and their family members. Brazil. March 2, 2018, paras. 127 et seq. and IACHR, Report No. 110/18, Case 12.678 Merits. Paola del Rosario Albarracín Guzmán and next of kin. October 5, 2018, paras. 103 et seq.

<sup>42</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States Parties' obligations (Article 2, paragraph 1 of the Covenant), 1990. In this sense, see: IACHR. Report on Poverty and Human Rights in the Americas OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

***Special Rapporteurship on Economic, Social, Cultural and Environmental Rights welcomes landmark IACHR Court decision on justiciability of ESCER, CP No. D181/17***

The recent decision of the Inter-American Court in relation to the effective application of Article 26 of the American Convention in the analysis of cases not only sets one of the most important precedents in regional jurisprudence on the matter; it also advances at the global level in strengthening a vision of integral and joint protection of human rights, overcoming politically constructed divisions and categories that interfere with the respect and guarantee of the dignity of the human person. The possibility of legally and bindingly demanding respect for and guaranteeing ESCER through the organs of the Inter-American System will make it possible to progressively develop and define the content of each of these rights and the obligations of the States Parties in relation to them, facilitating the formulation of appropriate public policies and establishing regional standards and guidelines for their effective enjoyment and realization, especially with respect to the most vulnerable populations.

REDESCA welcomes this transcendental step in the consolidation of Inter-American jurisprudence on ESCER, which until now has been developed by way of connection with rights traditionally considered civil and political rights (for example, in the area of health and certain components of social security; It also calls on States to effectively comply with the normative framework of the system in this area in accordance with the standards developed by the Inter-American Commission and the Inter-American Court, as well as the recommendations issued by the Working Group of the Protocol of San Salvador. It also makes a special call to civil society to join efforts for the strategic use of the tools of the Inter-American System in order to crystallize the effective protection of individuals and groups who are victims of violations of their ESCER in the region.

***C. General obligations of the States: respect for and guarantee of ESCER***

50. As is well known, Article 1(1) of the American Convention on Human Rights emphasizes the obligation of the States Parties to respect and guarantee the rights established therein. On the other hand, Article 2 establishes the obligation of the States to adopt provisions of domestic law, both legislative and otherwise. Such provisions certainly reach the provisions of Article 26 of the Convention, included in Part I of the instrument. In this sense, States have the obligation not only to ensure the progressive development of the right, but also to respect and guarantee its realization, including through the adoption of measures, non-discrimination in the exercise of rights, and access to an effective remedy.
51. The IACHR has pronounced on different occasions and through different instruments on obligations in the area of economic, social, cultural and environmental rights. However, it has only recently included in its pronouncements an interpretation based on the *pro persona* principle that supports its analysis of the obligations of States in this regard, and postulates its competence to analyze compliance or non-compliance with State obligations in specific cases.
52. In the following excerpts, you will find some manifestations of this interpretative evolution.

***Cases sent to the Court***

***Opario Lemoth Morris et al. (Buzos miskitos) (Case 12.378) v. Honduras. OEA/Ser.L/V/II.168 Doc. 74 (May 8, 2018).***

197. Both bodies of the inter-American system have indicated that the prevention measures to be taken must be determined in light of the characteristics and circumstances of each specific case. The Commission considers that, in the present case, which involves extreme labor conditions exercised by private companies, the obligations of regulation, supervision and oversight are applicable, in terms of the role of the State, in areas that involve fundamental interests of society and the basic rights of individuals.

273. For its part, the IACHR considers that, as part of the general duty to guarantee, the State must pay special attention to historically discriminated and excluded groups, and take measures to ensure that when these groups enter into a labor relationship with companies, they comply with the respective domestic regulations on benefits and social security. In this regard, the Commission has already indicated that the rights of indigenous populations are affected in a differentiated manner, for example, by the persistent obstacles to the realization of the right to decent work, through the marked barriers they face to full professional training, decent employment opportunities, and sufficient social security. Similarly, in relation to people with disabilities, it has indicated that they are more likely to experience adverse socioeconomic situations, such as lower levels of education, poorer health conditions, and high unemployment rates.

***Paola del Rosario Guzmán Albarracín and family members (Case 12.678) v. Ecuador (October 5, 2018).***

103. Article 26 of the American Convention establishes an obligation on the part of the States Parties to seek the progressive development of the rights contained therein. In turn, Article 1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights or "Protocol of San Salvador" establishes that the States Parties undertake to adopt the necessary measures, to the maximum of their available resources and taking into account their level of development, in order to achieve progressively the full realization of the rights recognized in the instrument.

Although both organs of the inter-American system have reaffirmed their competence to rule on possible violations of Article 26 of the American Convention in the framework of the system of individual petitions and cases, this provision had been the subject of little development in the jurisprudence of the inter-American system regarding contentious cases. On the other hand, by virtue of Article 19(6) of the Protocol of San Salvador, both the Inter-American Court and the IACHR have jurisdiction to decide on contentious cases regarding facts related to Article 13 of said treaty, which recognizes the right to education.

105. The Commission recognizes that the interpretation of Article 26 of the Convention and the concrete determination of its scope and content may involve certain interpretative complexities. In this regard, the Commission considers it necessary to develop some of its previous pronouncements in this regard, specifically with respect to what it considers to be an appropriate methodology of analysis that takes into account the text of the norm, but interprets it in a manner consistent with the developments that have been made in this area at the international level and that are very useful for unraveling its scope and content.

106. Thus, the Commission considers that the analysis of a specific case in light of Article 26 of the American Convention must be carried out on two levels. First, it is necessary to establish whether the right at issue in the case derives "from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States," as referred to in the text of Article 26. In other words, Article 26 of the ACHR is the one that attributes to the OAS Charter as a direct source of rights, assigning the character of human rights to the provisions on the subject that may derive from said treaty. Since the purpose of the OAS Charter was not to individualize rights but to constitute an international organization, it is necessary to resort to auxiliary texts to identify the rights that derive from the provisions of that instrument.

107. Once this has been established, it is necessary to determine whether the State in question failed to comply with the obligation to "progressively achieve" the full realization of this right, or with those general obligations to respect and guarantee it. In this second level of analysis, it is necessary to take into consideration the nature and scope of the State's obligations under Articles 1(1), 2 and 26 of the Convention, as well as the contents of the right in question, as will be done below.

In order to establish the criteria for deriving specific rights from the OAS Charter, determine their content and the obligations of the States in relation to them, Article 29 of the ACHR acquires relevance insofar as it establishes the parameters of the general rules of interpretation of said treaty. In this sense, according to this article, the interpretation of the provisions of the ACHR may not limit or suppress rights recognized by the domestic legislation of the States or by any other treaty to which it is a party, nor exclude the effects of the American Declaration on the Rights and Duties of Man or other international acts of the same nature. The provision thus embodies the "pro persona" principle in the inter-American system and offers a key tool for the effective protection of all human rights recognized in the Constitutions of the States Parties, as well as in the inter-American or universal human rights instruments ratified by them.

109. Based on the comprehensive interpretation that Article 26 requires in light of the provisions of Article 29, the Commission considers it pertinent to refer to the obligations that arise from Article 26 of the American Convention and that may be the subject of a pronouncement by the organs of the inter-American system in the context of contentious cases. In this regard, for the specific case, the Commission considers that in the interpretation of Article 26 of the American Convention, Article 1 of the "Protocol of San Salvador" referred to above must be taken into account, since it allows determining the scope of the State's obligation regarding the progressive development of the right under analysis.

In light of the above, the Commission understands that Article 26 of the American Convention imposes various obligations on the States that are not limited to a prohibition of regression, which is a correlate of the obligation of progressivity, but cannot be understood as the only obligation justiciable in the inter-American system under this norm. Thus, the Commission affirms that taking into account the interpretative framework of Article 29 of the American Convention, Article 26 seen in the light of Articles 1.1 and 2 of the same instrument, at least the following immediate and enforceable obligations can be deduced: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination to economic, social and cultural rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of the rights incorporated in said article and iv) offer suitable and effective

remedies for their protection. The methodologies or sources of analysis that are relevant for each of these obligations should be established according to the circumstances of each case.

***Martina Rebeca Vera Rojas (Case 13.039) v. Chile. OEA/Ser.L/V/II.169 Doc. 124 (October 5, 2018).***

58. Likewise, the IACHR understands that in light of the duty to guarantee provided for in Article 1(1) of the ACHR and the interpretation that the organs of the inter-American system have made of it, the States Parties must reasonably prevent the violation of the rights contained in Article 26 in the context of business activities. This includes adopting a legal framework that ensures the protection of these rights and provides effective access to remedies for the victims of such violations. Among the actions to ensure an adequate legal framework, the State should require companies under its jurisdiction to exercise human rights due diligence in order to identify, prevent and mitigate the risks of rights violations in the context of their activities.

### ***Thematic report***

***Access to justice as a guarantee of economic, social and cultural rights. Study of the standards set by the Inter-American Human Rights System. OEA/Ser.L/V/II.129 Doc. 4 (2 September 2007)***

96. The social functions of the State have been extended to areas such as health, housing, education, labor, social security, consumption or promotion of the participation of disadvantaged social groups. However, this has not necessarily translated, from a technical point of view, into the concrete configuration of rights. In many cases, the State assumed these functions through discretionary interventions or forms of organization of its activity, such as the provision of public services or the development of targeted social programs or plans. The social and economic effect of such functions is not particularly assigned to rights-holders, be they individual or collective. However, there is no theoretical or practical impossibility of configuring enforceable rights in these fields as well, so as to add to the institutional, administrative or political control mechanisms, the control that can be exercised over the providers or officials, the persons who exercise rights linked to these social benefits. There is no reason not to recognize the possibility of demanding civil rights in the area of social policies, such as the right to equality and non-discrimination, the right of access to information, or social rights that set frameworks and minimums for these policies. There is no doubt that a rights perspective in the formulation of plans should lead to contemplate, in their institutional engineering, the basic standards of due process of law.

97. In this regard, the ISHR has established a position on the application of the guarantees of due process of law in administrative spheres. Thus, it has established the obligation of States to have clear rules for the behavior of their agents, in order to avoid inadequate margins of discretion in the administrative sphere, which could encourage arbitrary or discriminatory practices. At the same time, the ISHR has made progress in identifying certain standards of due legal process that should govern administrative procedures, such as reasonable time, the right to judicial review of administrative decisions, the right to have a lawyer, the right to a well-founded decision, the right to publicity of the actions of the administration, among others.

***D. Progressive realization, prohibition of regressivity and immediate obligations.***

53. Through the interpretative function of the various treaty bodies, it has been recognized that two types of obligations arise from the obligations derived from economic, social and cultural rights instruments: obligations of progressive realization, on the one hand, and obligations of an immediate nature, on the other.<sup>43</sup>
54. Progressive realization implies that States have an obligation of means to ensure the gradual development of their obligations in this area, in accordance with the maximum available resources. This is in recognition of the structural and budgetary differences between countries, as well as the fact that they must take steps towards the effective realization of economic, social and cultural rights.
55. On the other hand, the same interpretation implies the existence of "immediate obligations". They are so called because they do not depend on the existence of resources or capacity of the State for the fulfillment of the right in question. Thus, in general terms, this implies: adopting measures, so that a programmatic approach is used for the realization of economic, social and cultural rights; and non-discrimination, as a principle that must govern the exercise of the State's functions in this regard.
56. The following excerpts reflect the manner in which the IACHR and REDESCA have been applying these principles and obligations.

***Thematic reports***

***Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017).***

*Recommendations*

2. Progressive realization and non-regressivity

It is forbidden for the State to adopt policies, measures and sanction legal norms that, without adequate and convincing justification, worsen the situation of the economic, social and cultural rights of the population. The State has the duty to account for how the available resources have been mobilized, to the maximum extent possible, to progressively achieve the full realization of these rights.

***Public policies with a human rights approach. OEA/Ser.L/V/II. Doc. 191 (September 15, 2018).***

118. The IACHR has pointed out that public expenditure planning should promote equality in the Americas and that an adequate fiscal policy can contribute to the redistribution of wealth to reduce inequality gaps, to the correction of market failures, to the investment necessary for the fulfillment of human rights, particularly economic and social rights, and to accountability between the State and the citizenry.

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<sup>43</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)*, E/1991/23 (1990), paras. 1-3.

119. In this regard, the Commission understands that, from a human rights perspective, the following principles and obligations are particularly relevant for fiscal policy: ensuring minimum essential levels; mobilization of the maximum available resources for the progressive realization of economic, social, cultural and environmental rights; compliance with the principle of progressivity and non-regression; and the application of the principle of equality and non-discrimination.

### ***Annual Report***

#### ***III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas "Until dignity becomes customary". OEA/Ser.L/V/II. 24 February 2020.***

60. REDESCA follows the line of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No. 3, in that measures related to the implementation of Economic, Social, Cultural and Environmental Rights, also in light of Inter-American standards, are called to progressively achieve the full realization of rights. Thus, the expression "progressive realization" constitutes a recognition of the fact that the full realization of all economic, social, cultural and environmental rights in general cannot be achieved in a short period of time.

61. Likewise, as the Inter-American Court of Human Rights has stated, there are two types of obligations deriving from ESCER: those of immediate enforceability, such as non-discrimination, and those of progressive realization. Regarding the latter, the progressive development of ESCER cannot be achieved in a short period of time, but requires the effective implementation of actions to achieve the full enjoyment of these rights. In this logic, the Court established that the obligation of progressive realization of ESCER prohibits the inactivity of the State in its task of implementing actions for the effective protection of these rights, especially in those matters where the total absence of state protection places people before the imminence of suffering harm to their life or personal integrity.

62. In this sense, since ESC rights are enshrined in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and its Protocol of San Salvador - among other normative instruments and specific human rights treaties of the Inter-American system - the "progressive" nature of ESC rights should in no way be an excuse for considering that ESC rights are rights less rooted in human dignity or in the same Inter-American instruments than civil or political rights. On the contrary, the universality, indivisibility, interdependence and interrelatedness of all human rights increasingly appear as central elements in ensuring their effective protection, as well as the preservation of democracy and the rule of law in States that are truly committed to the development of their peoples and, therefore, to the fulfillment of the 2030 Agenda.



## CHAPTER 3

# ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS AND RELATED ISSUES IN THE IACHR MECHANISMS

## **ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS AND RELATED ISSUES IN THE IACHR MECHANISMS**

57. The purpose of this section is to offer a representative and specialized systematization of the application of the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, its Additional Protocol on Economic, Social and Cultural Rights, and the Charter of the Organization of American States, in the interpretation of the rights and guarantees established in those instruments related to economic, social, cultural and environmental rights, and in the functions of the States for their progressive realization, as well as for their respect and guarantee.
58. To this end, we highlight various paragraphs from documents of the Commission and REDESCA, prepared in the framework of the various mechanisms of the IACHR, which identify and develop the content of the different economic, social, cultural and environmental rights, as well as two issues especially related to their validity in the region and which are of special concern to the Commission and its Special Rapporteur, namely: the issue of poverty, inequality and pandemics; and the issue of business and human rights.

### ***A. Right to water***

59. Although the inter-American instruments do not explicitly recognize the right to water, it is protected by Article 26 of the Pact of San José, Costa Rica, in light of the provisions of the OAS Charter. Moreover, there is an implicit recognition at the international level that the enjoyment of sufficient, safe, acceptable, accessible and affordable water is necessary for the realization of various human rights, including the right to food, health, personal integrity and life.
60. In this way, the right to water is affirmed in the indivisibility, interdependence and interrelation of all human rights. The Inter-American Commission on Human Rights has developed the content of the right to water particularly through its monitoring instruments, and although with less intensity, also through the system of cases and precautionary measures.
61. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the human right to water, developed within the framework of its different mechanisms.

### ***Precautionary Measures***

***Precautionary Measures No. 51/15. Subject children and adolescents of the communities of Uribía, Manaure, Ríohacha and Maicao of the Wayúu People, settled in the department of La Guajira, with respect to Colombia (December 11, 2015). Extension of beneficiaries in favor of pregnant and lactating women of the Wayúu Indigenous Community in the municipalities of Manaure, Riohacha and Uribía with respect to Colombia (January 26, 2017).***

In the resolutions issued, the IACHR orders:

- Take immediate measures so that the beneficiary communities can have, as soon as possible, access to safe and potable water, in a sustainable and sufficient manner for the subsistence of children and adolescents (2015).
- Take immediate measures so that pregnant and lactating women can have, as soon as possible, access to safe and potable water, in a sustainable and sufficient manner for the subsistence of the beneficiaries (2017).

***Precautionary Measure No. 772-17. Inhabitants consuming water from the Mezapa River with respect to Honduras (February 24, 2018).***

The resolution adopting the precautionary measure refers to the 2015 Annual Report. Chapter IV A. "Access to Water in the Americas. An approach to the human right to water in the Inter-American System" of the IACHR.

***Precautionary Measure No. 708-19. Inhabitants of the Zones Surrounding the Santiago River with respect to Mexico (February 15, 2020).***

The resolution adopting the precautionary measure refers to the 2015 Annual Report. Chapter IV A. "Access to Water in the Americas. An approach to the human right to water in the Inter-American System" of the IACHR.

***Thematic reports***

***Report of the Inter-American Commission on Human Rights on the situation of persons deprived of liberty in Honduras. OEA/Ser.L/V/II.147 (March 18, 2013).***

56. The IACHR also reaffirms that it is the State that must ensure that persons in its custody have access to, among others, the following minimum essential requirements: drinking water, adequate sanitary facilities for personal hygiene, space, adequate lighting and ventilation, sufficient food, and an adequate mattress and bedding.

***Situation of the human rights of the indigenous and tribal peoples of Panamazonia. OAS/Ser.L/V/II. Doc. 176 (September 29, 2019).***

280. The IACHR observes, based on the situation reported (supra III.C, III.D and III.E), that the various environmental impacts in the Amazon greatly compromise the indigenous peoples' enjoyment of their rights to water and food. In several cases, mercury contamination, the use of toxic agrochemicals or oil spills have caused serious violations of these rights, since these substances are transmitted mainly through the consumption of contaminated water and animals, and reduce access to these resources. On occasion, the contamination of water resources even generates a food crisis, given that, for many Amazonian communities, fish are the basis of their traditional diet. Likewise, the IACHR observes that, given that food practices are closely linked to their worldview, certain State measures for food supply have not been culturally appropriate, as would be the case with the distribution of industrialized products. Added to this are impacts related to the deforestation of forests and the loss of biodiversity, which have been reported to affect traditional hunting and gathering practices.

281. With respect to the right to water, although the Inter-American system does not have specific norms regarding this right, the IACHR has held that all of its instruments recognize a series of rights that are closely linked to access to water and its different dimensions, such as the conditions of availability, quality and accessibility of water without discrimination of any kind. Specifically, it has considered that although the American Declaration does not expressly recognize the right to water, it establishes the right to life, to personal integrity and the right of every person to have his or her health preserved by sanitary and social measures relating to food, clothing and housing. Likewise, the American Convention enshrines a series of human rights that are closely linked to access to water and sanitation as inherent conditions for the realization of those rights, such as the right to life and personal integrity. Likewise, Article 26 of the same instrument must be taken into account, which allows the derivation of human rights provisions from "the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States" and Article XI of the aforementioned American Declaration. Its protection can also be derived from Article 11.1 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, which states that "everyone has the right to live in a healthy environment and to have access to basic public services". In the last decade, the jurisprudence of both the IACHR and the Inter-American Court has addressed a series of issues related to access to water through the interpretation of the content of a series of human rights established in the Inter-American instruments, for which it has considered the contributions of the universal system and technical information from a series of specialized organizations.

282. In the Universal System, General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights has defined the right to water as "indispensable for living in dignity and a precondition for the realization of other human rights. It also states that it is a vital resource with various purposes and that it is related to different rights: it is necessary to produce food (the right to adequate food); to ensure environmental hygiene (the right to health); to procure means of subsistence (the right to earn a living through work); and to enjoy certain cultural practices (the right to participate in cultural life). It also states that, in the allocation of water, "priority should be given to the right to use water for personal and domestic purposes. Priority should also be given to water resources necessary to prevent hunger and disease.

283. Likewise, in relation to the healthy environment, the IACHR Court has recently held in its Advisory Opinion 23 that, in the framework of the obligation to respect that derives from Article 1.1 of the ACHR, the State must refrain from "(i) any practice or activity that denies or restricts access, under conditions of equality, to the requirements for a dignified life, such as water and adequate food, among others, and from (ii) unlawfully contaminating the environment in a way that affects the conditions that allow people to live in dignity, for example, by depositing waste from state enterprises in ways that affect the quality of or access to drinking water and/or food sources". For its part, as part of the obligation to ensure, the State must take measures to ensure that information is disseminated on the use and protection of water and adequate food sources. In addition, in specific cases where individuals or groups are unable to access water and adequate food on their own, for reasons beyond their control, the State must guarantee a minimum essential of water and food. If the State does not have the resources to meet this obligation, it must "demonstrate that every effort has been made to use all the resources at its disposal in order to meet, as a matter of priority, these minimum obligations".

284. Additionally, in 2017 the Minamata Convention on Mercury entered into force, the purpose of which is to protect human health and the environment from emissions of mercury and its compounds. This Convention has been ratified by countries such as Bolivia, Brazil, Ecuador, Guyana, Peru and Suriname.

285. As indicated, in the specific case of indigenous peoples, water resources are of singular importance due to the special relationship they have with nature and the environment that surrounds them. In the first place, it should be noted that natural water sources may be the only places where these groups can access this element. In this context, rivers and streams are often used by indigenous communities not only for fishing, personal hygiene, washing clothes and transportation, but above all as a source of drinking water.

286. Due to the importance of rivers and water sources, standards have been adopted at the international level that seek to safeguard this essential component of the territory. In effect, ILO Convention 169, an instrument that contemplates that the protection of the territory must be comprehensive, which encompasses the entire habitat of the peoples, including the rivers and water sources that are within this space. Similarly, the UN Declaration on the Rights of Indigenous Peoples recognizes that such collectives maintain a spiritual relationship with the territories within which coastal waters and seas are included (article 25); and establishes that the State has the obligation to ensure the conservation and protection of indigenous peoples, for which it is necessary to adopt effective measures, especially in the case of storage of hazardous materials, as would be the case of mercury (article 29). For its part, the American Declaration on the Rights of Indigenous Peoples recognizes the right to the protection of a healthy environment, and establishes that these peoples "have the right to be protected against the introduction, abandonment, dispersal, transit, indiscriminate use or deposit of any hazardous material that may adversely affect indigenous communities, lands, territories and resources" (Article 19).

287. For its part, the IACHR, in its Report on Indigenous peoples, Afro-descendant communities and natural resources: Protection of human rights in the context of extraction, exploitation and development activities, emphasized that the main impacts on access to water in the Americas originate in the negative effects derived from the "implementation of extractive projects and the use of agrochemicals in the Region, from the contamination of water sources, and from the lack of access to water for people and communities living in poverty and extreme poverty, especially those living in extreme poverty, the lack of access to water for people and communities living in poverty and extreme poverty, especially in rural areas, and the interruption of drinking water supply services, all of which generate disproportionate impacts on the human rights of individuals, groups, and communities historically discriminated against.

288. Along these lines, in the context of infrastructure and natural resource extraction projects, it has been identified that the construction of dams on indigenous or tribal lands and territories generates serious impacts on the indigenous peoples' own forms of water use, by interrupting the natural course of rivers. These dams, in turn, facilitate the disproportionate accumulation of minerals when mining activities are carried out in nearby areas. Similarly, informal mining generates soil and water contamination. In addition, there are projects of various kinds that could destroy essential water sources, such as the construction of the transoceanic canal in Nicaragua, which would affect Lake Cocibolca, the most important natural freshwater reservoir in Central America, despite the existence of a scientific opinion that describes the construction

of the canal as "catastrophic", given that this natural reserve of drinking water cannot be replaced.

289. It should be noted that in the case of indigenous peoples, both the right to water and the right to food are rights that are closely linked to the enjoyment of their territorial rights. It has been proven that the lack of access to their ancestral territories exposes these groups to precarious or subhuman living conditions in terms of access to food and water, among other basic services. This results in higher rates of infant mortality and malnutrition, as well as greater vulnerability to diseases or epidemics. Along the same lines, the IACHR Court has held that "the special effects on the right to health, and intimately linked to it, those on the right to food and access to clean water, have an acute impact on the right to a dignified existence and the basic conditions for the exercise of other rights, such as the right to education or the right to cultural identity".

290. With regard to the legal order concerning the contamination of rivers and water sources, soils and cleaning processes, it can be observed that the specific regulation of this matter, with respect to the areas that constitute the Amazon region, has been generally vague and not very concise. Environmental policies on the contamination of water sources and their cleanup have not had a particular focus on the territory of the Pan-Amazon region. Quantitative studies are needed on the current water pollution faced by Panamazonia.

291. In this regard, the IACHR reiterates the following recommendations specifically related to the rights of indigenous peoples. On the one hand, it is incumbent upon States to prevent, mitigate, and suspend negative impacts on human rights and, in particular, obstacles related to access to water for individuals, groups, and communities affected by extractive, development, and investment activities. Likewise, they must consult the peoples and communities in a prior, adequate, effective manner and in full compliance with international standards applicable to the matter, in the event that any activity or natural resource extraction project is intended to be carried out on indigenous lands and territories, or any other investment or development plan that involves potential impacts on their territory, in particular with respect to possible impacts on access to water in quality and quantity adequate for a dignified life.

***Report on the Economic, Social, Cultural and Environmental Rights of Afro-descendants.***  
**OEA/Ser.L/V/II. Doc. 109 (March 16, 2021).**

227. Regarding the rights to drinking water and sanitation, the IACHR and its REDESCA underscore the relevance of Article 26 of the American Convention and Article XI of the American Declaration as the central normative basis for their protection at the inter-American level. The content of other human rights expressly included in these instruments that are interdependent and indivisible and related to their realization, such as the right to life or personal integrity, must also be taken into account as a legal basis for these rights, as appropriate.

228. The Commission has also highlighted the relevance of Articles 3 and 45 of the OAS Charter in relation to the protection of these rights and has noted that according to various resolutions of the OAS General Assembly and, in particular, the Social Charter of the Americas, the right to water is a fundamental right for life, and is basic to environmental sustainability; and that non-discriminatory access of the population to drinking water and sanitation services contributes to the objective of combating poverty.

229. They also emphasize that, according to the provisions of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, it is the duty of the States to prevent, eliminate, prohibit and punish the restriction or limitation to access or sustainable use of water, natural resources and ecosystems, based on ethnic-racial origin and to adopt legislation that clearly defines and prohibits racial discrimination in access to public services. The Inter-American Convention on the Protection of the Human Rights of Older Persons also recognizes the obligation of States to guarantee equal access of older persons to basic public drinking water and sanitation services.

231. (...) In particular, the IACHR and its REDESCA have emphasized the importance of not neglecting the collective and cultural dimension of the right to water in relation to indigenous and tribal peoples, which includes Afro-descendant tribal peoples, regarding their rights to their territories and natural resources.

232. In light of the foregoing, the IACHR reiterates that the rights to water and sanitation are necessary elements to guarantee other rights such as life, personal integrity and health, since they are considered implicit aspects and inherent conditions for the realization of those rights. On this occasion, the IACHR and its REDESCA consider it essential to emphasize that the rights to water and sanitation fall into the category of essential guarantees to ensure an adequate standard of living, particularly because it is one of the fundamental conditions for survival, health and a dignified life, among the realization of other rights. In particular, on the human right to sanitation, they draw attention to the fact that it requires that services be available, safe, acceptable, accessible and affordable. States must ensure, without discrimination, that all persons have access to hygienic and safe sanitation that guarantees dignity.

233. In this line, it is important to remember that in light of the inter-American jurisprudence, one of the obligations that the State must assume in order to protect and guarantee the right to life is to generate the minimum living conditions compatible with the dignity of the human person, and not to produce conditions that hinder or impede it, as would be the case of a situation that determines the lack or limitation of the rights to water and sanitation. The IACHR and the Commission have also made special reference to the State's obligations with respect to persons, collectivities and groups in situations of historical discrimination, such as Afro-descendant persons and communities, indicating that the obligation to adopt concrete measures to guarantee the right to a dignified life is reinforced when dealing with persons in situations of historical discrimination and risk, whose attention becomes a priority.

237. By virtue of the foregoing, the IACHR urges States to design and implement policies for access to safe drinking water and sanitation focused on Afro-descendants, ensuring that strategies are implemented to guarantee their availability and management, both in urban and rural contexts, so that this population has accessibility and affordability to water and sanitation. For such purposes, it should be taken into account that there are intersectional factors that may exacerbate the obstacles to the enjoyment of these rights, such as socioeconomic origin, gender, age, disability, migrant status and/or forced displacement, sexual orientation and gender identity and/or expression, among other factors that aggravate the situation of discrimination and historical segregation against this ethnic-racial group.

238. In the same vein, the Commission and its REDESCA underscore that States have the obligation to prevent violations of the right to water and sanitation by both public and private actors, and, consequently, stress the importance of due compliance with the State's obligations to regulate, supervise, investigate, and provide access to reparations when violations and abuses of these rights are committed. The IACHR also urges States to promote plans to regulate, protect the quality and optimize the use of this resource in ethnic territories, respecting the autonomy and self-determination of their communities, and to particularly protect water resources in the territories of Afro-descendant communities. To fulfill these obligations, States must also design policies for prevention, mitigation and accountability in cases of water pollution, droughts, natural disasters affecting water and sanitation, the effects of climate change on these rights or any other substantive damage to them.

### ***Annual reports***

#### ***Annual Report of the Inter-American Commission on Human Rights 2015, OEA/Ser.L/V/II, Doc. 48/15 (Dec. 31, 2015). Chapter IV.A: Access to Water in the Americas. An approach to the human right to water in the Inter-American System.***

7. The IACHR considers that access to water is closely linked to the respect and guarantee of several human rights, such as the right to life, to personal integrity, and to the principle of equality and non-discrimination, among others. In this context, the Commission warns that the lack of access to water affects groups, individuals and communities historically discriminated against, such as women, children and adolescents, indigenous peoples and communities, Afro-descendants, rural and urbanized populations in precarious settlements, persons deprived of liberty, persons with disabilities, the elderly, among others. Likewise, a situation of special concern for the IACHR refers to the consequences of poverty and extreme poverty in the Americas; it has been recognized at the international level that people living in poverty suffer disproportionately from the consequences of the obstacle to access to water and adequate sanitation, which has an aggravated impact on the enjoyment of their economic, social and cultural rights, thus limiting the possibilities of escaping poverty and breaking the cycle of exclusion and inequality.

8. The IACHR notes with concern that available information indicates that lack of safe drinking water and sanitation is considered the second leading cause of morbidity and mortality in children under 5 years of age in the hemisphere. Therefore, access to quality water, that is, water that is safe and suitable for human use and consumption, is necessary to prevent death from dehydration, to reduce the risk of water-related diseases, and to meet the needs of consumption, cooking, personal and domestic hygiene.

Although the right to water is not expressly recognized in the inter-American system, the set of instruments establishes a series of rights that are closely linked to access to water and its different dimensions, such as the conditions of availability, quality and accessibility of water without discrimination of any kind. This section describes how the set of these instruments and the jurisprudential evolution of the system have been progressively addressing the issue and, therefore, advancing in the consequent obligations of the States. Indeed, it is important to point out that although the jurisprudence on access to water is still developing in the inter-American system, there are currently important decisions that have shed light on the obligations of States to guarantee access to water without discrimination.

29. As a normative starting point in the inter-American system, it is important to mention the American Declaration of the Rights and Duties of Man (hereinafter, "the American Declaration"), which, according to the jurisprudence of the inter-American human rights system, constitutes a source of obligations for all OAS member states. Although the American Declaration does not expressly recognize the right to water, it establishes the right to life, to personal integrity and the right of every person to have his health preserved by sanitary and social measures relating to food, clothing, housing (...). The IACHR understands that access to water constitutes a necessary element to guarantee the right to life, the right to personal integrity and that it is an inherent aspect of the right to health, in view of being considered an implicit aspect of the sanitary, food, housing and medical assistance measures referred to in the aforementioned norm. As explained below, the right of access to water has particularities in relation to indigenous and tribal peoples, and their rights to their lands and natural resources.

31. Regarding the link between the right to life and access to water, both the Commission and the Inter-American Court have considered, along with other elements, that access to safe and potable water is an indispensable requirement for the full enjoyment of the right to life enshrined in Article 4 of the American Convention. In this sense, this right comprises a double perspective: not only the right of every human being not to be arbitrarily deprived of life, but also the right to be guaranteed the necessary conditions for a dignified existence. In consideration of this dual perspective, States must adopt measures to ensure the satisfaction of an essential level of access to water in conditions of quantity and quality for human consumption without any discrimination whatsoever. On the other hand, they must refrain from engaging in practices or activities that prevent or restrict access to drinking water on equal terms, particularly with respect to individuals, groups and communities historically discriminated against. They must also prevent third parties from impairing access to water by adopting internal measures, for example, to prevent third parties from denying access to water or contaminating water resources, wells and other water distribution systems.

32. Indeed, the Inter-American Court has referred to the concept of life with dignity, within the obligations imposed by Article 4 of the Convention. Thus, in the case of *Villagrán Morales et al. v. Guatemala*, the Inter-American Court established that "the fundamental right to life includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right not to be prevented from having access to conditions that guarantee him a dignified existence". This interpretation was taken up again in the cases of the *Yakye Axa, Sawhoyamaya and Xákmok Kásek* indigenous communities *against Paraguay*, in which the Inter-American Court considered that the State had not taken the necessary measures to provide them with the essential conditions for a dignified life, by failing to guarantee the provision of water, food, health and education, among others.

33. In this sense, and as indicated above, it is important to emphasize that in the inter-American system, one of the obligations that the State must assume in order to protect and guarantee the right to life is to generate the minimum living conditions compatible with the dignity of the human person, and not to produce conditions that hinder or impede it, as would be the case of a situation that determines the impossibility of access to safe water or water fit for human consumption. Likewise, in the same jurisprudence, the Court made special reference to the State's obligations with respect to persons, collectivities and groups in a situation of historical discrimination, indicating that the obligation to adopt concrete measures to guarantee the right

to a decent life is reinforced when dealing with persons in a situation of historical discrimination and risk, whose attention becomes a priority. In relation to the special consideration that elderly people deserve, it is important to point out that the Court has indicated that the State must adopt measures aimed at maintaining their functionality and autonomy, guaranteeing the right to adequate food, access to clean water and health care.

40. Special mention should be made of the right to property and access to water in relation to indigenous peoples. In the words of the Court, the close ties of indigenous peoples to their traditional territories and the natural resources linked to their culture that are found there, as well as the incorporeal elements that derive from them, must be safeguarded by Article 21 of the American Convention.

41. Consequently, indigenous peoples' access to their ancestral lands and to the use and enjoyment of the natural resources found therein is directly linked to obtaining food and access to clean water. Indeed, according to the jurisprudence of the Court, the members of indigenous and tribal peoples have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have the right to own the land they have traditionally used and occupied for centuries, without them, the economic, social and cultural survival of these peoples is at risk. Hence the need to protect the lands and resources they have traditionally used to sustain their ways of life.

42. Relatedly, the IACHR has indicated that the cultural rights of an indigenous or tribal people may encompass activities related to natural resources, such as fishing or hunting. The IACHR has also noted that among indigenous communities, the lives of their members "depend fundamentally" on the subsistence activities - farming, hunting, fishing, gathering - that they carry out in their territories, and that therefore, "the relationship that the community maintains with its lands and resources is protected under other rights contemplated in the American Convention, such as the right to life, honor and dignity, freedom of conscience and religion, freedom of association, protection of the family, and the right of movement and residence". The preservation of the particular connection between indigenous and tribal peoples and the natural resources they have traditionally used and which are linked to their culture "is fundamental to the effective realization of the human rights of indigenous peoples more generally and, therefore, merits special measures of protection".

45. Regarding the right to personal integrity (Article 5 of the American Convention) and its relation to access to water, it is important to note that the Commission has referred in particular to the obligations of States to ensure the minimum conditions of detention compatible with human dignity. In this regard, the Commission has pointed out that the right to personal integrity implies the obligation of States to provide the minimum necessary conditions of access to water and sanitation for persons deprived of liberty. In the "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", the IACHR has indicated that "all persons deprived of liberty shall have access at all times to sufficient and adequate drinking water for their consumption". Similarly, it has proceeded in the framework of the system of individual petitions and cases. For example, in the case of Victor Rosario Congo v. Ecuador, it was found that he died as a result of dehydration and malnutrition while deprived of his liberty. The IACHR considered that the evidentiary material shows that for approximately forty days he remained in isolation, without food or water. The Commission considered in its merits report that the State failed to take the measures within its power to ensure the right to

life of a person who, partly due to his state of health and partly due to the injuries he suffered, was in a state of defenselessness and isolation.

46. It is important to note that the IACHR has considered that the absence of drinking water supply constitutes a serious breach of the State's duty to guarantee the rights of persons in its custody. In this regard, in the "Report on the Human Rights of Persons Deprived of Liberty in the Americas" it has taken into account the technical criteria of the International Red Cross. In this report, the IACHR has indicated that the minimum amount may increase according to certain conditions, such as the climate and the amount of physical exercise that the inmates do. For its part, the Commission considered that the minimum required per person to cover all needs is 10 to 15 liters of water per day, provided that the sanitary facilities are functioning properly.

47. The Commission also considered the "United Nations Standard Minimum Rules for the Treatment of Prisoners," which establish in Article 12 that "sanitary facilities shall be adequate to enable the prisoner to satisfy his natural needs at the proper time, in a clean and decent manner" for the analysis of the merits of the case of Paul Lallion v. Grenada. In the aforementioned case, the petitioner indicated that he was allegedly given a bucket to use for his needs and that he was only allowed to pour the contents of the bucket once a day. Once used, he was forced to endure the odor and unhygienic conditions until he was allowed to empty it. The Commission concluded that the conditions of detention, including the lack of adequate sanitation facilities to which Mr. Lallion was subjected did not respect his physical, mental and moral integrity, as required by Article 5(1) of the Convention.

50. On the other hand, the jurisprudence of the Inter-American system has assessed, among other elements, that the satisfaction of the right to personal integrity, in conjunction with the right to health, is directly and immediately linked to access to safe and potable water or water fit for human consumption. The IACHR has established that the right to personal integrity is a very broad concept. For its part, the Inter-American Court has developed in its jurisprudence the link between the right to personal integrity and the right to health. Indeed, the Court has repeatedly interpreted Article 5(1) of the Convention as being "directly and immediately linked to human health. This intrinsic relationship is a manifestation of the interdependence and indivisibility of civil and political rights and economic, social and cultural rights. In the words of the Court, both groups of rights must be "understood integrally as human rights, without hierarchy between them and enforceable in all cases before those authorities that are competent to do so. In this regard, it is also relevant to reiterate that the IACHR considers that in order to achieve the full effectiveness of the right to personal integrity, "the States have the legal obligation to adopt deliberate, concrete measures aimed at the realization of the right to health for all," which implies, among others, adopting measures to guarantee access to water fit for human consumption.

51. It should be noted that the Inter-American Court established three main obligations derived from the duty to guarantee the right to personal integrity in relation to the right to health that are related, among other conditions, to the duties of provision of and access to safe and potable water for the satisfaction of these rights. These obligations are those of regulation, supervision and control. These obligations apply both to the direct provision of services by the State and to the provision of services by private entities.

55. It is important to emphasize that the rights referred to in Article 26 of the American Convention are those derived from the economic, social, educational, scientific and cultural norms contained in the OAS Charter, and that the jurisprudence of the Inter-American Court and the IACHR has already identified the rights to social security, health and labor rights as economic, social and cultural rights derived from the OAS Charter. However, it should be noted that the doctrine indicates that other rights that can be derived from the OAS Charter are the right to education, the right to food, the right to housing and cultural rights, among others.

57. In this regard, it is important to note that the IACHR in its jurisprudence stated that the nature of the obligations derived from Article 26 of the American Convention implies that the full realization of the rights enshrined in that norm must be achieved progressively and in accordance with the available resources. This implies a correlative duty not to regress in the achievements made in this area. This is the obligation of non-regression developed by other international organizations and understood by the IACHR as a State duty that can be justiciable through the individual petition mechanism enshrined in the Convention.

63. The Inter-American system also has a specialized instrument on economic, social and cultural rights, the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, "Protocol of San Salvador" (hereinafter "the Protocol"). The aforementioned Protocol contains an extensive catalog of such economic, social and cultural rights, among which stand out for their link to access to water, the right of every person to health, and the right to live in a healthy environment and to have access to basic services.

65. It is in this context that the jurisprudence of the system has considered that the satisfaction of the right to personal integrity and the right to health are directly and immediately linked to access to safe and potable water. For example, in the 2009 Report on the Situation of Human Rights in Venezuela, the Commission emphasized that "a right closely linked to the right to health is the right to water". Also in its report "Guidelines for the Elaboration of Progress Indicators in the Area of Economic, Social and Cultural Rights", the IACHR established as one of the result indicators to measure the satisfaction of the right to health, the percentage of the population with access to drinking water. It is also pertinent to mention that in its 2001 report on the human rights situation in Guatemala, the IACHR indicated that health and disease are processes of intersectoral determination where the most important causal factors are social, economic, environmental and lifestyle, as well as biological; and that therefore drinking water, drainage, garbage disposal and access to electricity are essential to prevent disease and improve the health of the population. On that occasion, the Commission recommended that the State provide additional resources for the creation of basic infrastructure, so that all communities have access, at a minimum, to drinking water and sanitation facilities sufficient for the protection of health [...].

66. For its part, the Commission has also considered the link between human subsistence and the preservation of a healthy environment. Indeed, the IACHR notes that environmental degradation can negatively affect access to water and the enjoyment of several human rights, including the rights to life, health, and food. Specifically, in relation to the link between access to water fit for human consumption and the environment, the Committee on Economic, Social and Cultural Rights has indicated that in order to ensure the right to health, it is necessary to "ensure the adequate supply of safe and potable water and the creation of basic sanitary conditions [and] the prevention and reduction of exposure of the population to harmful substances such as radiation and chemical substances or other harmful environmental factors

that may directly or indirectly affect health. To this end, States should adopt measures to combat environmental health hazards, inter alia, by formulating and implementing policies "with a view to reducing and eliminating air, water and soil pollution, including pollution caused by heavy metals [...]".

67. In view of the foregoing considerations, the norms and jurisprudence of the Inter-American system for the protection of human rights, it is possible to affirm, as a general principle, that States have the obligation to guarantee access to safe and sufficient water as an unavoidable condition for the satisfaction and exercise of several human rights, such as the right to life, to personal integrity, to health, among others.

68. In relation to the duty to protect human rights through access to water, it should be noted that according to the jurisprudence of the inter-American system, the State has the duty to adopt preventive measures in accordance with the knowledge it has or should have of a situation of real and immediate risk to a particular individual or group of individuals and the reasonable possibilities of preventing or avoiding that risk. The failure to adopt protective measures in this sense, notwithstanding the full knowledge of the seriousness of the situation on the part of the State, has been understood as a source of international responsibility for violations of the right to life and personal integrity derived from such conditions.

75. In sum, the Inter-American Commission emphasizes that the international obligations regarding the principle of non-discrimination and equality before the law with respect to access to water constitute obligations of immediate compliance that must be considered by the States when adopting the pertinent measures to guarantee access to water fit for human consumption, particularly with respect to persons and groups that have historically been discriminated against.

76. According to the consolidated jurisprudence of the inter-American system, based on the obligations contained in Articles 8 and 25 of the American Convention, "[...] everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights, which is one of the basic pillars, not only of the American Convention, but also of the rule of law itself in a democratic society within the meaning of the Convention. In this regard, it should be noted that, with respect to access to justice, and in particular to violations related to access to water, States have both negative obligations - not to impede access to judicial and other remedies that are suitable and effective for claiming human rights violations - and fundamentally positive ones, such as the obligation to organize the institutional apparatus so that all individuals may have access to those remedies. To this end, States must remove the normative, social or economic obstacles that prevent or limit the possibility of access to justice.

149. From the norms and standards of the inter-American system for the protection of human rights, it is possible to affirm that, in general terms, there is an obligation of the States to guarantee access to safe and sufficient water as an unavoidable condition for the satisfaction of other human rights, such as the right to life, to personal integrity, to health, and with respect to indigenous peoples, the right to property. It reaffirms the intrinsic dependence of the respect and guarantee of these rights on access to water in sufficient quality and quantity in the inter-American system.

150. In this sense, although it is possible to affirm that even though the right to water is not recognized as an autonomous right, the inter-American system has made decisive progress in the protection of access to water as an unavoidable guarantee for the satisfaction of other rights. For its part, the IACHR has also taken note of the development and recognition of the human right to access to water at the Universal level and that the States of the Region have advanced in important normative recognitions and in the adoption of measures to guarantee access to water in the hemisphere.

151. The Commission has also reviewed the main problems and obstacles that hinder or impede access to water in the Americas that have been presented through its various working tools, without claiming to be an exhaustive analysis. In particular, reference has been made to information on the negative impacts on access to water caused by the activities of extractive industries and other development projects, as well as in relation to the contamination of water sources, acts of harassment of human rights and environmental defenders, the lack of access to drinking water that disproportionately affects people and groups living in poverty and in rural areas, and the interruption of drinking water supply that particularly affects people living in poverty and extreme poverty.

## ***Resolutions***

### ***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

Considering that, although there are impacts on all human rights in the various contexts caused by the pandemic, especially in relation to the right to life, health and personal integrity, the right to work, social security, education, food, water and housing, among other ESCER, are seriously affected.

4. Guarantee that the measures adopted to face pandemics and their consequences incorporate as a priority the content of the human right to health and its basic and social determinants, which are related to the content of other human rights, such as life and personal integrity and other ESCER, such as access to drinking water, access to nutritious food, access to clean means of cleaning, adequate housing, community cooperation, mental health support, and integration of public health services; as well as responses for the prevention of and attention to violence, ensuring effective social protection, including, among others, the granting of subsidies, basic income or other economic support measures.

### ***Resolution No. 4/2020: Human rights of persons with COVID-19 (July 27, 2020)***

NOTING that people with COVID-19 may experience negative impacts and limitations of other ESCER in addition to health, such as the right to work or education. On the other hand, the lack of access to certain ESCER, particularly access to water, food and adequate housing, increases the risk of infection for the most vulnerable populations.

16. States should direct efforts towards the broadest possible coverage at the geographic level, taking into account the particularities of each area. With regard to people with COVID19 at risk to life and serious threats to their health who live in rural areas or remote places, and with greater obstacles to access specialized services, such as indigenous peoples and communities of African descent, specific actions should be taken to identify them and build strategies to assist them with transportation, housing and essential access to water and food.

43. States should give priority to ensuring the supply of water and food in adequate quantities to people living in poverty or extreme poverty with COVID-19, especially those who do not have access to water or to the acquisition of basic foodstuffs. Likewise, it is recommended that decent temporary spaces be provided for the isolation or care of people with COVID-19 who require it, particularly those living in poverty, on the streets or in informal or precarious settlements. Among other measures, they can also implement the suspension of evictions, rent or mortgage payments, or any relief for people with COVID-19 to comply with the corresponding health provisions.

### *Press Releases*

#### ***REDESCA of the IACHR urges to prioritize actions aimed at the realization of the rights to water and sanitation in the hemisphere. CP No. 059/18 (March 23, 2018)***

On International Water Day, commemorated every March 22, the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR) calls on OAS Member States to redouble their efforts to guarantee the enjoyment of the rights to water and sanitation in the Americas, in particular by strengthening their recognition as human rights in their national regulatory frameworks; establishing participatory strategies, adequate budgets and clear and measurable objectives that allow the full realization of all their components and contents. It also urges the establishment of prevention policies and due diligence parameters to reduce risks and avoid violations related to the rights to water and sanitation; and to ensure the existence of effective legal procedures and remedies that allow for reparations to victims as well as accountability of state and non-state actors.

[The IACHR has indicated that access to water is a necessary element to guarantee the right to life, the right to personal integrity and that it is an inherent aspect of the right to health. In this context, REDESCA also emphasizes the broad recognition of its close and fundamental relationship with other human rights, particularly food, housing, education, and a healthy environment, which makes it a determining element and a precondition for respecting and guaranteeing those rights. It is precisely in these circumstances that the Office of the Special Rapporteur has prioritized the approach to the rights to water and sanitation in its work agenda based on its close relationship with the rights to food, health and decent living conditions.

REDESCA stresses the importance of not neglecting the collective and cultural dimension of the right to water in relation to indigenous and tribal peoples, particularly their rights to their territories and natural resources. It also stresses that there are particularities and specific contexts that should be taken into account in relation to groups and collectives historically discriminated against, such as women, children and adolescents, Afro-descendant communities, people living on the streets or in informal settlements, migrants, refugees or in search of refuge, stateless and displaced persons, persons deprived of liberty, elderly persons, persons with disabilities, and peasant communities, among others.

In this context, REDESCA urges States to prioritize the effective fulfillment of their obligations related to the rights to water and sanitation and that other actors directly or indirectly related

to their realization consider, as appropriate, the effects that these may have on their conduct. It also underlines that, although there may be difficulties and challenges in determining the existence of violations of the rights to water and sanitation, for example with respect to the provision of economic resources or progress towards their full realization, there are also immediate obligations that can be verifiable and assessed.

## ***B. Right to food***

62. The right to food is contemplated in Article 12 of the Protocol of San Salvador, which establishes both the individual right to adequate nutrition and the obligations of States to improve methods of production, supply and distribution of food. It is also expressly recognized by Article XI of the American Declaration of the Rights and Duties of Man, within the framework of the right to the preservation of health and well-being, as well as by Article 34 of the Charter of the Organization of American States.
63. Also covered by the protection provided by Article 26 of the American Convention, this right has been subject to monitoring and protection through various mechanisms of the Inter-American Commission on Human Rights.
64. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to food, developed within the framework of its different mechanisms.

### ***Precautionary measures***

***Precautionary Measures No. 51/15, Subject children and adolescents of the communities of Uribí, Manaure, Ríohacha and Maicao of the Wayúu People, settled in the department of La Guajira, with respect to Colombia (December 11, 2015). Extension of beneficiaries in favor of pregnant and lactating women of the Wayúu Indigenous Community in the municipalities of Manaure, Ríohacha and Uribí with respect to Colombia (January 26, 2017).***

In the resolutions issued, the IACHR orders:

- Take immediate measures so that children and adolescents can have food of sufficient quality and quantity to meet their nutritional needs with cultural relevance, as well as to establish suitable mechanisms to identify cases of malnutrition for immediate intervention (2015).
- Take immediate measures so that pregnant and lactating women can have food of sufficient quality and quantity to meet their nutritional needs with cultural relevance, as well as establish the appropriate mechanisms to identify cases for immediate intervention.

***Precautionary Measure No. 412-17 Evicted and displaced inhabitants of the Laguna Larga Community with respect to Guatemala (September 8, 2017).***

The IACHR asked the State to guarantee, among other aspects:

7.a.i. Access to adequate food in adequate nutritional and cultural terms, as well as drinking water for the displaced population, in accordance with the levels considered acceptable by international organizations such as the World Health Organization (WHO). In particular, adopt

immediate measures for the protection of the life and integrity of children suffering from malnutrition, and with the aim of preventing future cases.

### ***Thematic reports***

#### ***Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64 (December 31, 2011).***

480. In addition, some States have opted to contract private companies to supply food to prisons, also known as catering services. Although this initiative may seem advantageous in principle, the IACHR has observed that even in States that have implemented it, deficiencies persist, both in the quality and quantity of the food delivered, as well as in its distribution to the inmate population. In this regard, the IACHR reiterates that even when food for persons deprived of liberty is contracted out to a third party, "the State continues to be responsible for the supervision and quality control of the products delivered by the catering companies, and that such products actually arrive. The IACHR also considers that the States must ensure full compliance with the basic principles of free competition, equality among contractors, publicity and transparency in these public procurement processes.

#### ***Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78 (July 13, 2011).***

469. Considering that children are still developing subjects, the right to adequate and sufficient food acquires a fundamental relevance and States that have in their custody children who have infringed criminal laws have the obligation to guarantee this right.

470. With regard to the right to adequate and sufficient food for persons deprived of their liberty, Rule 20 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that:

[...] every prisoner shall receive from the administration ... food of good quality, well prepared and served, the nutritional value of which is sufficient for the maintenance of his health and strength.

471. With particular regard to the right to adequate and sufficient food for children deprived of their liberty, rule 37 of the Havana Rules states that:

All detention facilities shall ensure that every juvenile shall be provided with food adequately prepared and served at the usual times, in a quality and quantity that meets dietary, hygienic and health standards and, as far as possible, religious and cultural requirements. Clean and potable water shall be available to every child at all times.

473. The Commission urges States to ensure that children deprived of their liberty receive a nutritious diet that takes into account their age, health, physical condition, religion and culture. Food should also be hygienically prepared and served at least three meals a day, with reasonable intervals between meals.

#### ***Child's right to a family. Alternative care. Ending institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 (October 17, 2013).***

625. The Commission has expressed that since children are still developing, the right to adequate and sufficient food is of fundamental importance and States have the obligation to guarantee this right through adequate regulation and supervision in the context of foster care and residential institutions. In the case of very young children, the importance of food adapted to their age is crucial to ensure their health and development; inadequate or insufficient food can even compromise the child's life or lead to serious irreversible damage to his or her health and condition.

626. In this regard, the Commission considers it pertinent to mention the existence of norms that give special relevance to nutrition in the first years of life, as is the case of Articles VII and XI of the American Declaration, and Article 15.3 of the Protocol of San Salvador, which in its paragraph b, provides that the States undertake in particular to "guarantee children adequate nutrition, both during the breastfeeding period and during school age", among other relevant norms. Within the United Nations, there are resolutions of the World Health Organization referring to criteria for improving infant and young child feeding.

627. Likewise, the issue of the right to food has been addressed by the Commission both in general terms and in relation to certain States or groups specifically, as in the case of children belonging to indigenous peoples. The Court has also pronounced on the importance of the right to food, referring to the quantity, variety and quality of food as a condition to ensure that children have the minimum conditions for a dignified life.

628. For its part, Article 24 of the Convention on the Rights of the Child establishes that States Parties shall ensure that all children have access to the highest attainable standard of health through, inter alia, adequate nutrition. For its part, the Committee on the Rights of the Child has stated that "[m]alnutrition and disease have a long-term impact on the child's physical health and development. They affect the child's mental state, inhibit learning and social participation, and reduce the child's prospects of realizing his or her full potential. The same is true of obesity and unhealthy lifestyles."

629. According to Guideline 83 of the Guidelines for Alternative Child Care Arrangements provides that:

[caregivers should ensure that the children in their care receive a healthy and nutritious diet in sufficient quantity according to local food habits and relevant dietary standards and in accordance with the child's religious beliefs. Where necessary, appropriate nutritional supplements should also be provided.

630. According to the information gathered during the preparation of this report, States face difficulties in guaranteeing this right in the context of the operation of residential care institutions. A first difficulty is related to the lack of information from the authorities regarding the conditions under which care is provided in institutions, including nutritional care, especially in the case of private institutions. Thus, the Committee on the Rights of the Child has expressed its concern about the lack of information on the general functioning of institutions in several of the States in the region. Another of the difficulties detected has to do with the absence of technical standards in relation to the right to food, for example, in relation to the existence of nutritionists in the institutions.

631. The Commission considers it important to reaffirm that children and adolescents in institutions have the right to receive sufficient nutritious food, adequately prepared, served in a hygienic manner, taking into account their dietary requirements, religion and culture, as well as their needs and desires; in addition to receiving safe drinking water suitable for consumption, in sufficient quantity.

***Towards the closure of Guantánamo. OEA/Ser.L/V/II. Doc. 20/15 (June 3, 2015).***

135. With respect to religion and the rights of persons deprived of liberty, the IACHR Principles establish that detainees shall have the right to "participate in religious and spiritual activities and to exercise their traditional practices. In addition, they state that detainees shall have the right to receive food that "takes into consideration the cultural and religious issues of such persons".

***Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities. OEA/Ser.L/V/II. Doc. 47/15 (December 31, 2015).***

288. A highly relevant component of the right to food for indigenous peoples is access to food sources based on their own subsistence activities, such as hunting, fishing, agriculture, among others. Restrictions on the subsistence activities of indigenous peoples are often inherent to the implementation of projects of various kinds, have an impact on the right to food of such peoples and can jeopardize their very existence if they do not find new subsistence alternatives. The implementation of projects also affects food production, thus increasing the cost of living in the country and threatening the sovereignty and food security of the affected communities.

***Indigenous women and their human rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17 (April 17, 2017).***

207. Compared to the rest of the population, it is more difficult for indigenous peoples to have access to adequate food and drinking water, due to the situation of poverty in which they often live and the historical disregard for their right to control their lands and natural resources, among other factors. As the Inter-American Court noted in the judgment in the case of the Yakyé Axa Indigenous Community v. Paraguay, access to their ancestral lands and the use of natural resources are closely linked to the right to food and clean water. Consequently, when they are deprived of sufficient food and water, their situation of vulnerability is considerably exacerbated.

209. Discrimination against indigenous peoples and indigenous women is reflected in the lack of labor rights and in the level of poverty, but it is also a major obstacle to the enjoyment of the right to food.

***Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)***

187. The right to food is protected in the inter-American system by different instruments. The American Declaration establishes food as a right for the well-being and health of the individual; the OAS Charter also establishes the commitment of the States to achieve adequate nutrition

and guarantee the availability of food. The Protocol of San Salvador expressly recognizes the duty of States to eradicate malnutrition. The Inter-American Convention on the Protection of the Human Rights of Older Persons emphasizes the right to food and nutritional security. In this context, the Inter-American Court has also established that Article 26 of the Pact of San José is of particular importance for the protection of the right to food in the region as one of the economic, social, cultural and environmental rights included in this provision.

188. The IACHR Court has also established that the deprivation of land and lack of access to natural resources of indigenous peoples and other ethnic groups can generate direct obstacles in obtaining the food and goods necessary for their subsistence, and that the right to food should not be understood restrictively only as protection for mere physical subsistence, but also has cultural dimensions of importance for such groups. This Court considers that not just any food satisfies the respective right, but that it must be acceptable to a given culture, which leads to taking into account values unrelated to nutrition. Food, in turn, is indispensable for the enjoyment of other rights, and its "adequate" character may depend on environmental and cultural factors. The IACHR reaches the same conclusion in the context of Afro-descendant tribal peoples, since the challenges faced by these communities in accessing territory would affect their livelihoods and traditional activities such as fishing, hunting or gathering have a direct impact on the right to food.

189. The Commission and its REDESCA have also stressed that Afro-descendants may see their right to food limited in the context of business activities that may be detrimental to this right, such as in contexts of land grabbing and concentration, deforestation and land use change, including obstacles to access to traditional seeds and food sources or preventing production for their basic food because of the lack of protection for the genetic diversity of their crops or the reduced size and quality of their lands. They have also pointed out the possible risks that may arise in the application of international investment or trade treaties on the right to food of the most vulnerable sectors if the State does not ensure the inclusion of its international human rights commitments in this area.

193. Therefore, the Commission and its REDESCA emphasize that the Afro-descendant population must be included in a differentiated and explicit manner in the public programs and policies implemented by the States of the region in relation to the right to food. In particular, States should promote and implement strategies aimed at guaranteeing food and nutritional security for the Afro-descendant population, including in the context of food risk management, natural disasters and climate change. Likewise, a differential focus should be placed on the local and regional contexts that affect this population, particularly those Afro-descendant tribal communities settled in rural, coastal and island areas, whose means of subsistence and food production are based on the cultural relationship with their territories and natural resources.

194. Along the same lines, it is necessary to include the intersection between ethnic and racial origin, gender and poverty, in order to promote plans and projects for the eradication of child malnutrition in the Afro-descendant population. Likewise, to mitigate the disproportionate effects that structural poverty may have on the nutrition, health and integrity of this population group, especially women, children and adolescents, people with disabilities, rural communities, people living on the streets, migrants and forcibly displaced persons.

### ***Country reports***

***The Situation of Human Rights in Cuba, Seventh Report. OEA/Ser.L/V/II.61 Doc. 29 rev. 1 (October 4, 1983).***

1. Article XI of the American Declaration, when referring to the right to the preservation of health and well-being, specifically mentions food as one of the fundamental means to achieve the effective realization of this right. Article 25 of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family..." This provision explicitly states that this right includes food. The International Covenant on Economic, Social and Cultural Rights, states in Article 11, paragraph 1, that everyone has the right "to an adequate standard of living for himself and his family, including food..." Paragraph 2 of the same article proclaims that it is a "fundamental right of everyone to be free from hunger..."

2. The consumption of food that provides adequate nutrition is a basic and clearly defined human need, without which human beings cannot grow and develop physically, emotionally and intellectually. Adequate nutrition is essential for infant psychomotor development and is also necessary to promote and enhance physical and mental functioning from birth to death. Malnutrition, on the other hand, increases susceptibility to infectious diseases, decreases productivity in any type of activity or work, and generally limits the development of human potential.

***Democratic Institutionalality, Rule of Law and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 209 (December 31, 2017).***

430. In view of the aforementioned situation, the Commission considers it pertinent to recall that, in order to guarantee this right, there must be: (i) availability of food in sufficient quantity and quality; and (ii) accessibility of the same in ways that are sustainable and do not hinder the exercise of other rights.

***Serious human rights violations in the context of the social protests in Nicaragua. OEA/Ser.L/V/II. Doc. 86 (June 21, 2018).***

172. [The IACHR stresses that the availability of and access to food in sufficient quantity and quality are essential elements of the content of the right to food. It also notes that in emergency or disaster situations, not only is there often a reduction in access to food, but governance structures, food markets, and livelihoods can be weakened and destabilized. In this context, the Commission notes the importance for the State to monitor and ensure respect for and guarantee of this right, particularly with respect to the most vulnerable populations, such as children and adolescents, people living in poverty, the elderly, people living with HIV, the sick, and people with disabilities, among others.

***Situation of human rights in Honduras. OEA/Ser.L/V/II. Doc. 146 (August 27, 2019).***

136. In this context, the IACHR underscores that the United Nations Committee on Economic, Social and Cultural Rights has indicated that the right to food is realized when people have physical and economic access to adequate food or the means to obtain it at all times, which implies that States take concrete measures to continuously improve the ability of the

population to feed itself and eliminate hunger and malnutrition, including the direct allocation of food in cases where people are unable to procure such food for themselves.

137. The persistence of land grabbing and concentration tends to threaten the effective and full enjoyment of this right, for example, by generating forced displacements, hindering tenure and legal security over the lands of these populations, preventing access to seeds under reasonable conditions or impeding production for their basic food due to the lack of protection for the genetic diversity of crops, the existence of restrictive seed patent regimes or the reduced size and quality of the land. In this sense, it is necessary for the State to ensure that all seed, land and investment projects or policies are compatible with its international human rights obligations, particularly when the marginalization of communities that depend on access to land for their livelihoods is accentuated and the lack of land and seeds is associated with significant levels of rural poverty.

### **Situation of human rights in Cuba. OEA/Ser.L/V/II. Doc. 2 (3 February 2020)**

245. The IACHR also received information from the Cuban population that reported shortages of essential food products such as oil, wheat flour, rice, pork, chicken, and eggs have reportedly become intermittent. Testimonies of Cuban individuals collected by the IACHR describe difficulties of the population in acquiring food products beyond those contained in the ration book. One of the persons interviewed stated:

The basic food basket has totally diminished, the government has released many products that are not in the free market and the price has increased. Now it is reduced only to sugar, beans, grains and some meat, such as chicken. The basic food for Cubans is bad, although there are alternatives, but they do not supply the entire population. Prices are very high, there are almost no resources. Cubans live because the Cuban diaspora provides money for the oil that is in short supply, for example, eggs are also scarce and are only received once a month.

#### *Conclusions and recommendations:*

19. On the right to food, take measures to ensure the availability of food in sufficient quantity and quality to meet the dietary needs of individuals and the accessibility of such food. Likewise, take actions so that the personal or family financial cost associated with the acquisition of the food necessary for adequate food is at a level such that the provision and satisfaction of other basic needs are not threatened or endangered.

### **Resolutions**

#### ***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

Considering that, although there are impacts on all human rights in the various contexts caused by the pandemic, especially in relation to the right to life, health and personal integrity, the right to work, social security, education, food, water and housing, among other ESCER, are seriously affected.

4. Guarantee that the measures adopted to face pandemics and their consequences incorporate as a priority the content of the human right to health and its basic and social determinants,

which are related to the content of other human rights, such as life and personal integrity and other ESCER, such as access to drinking water, access to nutritious food, access to clean means of cleaning, adequate housing, community cooperation, mental health support, and integration of public health services; as well as responses for the prevention of and attention to violence, ensuring effective social protection, including, among others, the granting of subsidies, basic income or other economic support measures.

***Resolution No. 4/2020: Human rights of persons with COVID-19 (July 27, 2020)***

NOTING that people with COVID-19 may experience negative impacts and limitations of other ESCER in addition to health, such as the right to work or education. On the other hand, the lack of access to certain ESCER, particularly access to water, food and adequate housing, increases the risk of infection for the most vulnerable populations.

16. States should direct efforts towards the broadest possible coverage at the geographic level, taking into account the particularities of each area. With regard to people with COVID19 at risk to life and serious threats to their health who live in rural areas or remote places, and with greater obstacles to access specialized services, such as indigenous peoples and Afro-descendant tribal communities, specific actions should be generated to identify them and build assistance strategies for transportation, housing, and essential access to water and food.

43. States should give priority to ensuring the supply of water and food in adequate quantities to people living in poverty or extreme poverty with COVID-19, especially those who do not have access to water or to the acquisition of basic foodstuffs. Likewise, it is recommended that decent temporary spaces be provided for the isolation or care of people with COVID-19 who require it, particularly those living in poverty, on the streets or in informal or precarious settlements. Among other measures, they can also implement the suspension of evictions, rent or mortgage payments, or any relief for people with COVID19 to comply with the corresponding health provisions.

***Annual Report***

***Annual Report of the Inter-American Commission on Human Rights 2018; Chapter IV.B - Venezuela.***

116. The Commission reminds the State that in the same sense as Article XI of the American Declaration, every person has the right to have his health preserved by measures relating to food. Similarly, Article VIII of the same instrument indicates that every pregnant or nursing woman and every child has the right to special protection, care and assistance. Likewise, the Committee on ESC rights in its General Comment No. 12 indicates that the basic content of the right to food is qualified as: "the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" and "the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights".

***Press Release***

***IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights urge the State of Venezuela to guarantee and respect the rights to food and health. CP No. 016/18 (February 1, 2018)***

In light of current international standards, the IACHR's REDESCA affirms that the right to food is realized when people have physical and economic access to adequate food or the means to obtain it at all times. In this framework, the Venezuelan State must redouble its efforts to guarantee essential levels to protect its population from hunger, even in situations of severe resource constraints.

***C. Fair, equitable and satisfactory conditions of work***

65. In accordance with the provisions of the Protocol of San Salvador, just, equitable and satisfactory conditions of work include: a minimum wage that guarantees a decent and dignified subsistence, an equitable wage, equal pay for equal work, the possibility for all workers to follow their vocation, the opportunity to be promoted, job stability, occupational health and safety, reasonable limitation of working hours and rest, the enjoyment of free time, paid vacations and remuneration for national holidays, and the prohibition of child labor. Therefore, the right to just, fair, equitable and satisfactory conditions must be analyzed particularly in relation to specific groups of workers, such as migrant workers and women.
66. In this regard, this document refers to the Compendium on Labor and Trade Union Rights, for which the Commission and the ESCER Special Rapporteurship present relevant excerpts from reports approved by the IACHR on occupational health and safety, as well as inter-American standards developed on labor in relation to groups in vulnerable situations, such as children, women and persons in a situation of human mobility.

***D. Right to care***

67. The right to care is being progressively shaped, specifically in relation to older persons and persons with disabilities. In this regard, although the general Inter-American instruments do not explicitly recognize it, its configuration has occurred in part as a result of the adoption of the Inter-American Convention on the Protection of the Human Rights of Older Persons, adopted in 2015, Article 12 of which recognizes the right to receive long-term care services. Said Convention recognizes care as a general principle applicable to the Convention and of the right to older persons access to "non-discriminatory and comprehensive care, including palliative care".
68. Throughout the Convention, the concept of care is reiterated, recognizing in Article 12 the rights of the elderly to receive long-term care services, based on the right to "a comprehensive system of care that provides protection and promotion of health, coverage of social services, food and nutritional security, water, clothing and housing; promoting that the elderly person may decide to remain at home and maintain his or her independence and autonomy".

69. The Commission has recently begun to pronounce care as a right whose recognition and protection must be strengthened; this has been increasingly the case since the work of REDESCA and especially in the context of the COVID-19 pandemic.
70. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to care, which are developed within the framework of its different mechanisms.

### ***Precautionary measure***

#### ***Precautionary Measure No. 51-15. Elderly persons belonging to the Shipia Wayúu Association of the Wayúu Indigenous Community in the municipalities of Manaure, Riohacha and Uribía with respect to Colombia (Extension) (December 1, 2017).***

21. The Commission notes that the present request for extension was submitted in favor of elderly members of the Wayúu people. When assessing the seriousness requirement, the Commission takes into account that the proposed beneficiaries play an essential role in the worldview of the Wayúu indigenous community, both in the transmission of customs and in the dynamics of their society. In this regard, the Commission recalls that international law has recognized the importance of adopting measures with specific approaches to protect the rights of indigenous elders. As identified in its report on the Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources, "in many indigenous communities, the oral transmission of culture to younger generations is primarily the responsibility of elders. Likewise, as indicated by the Inter-American Court:

With regard to the special consideration that the elderly deserve, it is important that the State adopt measures aimed at maintaining their functionality and autonomy, guaranteeing the right to adequate food, access to clean water and health care. In particular, the State should care for the chronically and terminally ill elderly, sparing them avoidable suffering.

22. In relation to the risk situation of the proposed beneficiaries, the representation has provided journalistic investigations and analyses carried out by State bodies such as the Ombudsman's Office and the Attorney General's Office, which indicate that the situation of the elderly is quite serious, especially due to the high rate of malnutrition among the Wayúu elderly, their degree of vulnerability to certain diseases and the difficulties in accessing adequate medical treatment.

23. More specifically, the Commission notes that the representatives have reported that the elderly Wayúu people are in similar circumstances to those that led to the granting of the present precautionary measures in favor of the children and pregnant and lactating women of the Wayúu people. In particular: i) they would have the same circumstances of lack of access to drinking water and state of malnutrition; ii) they would be prone to certain diseases such as tuberculosis; and iii) they would not have access to adequate medical care and the only way to access a health care center would be to travel on foot and make a journey of approximately 6 hours to and from the health center closest to their communities.

25. In view of the foregoing, in the absence of additional elements of information from the State and the aspects of risk raised by the representation that are consistent with the context

described, the Commission considers that the situation of the elderly persons demonstrates that their rights are prima facie in a serious situation. In assessing this gravity, the Commission has taken into account that the lack of access to water, medical care, and food in sufficient quantity and quality puts the health, life, and integrity of the Wayúu elderly in the municipalities of Manaure, Riohacha, and Uribia at risk. The Commission has also taken into account the special role that the elderly play within the communities.

## ***Annual Report***

***IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas. "Human and planetary health face an unprecedented crisis." OAS/SER.L/V/II. Doc. 28 (30 March 2021).***

1158. On the other hand, REDESCA is concerned about the tendency to overburden women in their care tasks due to the pandemic, recalling with the IACHR, that: "the care of sick people or those in need of special attention falls mainly on women, at the expense of their personal or labor development, with little institutionalization and social or economic recognition for such care tasks, which in times of pandemic become even more necessary and demanding" 2531. In the context of COVID-19, care is affirmed as a human right of vital importance for people, especially for those who are ill, people with disabilities, the elderly and children and adolescents. However, very few States in the region have national care systems in place or have implemented them during the pandemic. In this sense, REDESCA will continue to call for the recognition and protection of care as a human right, the valuation of care work and the labor rights of domestic workers, as well as the creation of national care systems with a focus on rights, gender and intersectionality. The gender perspective and the realization of women's human rights today represent a challenge as great as the opportunity to make our societies fairer, more equal and more caring.

## ***Resolutions***

### ***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

40. Include as a priority the elderly in pandemic response programs, especially in access to COVID-19 testing, timely treatment, access to medicines and necessary palliative care, ensuring that they give their prior, full, free and informed consent and taking into account particular situations such as belonging to indigenous or Afro-descendant peoples.

41. Adopt the necessary measures to prevent the spread of COVID-19 among the elderly population in general and, in particular, among those in long-stay homes, hospitals and detention centers, adopting humanitarian aid measures to guarantee the provision of food, water and sanitation and establishing shelters for people in situations of extreme poverty, street or abandonment, or in situations of disability.

42. Strengthen in this context the monitoring and surveillance measures against violence against the elderly, whether in the family, in long-stay homes, hospitals or prisons, facilitating accessibility to reporting mechanisms.

43. Oversee that medical protocols, decisions on medical resources and treatments in relation to COVID-19 are implemented without discrimination based on age and paying special attention to the elderly with disabilities or chronic conditions and diseases, patients with HIV or AIDS, who require medication and regular care such as patients with diabetes, hypertension, senile dementia, Alzheimer's, among others.

Consider in the implementation of contingency measures the balance that should exist between protection against COVID-19 and the particular need of the elderly to connect with their families, for those who are alone or in long-term residences, facilitating alternative means of family contact such as telephone or Internet communication, taking into account the need to remedy the digital divide.

***Resolution No. 4/2020: Human rights of persons with COVID-19 (July 27, 2020)***

23. Decisions regarding the health and care of persons with COVID-19 should be adopted and implemented without any arbitrary discrimination based on any of the grounds recognized in international human rights standards; this should be particularly considered with respect to certain groups, such as the elderly or persons with disabilities. A difference in treatment is contrary to international law when it has no objective and reasonable justification, i.e., when it does not pursue a legitimate aim and there is no reasonable relationship of proportionality between the means used and the aim pursued. This is applicable, even in the medical treatment of persons with medical conditions or illnesses that have been caused or aggravated by the virus itself.

24. To overcome the social stigma associated with COVID-19 and possible discriminatory behavior toward persons who are perceived to have been in contact with the virus, immediate measures should be adopted that take into account the perspectives of gender equality and intersectionality, in addition to differentiated approaches that make visible the aggravated risks to human rights against persons, groups and collectivities in special situations of vulnerability and historical exclusion in the hemisphere, such as people living in poverty or on the streets, the elderly, persons deprived of liberty, indigenous peoples, tribal communities, Afro-descendants, persons with disabilities, migrants, refugees and others in situations of human mobility, LGBTI persons, children and adolescents, and women, with special consideration for those who are pregnant or victims of gender-based violence.

***Press releases***

***In the context of the COVID-19 pandemic, the IACHR calls on States to guarantee the rights of persons with disabilities. CP No. 071/20 (April 8, 2020)***

[...] the IACHR calls upon the States to guarantee the right to health to all persons with disabilities without any type of discrimination based on their condition. To this end, it is necessary to make physical and capacity adjustments in health facilities and services, determined according to the specific protection needs. In particular, considering the potential effects of the COVID-19 pandemic, States should develop care protocols that anticipate possible situations of medical resource constraints, in order to ensure that persons with disabilities have timely, appropriate and non-discriminatory health care. In addition, in view of the

containment measures that respond to the nature of the pandemic, particular attention should also be given to the mental health of persons with psychosocial disabilities.

***IACHR Urges States to Guarantee the Rights of the Elderly in the Face of the COVID-19 Pandemic. CP No. 088/20 (April 23, 2020)***

The IACHR calls on States to ensure that medical protocols, bioethical guidelines, medical resource decisions, and treatment decisions regarding COVID-19 are developed and implemented without discrimination on the basis of age. The Commission also recalls the obligation of States to guarantee the right of older persons suffering from COVID-19 to give prior, full, free and informed consent regarding the treatments and medications they are to receive. Likewise, during isolation, special attention should be given to older persons with disabilities, chronic diseases and those who require medication and regular or palliative care, which should be provided in a timely and appropriate manner.

The Commission emphasizes that the States must adopt and strengthen all legislative, administrative, budgetary and any other type of measures in order to guarantee differentiated and preferential treatment for the elderly in all areas, including them as a priority and in an appropriate manner in their contingency plans. [...]

Likewise, the measures adopted must identify and eliminate obstacles and barriers for the access of the elderly to their supplies, public services, care, information and communication during isolation. [...]

***IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic. CP 124/20 (June 2, 2020)***

[It is also necessary to advance in the recognition and protection of the human right to care, implementing systems that ensure that people who lack economic resources receive adequate assistance and protection in the face of old age, disability or illness, while taking into account the rights and value of caregivers, most of whom are women.

***E. Cultural rights***

71. Cultural rights are protected by Article 26 of the American Convention and are expressly recognized in Article 14 of the Protocol of San Salvador, and are divided into the possibility of participating in the cultural and artistic life of the community, benefiting from scientific and technological progress, as well as the moral and material interests resulting from scientific, literary or artistic production on which authorship is held. It also establishes several obligations for States, such as the adoption of measures to conserve, develop and disseminate science, culture and art; respect for the freedom of scientific research and creative activity; and international cooperation for the recognition of benefits derived from scientific, artistic and cultural matters. The Charter of the Organization of American States and Article 13 of the American Declaration on the Rights and Duties of Man also recognize them.
72. In the framework of the IACHR's work, cultural rights have been developed particularly through the angle of the rights of indigenous peoples, recognizing the link between their right

to collective property and the preservation of their cultural characteristics and traditions. On the other hand, cultural rights and, in particular, the right to benefit from scientific progress has taken on particular importance in the context of the COVID19 pandemic, which has been reflected in the work of the IACHR and REDESCA.

73. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding cultural rights, developed within the framework of its different mechanisms.

### ***Cases filed with the Court***

#### ***Complaint in the case of the Sawhoyamaxa Indigenous Community of the Enxet-Lengua People and its Members (Case 12.419) against the Republic of Paraguay (February 2, 2005).***

141. The Commission also considers that the right of the community to live in its ancestral territory implies that said territory must be large enough for the community to preserve and develop its cultural identity.

208. The relationship between the members of the Community and of the members with the Community is what gives meaning to their indigenous existence, it is what gives meaning not only to an ethnic origin but to the possibility of possessing and transmitting their own culture, which includes elements such as language, spirituality, lifestyles, customary law and traditions. As already expressed, being and belonging to an indigenous people, in this case the Enxet-Lengua people, includes the idea of a distinct and independent culture and lifestyle, based on ancient knowledge and traditions, fundamentally linked to a specific territory.

209. Reparation must include the collective perspective and be based on the understanding of the socio-cultural elements characteristic of the Enxet-Lengua people in general and of the Sawhoyamaxa Community in particular, understanding its worldview, spirituality and community social structure.

#### ***Application to the Inter-American Court of Human Rights in the Case of the 12 Saramaka Clans (Case 12.338) v. Republic of Suriname (June 23, 2006)***

133. Moreover, it is significant that the bodies of the inter-American human rights system have specifically recognized that indigenous peoples have a special relationship with the land and resources they have traditionally occupied and used, whereby those lands and resources are considered to be the property and object of use of the indigenous community as a whole and that the use and enjoyment of the land and its resources are integral to the physical and cultural survival of the indigenous communities, as well as to the exercise of their human rights in a broader sense....

134. The Commission, through its reports on individual petitions and on the general human rights situation in the member States, as well as through precautionary measures, has pronounced on the need for States to adopt measures aimed at reestablishing, protecting, and preserving the rights of indigenous peoples to their ancestral territories. It has also held that respect for the collective rights of indigenous peoples to ownership and possession of their ancestral lands and territories constitutes an obligation of the OAS member states and that

failure to comply with this obligation entails international responsibility for the states. According to the Commission, the right to property under the American Convention must be interpreted and applied in the context of indigenous peoples with due regard for the principles that relate to the protection of traditional forms of property and cultural survival and rights to land, territories and natural resources.

136. The Court has repeatedly emphasized that the close relationship that indigenous peoples maintain with the land must be recognized and understood as the fundamental basis of their culture, spiritual life, integrity, economic survival, and its preservation and transmission to future generations. Adding that the culture of the members of the indigenous communities corresponds to a particular way of life of being, seeing and acting in the world, constituted from their close relationship with their traditional territories and the resources found there, not only because these are their main means of subsistence, but also because they constitute an integral element of their cosmovision, religiosity and, therefore, of their cultural identity.

137. Consequently, the organs of the inter-American human rights system have recognized that property rights are not limited to property interests already recognized by States or defined by domestic legislation, but that the right to property has an autonomous meaning in international human rights law. In this sense, the jurisprudence of the system has recognized that the property rights of indigenous peoples are not exclusively defined by the rights assigned by the formal legal regime of the State, but also include indigenous communal property derived from and founded on indigenous custom and tradition.

***Application before the Inter-American Court of Human Rights in the case of Xákmok Kásek Indigenous Community of the Enxet-Lengua People and its members (Case 12.420) against the Republic of Paraguay (July 3, 2009).***

174. In this context, the Commission recalls that the close relationship of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their survival. Moreover, the right to property incorporates the right to natural resources traditionally used and necessary for the survival, development and continuity of the way of life of indigenous communities.

***Application before the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al (Case 12.579) v. United Mexican States (August 2, 2009)***

71. The IACHR has established the need for States, through the administration of justice, to incorporate the specific needs of indigenous women in their actions, respecting their cultural and ethnic identity, language and idiosyncrasy, including the creation of systems and methods of cultural expertise in cases of violence.

***Application before the Inter-American Court of Human Rights in the case of the Kichwa Indigenous People of Sarayaku and its members (Case 12.465) vs. Ecuador (April 26, 2010)***

154. The Commission understands that with respect to the political rights of indigenous peoples, Article 23 of the American Convention must be interpreted in light of the provisions of other instruments for the protection of human rights, which recognize their own form of organization and participation. In this sense, the human rights protection bodies of the Inter-American system have observed with special attention and interest the rights of indigenous

peoples, including their political and organizational rights. Specifically, the Commission has pointed out:

In order for an ethnic group to survive while preserving its cultural values, it is essential that its members enjoy all the rights recognized in the American Convention on Human Rights, since this guarantees its effective functioning as a group, which includes the preservation of its own cultural identity. In this particular way, the rights to protection of honor and dignity; freedom of thought and expression; the right to assembly and association; the right to movement and residence and the right to elect their authorities are linked to this situation.

155. Specifically, the Commission observes that the consultation mechanism represents the institution that indigenous peoples have to make decisions and relate politically with other indigenous peoples and with the State, constituting a political space of election and decision, where the people participate in accordance with their ancestral uses and customs. The characteristic of the indigenous consultation process is that the mechanism or form in which it is carried out will depend on the uses and customs of each community.

***Marino López et al. (Operation Genesis) (Case 12.573) v. Colombia. OEA/Ser.L/V/II.141 Doc. 69 (March 31, 2011).***

40. The Inter-American Court has established that among indigenous peoples there is a community tradition of a communal form of collective ownership of the land, in the sense that the ownership of the land is not centered on an individual but on the group and its community. In this regard, it has established that:

Indigenous people, by virtue of their very existence, have the right to live freely in their own territories; the close relationship that indigenous people maintain with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival. For indigenous communities, the relationship with the land is not merely a matter of possession and production, but a material and spiritual element that they must fully enjoy, including the preservation of their cultural legacy and its transmission to future generations.

341. The IACHR, in application of Article 29 of the American Convention, in cases involving indigenous and tribal peoples, has established that the Convention must be interpreted to include the principles of the collective rights of indigenous peoples. Likewise, the right to territorial property has been recognized by the IACHR as one of the rights of indigenous and tribal peoples that has a collective aspect.

342. It is on the basis of the collective dimension of indigenous and tribal peoples that the Commission and the Court have recognized that they have a particular relationship with the lands and resources that they have traditionally occupied and used, by virtue of which such lands and resources are considered to be owned and enjoyed by the communities as a whole, as in the case of the Saramaka tribal peoples.

***Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe and others (Cases 12.576, 12.611 and 12.612) v. Chile (November 5, 2010).***

213. The right of indigenous peoples, and of the persons that comprise them, to the protection of and respect for their sociocultural integrity has been recognized on repeated occasions by the bodies of the inter-American system for the protection of human rights, which have applied not only the guarantees enshrined in the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man, but also, as interpretative factors, to the relevant provisions of the International Covenant on Civil and Political Rights (particularly Article 27), the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, the United Nations Declaration on the Rights of Indigenous Peoples, and other instruments.

214. Thus, the IACHR (a) in its 1985 Resolution on the situation of the Yanomami people of Brazil, declared that "International Law, in its present state and as crystallized in Article 27 of the International Covenant on Civil and Political Rights, recognizes the right of ethnic groups to special protection for the use of their language, the exercise of their religion and, in general, all those characteristics necessary for the preservation of their cultural identity, of all those characteristics necessary for the preservation of their cultural identity, and that "the Organization of American States has established as a priority action for member countries, the preservation and strengthening of the cultural heritage of ethnic groups and the fight against discrimination that invalidates their potential as human beings through the destruction of their cultural identity and individuality as indigenous peoples"; (b) in its 1997 Report on the Situation of Human Rights in Ecuador, concluded that "within international law in general, and inter-American law specifically, (...) it may be necessary to establish special measures of protection for indigenous peoples in order to guarantee their physical and cultural survival"; and (c) in the 2002 Report on the case of Mary and Carrie Dann, it emphasized that "in interpreting the American Declaration as safeguarding the integrity, survival and culture of indigenous peoples through effective protection of their individual and collective human rights, the Commission is respecting the very purposes on which the Declaration is founded which, as expressed in its Preamble, include the recognition that 'it is the duty of man to exercise, maintain and stimulate culture by all the means at his disposal, because culture is the highest social and historical expression of the spirit'".

215. The right to sociocultural integrity of indigenous peoples has been expressly recognized in several provisions of the United Nations Declaration on the Rights of Indigenous Peoples, whereby "indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" (Article 5); "indigenous peoples and individuals have the right not to suffer from forced assimilation or destruction of their culture" (Article 8.1); "States shall establish effective mechanisms for the prevention of and redress for: a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples or of their cultural values or ethnic identity" (Article 8.2.a); "indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures" (Article 11); "indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions" (Article 20); and "indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and,

where they exist, juridical systems or customs, in accordance with international human rights standards".

217. In sum, international human rights law, which operates as a central interpretative factor of the American Declaration and Convention, broadly recognizes the right of indigenous peoples to the preservation of their sociocultural integrity. Hence, the States Parties to the OAS are under the obligation, inter alia, under Article 1(1) of the Convention, to fully respect and guarantee this right to the preservation of sociocultural integrity, which has both individual and collective dimensions.

***Río Negro Community of the Maya Indigenous People and its members (Río Negro Massacres (Case 12.649) v. Guatemala. OEA/Ser.L/V/II.139 Doc. 26 (July 14, 2010).***

334. With respect to the right to freedom of conscience and religion, the Commission has established that the victims in the instant case are indigenous Mayans belonging to the Achí linguistic group. The Commission considers that for indigenous peoples, the right to culture and their ethnic identity translate, among others, into the expression and preservation of their beliefs, language, customs, clothing, way of life, sacred places and social organization. In this sense, the CEDH expressed, with respect to indigenous identity and culture, that its preservation consisted of guaranteeing the development of the characteristics that identify the indigenous people, such as language, religion, way of life and symbols.

***Kaqchikel Maya Indigenous Peoples of Sumpango et al. (Case 13.608) v. Guatemala. OEA/Ser.L/V/II.174 Doc. 184 (November 9, 2019).***

93. The Commission notes that the OAS Charter refers to cultural rights. Thus, the Charter establishes that States must give priority to the promotion of culture for the integral betterment of the human person as the foundation of social justice and democracy (Article 47), then recognizes the individual and solidarity commitment to preserve the cultural heritage of the American peoples (Article 48); and also enshrines the right of participation of excluded and discriminated sectors in the cultural life of the country (Article 45.f). For the purposes of indigenous peoples in general, the IACHR understands these provisions as the right to practice and, if applicable, disseminate their own culture; and, as a manifestation of the duty to respect that their cultural practices and worldview be duly protected.

95. Likewise, the IACHR takes into account that among the immediate obligations of the States regarding this right is the elimination of obstacles that prevent or limit the access of the person or community to their own culture, the possibility of carrying out their cultural practices and living their way of life, including the prohibition of discrimination based on cultural identity, exclusion or forced assimilation. In particular, the Commission emphasizes that "[t]he protection of cultural diversity is an ethical imperative inseparable from respect for human dignity. It entails a commitment to human rights and fundamental freedoms and requires the full realization of cultural rights, including the right to participate in cultural life", and therefore the State should strengthen its protective actions in this regard in the contexts of indigenous peoples, in light of the delicate relationship and threats that may arise between their culture and the majority society.

96. In this context, the Commission understands that access to and participation in cultural life is part of the content of the cultural rights recognized in the OAS Charter. Article XIII of the American Declaration recognizes that "everyone has the right to participate in the cultural life of the community [...]". In turn, General Comment No. 21 on "the right of everyone to take part in cultural life" of the United Nations Committee on Economic, Social and Cultural Rights has established that "taking part" or "taking part" in cultural life implies participation, access and contribution in cultural life, either individually or as a community, in the case of indigenous peoples. Participation implies, among other things, exercising their own cultural practices and expressing themselves in the language of their choice, as well as the right to seek, develop and share their knowledge and cultural expressions with others. Access implies knowing and understanding one's own culture and that of others, through education and information, as well as the right to know forms of expression and dissemination by any technological means of information and communication. Likewise, contribution to cultural life refers to the right of every person to contribute to the creation of the spiritual, material, intellectual and emotional manifestations of the community. Likewise, General Comment No. 21 establishes various elements of the right to participate in cultural life, among which the element of accessibility is recognized. Accessibility, in turn, highlights as an inherent component of the right to take part in cultural life the access of communities to the means of expression and dissemination.

98. The Commission understands that participation in cultural life is part of the content of the cultural rights of indigenous peoples, and that, in turn, an inherent element of such participation refers to access to means of communication and the possibility of founding media autonomously, through which indigenous peoples can not only participate, but also learn about and contribute to their own cultures, in their own language.

99. In this sense, the right to freedom of expression through community radio works in an instrumental way to achieve effective participation in the cultural life of the peoples, which is of transcendental importance for the preservation, promotion and enjoyment of the culture of the indigenous communities. Likewise, as mentioned above, one of the immediate obligations of the States regarding this right refers to the elimination of obstacles that prevent or limit the access of the individual or community to their own culture. In this sense, States must remove obstacles that prevent or limit access to radio frequencies for community radio stations, since they constitute one of the most important mechanisms through which indigenous peoples enjoy and exercise their cultural rights.

***Tagaeri and Taromenane Indigenous Peoples (in voluntary isolation) (Case 12.979) v. Ecuador.***  
**OEA/Ser.L/V/II.173 Doc. 167 (September 28, 2019).**

117. In turn, for purposes of the application of Article 26 of the ACHR, the IACHR notes that the OAS Charter also refers to cultural rights. Thus, the Charter establishes that States must give priority to the promotion of culture for the integral improvement of the human person as the foundation of social justice and democracy (Article 47), then recognizes the individual and solidarity commitment to preserve the cultural heritage of the American peoples (Article 48); and also enshrines the right of participation of excluded and discriminated sectors in the cultural life of the country (Article 45.f). For the purposes of indigenous peoples in general and the FIVIMS in particular, the IACHR understands these provisions as the right to practice and, if applicable, disseminate their own culture; and, as a manifestation of the duty to respect that their cultural practices and worldview are duly protected and that they are not subject to discrimination.

119. Likewise, the IACHR takes into account that among the immediate obligations of the States regarding this right is the elimination of obstacles that prevent or limit the access of the person or community to their own culture, the possibility of carrying out their cultural practices and living their way of life, including the prohibition of discrimination based on cultural identity, exclusion or forced assimilation. In particular, the Commission emphasizes that "[t]he protection of cultural diversity is an ethical imperative inseparable from respect for human dignity. It entails a commitment to human rights and fundamental freedoms and requires the full realization of cultural rights, including the right to participate in cultural life", and therefore the State should strengthen its protective actions in this regard in the contexts of indigenous peoples, and the FIVIMS in particular, in light of the delicate relationship and threats that may arise between their culture and the majority society.

120. In this context, the IACHR recalls that it also indicated that in light of the duty to guarantee provided for in Article 1(1) of the ACHR and the interpretation of the same by the organs of the Inter-American system, the States Parties must reasonably prevent the violation of the rights contained in Article 26 in the context of business activities. This includes adopting a legal framework that ensures the protection of these rights and provides effective access to remedies for the victims of such violations. Among the actions to ensure an adequate legal framework, the State should require that companies under its jurisdiction exercise human rights due diligence in order to identify, prevent and mitigate the risks of rights violations in the context of their activities. The IACHR considers it important to emphasize in this context that it is widely accepted that the responsibility to respect human rights is a global standard of conduct applicable to all companies in all situations, regardless of the existence of national norms that concretize it and the international obligations of States in this area; In addition, for the IACHR, States, in effectively complying with their obligation to guarantee human rights under international human rights law, must ensure that companies have direct and binding obligations to respect human rights and take into account the impact of their activities on vulnerable populations such as indigenous peoples or indigenous peoples in light of international human rights standards.

160. By virtue of the foregoing, the Commission considers that cultural identity is a human right recognized and guaranteed by the American Convention, whose content, in its collective dimension, protects the social and cultural manifestations of a group and its social fabric; and in its individual dimension, it guarantees the right to be part of, participate in the uses and customs, self-identify as a member of a certain group and worldview, which is reflected in the different interactions with other persons and which cannot be forced to be abandoned, changed, prohibited or transformed. Based on the foregoing, the Commission considers that the forced separation of indigenous persons in voluntary isolation also generates the affectation of the right to cultural identity.

161. Likewise, the IACHR considers that the best interests of the child play a preponderant role in cases such as the present one and that, taking into consideration the *corpus iuris* on the rights of indigenous children, it must be analyzed from an intercultural perspective, which implies the State's obligation to ensure that the well-being of indigenous children who are victims of forced relocation takes into consideration, to the extent possible, their cultural formative processes, existing socio-cultural representations and that they are granted the right to be heard in making decisions that affect their lives and future.

***U'wa Indigenous People and its members (Case 11.754) v. Colombia. OEA/Ser.L/V/II.173 Doc. 161 (September 28, 2019).***

148. In this context, the right of indigenous peoples to be consulted on decisions that may affect them is also related to their cultural rights, insofar as culture may be affected by such decisions. Thus, the IACHR has recognized that States must respect, protect and promote the traditions, institutions and customs of indigenous and tribal peoples, as these are an intrinsic component of their way of life. Hence, the State's obligation to develop consultation processes in the context of business activities that may have an impact on their rights is not only directly linked to their right to collective property, but also to the State's obligation to adopt special measures to protect their cultural rights, as practices and ways of life intrinsically related to their territory and use of natural resources.

149. In this context, the IACHR recalls that it also indicated that in light of the duty to guarantee provided for in Article 1(1) of the ACHR and the interpretation of the same by the organs of the Inter-American system, the States Parties must reasonably prevent the violation of the rights contained in Article 26 in the context of business activities. This includes adopting a legal framework that ensures the protection of these rights and provides effective access to remedies for the victims of such violations. Among the actions to ensure an adequate legal framework, the State should require companies under its jurisdiction to exercise human rights due diligence in order to identify, prevent and mitigate the risks of rights violations in the context of their activities.

***Precautionary measures***

***Precautionary Measure No. 505-15. Extension of beneficiaries Miskitu Indigenous People of Wangki Twi-Tasba Raya with respect to Nicaragua (January 16, 2016).***

18. The IACHR and the Inter-American Court have insisted that "States must respect the special relationship that members of indigenous and tribal peoples have with their territory in order to guarantee their social, cultural and economic survival. For the IACHR, the special relationship between indigenous and tribal peoples and their territories means that "the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of indigenous communities and of the effective realization of their human rights in more general terms".

***Precautionary Measure No. 54-13. Matter of communities in voluntary isolation of the Ayoreo Totobiegosode People with respect to Paraguay (February 3, 2016).***

35. In this regard, the Commission has received information on the serious harm that contact with outsiders can cause to the worldview of indigenous peoples in voluntary isolation, in terms of damage to an entire system of beliefs and traditions, on which these peoples have based their way of life and culture for hundreds of years. In general terms, the IACHR and the Inter-American Court have stated that indigenous peoples have a special relationship with their lands, territories and natural resources in material, social, cultural and spiritual terms; the protection of this relationship is fundamental for the enjoyment of other human rights of indigenous peoples and therefore merits special protection measures.

**Precautionary Measure No. 51-15. *Elderly persons belonging to the Shipia Wayúu Association of the Wayúu Indigenous Community in the municipalities of Manaure, Riohacha and Uribía with respect to Colombia (Extension) (December 1, 2017).***

21. The Commission notes that the present request for extension was submitted in favor of elderly members of the Wayúu people. When assessing the seriousness requirement, the Commission takes into account that the proposed beneficiaries play an essential role in the worldview of the Wayúu indigenous community, both in the transmission of customs and in the dynamics of their society. In this regard, the Commission recalls that international law has recognized the importance of adopting measures with specific approaches to protect the rights of indigenous elders. As identified in its report on Indigenous and Tribal Peoples' Rights over Ancestral Lands and Natural Resources, "in many indigenous communities, the oral transmission of culture to younger generations is primarily the responsibility of elders.

**Precautionary Measure No. 395-18. *Authorities and members of the Gonzaya (Buenavista) and Po Piyuya (Santa Cruz de Piñuña Blanco) Resguardos of the Siona Indigenous People (ZioBain) with respect to Colombia (July 14, 2018).***

24. Furthermore, the Commission considers that the lack of free access to various areas of an indigenous people's territory may impede the use and enjoyment of their territory in accordance with their culture, as well as their effective control over it. This may expose them to precarious living conditions or greater vulnerability, as they are unable to carry out their physical and cultural subsistence activities, as well as subject them to situations of "extreme vulnerability".

30. In relation to this last point, the Commission observes that the alleged existence of the problem of forced or "voluntary" recruitment, or the entry of indigenous youth into armed structures with different cultural references, in addition to placing their rights to life and integrity at risk through their incorporation in violent events, can lead to the disarticulation of the collective, by depriving it of an important population of the same generational group in formation and vital for the recreation and transmission of its values, norms and culture.

**Precautionary measure No. 954-19. *Lof Buenuleo Mapuche community with respect to Argentina (May 14, 2020).***

28. Finally, in view of the circumstances in which the aforementioned events allegedly occurred and the particular context (see *supra* paras. 5 and 9), the Commission recalls that "historically, indigenous and tribal peoples have been subject to conditions of marginalization and discrimination," and therefore reiterates that "[i]n international law in general, and in inter-American law specifically, special protection is required so that indigenous peoples can exercise their rights fully and equitably with the rest of the population. In addition, it may be necessary to establish special measures of protection for indigenous peoples in order to guarantee their physical and cultural survival - a right protected in several international instruments and conventions". This is particularly serious in the context of conflicts faced by indigenous peoples in the context of processes of claiming rights to traditional lands, territories and natural resources.

***Thematic reports***

***Rights of indigenous and tribal peoples over their ancestral lands and natural resources. Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09 (December 30, 2009).***

The perpetuation of the cultural identity of indigenous and tribal peoples also depends on the recognition of ancestral lands and territories. The close relationship between indigenous and tribal peoples and their traditional territories and the natural resources found therein is a constitutive element of their culture as a particular way of life. Ancestral burial grounds, places of religious significance and importance, and ceremonial or ritual sites linked to the occupation and use of their physical territories constitute an intrinsic element of the right to cultural identity. The failure to guarantee the right to communal property, therefore, undermines the preservation of the ways of life, customs and language of indigenous and tribal communities. For indigenous and tribal peoples, "the possession of their traditional territory is indelibly marked in their historical memory and the relationship they maintain with the land is of such a quality that their dissociation from it implies a certain risk of irreparable ethnic and cultural loss, with the consequent vacancy for diversity that such an event would entail.

161. Indigenous and tribal peoples have the right, in this sense, to have "the State effectively guarantee their right to live in their ancestral territory and thus be able (...) to preserve their cultural identity. By not guaranteeing the State the right to territorial property of the indigenous communities and their members, they are deprived "not only of the material possession of their territory but also of the fundamental basis for developing their culture, their spiritual life, their integrity and their economic survival". Therefore, under Article 21 of the American Convention, the guarantee of the right to territorial property is a means to preserve the fundamental basis for the development of the culture, spiritual life, integrity and economic survival of indigenous communities. Limitations on the right to indigenous property may also affect the right to exercise one's religion, spirituality or beliefs, a right recognized in Article 12 of the American Convention and Article III of the American Declaration. States have the obligation to guarantee indigenous peoples the freedom to preserve their own forms of religiosity or spirituality, including the public expression of this right and access to sacred sites.

162. The loss of cultural identity due to lack of access to ancestral territory has a direct impact on the rights of children of dispossessed communities. The Inter-American Court has explained: "With respect to the cultural identity of children of indigenous communities, the Court notes that Article 30 of the Convention on the Rights of the Child establishes an additional and complementary obligation that gives content to Article 19 of the American Convention, which consists of the obligation to promote and protect the right of indigenous children to live in accordance with their own culture, their own religion and their own language. // Likewise, this Court considers that within the general obligation of the States to promote and protect cultural diversity, there is a special obligation to guarantee the right to cultural life of indigenous children. // In this sense, the Court considers that the loss of traditional practices, such as female or male initiation rites and the languages of the Community, and the harm derived from the lack of territory, particularly affect the development and cultural identity of the children of the Community, who will not even be able to develop that special relationship with their traditional territory and that particular way of life proper to their culture if the necessary measures are not implemented to guarantee the enjoyment of these rights".

***Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights. OEA/Ser.L/V/II. Doc. 47/13 (December 30, 2013).***

22. The principle of no contact is the manifestation of the right of indigenous peoples in voluntary isolation to self-determination. One of the reasons for protecting the rights of indigenous peoples in voluntary isolation is cultural diversity, and that the loss of their culture is a loss for all humanity. As the IACHR and the Inter-American Court of Human Rights have stated on other occasions, indigenous peoples have the right to their cultural identity and to have States guarantee their right to live in their ancestral territories in order to preserve that identity. The Commission also considers that when evaluating the human rights situation of indigenous peoples in voluntary isolation and initial contact, it should be borne in mind - in addition to cultural diversity - that they are entitled to all the rights and freedoms enjoyed by non-indigenous persons, as well as individual and collective rights to self-determination. For indigenous peoples in voluntary isolation and initial contact, the right to self-determination has a direct and profound relationship with the rights to their lands, territories and natural resources.

***Standards for a Free, Open and Inclusive Internet. OEA/Ser.L/V/II IACHR/RELE/INF.17/17 (March 15, 2017).***

143. Intellectual property, freedom of expression and the right to culture are complementary rights, the purpose of intellectual property being "the promotion of literary, musical and artistic creativity, the enrichment of cultural heritage and the dissemination of knowledge and information goods to the general public". The United Nations Special Rapporteur on cultural rights stated that "both intellectual property systems and the right to science and culture oblige governments "to recognize and reward human creativity and innovation and, at the same time, to ensure public access to the fruits of these efforts. Striking the right balance between these two objectives is the main challenge for both regimes.

144. Copyright protection has a legitimate purpose that could lead to the imposition of limitations on the human rights to education, culture and freedom of expression. However, protection could not be implemented in a way that discourages creativity or the free exchange of information and ideas on the Internet. The advent of the Internet has had a great impact on the social dimension of freedom of expression, democratizing access to information, ideas and opinions of all kinds and decentralizing the creative process. On the Internet, users not only receive content; they also produce and disseminate their own content, widening the closed circle that was once concentrated in the record industries, companies and artists' organizations, and enabling the unauthorized use of copyrighted material. It is important at this time to rethink the role of copyright protection on the Internet and the effectiveness of such regimes in achieving their legitimate objectives.

***Indigenous women and their human rights in the Americas. OEA/Ser.L/V/II. Doc. 144/17 (April 17, 2017).***

220. In order to ensure respect for the right to self-determination of indigenous peoples, the close connection between the rights of indigenous peoples to their culture and languages and the rights related to their lands, territories and natural resources must be recognized. Furthermore, the connection of indigenous peoples to their traditional territories, home and

community is important, even for those who have migrated in search of work and education, for the preservation and development of indigenous cultures. The Inter-American Court has affirmed that the culture of the members of indigenous communities "corresponds to a particular way of life of being, seeing and acting in the world, constituted from their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they constitute an integral element of their cosmology, religiosity and, therefore, of their cultural identity". The IACHR has pointed out that indigenous women are part of societies in which ancestral lands are an essential element of their existence and culture. In the context of a visit by the Inter-American Commission to Colombia, indigenous women affirmed that their survival is linked to the preservation of their lands because it is there that they can freely express their culture. Indigenous women from Trinidad and Tobago and Belize, respectively, informed the Commission about the central role that women had played in passing culture from one generation to the next, and stated that "culture is who we are as indigenous women" and that "[indigenous] women are seen as the protectors and guardians of cultural values, customs and practices, and they are the keepers of that knowledge. They have the power to translate this knowledge to sustainably fulfill the lives of their children." They also spoke about the strength and resilience of indigenous women, as well as their ability to empower entire communities through the recovery of traditional knowledge about their culture or territorial preservation.

221. The IACHR has addressed the unique relationship between indigenous peoples and their lands on many occasions and has noted that "the use and enjoyment of land and its resources are integral components of the physical and cultural survival of indigenous communities and of the effective realization of their human rights more generally." The Inter-American Commission has observed that the particular connection of indigenous communities with their lands and resources is linked to the very existence of these peoples in terms of both material subsistence and cultural integrity and, therefore, "merits special measures of protection". Likewise, the Inter-American Court has pointed out that "for indigenous communities the relationship with the land is not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, including in order to preserve their cultural legacy and transmit it to future generations".

222. In view of the fact that cultural and community identity is extremely important to indigenous peoples, the forced displacement of children from their lands and the forced breakup of families can have a variety of effects on the community in general and on women and girls in particular. State policies of forced removal of children from their families can have a strong intergenerational effect.

***Situation of the human rights of the indigenous and tribal peoples of Panamazonia. OEA/Ser.L/V/II. Doc. 176 (September 29, 2019).***

297. In this context, the right of indigenous peoples to be consulted on decisions that may affect them is also related to their cultural rights, insofar as culture may be affected by such decisions. Thus, the IACHR has recognized that States must respect, protect and promote the traditions, institutions and customs of indigenous and tribal peoples, as these are an intrinsic component of the way of life of these peoples. In this sense, the State's obligation to develop consultation processes in the context of business activities that may have an impact on their rights is not only directly linked to their right to collective property, but also to the State's obligation to adopt special measures to protect their cultural rights.

300. In this regard, the IACHR reiterates that in cases in which indigenous peoples have been deprived or prevented from engaging in religious practices, there is a violation of the right to cultural identity, which is intimately linked to the religious and spiritual manifestations of these peoples and their members, which are part of their cultural heritage. The loss of cultural identity is threatened by the large-scale oil and mining exploitation that affects the aforementioned indigenous peoples, especially because all these processes were not preceded by prior consultation according to national and international standards.

301. The IACHR reiterates what has been stated by the Inter-American Court in the sense that the culture of indigenous peoples responds to a particular way of life of being, seeing and acting in the world, built on their close relationship with their traditional lands and natural resources. Accordingly, States must guarantee, under conditions of equality, the full exercise and enjoyment of the rights of the persons subject to their jurisdiction. In order to effectively guarantee these rights, when interpreting and applying their domestic legislation, they must take into consideration the characteristics that differentiate the members of indigenous peoples from the general population and that make up their cultural identity.

**Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)**

204. With regard to culture and the rights deriving therefrom, the Protocol of San Salvador establishes that everyone has the right to participate in the cultural and artistic life of the community. Cultural rights have been reaffirmed by different inter-American instruments such as the American Convention, the American Declaration and the OAS Charter. In particular, the IACHR and its REDESCA note that the latter instrument mentions that the States must give priority to the stimulation of culture for the integral improvement of the human person as the foundation of social justice and democracy, recognizes the individual and solidarity commitment to preserve the cultural heritage of the American peoples, as well as the right of participation of excluded and discriminated sectors in the cultural life of the member countries.

206. The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance emphasizes that forms of cultural expression can be affected by the phenomenon of racism, and prevents any type of denial of access, restriction or limitation. For its part, the Social Charter of the Americas stresses that culture is a key element for the socioeconomic development of peoples, which is why States must promote inclusive cultural development policies, programs to support cultural and creative industries, as well as plans for the preservation and protection of cultural heritage and diversity.

209. In particular, the Commission and its REDESCA emphasize that the protection of cultural diversity is an ethical imperative inseparable from respect for human dignity. It entails a commitment to human rights and fundamental freedoms and requires the full realization of cultural rights, including the right to participate in cultural life. This implies that the State must strengthen its protective actions with respect to people of African descent, as a group in a particularly vulnerable and historically discriminated situation, in light of the delicate relationship and obstacles that may arise between access to participation in cultural life and the social, normative and institutional limits set by ethnic-racial criteria in the dominant society.

For the IACHR and its REDESCA, the right of Afro-descendants to participate in cultural life, like other groups in a particularly vulnerable situation, implies that they have the right to freely express their identity in all areas of cultural life, contribute to its development and enjoy its benefits. Hence, programs and policies aimed at promoting culture should constructively integrate this population and ensure their full participation and non-discrimination in order to preserve their distinctive forms of expression, while also promoting historical memory as well as tolerance and respect in society. Bearing in mind that cultural activities, goods and services are a conduit for transmitting values, identities, reflections, forms of existence, worldviews or ways of living together, the Commission and its REDESCA recognize that they transcend a form of expression and comprise elements that structure and affect economic, social and political relations. In this sense, States have the obligation to promote a cultural environment respectful of people of African descent, as well as to adopt legislative, administrative and judicial measures aimed at ensuring both their right to culture and the eradication of prejudices and negative and harmful stereotypes against these people in this area, including prevention, regulation, supervision and access to justice in contexts of business activities that negatively impact the right to culture.

211. Therefore, the Commission underscores the duty of the States of the region to implement affirmative actions for the promotion and preservation of the cultural traditions of Afro-descendants in the Americas; and to protect the intangible heritage of this ethno-racial community and prevent the cultural usurpation of their own ancestral practices. The IACHR and its REDESCA urge the States to have plans and projects for Afro-descendant communities to benefit from cultural incentives in order to promote the conservation of their historical legacies, the creation and management of cultural initiatives, respecting their self-determination. Along these lines, the IACHR reiterates the importance that ethnic groups receive the revenues from the commercialization of their cultural products.

### ***Country report***

#### ***Democracy and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 54 (December 30, 2009)***

1050. As part of economic, social and cultural rights, the right to cultural identity must be guaranteed, that is, culture as a way of life must be protected. Consequently, States must adopt the necessary measures to protect the identity of minorities, including the right of indigenous peoples to use their own language, the right to self-determination, the right to be consulted on decisions that could affect them, respect for their traditions and customs, and the right to ownership and possession of their ancestral lands, among others.

1054. As this Commission has pointed out, an aspect of fundamental importance for indigenous peoples and the enjoyment of their rights is their link to the land and natural resources. In the same sense, the Inter-American Court has stated that:

(...) the culture of the members of the indigenous communities corresponds to a particular way of life of being, seeing and acting in the world, constituted from their close relationship with their traditional territories and the resources found there, not only because these are their main means of subsistence but also because they constitute an integral element of their cosmovision, religiosity and, therefore, of their cultural identity.

1072. States must ensure that indigenous peoples enjoy the same rights as the rest of the population, but must also adopt specific measures aimed at promoting and improving indigenous peoples' access to services such as education and health, as well as ensuring that these services are culturally appropriate.

### ***Annual Report***

#### ***Annual Report of the Inter-American Commission on Human Rights 2000. OEA/Ser.L/V/II.111 doc. 20 rev. (April 16, 2001)***

63. The right to culture is also enshrined in the American Declaration when it states in Article XIII that "Everyone has the right to participate in the cultural life of the community, to enjoy the arts, and to enjoy the benefits resulting from intellectual progress, especially scientific discoveries. He is also entitled to the protection of the moral and material interests resulting from any inventions, literary, scientific or artistic works of which he is the author.

### ***Resolutions***

#### ***Resolution 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (7 December 2019).***

Principle 17: Protection of indigenous peoples, including migrants in border areas:

States must also ensure respect for the language and culture of migrants and internationally protected persons belonging to indigenous groups.

Principle 39: Right to culture:

Every migrant has the right to enjoy his or her own culture and to communicate in his or her own language, either individually or in community, both in the public and private spheres.

Every migrant has the right to participate in the cultural and artistic life of the community, to enjoy the benefits of scientific and technological progress, and to benefit from the protection of the moral and material interests in any scientific, literary or artistic work of which he is the author.

The right to enjoy cultural life includes the freedom of migrant parents to ensure the religious, cultural, linguistic and moral education of their children in accordance with their own convictions, as well as the freedom to choose a school other than those established by the public authorities.

States should ensure the integration of migrants into society through the implementation of positive measures. This should not be conditional on the loss of national or cultural identity in their countries of origin. States should encourage and support migrants' efforts to preserve their cultural and ethnic identity through educational and cultural activities, including the preservation of their languages and knowledge related to their cultures.

***Resolution No. 1/20: Pandemic and Human Rights in the Americas (April 10, 2020)***

54. Provide information on the pandemic in their traditional language, where possible establishing cross-cultural facilitators to enable them to clearly understand the measures taken by the State and the effects of the pandemic.

56. To take extreme measures to protect the human rights of indigenous peoples in the context of the COVID-19 pandemic, taking into consideration that these groups have the right to receive culturally relevant health care that takes into account preventive care, curative practices and traditional medicines.

***Resolution No. 4/20: Human rights of persons with COVID-19 (July 27, 2020)***

17. In the treatment and care of indigenous persons with COVID-19, consideration should be given to the fact that these groups have the right to receive culturally relevant health care that takes into account their preventive care, healing practices and traditional medicines. Similarly, States must ensure an adequate intercultural approach in the treatment and care of Afro-descendant tribal communities.

***Press Releases***

***The IACHR warns about the special vulnerability of indigenous peoples in the face of the COVID-19 pandemic and calls on States to take specific measures in accordance with their culture and respect for their territories. CP No. 103/20 (May 6, 2020)***

In the context of the COVID-19 pandemic, the IACHR reiterates that indigenous peoples have a collective and individual right to the enjoyment of the highest attainable standard of physical, mental and spiritual health. It is necessary to formulate and implement public policies that guarantee the right to health of indigenous peoples, including the accessibility of services and the availability of supplies (including tests for the diagnosis of COVID-19); the development and implementation of specialized and culturally appropriate prevention and contingency protocols, including the design of training strategies for indigenous health workers (such as caregivers and traditional healers), and that they are provided with the necessary elements for their protection (masks, gloves, disinfectants, among others); as well as the cultural adequacy of medical care, which should respect the worldviews of these communities. These public policies must incorporate the fundamental principles of the human rights approach, such as social participation, equality and non-discrimination.

In addition, States, in consultation and coordination with indigenous peoples, should promote intercultural systems or practices in the medical and health services provided in indigenous communities, including the training of indigenous health technicians and professionals. At the same time, the IACHR, based on the right to self-determination, emphasizes the obligation to include representatives, leaders and traditional authorities in the organization of responses and in the implementation of measures in the framework of the pandemic.

The IACHR reaffirms to the States that consultation and free, prior and informed consent, as affirmed in the jurisprudence of the inter-American system and in other international human rights instruments, is a central element for the guarantee and protection of the rights of indigenous peoples. It also recalls that, for the development of this procedure, it is necessary

to consider the cultural practices of indigenous peoples, especially their ancestral forms of collective organization, which usually involve the holding of community assemblies. Likewise, in relation to virtual consultations, the IACHR warns that, due to structural discrimination, many indigenous peoples do not have access to the Internet, so that the imposition and implementation of consultative processes through digital platforms would represent a violation of the right to real and effective participation of these groups.

In the context of the adoption of social distancing measures adopted by the States to mitigate the spread of the COVID-19 pandemic, the IACHR urges the States to suspend administrative procedures aimed at granting permits for extractive and other natural resource exploitation or development projects in or around indigenous territories, in order to ensure respect for cultural practices and the effective participation of indigenous peoples in all decisions that may directly affect them.

***The IACHR expresses its concern about the state of health of Mapuche prisoners on hunger strike in Chile, calls for the intensification of timely dialogue to address their demands, and condemns all forms of violence in Araucanía. CP No. 197/20 (August 12, 2020)***

The IACHR recalls that indigenous persons deprived of liberty have specific needs based on their ethnicity, culture, traditions, religion, and language, and require differentiated treatment that is sensitive to their cultures. In consideration of the serious risks faced by persons in vulnerable situations, the Commission recalls, based on its Resolution 1/2020, on Pandemic and Human Rights in the Americas, that States must evaluate requests for prison benefits and alternative measures to imprisonment. In addition, in the case of indigenous peoples, the Commission recommended that States take extreme measures to protect the human rights of indigenous peoples in the context of the pandemic and that the right of these groups to receive culturally relevant health care, preventive care, healing practices and traditional medicines be taken into consideration.

## ***F. Right to education***

74. The right to education is protected by Article 26 of the American Convention and enshrined in Article 13 of the Protocol of San Salvador, which establishes the individual nature of the right, on the one hand, and various obligations for the States, including the objectives that education must pursue and the progressiveness of free access to education. It is also recognized by Article XII of the American Declaration on the Rights and Duties of Man, and in Articles 34, 47, 48, 49, 50 and 51 of the Charter of the Organization of American States.
75. The right to education has been developed through the different mechanisms of the Commission, through a multifaceted interpretation with respect to different groups in vulnerable situations and the corresponding state obligations for its respect and guarantee.
76. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to education, developed within the framework of its different mechanisms.

## ***Cases filed with the Court***

***Application before the Inter-American Court of Human Rights in the case of Xákmok Kásek Indigenous Community of the Enxet-Lengua People and its members (Case 12.420) against the Republic of Paraguay (July 3, 2009).***

215. It should be noted that within the special measures for the protection of children and among the rights recognized to them in Article 19 of the Convention, is contained "the right to education, which favors the possibility of enjoying a decent life and contributes to prevent unfavorable situations for the child and for society itself". The commitment to protect children is guaranteed in various international instruments that establish special protection for children due to their status as minors, such as the Convention on the Rights of the Child and the Protocol of San Salvador.

***César Alberto Mendoza et al. (Life imprisonment and life imprisonment of adolescents) (Case 12.561) v. Argentina (November 2, 2010)***

172. As indicated under the heading of standards in criminal justice for children and adolescents, and life imprisonment, the need for periodic review is related to the lower reproach judgment with respect to conduct committed by adolescents under 18 years of age, compared to conduct committed by adults. It is also related to the fundamental objectives that must be pursued by custodial sentences imposed for acts that took place when the convicted person was still a child. As indicated above, States assume the obligation to provide education, treatment and care with a view to release, social reintegration and a constructive role in society. In the Commission's view, these obligations are based on the fact that the time during which the State assumes custody of young people who committed crimes as children constitutes a crucial stage of life in personal and social development, in the determination of a life plan and in the acquisition of the knowledge and skills indispensable for life in society.

173. In this sense, the lack of a periodic review of these aspects that would make it possible to measure the evolution of the rehabilitation process and, eventually, to order release from prison based on such evolution, entails a particularly serious impact on the possibilities of reform and social reintegration of persons convicted for acts that occurred while they were still children, which is incompatible with the provisions of Articles 5(6) and 19 of the American Convention, in relation to the obligations enshrined in Articles 1(1) and 2 of the same instrument.

***Paola del Rosario Guzmán Albarracín and family members (Case 12.678) v. Ecuador (October 5, 2018).***

113. Specifically with respect to the right to education, Article 49 of the OAS Charter expressly enshrines the right to education and refers to the different levels of education. Article 34 h) of the same instrument underscores the role of the State in the "rapid eradication of illiteracy and the expansion of educational opportunities for all. Likewise, Article 47 states that States should give priority to the encouragement of education aimed at the integral improvement of the individual, and Articles 3 h), 30, 31, 48, 50, 52 refer to actions and cooperation to be undertaken by States in the field of education. Likewise, Article XII of the American Declaration establishes that everyone has the right to education, which includes equality of opportunity and its orientation towards the achievement of a dignified subsistence and improvement of the standard of living. For its part, as previously mentioned, Article 13 of the Protocol of San

Salvador, includes this right and states that everyone has the right to education, which should be oriented to the full development of the human personality, respect for human rights, justice and peace.

114. From the foregoing, the Commission considers it clear that the right to education constitutes one of the economic and social standards mentioned in Article 26 of the Convention and, in this sense, the States Parties have the obligation to ensure its progressive development, as well as to respect, guarantee, and adopt the necessary measures to make this right effective. Likewise, the IACHR considers that in addition to its competence to directly review the content of the right to education and the fulfillment of the obligations of the States Parties to the Protocol of San Salvador with respect to this right, it will also take into account the effects for its protection through Article 26 of the ACHR.

116. With regard to sexual violence and discrimination against women, girls, and adolescents in the educational sphere, the IACHR notes with concern the common nature of these practices and considers that certain predominant social and cultural beliefs can hinder the development of educational policies capable of guaranteeing the right to education, insofar as they promote or facilitate forms of socialization that are contrary to the dignity of persons. Therefore, for the IACHR, the right to education cannot be treated in isolation from gender issues. Bearing in mind that girls are more vulnerable to sexual violence due to the influence of gender-based power relations deeply rooted in society, combating all forms of violence and discrimination against women, girls and adolescents requires that education systems eliminate prejudices, customs and practices based on the superiority or inferiority of the sexes or on stereotyped roles for men and women.

118. In addition, the IACHR has already emphasized that one of the risk factors for sexual violence in the education sector is associated with the very nature of educational institutions, where relationships of trust are created between students and teaching or administrative staff, and the latter can commit acts of sexual violence by abusing their power. Another factor is linked to institutional cover-up and tolerance favoring the perpetrators. Finally, a third factor may be associated with the weakness of justice mechanisms in responding to violations, in addition to individual factors that tend to increase the potential for sexual violence such as gender, age, ethnicity, sexual diversity, disability, migration, poverty and living in rural or marginalized areas.

119. Thus, for the IACHR, the school, being the central place of teaching, development and socialization, has an essential role in the life and formation of children and adolescents, so that the existence of harmful practices that violate the rights of these exercised by the personnel in charge of guaranteeing it, whether in its design, implementation or supervision, affects the right to receive an adequate education of quality and in safe conditions in light of the best interests of the children. For the IACHR, the protection of girls and adolescents against sexual and gender-based violence at school is not only a priority and immediate requirement, but also involves and commits the entire educational apparatus, from the production of learning materials with a human rights and gender equality approach; the adequate construction of sanitary facilities; access to impartial and timely information on sexual and reproductive rights, training and sensitization of teachers and administrative personnel, comprehensive reparations to victims, as well as the adequate development of investigations and punishment of those responsible for sexual violence, both in the criminal and administrative spheres.

### ***Precautionary measures***

#### ***Precautionary measure No. 376-15. Irene with respect to Argentina (July 7, 2016).***

25. Regarding the topic of childhood, comprehensive health and education for persons with disabilities, the Commission has taken into consideration the interrelation of these topics and the importance of early childhood education for children with disabilities. Mainly, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has considered that the way to achieve the psychophysical development of persons with disabilities is through inclusive education, understood as "a process of addressing and responding to the diversity of needs of all students through increased participation in learning, cultures and communities; and as a reduction of exclusion from education".

### ***Thematic Reports***

#### ***Women's Work, Education, and Resources: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59 (November 3, 2011).***

170. Education is a human right and an indispensable means for the realization of other rights, especially for achieving gender equality. However, major inequalities persist in the region that limit the enjoyment of this right, particularly affecting girls, adolescents, and adult women.

181. Like other human rights, the right to education imposes on OAS member states the obligation to respect, protect, and fulfill the interrelated characteristics of the right, i.e., availability, accessibility, acceptability, and adaptability.

183. The IACHR considers that as long as the States do not assume that the education of girls and women is a human right and not a service, and that discrimination is one of the causes that limit them in the exercise of this right, the efforts in the struggle for equality in the education of girls will be insufficient. Due to the relationship between the right to education and other human rights, a comprehensive approach to education requires joint work with other sectors involved, such as labor, justice and health.

232. The IACHR considers that based on the principles of equality and non-discrimination that permeate the inter-American system, the States have the obligation to guarantee that all pregnant adolescents continue their studies and that all adolescent mothers return to school to complete their studies. To this end, the IACHR urges all States in the region to adopt all necessary measures to eliminate any form of discrimination, whether in laws, policies and/or practices that discriminate against pregnant adolescents in the enjoyment of their right to education. Likewise, in accordance with their international obligations, it urges the States to establish monitoring measures to prevent these situations from continuing to occur, and to implement the necessary measures to ensure that adolescent mothers return to school once they have had their children so that they can complete their studies.

#### ***Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78 (July 13, 2011).***

492. The Commission considers that the objectives of juvenile justice sanctions require the implementation of education programs, including formal schooling, vocational and job training, recreational and sports activities (...).

493. Children deprived of liberty should have access to educational programs, without discrimination. In the juvenile justice system, the treatment and education of children should be oriented to promote respect for human rights and take into account cultural diversity. Likewise, the education and vocational training provided in places of deprivation of liberty should be recognized by the general education system and operate in close coordination with it.

510. The Commission recalls that one characteristic of the intervention is given by the socio-educational content of the measures of deprivation of liberty. This implies the obligation of the States to address the problem of child offenders from an integral perspective, contemplating the punitive aspect (accountability for their conduct) and the socio-educational aspect (aimed at their family and community integration). In this sense, the Commission considers it advisable to strengthen the participation of families, non-governmental organizations and private educational institutions in the development or implementation of educational and training programs for children deprived of liberty. However, this should not neglect the formal nature of the education that should be provided to all children deprived of liberty to ensure that their studies are not suspended as a result of the sanction to which they are subjected.

511. Closely linked to the right to education is the right to recreation of children deprived of liberty. Taking into account that they are developing individuals, children deprived of their liberty must have access to recreational programs. In turn, these programs should be designed to guarantee the contact of children deprived of liberty with their family and community. It is recommended that the centers articulate programs with the community so that children who have been subjected to a custodial sanction can participate in socialization, recreation, leisure, sports, education and health activities, even outside the institutions. These programs should be intensified in the period prior to the release of the sanctioned child, to facilitate his or her reintegration into the family and the community.

***Human rights of migrants and other persons in the context of human mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13 (December 30, 2013).***

607. With regard to the right to education, Article 13 of the Protocol of San Salvador establishes that education shall be a right of all persons and that among the various measures that States must adopt to achieve the full exercise of this right is that "primary education shall be compulsory and available free of charge to all". In greater detail, Article 30 of the International Convention for the Protection of All Migrant Workers and Members of Their Families establishes that all children of migrant workers shall enjoy the fundamental right of access to education on the basis of equality of treatment with nationals of the State concerned.

608. Based on the information gathered during the visit, the Commission notes with concern that migrant children face several difficulties in accessing education. First, they are required to have valid migratory documentation. Secondly, the administration charges fees to validate their previous studies. This represents an obstacle for many migrant families who, being in a

situation of poverty, cannot afford to pay these fees. This also applies when it is necessary to pay fines to regulate their immigration status.

610. The Commission is also aware that many migrant workers and their families only speak indigenous languages, so they have to face different obstacles in the access, enjoyment and exercise of their rights because they do not speak or understand Spanish. On the other hand, there is also the situation that agricultural cycles do not coincide with school cycles, which represents an obstacle for children who migrate with their parents, and who also work in the agricultural sector, to enjoy and exercise their right to education.

***Child's right to a family. Alternative care. Ending institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 (October 17, 2013).***

632. Access to quality education enables children to enjoy other rights by providing them with the necessary knowledge, skills and capacities to do so, while preparing them to lead a full, satisfying and responsible life in a free society. The Court has referred to the right to education of children in the following terms:

[...] among the special measures for the protection of children and among the rights recognized for them in Article 19 of the American Convention, the right to education, which favors the possibility of enjoying a life of dignity and contributes to preventing unfavorable situations for the child and for society itself, figures prominently.

634. Children and adolescents in centers or institutions also have the right to access to recreational, cultural and leisure activities that contribute to their integral formation, under equal conditions as those children who are not in residential care. The facilities of residential institutions must be equipped and have sufficient space to allow recreation, leisure, culture and play for children and adolescents, in addition to adapting these spaces and activities to the different ages of children and adolescents. As noted with respect to education, the Commission understands that the possibility of participating in recreational and cultural activities within the community is of vital importance to maintain the child's ties with his or her close circle and community and to promote socialization with people outside the institution, around which the child will return in the future. In addition, for children from a particular group with its own traditions, culture or language, access to education and recreational and cultural activities within their community are crucial for the maintenance of culture and identity.

636. In addition to compulsory formal schooling, the Commission considers it important to guarantee children and adolescents vocational and job training programs, according to their age, particularly when they are close to adulthood and leave the institution. Vocational training and preparation for employment are part of individualized plans that prepare the child for independent living after leaving the institution. The Commission has already referred to the concern that children who leave institutions when they reach the age of majority are more likely to find themselves in conditions of special vulnerability in their rights and exposed to forms of exploitation if they are unable to access the minimum means of living.

637. Likewise, educational and training programs must respect the right to equality between men and women, as well as the cultural and linguistic specificities of the child. For example, in the case of children belonging to indigenous peoples, among other characteristics, the

programs must be respectful of the language of these children, for which they must have adequate personnel and written material.

639. To fully exercise their right to education, many children with disabilities often require special educational services or require personal assistance, in particular, teachers trained in appropriate methodologies and languages to teach children through child-centered and child-empowered teaching strategies, with appropriate teaching materials. The Committee on the Rights of the Child has noted that inclusive education should generally be the goal of the education of children with disabilities, and that the form and procedures of inclusion will be determined by the individual child's educational needs and requirements, as the education of some children with disabilities requires a type of support that is not readily available in the general education system. Children with disabilities have the right not to be excluded from the general education system on the basis of disability, as well as to receive the necessary support within the general education system to facilitate their effective education. However, the degree of inclusion within the general education system may vary. In circumstances where a fully inclusive education is not feasible, options should be maintained that allow the child access to an education adapted to his or her learning needs. Institutions providing care for children with disabilities should ensure the right of these children to an appropriate education, seeking as far as possible to enable the child to participate in the education system in the community, as well as in recreational, leisure and cultural activities.

644. The Commission considers that States should ensure that, except in exceptional cases, children and adolescents in residential care institutions have access to educational facilities in the community. In cases where children have access to educational programs in the institution, the education and vocational training provided should be recognized by, and operate in close coordination with, the general education system.

***Violence, children and organized crime. OEA/Ser.L/V/II. Doc. 40/15 (November 11, 2015).***

364. The right to education is particularly affected in contexts where there is a generalized situation of insecurity and violence. In this regard, information has been gathered from the responses to the questionnaires and from the reports of various United Nations agencies that indicate that communities, areas and neighborhoods exposed to violence usually lack quality educational services, have high levels of absenteeism and school dropout, and the number of adolescents who pursue higher education after completing compulsory education is low. As a result, professional opportunities are restricted due to the low level of education received, and the jobs young people have access to are often informal or in precarious working conditions - in terms of salary level, benefits, and job stability. This results in low rates of social mobility in these sectors and the reproduction of conditions of poverty and social exclusion.

365. Taking into account that social exclusion and economic inequalities are among the conditions that facilitate the emergence of social tensions, violence, insecurity and crime, the failure to ensure the provision of a quality educational service that provides opportunities for labor insertion contributes to the reproduction of the aforementioned scenarios of exclusion, insecurity and violence, in addition to violating the right to education. In this sense, the public policies of the States must take into consideration the investment of the necessary resources to guarantee a quality educational service in equal conditions to those accessed by other

students, in contexts that present particular circumstances and challenges such as those described.

366. The presence of gang members in and around schools can have devastating effects on the exercise of the right to education, particularly if adequate measures are not taken to prevent and counteract certain behaviors. Violence exercised by student gang members or maras inside schools, against their peers and teachers, such as fights, thefts, robberies, coercion, extortion and threats, and acts of vandalism in educational facilities, affect the school climate and generate fear. This has a significant negative impact on children's right to education.

367. In particular, situations of physical violence and threats negatively influence the educational environment and the learning process, the acquisition of socialization skills and the creation of positive interpersonal relationships among students, all of which are basic elements of the educational and formative process. Violence involves violations to the physical integrity of boys and girls that can be very serious, especially due to the entry of weapons (white or firearms) in schools. It also generates tensions and stress that affect children psychologically, with long-lasting impacts. Likewise, the presence of maras and gangs generates risks to the extent that the maras and gangs recruit new members at school, or awaken the interest of some of their peers to join them. Some adolescents respond to pressure and violence with more violence, as a means of defense; others remain subjected to extortion payments; some join the mara or gang out of sympathy or as a protective measure. These contexts also generate absenteeism among students, school dropouts and changes of educational center for some students. Faced with these situations, the school fails to fulfill its educational function and fails to become a protective environment for children, exposing them to violence and other risks. In some countries in the region, particularly in Central America, school closures have been reported due to violence and threats by gangs.

385. The IACHR expresses that restrictions to the rights to rest, leisure, play and culture have special impacts when it comes to children and adolescents due to their unique state of development and physical and psychological growth and the importance of the exercise of these rights for their integral personal development, the evolution of their cognitive capacities and social competencies and, in general, their health and well-being.

***Indigenous women and their human rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17 (April 17, 2017).***

188. Education is an essential human right and a precondition for the enjoyment of other rights. It is also an effective tool for achieving gender equality and a life free of poverty. Indeed, education is one of the most economically efficient and sound investments for an individual and for society, and this is particularly the case for women, since education directly increases their wages and provides broader health and social benefits. Although this section of the report refers to indigenous women's right to education in general, it will focus primarily on indigenous girls' access to education, particularly primary education, as it is a determining factor in their lives, which will have direct impacts on their socio-economic conditions throughout their lives, as well as on their ability to continue their education at the secondary and higher levels.

189. Based on these considerations and within the framework of the Millennium Development Goals, the United Nations made the right to education its priority No. 2, establishing that States

must guarantee that: "by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling". In addition to the international treaties that establish it, the Inter-American Court has affirmed that States have the duty to ensure access to free basic education. In the case of indigenous communities, the State must promote the right to education from an ethno-educational perspective. In other words, it must "adopt positive measures to make education culturally acceptable from an ethnically differentiated perspective".

197. It is essential that States pay special attention to the particular situation of indigenous women and consult them on the formulation of responses to address sexual violence against women in the education sector, in order to take measures that are sensitive to their worldview and reflect an intercultural perspective. The IACHR has emphasized that intercultural education free from all forms of discrimination includes the right to a life free from all forms of violence.

***Progress and challenges towards the recognition of the rights of LGBTI persons in the Americas. OEA/Ser.L/V/II.170 Doc. 184 (December 7, 2018).***

131. In the Inter-American system, the right to education is enshrined in several instruments, and includes the right of every person "to be enabled, through such education, to attain a decent standard of living, to improve his standard of living and to be useful to society," which is reiterated by the American Convention, in Article 26, establishing the commitment of the States to "achieve progressively the full realization of the rights flowing from the economic, social, educational, scientific and cultural standards. Likewise, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights - hereinafter "Protocol of San Salvador" - states that States "shall enable all persons to participate effectively in a democratic and pluralistic society", in addition to "aiming at the full development of the human personality and the sense of its dignity". All the instruments cited, moreover, expressly contain norms that provide for the obligation of non-discrimination (Articles II, 1.1 and 3, respectively) in relation to all the rights enshrined therein.

132. Specifically concerning LGBTI persons, or those perceived as such, the IACHR has condemned acts of intimidation and harassment in educational environments (commonly known as bullying), and has urged OAS Member States to adopt and enforce effective measures for the prevention of violence and discrimination against LGBTI persons in both public and private educational institutions. The Commission also recommended that States should implement "comprehensive sex education in the school curriculum, which includes a perspective of bodily, sexual and gender diversity". Additionally, it referred to the fact that "comprehensive sex education is a basic tool for eliminating discrimination against LGBTI persons and that special attention should be given to diversity, given that all persons have the right to decide on their own sexuality without being discriminated against based on their sexual orientation or gender identity.

151. With respect to this issue, the IACHR further emphasizes that education is an essential means to promote cultural change in a society, and includes not only formal educational processes, related to schools and universities, but also all means that contemplate the production of information for society in general. In this sense, the IACHR urges States to assume their role as guarantors of a society free of all forms of prejudice, discrimination and

violence, and to undertake efforts aimed at developing an appropriate educational project in formal educational environments, while at the same time promoting a process of cultural change in all sectors of society in general. With regard to formal education, programs should be designed to include gender education, free of prejudice and based on a model that guarantees the autonomy of all persons, and States should create a safe home for children and adolescents who have a sexual orientation, gender identity -real or perceived-, or body characteristics different from the male-female binary.

156. In light of the foregoing considerations, the IACHR recalls that States have the obligation to generate effective mechanisms to prevent and punish discrimination against LGBTI persons, or those perceived as such, in the educational system, and emphasizes that awareness-raising plays an essential role in the prevention of discrimination against these persons in educational environments and in the effective recognition of the right to education of LGBTI persons.

***Forced migration of Nicaraguan persons to Costa Rica. OEA/Ser.L/V/II. Doc. 150 (September 8, 2019).***

320. For the Commission, the right to education of migrants or persons seeking international protection, particularly children and adolescents, serves to better protect them from the risk that they will become involved in dangerous activities, including child labor; the greater the reduction in the content of the right to education, the greater the possibility that it will lead to the violation of the human rights of children in these contexts. The IACHR also emphasizes that the principle of equality and non-discrimination governs non-formal education and training and that focused on adults, so it is necessary for the State to monitor whether in these areas access to education is not limited for these people. In addition, the guarantees that the State implements for the realization of this right serve to protect this population group from discrimination and xenophobia, sexual and gender violence, risks from communicable diseases, crime, drugs and other dangers.

***Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

The human right to education is enshrined in a considerable number of inter-American and international human rights treaties. This right has been characterized as a "fundamental pillar for guaranteeing the enjoyment of a life in dignity" and as an "indispensable means for the realization of other human rights. Likewise, education is necessary for the full intellectual development of one's identity, personality, talents and abilities, all of which provide individuals with valuable mechanisms for developing their full potential, such as tools for finding quality employment and avoiding falling into or escaping poverty.

164. With regard specifically to the duty to guarantee the right to education, the IACHR warns that, in order to ensure its effective enjoyment, it is necessary to implement public policies backed by adequate and sufficient financial resources, complemented by monitoring measures to evaluate their effectiveness. In addition, with regard to the modalities in which this right must be guaranteed, both the IACHR and the Inter-American Court have followed the standards outlined by the Committee on ESCER, which has specified four essential criteria that States must guarantee in relation to the right to education in general terms.

165. In this regard, the *availability* of education must be ensured in the first place, i.e., that there are sufficient educational institutions and programs in the State, with the necessary safety and hygiene conditions to be able to function, qualified teaching staff, competitive salaries, and adequate and sufficient materials, among other requirements. Likewise, States must guarantee the *accessibility* of education from a *material point of view* (in terms of geographic location and the possibility of physical access to any person), and from an *economic point of view* (ensuring free elementary school and tending to it at the secondary level), making sure that there is no discrimination, especially with respect to groups in vulnerable situations. Furthermore, *acceptability* must be guaranteed, both in terms of form and substance, including curricula and teaching methods, which must be relevant, culturally appropriate and of good quality. Finally, it is the duty of States to ensure the *adaptability* of education in order to be able to serve specific needs in varied cultural and social contexts.

219. Human rights education is one of the fundamental pillars of the global effort to realize human rights. Human rights education involves creating a universal human rights culture by transmitting knowledge, teaching skills and shaping attitudes, empowering those who receive it, providing them with tools to develop critical thinking, demand the effective fulfillment of rights and be aware of the need for inclusive solutions in a democratic society. Human rights education and training are essential for the promotion of universal and effective respect for human rights and fundamental freedoms for all, in accordance with the principles of equality, universality, indivisibility and interdependence.

221. The IACHR reiterates that, in accordance with the instruments of the Inter-American System, and especially the Protocol of San Salvador, States have the obligation to provide human rights education in formal and non-formal educational contexts, ensuring the effective professional training of teachers, particularly with regard to issues of equality and non-discrimination. This should be particularly taken into account given that the IIDH identified specialized training and the training of teachers in human rights pedagogy as the area with the greatest lag in the region.

227. Specifically, from the point of view of human development, education constitutes the environment in which each person receives the skills and knowledge necessary to develop his or her full human potential. Exclusion from educational opportunities will necessarily have an impact that will seriously limit the possibilities of obtaining a decent job or even entering the labor market. In other words, because educational attainment, especially completion of secondary or high school, is often a significant determinant of the economic status that a person will be able to achieve throughout his or her life, when transgender people see their right to education restricted or affected, their future economic prospects are also affected, while their social vulnerability increases, among other negative outcomes that are extremely difficult to reverse.

***Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)***

155. The international obligations of States with respect to the right to education arise from a vast international corpus iuris. At the Inter-American level, of importance are Article 26 of the American Convention, Articles 34 h, 47 and 49 of the OAS Charter, Article XII of the American

Declaration, and Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

157. Education plays an important role in promoting the right to equality, non-discrimination and tolerance, according to the Inter-American Convention against Racism, Racial Discrimination and Related Intolerance, which also emphasizes the prohibition of denying access to public or private education on the basis of race or national or ethnic origin. This treaty also underscores the obligation of States to formulate policies that guarantee the right to education with equal opportunities. Both the IACHR and the Inter-American Court have been emphatic in recognizing that education is an intrinsic and indispensable right for the realization of other human rights. In the area of personal autonomy, education is the main means that allows adults, children and adolescents who have been exposed to economic and social marginalization to escape poverty and participate fully in their communities.

163. The IACHR and its REDESCA emphasize that education is a transforming instrument that allows human beings to maximize their multiple capacities and participate fully in all spaces under conditions of equality and non-discrimination. From this perspective, it is necessary to converge in an intercultural dialogue which, according to UNESCO research, involves the interrelation of different cultural dimensions that involve educational actors who in turn incorporate the ethnic approach in the different teaching and learning methodologies. In this sense, it is necessary to emphasize that the right to education encompasses policies of inclusion, universal coverage, permanence and assurance, which aim that all population groups, including those in conditions of special and extreme vulnerability, have access to quality education; as is the case of Afro-descendants and tribal communities, who, due to structural discrimination, institutional racism and historical segregation to which they have been exposed, continue to face obstacles to the realization of their rights and face gaps in opportunities for their own development.

164. The principle of equality and non-discrimination should govern the education and training of all persons, and it is therefore necessary for the State to ensure that both public and private institutions do not discriminate against people of African descent. The guarantees that the State implements for the realization of this right serve to protect this population group from discrimination, racism and hate speech or intolerance.

165. The IACHR and its REDESCA understand that the targeted inclusion of these persons in the educational system, both in public and private educational centers and at all levels, strengthens it, constituting an asset of the system itself, by enriching and expanding the teaching and learning of all students in general, and promoting and integrating the principles of diversity, respect and solidarity in society. In this regard, States must ensure that people of African descent are not directly or indirectly marginalized within the education system and ensure that the education services provided to them, whether public or private, are accessible and of good quality, as well as include training and awareness-raising on aspects that affect them, both for teachers and administrative personnel, particularly at the primary and secondary levels.

166. The Commission underscores the great importance and urgency for the States of the region to implement effective strategies, within the framework of the right to education, aimed specifically at Afro-descendants and tribal communities, for universal and free access to basic education. Likewise, that they incorporate an intersectional perspective, taking into account

the urban and rural contexts where this population is concentrated, emphasizing special conditions such as gender; disability; LGBTI groups; children and adolescents; street people; nationality; socioeconomic origin, migratory status; persons deprived of liberty; and rural workers.

167. Therefore, the IACHR emphasizes that in order to guarantee the right to education, the States must have affirmative actions and special measures that promote and guarantee access and permanence at all levels of school and higher education for the Afro-descendant population. To this end, they should take into consideration their worldview, traditions and ancestral customs, with a view to including their indigenous languages and knowledge in the curricula of all public and private educational institutions, as a way of preserving their cultural heritage and social empowerment. Along the same lines, the Commission calls on the States to guarantee the right to Afro-descendant historical memory with the implementation of a specialized chair that will provide an account of the history of the African Diaspora and the processes of resistance and vindication of Afro-descendant communities in the Americas; in accordance with the right to self-determination, and guaranteeing the representation of Afro-descendant grassroots and civil society organizations in the stages of consultation, design, monitoring and execution of ethno-education plans, policies and projects at local, regional and national levels.

168. Likewise, the IACHR calls on the States to promote pedagogical policies that prohibit the direct or indirect use of stereotypes or stigmatization based on Afro-descendant ethno-racial origin in the educational sphere, both in the use of support resources and in the content of curricula.

### ***Country reports***

#### ***Serious human rights violations in the context of the social protests in Nicaragua. OEA/Ser.L/V/II. Doc. 86 (June 21, 2018).***

The IACHR recalls that the right to education is considered the epitome of the indivisibility and interdependence of all human rights, serving as a catalyst to generate a critical and participatory citizenship as well as to influence the very development of individuals and societies. In particular, in higher education, the academic freedom of teachers and students as well as the autonomy of institutions are fundamental pillars for strengthening democratic structures and avoiding pressures or intervention of a political nature. The Commission also emphasizes that the right to education makes it possible to mitigate the psychosocial impact of emergency or conflict situations, to strengthen the capacity to help those affected in the context of crisis, and to offer tools for social stability and reconstruction.

171. Given the negative impacts that this context is having on the right to education, particularly at the secondary and higher education levels, characterized by instability and latent risks against students, the IACHR considers it necessary for the State to take action to investigate the students' complaints of instigation by university authorities or student leaders sympathetic to the government, and to guarantee the autonomy of universities and the academic freedom and freedom of thought of their students. Likewise, an environment conducive to the recovery of classes should be facilitated and guaranteed as soon as possible, prioritizing the safety and protection of the students. If necessary, the State should make the

appropriate adjustments taking into account the elements of availability, accessibility, acceptability and adaptability.

***Situation of human rights in Honduras. OEA/Ser.L/V/II. Doc. 146 (August 27, 2019).***

139. The IACHR recalls that the right to education is considered the epitome of the indivisibility and interdependence of all human rights, and serves as a catalyst to generate a critical and participatory citizenship as well as to influence the very development of individuals and societies. The IACHR also recalls that according to the Protocol of San Salvador, to which Honduras is a party, the right to education should be oriented to "the full development of the human personality and the sense of its dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace"; it should also be aimed at ensuring that people are properly trained to achieve a decent livelihood, full autonomy and democratic and pluralistic participation in society. This implies that the State must realize the right of its population to receive human rights education, in addition to the obligation to respect and guarantee each of the fundamental elements for the realization of the right to education, such as its availability, accessibility, acceptability and adaptability.

140. In summary, within this framework, the IACHR emphasizes that the right to education is indispensable for the realization of other human rights such as work, political participation, freedom of expression, care for the environment, and substantive equality between women and men. It also stresses that the right to food, like the right to health, must be understood as a fundamental and indispensable guarantee, in particular, for the exercise of the rights to life and personal integrity, which implies obligations for States to adopt measures for the exercise of such rights. Although International Human Rights Law understands that there are certain aspects of the rights to health, food and education that must be progressively realized, it is necessary to emphasize that in relation to these rights there are also immediate obligations for the States, including the provision without discrimination of medicines and essential foods, such as free and compulsory primary education, particularly prioritizing those individuals, groups and collectives in the most vulnerable and poorest situations. The State, in addition to fulfilling its immediate obligations, must show the progress achieved and monitor the policies aimed at achieving the goals related to these rights, as well as be accountable when the relevant measures are not adopted. For these purposes, the IACHR considers it useful to have as a reference parameter the goals approved by the States on health, food and education based on the implementation of the 2030 Agenda for Sustainable Development Goals.

145. [In this regard, the IACHR emphasizes that States and indigenous peoples, in accordance with the principle of equal opportunity, must promote the reduction of disparities in education between indigenous and non-indigenous peoples. For their part, indigenous peoples have the right to establish and control their educational systems and institutions, in accordance with their cultural methods of teaching and learning. Likewise, in the case of indigenous peoples, the right to education implies, among other things, that States, in conjunction with these groups, should promote intercultural education.

***Annual Report***

***III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and***

***protection of all human rights for all people in the Americas "Until dignity becomes customary".  
OEA/Ser.L/V/II. 24 February 2020.***

In addition to expressing its concern about the persistence of poverty and inequality in the region, as well as the risk of an increase in poverty and extreme poverty in countries where serious human rights crises are occurring, REDESCA emphasizes that these aspects of special concern have guided the preparation of this Report. In general, the report has focused on the actions and measures taken by Member States to guarantee the full enjoyment of the right to education and health of their inhabitants, as well as the progress and challenges faced by each country during 2019 with respect to these and other ESCER, according to the information available in relation to each of the States.

***Resolutions***

***Resolution 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (7 December 2019).***

Principle 37: Right to education:

All migrants, especially migrant children and adolescents, have the right to education, regardless of their migratory status.

Access to public education establishments shall not be denied or limited because of the immigration status or employment of either parent, or lack of identity documents, or lack of schooling.

States should promote the availability and accessibility of secondary education to all persons, including migrants and their children, on an equal basis with nationals.

States should provide for the accessibility of higher education for all persons, including migrants and their children.

States should, to the extent possible, standardize and relax the requirements for migrants' access to education in order to ensure their access to and completion of studies at all levels of education.

***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

64. Regarding the right to education, States must have mechanisms that allow children and adolescents to continue with access to education and with the stimuli that their age and level of development require. In particular, States should provide tools for responsible adults to carry out activities with their children, giving priority to strengthening family ties and preventing domestic violence. Ensure that children with disabilities can access online education without exclusion, through support systems, communication strategies and accessible content.

67. Give special attention to children and adolescents living on the street or in rural areas. The measures of special attention should consider the economic and social conditions and, in

addition, consider that the effects of the pandemic are different for each population group of children and adolescents due to the social context in which they are inserted, including the digital divide. The Commission recommends that States use the media to guarantee access to education for all children and adolescents without any type of discrimination.

***Resolution No. 4/20: Human rights of persons with COVID-19 (July 27, 2020)***

44. For the full enjoyment of the right to education of persons with COVID-19, either because they suffer the disease directly or in the nucleus of their families, the States should foresee, within the different levels of their educational systems, the implementation of measures that mitigate the possible interruption of their studies and focus on reducing dropout rates. As well as mitigating other consequences directly derived from the pandemic, taking into consideration the role of the school in the most vulnerable environments, as a provider of hygiene, health or food.

***Press releases***

***IACHR Warns of the Consequences of the COVID-19 Pandemic on Children and Adolescents. CP No. 090/20 (April 27, 2020)***

Physical isolation also imposes other effects on rights, and the Commission is particularly concerned about the guarantee of the right to education in the face of the cessation of school activities and the closure of schools. The IACHR emphasizes that States must have mechanisms that allow children and adolescents to continue their studies, with the mechanisms that their age and level of development require. In particular, States must provide tools and labor flexibility for responsible adults to carry out activities with children, giving priority to strengthening family ties, ensuring that children with disabilities can access education without exclusion, through support systems, communication strategies and accessible content. The Commission also emphasizes that in many countries of the region, schools play an important role in food security.

The Commission notes that most of the States in the region have adopted distance education measures as a way of providing continuity in access to education. Although distance education is an important tool, this is a measure that does not serve all children and adolescents equitably, since access to computer equipment and the Internet is not universal in the Americas. In Latin America, in particular, data from 2019 indicate that 33% of the population does not have access to the Internet. Given the digital divide, the IACHR recommends States to use the media to ensure access to education without discrimination of any kind. As well as the need to ensure that online learning does not mean a worsening of existing inequalities or replace the student-teacher interaction.

***G. Right to a healthy environment***

77. The right to a healthy environment was recognized for the first time in an international treaty in article 11 of the Protocol of San Salvador, and establishes both an individual right to enjoy a healthy environment and to have access to basic public services. It also establishes the State's obligation to protect, preserve and improve the environment. Likewise, the existence of a

healthy environment is a fundamental requirement for the exercise of the other human rights recognized in the Inter-American system.

78. Although other Inter-American instruments do not expressly refer to this right, there has been an important international evolution towards the recognition of this right as an autonomous right, also protected by Article 26 of the American Convention. The Inter-American Commission on Human Rights has interpreted it especially in the context of extractive activities and corporate activity, as well as pointing out its link to the right to property in the context of the rights of indigenous peoples.
79. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the human right to a healthy environment, developed within the framework of its different mechanisms.

### ***Precautionary Measures***

#### ***Precautionary Measure No. 120-16. Inhabitants of the Community of Cuninico et al. with respect to Peru (December 2, 2017).***

In assessing the regulatory requirements in the present case, the Commission takes into account that there is a link between the subsistence of human beings and the preservation of a healthy environment. In this regard, the IACHR has observed that environmental degradation can negatively affect access to water and the enjoyment of several human rights.

#### ***Precautionary Measure No. 708-19. Inhabitants of the areas surrounding the Santiago River with respect to Mexico (February 5, 2020).***

37. In this regard, it recalls that the Inter-American Court of Human Rights has already emphasized that States have the obligation to adequately regulate and oversee activities under their jurisdiction that may cause significant damage to the environment, for which purpose they must implement appropriate and independent oversight and accountability mechanisms, including both preventive measures and measures of sanction and reparation. States also have the obligation to mitigate significant environmental damage, even when it has occurred despite preventive actions by the State or if the source of the pollution is unknown, using the best available technology and science.

### ***Cases filed with the Court***

#### ***Application to the Inter-American Court of Human Rights in the Case of the 12 Saramaka Clans (Case 12.338) v. Republic of Suriname (June 23, 2006)***

153. The Commission recognizes the importance of economic development for the prosperity of the peoples of the hemisphere. As the Inter-American Democratic Charter proclaims, "[t]he promotion and observance of economic, social, and cultural rights are inherent to integral development, to economic growth with equity, and to the consolidation of democracy in the States of the Hemisphere. At the same time, development activities must be accompanied by adequate and effective measures to ensure that such activities are not carried out at the expense of the fundamental rights of persons who may be particularly and adversely affected,

including indigenous and tribal communities, as well as the environment on which they depend for their physical, cultural, and spiritual well-being.

161. Finally, regarding the environmental damage caused by the concessions, the Commission maintains that, according to the evidence presented to the Court, the logging concessions granted by the State in the Upper Suriname River have deteriorated the environment and that this deterioration has had a negative impact on the lands that totally or partially lie within the boundaries of the territory over which the Saramaka community has a property right. The Commission considers that the harm resulted in part from the State's failure to establish adequate safeguards and mechanisms, to monitor or control the concessions, and to ensure that the logging concessions did not cause serious harm to the Saramaka lands and communities.

***Kuna de Madungandí and Embera de Bayano indigenous peoples (Case 12.354) v. Panama (November 13, 2012).***

233. Likewise, although neither the American Declaration of the Rights and Duties of Man nor the American Convention on Human Rights include express references to the protection of the environment, it is clear that several fundamental rights enshrined therein require, as a precondition for their due exercise, a minimum environmental quality, and are profoundly affected by the degradation of natural resources. The IACHR has emphasized in this regard that there is a direct relationship between the physical environment in which people live and the rights to life, security and physical integrity. These rights are directly affected when there are episodes or situations of deforestation, water contamination, pollution or other types of environmental damage in ancestral territories.

234. The IACHR considers that States have the duty to adopt measures to prevent damage to the environment in indigenous or tribal territories and to adopt those measures necessary to protect the habitat of indigenous communities, taking into account the special characteristics of indigenous peoples, and the special and unique relationship with their ancestral territories and the natural resources found therein. In adopting these measures, as the IACHR has pointed out, the States must place "special emphasis on the protection of forests and waters, basic to their health and survival as communities". Likewise, the Commission has previously stated that States have the obligation to control and prevent illegal extractive activities, such as illegal logging, fishing or mining, in indigenous or tribal ancestral territories, and to investigate and punish those responsible.

***Application before the Inter-American Court of Human Rights in the Case of Comunidad de la Oroya (Case 12.718) v. Peru. Report n. 330/20. OEA/Ser.L/V/II, Doc. 348 (November 19, 2020).***

141. The IACHR does not fail to note that environmental pollution has an impact on climate change, which seriously and directly threatens the enjoyment of all human rights, and therefore States must ensure that both public and private entities are held accountable for the harm they may cause to the environment and the climate. The IACHR stresses that in order to respect and guarantee human rights in this context, the efforts of the States must be directed towards achieving a continuous and progressive reduction of polluting and toxic gas emissions and not to facilitate or promote them, ensuring that public and private investments and activities are consistent with their commitments on the matter.

148. In this sense, the IACHR highlights the importance of the obligation of active transparency, as well as the obligation to produce or collect information, as elements that are part of the content of the right of access to environmental information. The IACHR has established that the obligation of active transparency of the States consists of providing the maximum amount of information informally, to the citizens in general or to a particular group, despite the lack of a specific request, particularly when this is a condition for the exercise of other rights. The right of access to environmental information includes that information that is necessary for the exercise or protection of human rights in the context of business activities, which must be provided in a timely, understandable, accessible, updated and complete manner.

152. The Commission considers that the right of access to information on environmental matters implies compliance with a series of obligations on the part of the State, which includes information related to mitigation, adaptation, and resilience to climate change, and information related to the activities and environmental impacts generated by companies and financing and investment agents, whether local or transnational. The obligated individuals are all public authorities and autonomous bodies, at all levels of government, including natural and legal persons responsible for performing public functions, administering or providing public services, executing or benefiting from public resources.

### ***Thematic reports***

#### ***Rights of indigenous and tribal peoples over their ancestral lands and natural resources. Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09 (December 30, 2009).***

190. Although neither the American Declaration of the Rights and Duties of Man nor the American Convention on Human Rights include express references to the protection of the environment, several fundamental rights require, as a necessary precondition for their exercise, a minimum environmental quality, and are profoundly affected by the degradation of natural resources. The IACHR has emphasized that there is a direct relationship between the physical environment in which people live and the rights to life, security and physical integrity: "The exercise of the right to life and to security and physical integrity is necessarily linked to and, in various ways, depends on the physical environment. For this reason, when pollution and environmental degradation constitute a persistent threat to human life and health, these rights are compromised".

Both the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights reflect a priority concern for the preservation of the health and well-being of the individual, legal assets protected by the interrelation between the rights to life, security of the person, physical, mental and moral integrity, and health, and to that extent refer to the right to a healthy environment.

192. As the IACHR has explained, the crucial link between human subsistence and the environment has also been recognized in other international treaties and instruments that bind several States of the Americas, among others, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the Amazon Cooperation Treaty; the World Charter for Nature; the Convention for the Protection of the Flora, Fauna and Natural Scenic Beauty of the Americas; the Rio Declaration on

Environment and Development; and the Convention on Biological Diversity. Both ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples incorporate specific provisions for the protection of the environment of indigenous territories. At the Inter-American level, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), which has been signed or ratified by several countries in the region and entered into force in November 1999, provides in Article 11, on the right to a healthy environment: "1. Every person has the right to live in a healthy environment and to have access to basic public services. // 2.

193. These provisions are directly relevant to the interpretation of the Inter-American human rights instruments, by virtue of the evolutionary and systematic interpretative posture applied to the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Thus, both the IACHR and the Inter-American Court have articulated a series of state obligations concerning the preservation of an environmental quality that permits the enjoyment of human rights. States parties to the OAS must prevent environmental degradation in order to comply with their human rights obligations under the Inter-American system.

194. In relation to indigenous and tribal peoples, the protection of the natural resources present in ancestral territories, and of the environmental integrity of such territories, is necessary to guarantee certain fundamental rights of their members, such as life, dignity, personal integrity, health, property, privacy, or information. These rights are directly affected whenever pollution, deforestation, water contamination, or other types of environmental damage occur in ancestral territories. This implies that the State is obliged to adopt preventive and positive actions aimed at guaranteeing an environment that does not compromise the ability of indigenous people to exercise their most basic human rights. Along these lines, the IACHR has explained that the right to life protected by both the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights "is not limited (...) to protection against death caused arbitrarily. States parties must take certain positive measures to safeguard life and limb. Serious environmental pollution may present a threat to human life and health, and in due course may give rise to a State's obligation to take reasonable measures to avoid such a risk, or measures necessary to respond when persons have been injured.

213. In more specific terms, the IACHR has required States to establish adequate safeguards and mechanisms to ensure that natural resource exploitation concessions do not cause environmental damage affecting indigenous lands or communities; and has urged them to "take measures to avoid harm to affected persons due to the behavior of concessionaires and private actors (...) [and to] ensure that protective measures are in place to prevent incidents of environmental pollution that threaten the lives of the inhabitants of developing sectors."

216. Whenever significant ecological or other damage is being caused to indigenous or tribal territories as a result of development or investment projects or plans or extractive concessions, these projects, plans or concessions become illegal and States have a duty to suspend them, repair the environmental damage, and investigate and punish those responsible for the damage.

245. A "prior social and environmental impact study" [EISA] must be carried out by "independent and technically capable entities, under the supervision of the State" in the context of development and investment projects and extractive activities in indigenous territories. The social and environmental impact studies respond to the ultimate purpose of

"preserving, protecting and guaranteeing the special relationship" of indigenous peoples with their territories and guaranteeing their subsistence as peoples.

253. Insofar as the performance of impact studies constitutes a State obligation linked to the duty to protect the right to indigenous property, such studies must be performed by the State itself, or "under the supervision of the State" contents and conditions of the impact studies. The supervisory work by the State authorities must ensure compliance with the criteria established in the relevant regulations in relation to the contents and conditions of the impact studies.

***Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities. OEA/Ser.L/V/II. Doc. 47/15 (December 31, 2015).***

62. For its part, the Commission has also considered the link between human subsistence and the preservation of a healthy environment. Indeed, the IACHR notes that environmental degradation can negatively affect access to water and the enjoyment of several human rights, including the rights to life, health, and food. Specifically, in relation to the link between access to water fit for human consumption and the environment, the Committee on Economic, Social and Cultural Rights has indicated that in order to ensure the right to health, it is necessary to "ensure the adequate supply of safe and potable water and the creation of basic sanitary conditions [and] the prevention and reduction of exposure of the population to harmful substances such as radiation and chemical substances or other harmful environmental factors that may directly or indirectly affect health. To this end, States should adopt measures to combat environmental health hazards, inter alia, by formulating and implementing policies "with a view to reducing and eliminating air, water and soil pollution, including pollution caused by heavy metals [...]".

88. A fundamental issue in this area is the establishment of a clear legislative and institutional framework for effectively assessing the risks to human rights inherent in the operation of extractive and development activities before they are authorized. This is closely linked to the existence of environmental regulations, institutions and public policies that ensure adequate protection against pollution and environmental degradation and, therefore, related human rights. OAS member states must prevent environmental degradation in order to comply with their human rights obligations under the inter-American system. Adequate protection of the environment is essential for human well-being, as well as for the enjoyment of human rights, in particular the right to life. In this regard, the Commission notes that the domestic laws of the countries of the hemisphere contain certain provisions requiring individuals interested in requesting authorization to carry out projects that may affect the environment to carry out, as a precondition, environmental impact assessments and to provide specific information on the areas of influence of a given project. The vast majority of the continent's States have resorted to mechanisms that require the licensing of business activities that may be risky for the environment.

#### *Recommendations*

5. Adopt the necessary measures to implement or strengthen the systems of supervision and control of extraction, exploitation or development activities, in a manner consistent with human rights obligations and in such a way that it is oriented to avoid the violation of the rights of the population in the area of influence where these activities take place. This implies having

a legal and institutional framework that ensures the protection of the environment and vulnerable human rights in these contexts, including periodic monitoring and the imposition of sanctions or corrective measures in the event of non-compliance. These evaluation and control mechanisms must be transparent and independent of the control structures of the companies and of any type of influence.

***Situation of the human rights of the indigenous and tribal peoples of Panamazonia. OAS/Ser.L/V/II. Doc. 176 (September 29, 2019).***

277. In the specific case of indigenous peoples, in accordance with Article 19 of the American Declaration on the Rights of Indigenous Peoples, these groups "have the right to live in harmony with nature and to a healthy, safe and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview and collective well-being. It should be noted that the IACHR Court has pointed out that indigenous peoples are particularly vulnerable to environmental degradation, not only because of their spiritual relationship with their territories, but also because their survival and economic practices depend on the natural resources found therein. Thus, adverse impacts on their environment can significantly affect the available natural resources and thus compromise their traditional ways of life.

278. In this sense, the contexts of natural resource extraction projects, activities that generally take place in lands and territories historically inhabited by indigenous and tribal peoples, regardless of their legal status, can have serious effects on the environment. Such is the case of illegal mining, especially in Amazonian regions, which results in an intense rate of deforestation and contamination of soils and rivers due to the use of substances such as mercury.

279. Other consequences of these activities are the decrease in the quantity and quality of water sources; the impoverishment of agricultural soils; the alteration of their own production systems; the decrease in fishing, fauna, flora and biodiversity in general; and the affectation of the balance that constitutes the basis for the ethnic and cultural reproduction of indigenous peoples. As previously warned by the IACHR, in Amazonian countries, environmental impacts are generating serious implications for the physical and cultural survival of indigenous peoples. This reveals the urgency of adopting measures by the States to prevent these violations from increasing, to the point of placing these groups at risk of disappearing.

***Business and Human Rights: Inter-American Standards. OEA/Ser.L/V/II IACHR/REDESCA/INF.1/19 (November 1, 2019).***

47. The IACHR and its REDESCA reaffirm the close relationship between human rights, sustainable development and the environment, whose interaction encompasses innumerable facets and scopes; therefore, not only the States, when exercising their regulatory, oversight and judicial functions, but also the companies, within the framework of their activities and commercial relations, must take into account and respect the human right to a healthy environment and the sustainable use and conservation of ecosystems and biological diversity, paying special attention to their close relationship with indigenous peoples, Afro-descendant communities and rural or peasant populations. This includes ensuring and respecting, as a minimum, all environmental laws in force and international standards or principles on the matter, implementing due diligence processes with respect to environmental impact on human

rights and climate, guaranteeing access to environmental information, participatory processes and accountability, as well as effective reparations to victims of environmental degradation. Attention must be paid not only to the individual dimension of the right to a healthy environment, but also to its collective component, as an interest of universal and intergenerational scope; likewise, due protection must be given to the characteristics of the environment as legal goods in themselves, regardless of the connection with their usefulness for human beings. In particular, at the regional level, REDESCA stresses the importance of States ratifying and implementing the provisions of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean adopted in 2018, known as the Escazú Agreement, and stresses the immediate obligation of States to implement human rights-based and gender-sensitive strategies and policies to reduce greenhouse gas emissions and the effects of climate change, including the legal responsibilities of corporations and the due protection of environmental defenders.

237. In the framework of the OAS, the relationship between the environment and human rights can be identified in various pronouncements of the General Assembly, which has recognized "that climate change generates negative impacts throughout the Hemisphere, causing the degradation of the quality of life and the environment for present and future generations. For its part, the IACHR has already recognized the close link between human subsistence and the preservation of a healthy environment, and warns that environmental degradation can negatively affect access to water and the enjoyment of various human rights, such as the rights to life, health, development and self-determination. In particular, it stressed that the links between climate change and the occurrence of increasingly recurrent environmental disasters threaten the exercise of several human rights, including the generation of forced displacement of people and the increase in inequality and poverty. Both the IACHR and the Inter-American Court have also underscored the positive and relevant role of environmental defenders as well as the need for special recognition and protection that should be given to their work and activities in defense of human rights, considering them fundamental to the strengthening of democracy and the rule of law. Thus, the IACHR and its REDESCA consider it important to emphasize the contribution that these actors make in the observance of human rights through environmental protection, and reiterate the essential role they play within the States and the inter-American system itself in the fight against climate change and environmental degradation.

250. In this regard, through their institutional and regulatory design, States should direct their efforts to ensure that companies contribute to or avoid causing negative impacts on human rights through environmental damage in general and climate change in particular. Businesses should address these impacts when they occur and exercise due diligence, including environmental mitigation and adaptation measures, to prevent human rights impacts directly related to operations, products or services provided as part of their business relationships that generate environmental harm. This is particularly relevant for companies involved in the fossil fuel industry and those that generate deforestation, as they are the main drivers of climate change. Investment and financing institutions, whether public or private, should also direct their actions in line with the reduction and limitation of greenhouse gas emissions and respect for the right to a healthy environment. In general, all companies should seek to reduce their greenhouse gas emissions, avoid excessive emissions, publish information in an accessible manner on actions to that end, and not hinder access to protective remedies, the work of

environmental human rights defenders, or policies and regulatory frameworks aimed at addressing climate change and environmental degradation, including in those business activities that are transnational in nature.

251. For the Commission and its REDESCA, it is also a priority for States to guarantee access to justice and reparations for climate-related damages. This obligation requires States to guarantee the existence of accessible, affordable, timely and effective mechanisms to challenge those actions or omissions that may affect human rights due to climate change and environmental degradation and to obtain redress for damages arising from climate risks and the policies adopted in this regard, whether these actions come from the State or through companies.

**Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)**

Regarding the right to a healthy environment, the IACHR and its REDESCA highlight the Protocol of San Salvador as the first binding inter-American instrument that expressly recognizes and requires the protection of this right. Also of importance is Article 26 of the ACHR and Article XI of the American Declaration, which by way of interpretation by the IACHR Court and the Commission also include this right, as well as the Inter-American Convention on the Protection of the Human Rights of Older Persons, which establishes that "the older person has the right to live in a healthy environment and to have access to basic public services". The Inter-American Democratic Charter, the Social Charter of the Americas and the American Declaration on the Rights of Indigenous Peoples also contain references to the right to a healthy environment.

214. On the other hand, the Working Group on the Protocol of San Salvador has established that the obligations derived for the States with respect to the right to the environment are centered on guaranteeing to all persons, without any discrimination, the right to a healthy environment and basic public services; promoting the protection and preservation of the environment, as well as its improvement, guided by the criteria of availability, accessibility, sustainability, acceptability and adaptability, common to other economic, social and cultural rights.

216. For its part, the Commission understands that the right to a healthy environment is a necessary precondition for the exercise of several fundamental rights in the case of Afro-descendant communities and tribal peoples, since the minimum environmental quality can be affected by the deterioration of their territories and natural resources. The IACHR and its REDESCA have underscored the close link between human subsistence and the preservation of a healthy environment, and warn that environmental degradation can negatively affect access to water and the enjoyment of several human rights, such as the rights to life, health, development and self-determination. In particular, they have indicated that the links between climate change and the occurrence of increasingly recurrent environmental disasters threaten the exercise of several human rights, including the generation of forced displacement of people and the increase in inequality and poverty of the most vulnerable sectors. They have also indicated that all public policies and regulatory frameworks implemented in relation to mitigation, adaptation and resilience to climate change, as well as to address significant environmental damage, should be carried out with a rights-based approach and include the impacts and violations produced by companies, including financing and investment agents.

217. Thus, the inter-American system has not only recognized the existence of an unquestionable relationship between the protection of the environment and the realization of other human rights of the population in general, but also its particular relationship with the collective territories and natural resources of indigenous and tribal peoples. In this regard, there is evidence that tribal peoples have been affected by the development of megaprojects that go against cultural traditions and environmental protection, limiting their traditional activities and even their very subsistence.

### ***Country report***

#### **Situation of human rights in Brazil. OEA/Ser.L/V/II. Doc. 9 (12 February 2021)**

39. The denial of the historical and cultural identity and rights of these people is a product of the structural racial discrimination to which they have always been subjected in the country. The State's historical omission, which began to be corrected only in 1988 with the promulgation of the most recent Brazilian Constitution, opened a space for different violations of the rights of these collectivities. Among these violations are those related to the environment and the impact of the execution of mega-projects by the State or private agents, the lack of public services and their precariousness, and the inadequacy of the provisions of domestic law and administrative mechanisms to guarantee and respect the territorial rights and consultation of the quilombola peoples. Finally, it is worth noting the lack of an effective policy of reparation for the historical discrimination against this population.

61. In the same vein, the Commission detected the weakening of environmental permitting policies and institutions that have a direct impact on the rights of indigenous peoples. On February 29, 2019, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) published Normative Instruction 8, by which it authorized companies to request environmental permits directly from state and municipal bodies, instead of requesting them from the federal body, which was the only one that could issue them until then. According to the regulatory instruction, such requests may cover business activities on indigenous lands and in protected areas, as well as oil extraction on the Brazilian coast. The IACHR warns that, in the absence of an institutional structure at the federal level that can mediate in permit granting processes, state and municipal bodies could be more vulnerable to pressure from private interests.

86. Finally, the Inter-American Commission points out to the State that the ethno-racial discrimination suffered by indigenous peoples, centered on the historical cultural assimilation of these populations and the invasion of their ancestral territories, exposes these persons to various violations, such as acts of violence perpetrated in the territories by illegal groups dedicated to the extraction of natural resources, as well as the lack of a robust policy that guarantees these populations effective and culturally appropriate access to their economic, social, cultural, and environmental rights. The IACHR emphasizes that the deterioration of the protection provided by the State in indigenous territories increases the risk of extermination of ancestral populations as a result of confrontations with invaders, the destruction of the environment and their forms of subsistence, cultural assimilation, and processes of adaptation of these populations to the will of the majorities.

104. The process of land concentration and the search for access to and democratization of rural assets for subsistence production generated major rural conflicts between large landowners, peasants and rural workers. Since 2017, the IACHR has paid close attention to rural violence in Brazil and has been expressing concern about the forced displacement of rural communities; the murder of human rights defenders linked to the right to the environment, land and rural workers; the massacre of families in the context of agrarian reform processes and the impunity that characterizes these events.

### ***Annual Report***

***IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas. "Human and planetary health face an unprecedented crisis." OAS/SER.L/V/II. Doc. 28 March 30, 2021.***

1217. REDESCA is aware that, although there is a widespread call to return to a "new normal", it could have been the same reason that led us to this present situation. The health of ecosystems is intrinsically linked to the health of people; it is not for nothing that UN environmental agencies have noted that part of the factors that helped the new coronavirus spread the way it did was in part due to the high rates of bio-diversity loss that may have been a natural barrier to the virus.

1218. However, the accelerated changes in our climate, plus a predatory economy of natural resources, are only leading to further widening social gaps if we do not take into consideration the need to change development models to truly inclusive, sustainable and democratic ones that safeguard the rights of all people, while protecting nature.

### ***Press releases***

***REDESCA welcomes decisions taken in the region to address climate change. CP No. 083/18 (April 17, 2018)***

This Office of the Special Rapporteur recognizes the work and efforts promoted by civil society to advance these initiatives and recalls that the IACHR Court, through Advisory Opinion 23-17, has indicated that States must regulate, supervise and oversee activities under their jurisdiction that may cause significant damage to the environment. Said Opinion also indicates that States must apply the precautionary principle, in the face of possible serious or irreversible damage to the environment, even in the absence of scientific certainty. This is due to the existence of an undeniable relationship between the protection of the right to a healthy environment and the realization of other human rights, inasmuch as the degradation of ecosystems may affect the effective enjoyment of these rights.

***The Americas: Governments must strengthen, not weaken, environmental protection during the COVID-19 pandemic. CP No. 198/20 (August 13, 2020)***

In this matter, States should suspend or refrain from approving or investing in any large-scale industrial or agricultural activity if appropriate consultation and participation mechanisms have not been implemented in accordance with international standards, including the free, prior and informed consent of indigenous peoples. In addition, they should ensure that all

environmental protection institutions are adequately funded, staffed and equipped to continue their monitoring and enforcement tasks in their respective jurisdictions.

In the event that a decision is required to reform specific environmental standards, such decisions should respect both the procedural and substantive elements of human rights. All decisions should be made in a transparent manner, with broad public participation and providing access to justice for individuals, communities and other interested organizations. States should ensure that any change respects the principles of non-discrimination and non-retrogression.

A crucial aspect of public participation is the protection of environmental human rights defenders. States should take all appropriate measures to ensure the protection of environmental human rights defenders and the prompt investigation and prosecution of those responsible for threats or acts of violence against such persons.

***On Earth Day, IACHR and REDESCA welcome the entry into force of the Escazú Agreement and call on the States of the region to strengthen their environmental public policies in the face of the climate emergency. CP No.98/21 (April 22, 2021)***

The degradation of nature, in general, has a disproportionate impact not only on its vital cycles, but also on people's subsistence and factors for obtaining a dignified quality of life. In the current pandemic context, the IACHR and REDESCA recall that nature also provides the foundation for human health in all its dimensions and contributes to the immaterial aspects of people's quality of life, with the risk of harm being particularly high for those segments of the population that are currently in a situation of marginalization or vulnerability or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, including women; children and adolescents; indigenous peoples; people of African descent; people with disabilities; people living in poverty, informal settlements or on the street; migrants and people in human mobility; peasant populations and people living in rural areas, among others. This is despite the fact that these populations contribute very little to greenhouse gas emissions, the main cause of the climate crisis.

Disproportionate climate impacts are already a reality in the Americas, as exemplified by the magnitude of forest fires in the Amazon and other areas of the region. The destruction of forests not only contributes to the climate crisis, but also causes the forced displacement of communities, the loss of subsistence lands, and the serious risk to the livelihoods of indigenous peoples in voluntary isolation. Likewise, the increase in global temperature is associated with a decrease in river flow and a tendency to drought in Central American rivers, while an area of between 20% and 50% of Andean glaciers has melted since the 1970s. All this reduces the availability of water resources, putting at risk the food security of entire populations, especially those exposed to pre-existing conditions of precariousness and social inequality.

In Central America, the right to life, to a healthy environment and to housing, among other ESCER, are being severely affected by the intensity and frequency of extreme weather phenomena such as hurricanes and floods. Similarly, extreme events intensify the historical trend towards migration, exemplified by the population displacement caused by drought and the change in rainfall patterns in the regions of the "dry corridor", especially in the three

northern Central American countries. In the Caribbean, rising sea levels, among other extreme phenomena, accentuate the loss and erosion of coastal areas, the deterioration of marine ecosystems, the modification of marine habitats and the loss of mangroves or corals. In particular, it is estimated that the entire coral ecosystem will collapse by 2050. It is undeniable that the loss of biodiversity resulting from such climate impacts has a negative impact on a wide range of human rights.

Faced with this reality, the IACHR and REDESCA call on the American States to urgently strengthen their environmental public policies in the face of the climate emergency, reiterating their commitment and willingness to contribute in every way possible to such efforts. In this regard, as the IACHR's specialized mandate on environmental rights, REDESCA will continue to promote actions to determine the linkage "between the adverse effects of climate change and the full enjoyment of human rights", as foreseen in OAS General Assembly Resolution 2429 of 2008 on Human Rights and Climate Change in the Americas. In this regard, the IACHR entrusted REDESCA in the current Strategic Plan 2017-2021 with the development of standards on environment and climate change, something in which the mandate has been advancing and is reflected, for example, in the Report on Business and Human Rights: Inter-American Standards. It is also a strategic line prioritized in REDESCA's Triennial Plan 2020-2023, recently approved by the IACHR, for whose implementation the IACHR and the Office of the Special Rapporteur call for the broad collaboration of States, as well as civil society and other relevant actors in the Americas.

## ***H. Right to health***

80. The American Declaration on the Rights and Duties of Man recognizes the right to the preservation of health and well-being in Article XI, as does the Charter of the Organization of American States in Articles 34 and 45. In addition to the above, the Inter-American system has determined the existence of a close link between health, various economic or social rights, and the rights to personal integrity and life.
81. The right to health is also protected by Article 26 of the American Convention and contemplated in Article 10 of the Protocol of San Salvador, which specifies State obligations with respect to this right, addressing issues such as health care, immunization against infectious diseases, prevention and treatment of endemic, occupational and other diseases, education on the prevention and treatment of health problems, and meeting the needs of groups in situations of vulnerability and poverty.
82. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to health, developed within the framework of its different mechanisms.

## ***Precautionary Measures***

### ***Precautionary Measure No. 617-15. Gómez Murillo et al. v. Costa Rica (January 29, 2016).***

8. In the instant case, the Inter-American Commission considers that the gravity requirement has been met, in view of the possible effects that the prohibition of the IVF technique and the impact of the passage of time is having on the rights of the couples identified in the instant

proceeding, in the context of the possibility of timely access to an internationally accepted medical treatment that could lead to the possibility of having biological children. Specifically, the IACHR observes that the prohibition of the IVF technique for the indicated couples could create a particular combination of consequences on their rights to personal integrity, personal liberty, private and family life, among other rights, as has been previously recognized by the Inter-American System, with respect to other couples who saw such consequences materialize. In particular, regarding the current situation, the petitioner has pointed out that the aforementioned couples are "close to the age of reproductive decline, which means that if their reproductive rights are not protected, they will irremediably lose the possibility of motherhood and fatherhood, [...] [and] if an immediate precautionary measure is not adopted, the results of the process will be illusory. In this scenario, the exceptional circumstances surrounding the present case, determined by the status as victims of the couples identified in the present proceeding, acquire particular relevance in relation to IACHR Merits Report 12.798 with respect to Costa Rica, the only country that maintains an absolute prohibition of the IVF technique in the region.

12. In view of this information, the Inter-American Commission observes that, more than five years after the IACHR's merits report was issued and more than three years after the Inter-American Court's decision, both in relation to the *Artavia Murillo et al.* case, the restriction on access to the IVF technique continues to this day. Given the nature of the situation and the possibility that the passage of time will continue to make access to the treatment that will allow them to seek to have biological children illusory, the Commission considers it necessary to implement immediate and effective measures to address the situation of the persons identified in this resolution so as not to frustrate the exercise of their rights.

**Precautionary Measure No. 161-17. *Juvenile Deprivation of Liberty Centers with respect to Guatemala (June 12, 2017).***

38. In view of the foregoing and with respect to the present case, the Commission, in evaluating the information provided by the petitioner in light of the regulatory requirements, takes into account that since the proposed beneficiaries are deprived of their liberty, children and adolescents, they enjoy special protection recognized by the international corpus iuris for the protection of their rights. In this sense, the Commission considers that the sanitary and health aspects, security, infrastructure, health care, hygiene, among others, have a particularly severe impact on their rights in comparison with other populations deprived of adult liberty.

**Precautionary Measure No. 876-171. *X, Y and family with respect to Colombia (December 25, 2017).***

On the other hand, the Commission has learned about the obstacles that women face when trying to report the acts of violence they have suffered, as well as the lack of protection and judicial guarantees to protect their dignity, security and privacy during the process. The Commission has received information from its Rapporteurship on Women's Rights on the fear of victims of violence of being revictimized and their distrust to file complaints about acts of violence against them. In this regard, the Commission has highlighted the importance of the State providing adequate medical services for women who have been victims of sexual violence, including those related to mental, sexual and reproductive health.

**Precautionary measure No. 1039-17. *Child patients of the Nephrology area of the José Manuel de los Ríos Hospital regarding Venezuela (February 21, 2018).***

22. The Inter-American Commission on Human Rights considers that the present case meets prima facie the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests Venezuela to:

- a) adopt the necessary measures to guarantee the life, personal integrity and health of the children patients in the nephrology area of the José Manuel de los Ríos Hospital in Caracas. In particular, the Commission considers that the authorities should provide medical treatment that takes into account, among other aspects, access to the required medications and procedures, in accordance with the recommendations of the corresponding experts, as well as the satisfaction of their nutritional needs and other complementary measures, in light of their best interests;
- b) adopt the necessary measures to ensure that the sanitary and safety conditions of the Nephrology area where the children are being held are adequate, in accordance with applicable international standards; (...)

**Precautionary Measure No. 48-18. *Adolescente "M" regarding Mexico (April 2, 2018).***

29. In view of the foregoing, the IACHR considers that the present case meets prima facie the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests the State of Mexico to:

- a) Adopt the necessary measures to preserve the life, personal integrity and health of "M", taking into account her condition as an adolescent and the need to safeguard her best interests; and b) Adopt the necessary measures to preserve the life, personal integrity and health of "M", taking into account her condition as an adolescent and the need to safeguard her best interests.
- b) Agree on the measures to be adopted with the beneficiary and his representatives, especially with respect to the medical and psychological care to be provided, guaranteeing his autonomy and obtaining the informed consent of the beneficiary and his parents for the medical or psychological examinations and treatment determined necessary by the specialists.

**Precautionary measure No. 1014-17. *Indigenous girl U.V.O. and family regarding Mexico (May 5, 2018).***

After analyzing the allegations of fact and law made by the parties, the Commission considers that the proposed beneficiaries are prima facie in a serious and urgent situation, since their rights face a risk of irreparable harm. Consequently, based on Article 25 of its Rules of Procedure, the Commission requires Mexico to: a) adopt the necessary measures to protect the life, personal integrity and health of the indigenous girl U.V.O. in accordance with international standards on the matter and oriented in accordance with her best interests, also including the duly identified members of her family; b) adopt the culturally appropriate measures with a gender perspective and considering her best interests to ensure that the indigenous girl U.V.O. continues with and has access to the necessary medical and psychological health care; (...)

**Precautionary Measure No. 150-19. *Concepción Palacios Maternity Hospital with respect to Venezuela (March 18, 2019).***

16. In the present case, the Commission observes that the alleged situation of risk of the women patients at the Hospital is framed in a specific context, related to a lack of access to medical treatment that only women require, for the reasons indicated in the request. In addition to the above, the risk factors faced by the patients take on a particular dimension, as they are pregnant women, women in labor or postpartum, who therefore require enhanced protection and more specialized care. Indeed, as the Inter-American Court has pointed out, the Commission understands that "[...] sexual and reproductive health is certainly an expression of health that has particular implications for women due to their biological capacity for pregnancy and childbirth. This requires, therefore, addressing the situation of the proposed beneficiaries from a perspective that is adjusted to their condition, as well as in view of the differentiated impact that the risk factors faced would have on them, an assessment that the Commission has in fact already made in the context of other situations that require a differentiated analysis in view of the circumstances.

17. Based on these premises, the Commission considers it appropriate to recall that, under the Convention of Belém do Pará, invoked by the petitioners and to which the State of Venezuela is a party, "[...] violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere," including in those situations in which the violence is perpetrated by any person and occurs in a health facility. In accordance with the aforementioned Convention, States have the duty to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing and eradicating such violence, taking special account of situations of vulnerability, as in the case of a pregnant woman.

18. As the Commission has pointed out, "[t]he right to personal integrity in the area of health is closely related to the right to health, given that the provision of adequate and timely maternal health services is one of the main measures to guarantee the right to personal integrity of women. Along these lines, it noted that "[i]n the Inter-American system, barriers to access to maternal health services can result in the impairment of women's right to physical, psychological and moral integrity.

19. Taking into account these elements as a whole, the Commission deems it necessary to point out that, when determining the situation of risk to the health, life and personal integrity of the women proposed as beneficiaries, this should not only be analyzed in itself, but also by adding the dimension of the differentiated impact, thus allowing for a comprehensive assessment. Indeed, in accordance with the aforementioned Convention of Belém do Pará, this implies recognizing that the serious barriers to accessing adequate and timely medical treatment is yet another form of violence against women, characterized by the differentiated impact that occurs precisely on the basis of their gender or their mere condition as women, reflecting the discrimination to which they have been historically subjected. In effect, the IACHR has considered that the lack of positive measures to guarantee accessibility to maternal health services, as well as to guarantee all the characteristics of the right to health, can also have repercussions on the principle of equality and non-discrimination, which permeate the inter-American system.

20. In the instant case, the Commission notes that according to the information provided by the petitioners, the Hospital as a whole suffers from various deficiencies and serious unsanitary conditions. In this regard, the Commission understands that patients who enter the Hospital in search of medical treatment may not receive services that correspond to the applicable standards for their provision, which, in accordance with the principles of acceptability and quality of health establishments, goods and services, must not only be respectful of medical ethics and culturally appropriate, but also appropriate from a scientific and medical point of view.

21. In this regard, the Commission recalls that together with its Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), it has spoken out about the shortage and shortage of medicines, supplies, materials and medical treatment in Venezuela that has been worsening since 2014, which has led to shortages of medicines and supplies nationwide, with a greater impact on groups in situations of exclusion and historical discrimination, including women and in particular, pregnant women. Thus, the IACHR has pointed out as especially worrisome the situation of pregnant women in terms of the lack of treatment for HIV-positive pregnant women to reduce the risk of child transmission, as well as the fact that in the context of the food crisis that the country is going through, malnutrition affects them especially during pregnancy and breastfeeding, crucial moments for the healthy life of the woman and the fetus. Similarly, the Commission has noted with concern the infant mortality rates and, in particular, the worrisome situation of newborns. In this context, the Commission has been informed that as a consequence of the shortage of medicines, supplies, materials and medical treatment, thousands of women have been forced to migrate to give birth, most of them at an advanced stage of pregnancy and with critical medical conditions.

**Precautionary measure No. 1498-18. *Marcelino Díaz Sánchez et al. with respect to Mexico (April 23, 2019).***

In addition, the IACHR notes that not only high levels of exposure to toxic or hazardous substances pose a threat to the rights to life, personal integrity, and health, but so can chronic and permanent low-level exposure to such substances. In particular, the protection of the right to health in these circumstances is closely related to the rights to water, food and adequate housing, and the corresponding obligation of States to protect them against exposure to toxic substances and the risks or threats they entail. In order to protect the human rights threatened in such circumstances, States have, among other obligations, the duty to generate, collect, evaluate and update adequate information, communicate it effectively, particularly to the population at risk, facilitate the right of participation of rights holders in decision-making in such contexts, as well as implement actions to ensure that companies involved in the management of such substances carry out human rights due diligence.

**Precautionary Measure No. 566-19. *Thirteen persons with hemophilia and other coagulopathies with respect to Venezuela (July 15, 2019).***

18. Consequently, considering the exceptional situation that the State of Venezuela is going through and that the health of the proposed beneficiaries is worsening due to the lack of prescribed medical treatment for a prolonged period of time ranging from 11 to 28 months, together with the seriousness of the illnesses they are suffering from and the lack of response from the State, the Commission concludes, based on the applicable prima facie standard, that

the rights to life, personal integrity and health of the persons identified are in a situation of serious risk. In making this assessment, the Commission takes into account that access to medicines is an integral part of the right to health, and that essential medicines must be provided and prioritized to address diseases that present a public health risk or those priority needs for the health of the population in Venezuela.

**Precautionary Measure No. 23-20. *Cabimas Detention and Preventive Detention Center in respect of Venezuela ("Cabimas Detention Center") (February 6, 2020).***

38. As the Commission has pointed out, "[u]nder the Inter-American system, barriers in access to maternal health services can result in the impairment of women's right to physical, psychological and moral integrity," which in turn can cause irreparable harm. Likewise, as has been reiterated in the framework of other international protection measures, the obligation of the State to take into consideration the special attention that pregnant and breastfeeding women deprived of liberty must receive during their detention is reiterated. In addition, the authorities must protect women against all forms of discrimination and violence, even more so when they are in state custody, which is why they must be separated from men and guarded by female personnel.

**Precautionary Measure No. 317-20. *Juan Antonio Planchart Márquez with respect to Venezuela (May 3, 2020).***

16. With regard to the gravity requirement, the Commission recalls that the proposed beneficiary is in the custody of the State, and therefore has a special position of guarantor, inasmuch as the prison authorities exercise a strong control or dominion over the persons who are subject to their custody. This is the result of the special relationship and interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his rights and obligations, and by the circumstances of confinement, where the prisoner is prevented from satisfying on his own a series of basic needs essential for the development of a dignified life. More specifically, and in light of the facts narrated by the petitioner, the Commission recalls that, based on the principle of non-discrimination, the Inter-American Court has indicated that this duty implies the obligation of the State to guarantee his physical and mental health, specifically through the provision of a regular medical check-up and, when required, adequate, timely and, where appropriate, specialized medical treatment in accordance with the special care needs of the detainees in question.

**Precautionary Measure No. 545-19. *12 women with breast cancer regarding Venezuela (October 14, 2020).***

17. Taking into account these elements as a whole, the Commission deems it necessary to point out that, when determining the situation of risk to the health, life and personal integrity of the women proposed as beneficiaries, this should not only be analyzed in itself, but also by adding the dimension of the differentiated impact, thus allowing for a comprehensive assessment. Indeed, in accordance with the aforementioned Convention of Belém do Pará, this implies recognizing that the serious barriers to accessing adequate and timely medical treatment is yet another form of violence against women, characterized by the differentiated impact that occurs precisely on the basis of their gender or their mere condition as women, reflecting the

discrimination to which they have been historically subjected. Indeed, the IACHR has considered that the lack of positive measures to guarantee all the characteristics of the right to health, such as availability, acceptability and quality, can have repercussions on the principle of equality and non-discrimination, which permeate the inter-American system.

21. Likewise, the Commission and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) have warned with grave concern about the effects of the COVID-19 pandemic given the situation of extreme vulnerability of Venezuelan people due to the profound and prolonged humanitarian crisis that the country is going through. The Commission has also indicated that, in the context of the pandemic, States must ensure equitable distribution of and access to health facilities, goods and services without discrimination, taking into account those persons in the most vulnerable situations, such as persons with pre-existing diseases that make them especially vulnerable to the virus. The scarcity of resources does not justify direct, indirect, multiple or intersectional acts of discrimination. Likewise, the Commission has warned that, in this context, States continue to have the duty to provide essential services for diagnosis, treatment, care (including palliative care) and rehabilitation of other diseases, pathologies or medical needs that require life support or medical attention in a timely and appropriate manner to protect the health and life of individuals.

**Precautionary Measure No. 1286-18 *Twenty persons diagnosed with Multiple Sclerosis with respect to Venezuela* (Expansion) (January 7, 2021)**

104. Along these lines, the Commission also emphasizes that the complex humanitarian situation in Venezuela is even more difficult for persons with pre-existing chronic diseases in the context of the current pandemic, in which States have the obligation to ensure equitable distribution and access to health facilities, goods and services without discrimination, ensuring care for persons with pre-existing diseases that make them especially vulnerable to the virus, as in this case would be the case of persons affected by multiple sclerosis. As the IACHR and its REDESCA have said, given the viral nature of COVID-19 transmission, certain social groups are at greater risk of suffering differentiated impacts and having their rights more easily affected; among them are people with certain pathologies and diseases, such as multiple sclerosis, so the measures adopted should include actions to prevent contagion and guarantee medical care and treatment, medicines and supplies, avoiding the differentiated impacts of shortages.

108. Considering the situation within the context of the particular crisis that Venezuela is going through, as well as the domestic actions initiated, the Commission does not identify information that indicates that the alleged situation of risk of the proposed beneficiaries has been effectively addressed by the State. In these circumstances, the Commission regrets the lack of a substantial response from the State, even more so given the nature of the alleged facts in the current context of the country. While this does not in itself justify the granting or extension of precautionary measures, it does prevent the Commission from being aware of its observations on the present requests for precautionary measures. In these conditions, the Commission considers that the State has not presented information regarding the health situation of the persons proposed as beneficiaries, the suitability of the medicine they would require or the difficulties in guaranteeing access to it, or whether they would have an adequate alternative treatment. In this sense, there are no elements of assessment that controvert the worrisome situation of risk alleged by the petitioners.

### ***Cases filed with the Court***

#### ***Complaint in the case of Damiao Ximenes Lopes (Case 12.237) vs. the Federative Republic of Brazil (October 1, 2004)***

94. The term "persons with disabilities" usually refers to any person who is totally or partially limited in the performance of essential activities of daily living as a result of a temporary or permanent impairment of physical or mental capacity.

95. The Inter-American Commission has noted that persons with mental illness are particularly vulnerable to discrimination, arbitrary restriction of personal liberty, and inhuman and degrading treatment.

96. Although the factual situations affecting persons with mental illness are not always perceived as human rights problems, the fact is that many times these persons are affected in their personal integrity, their lives and other fundamental rights due to their special circumstances.

97. A person with a mental disability may have a mild, moderate, severe or profound level of impairment, which may be temporary or permanent. But, above all, he/she has unique characteristics and personality. Generally speaking, it is exposed to prejudice, stigma and other cultural and practical factors that often mean that the violations it suffers are kept silent. This facilitates impunity and repetition.

106. The Inter-American Commission has applied the aforementioned international standards related to the human rights of persons with mental illnesses and has also taken into account the jurisprudence of the European system on the matter. The IACHR expressly mentioned that it is "pertinent to employ special standards in determining whether conventional norms have been complied with in cases involving persons suffering from mental illness.

145. The circumstance of disability of persons who are hospitalized or under the care of health personnel, establishes qualified obligations to the officials under whose care they are. There is a particular intensity with which the State, through the health personnel of the entity contracted to provide these services on its behalf, can affect the rights of the disabled person due to the circumstances of hospitalization or internment, the disabled person may see his or her capacity to temporarily or permanently satisfy a series of basic needs for self-care, self-guardianship, self-control, interpersonal relationships and cognitive functioning limited.

#### ***Application before the Inter-American Court of Human Rights in the case of Pedro Miguel Vera Vera and Others (Case 11.535) v. Republic of Ecuador (February 24, 2010)***

39. In addition to the rights and obligations established in Article 5 of the Convention, it is important to mention the regional and universal standards especially applicable to the protection of the personal integrity and health of persons deprived of liberty. In the Inter-American System, Principle X of the "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas" states that:

Persons deprived of liberty shall have the right to health, understood as the enjoyment of the highest attainable standard of physical, mental and social well-being, which includes, inter alia, adequate medical, psychiatric and dental care; the permanent availability of suitable and impartial medical personnel; access to appropriate treatment and medication free of charge [...].

40. Principle XXIV for the Protection of All Persons under Any Form of Detention or Imprisonment states that "[...] every detained person [...] shall receive [...] medical care and treatment whenever necessary [...]" . Rule 22(1) of the "Standard Minimum Rules for the Treatment of Prisoners" states that:

Every penal institution shall have at least one qualified physician who shall have some knowledge of psychiatry. The medical services shall be organized in close liaison with the general administration of the community or national health service. They shall include a psychiatric service for the diagnosis and, if necessary, for the treatment of cases of mental illness. (2) Provision shall be made for the transfer of sick persons whose condition requires special care to specialized penitentiary establishments or civil hospitals. When the institution has internal hospital services, they shall be equipped with the necessary material, instruments and pharmaceutical products to provide the sick inmates with adequate care and treatment. In addition, the staff should have sufficient professional training. (3) Every prisoner should be able to use the services of a qualified dentist.

41. Likewise, Principles 1 and 2 of the "Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", state that physicians have a duty to "provide protection of the physical and mental health of such persons and to treat their illnesses to the same standard of quality as they provide to persons who are not prisoners or detainees" and that "it is a violation of medical ethics, as well as an offence under applicable international instruments, to participate in, incite or attempt to commit torture or other cruel, inhuman or degrading treatment or punishment".

42. In view of the above, in the case of persons deprived of liberty, the obligation of States to respect physical integrity, not to use cruel and inhuman treatment, and to respect the inherent dignity of the human being, extends to guaranteeing access to adequate medical care.

54. This implies that the duty to protect extends to the area of public health, and in the case of public hospitals, the acts and omissions of their personnel can generate the responsibility of the State under the American Convention and must be the subject of clarification and accountability. In the case of the death of persons in the custody of the State, it is necessary to establish whether or not the State has complied with its duty to guarantee the right to life and whether the necessary measures have been adopted to clarify the facts and prosecute those possibly responsible.

62. Likewise, the obligation to guarantee and protect the physical well-being of persons deprived of liberty - which, as indicated above, includes the provision of medical assistance - implies that whenever a detainee loses his or her life, the State has the obligation to clarify the causes of death and the measures adopted to provide adequate medical treatment.

***Application before the Inter-American Court of Human Rights in the case of the Kichwa Indigenous People of Sarayaku and its members (Case 12.465) vs. Ecuador (April 26, 2010)***

137. The Commission has indicated that the provision of clear and sufficient information to indigenous peoples on external interventions that may affect their territory is an indispensable condition to adequately guarantee the exercise of their right to collective property over their territories. Likewise, the close relationship of indigenous peoples with their territory, allows us to maintain that the right of access to information on the potential exogenous intervention in indigenous territory, when the same may have a serious impact on the community habitat, can become a necessary mechanism to ensure other rights such as the right to health of the members of the group, and even the right to their very existence as a community. Finally, the right of access to information on exogenous interference in indigenous territory is an indispensable condition to guarantee control over political decisions that may compromise the collective rights of said People and the fundamental rights that would be affected.

***TGGL (Case 12.723) v. Ecuador (November 5, 2013)***

170. However, as indicated in the section on State obligations related to the right to personal integrity in the area of health, the duty to regulate, supervise and oversee corresponds to the State with respect to any entity that provides health care. In this sense, if an affectation to personal integrity or life is committed in a private health institution that operates without an appropriate regulatory framework and without adequate and timely supervision and oversight, the State would be liable for breach of the duty to guarantee such rights. Likewise, there are certain activities in the same field of health that, due to the risk they pose to life and personal integrity, impose on the States a stronger duty to regulate, supervise and oversee the activity. The Commission considers that blood banks, by their very nature and functions, fall into this category.

***María Inés Chinchilla Sandoval et al (Case 12.739) v. Guatemala (April 2, 2014).***

125. Specifically, in relation to persons who have been deprived of their liberty, the Commission recalls that the State is in a special position of guarantor, since the prison authorities exercise a strong control or dominion over the persons who are subject to their custody. This is the result of the special relationship and special interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his rights and obligations and by the circumstances of confinement, where the inmate is prevented from satisfying on his own a series of basic needs essential for the development of a dignified life.

126. This duty of protection of the State in the case of persons deprived of liberty extends to the area of health, specifically, the obligation to provide adequate medical treatment during the time that the persons remain in its custody. The Court has recognized that the rights to life and personal integrity are directly and immediately linked to human health care and the Court has emphasized that the State has the duty, as guarantor of health, to provide detainees with regular medical review and adequate medical care and treatment when required.

129. The lack of adequate medical care "does not satisfy the minimum material requirements of treatment worthy of human beings within the meaning of Article 5 of the American

Convention" and the lack of adequate medical care for a person deprived of liberty and in the custody of the State could be considered a violation of that right depending on the specific circumstances of the particular person, such as his or her state of health or the type of ailment he or she suffers, the time that has elapsed without care, its cumulative physical and mental effects and, in some cases, the person's sex and age, among others.

131. For its part, the scope of the right to life when dealing with persons deprived of liberty also includes the obligation of the State to guarantee the right to health, taking appropriate measures to safeguard the lives of persons in its custody, specifically under the obligation to provide medical treatment that must be adequate, timely, and specialized and in accordance with the special care needs required by the detainees in question.

134. In sum, both the right to life and the right to personal integrity impose obligations on the State authorities, whose compliance becomes more relevant since the condition of these persons depends entirely on the actions taken by the State in their favor. These obligations are accentuated when the person is in a greater state of vulnerability due to serious health problems.

#### ***I.V. (Case 12.655) v. Bolivia (August 15, 2014).***

97. The Commission has established that the right to personal integrity is a very broad concept, encompassing women's maternal health. The protection of the right to personal integrity of women in the area of maternal health entails the obligation to ensure that women have equal access to the health services they require according to their particular needs related to pregnancy and the postpartum period and to other services and information related to maternity and reproductive matters throughout their lives. In this area, guaranteeing the right to personal integrity has implications for women's equality, autonomy, privacy, autonomy and dignity.

The IACHR has also recognized the link between the content of Article 5(1) of the American Convention and the principle of non-discrimination enshrined in Article 1(1) of the American Convention. It has considered it pertinent to highlight that many women in the region suffer affectations of their right to personal integrity in the access to services and interventions relevant to their health that only they require because of their sex, biological differences, and their reproductive ability. In this sense, the IACHR has considered that the States have the duty to adopt positive measures to guarantee the accessibility, availability, acceptability, and quality of maternal health services, as part of their obligations derived from the principle of equality and non-discrimination. As a correlative principle, the Inter-American Court has also affirmed that it is necessary to consider the scope of women's right to health from a perspective that takes into account their interests and needs "in view of the factors and distinctive features that differentiate them from men, namely: (a) biological factors [...], such as [...] their reproductive function." It follows from these principles that failure to fully respect women's right to personal integrity in the reproductive sphere may in turn contravene their right to live free from all forms of discrimination protected by Article 1(1) of the American Convention.

115. The IACHR has recognized that the right of access to information is key to the protection of the right to personal integrity, autonomy and health of individuals. In particular, it has recognized that the right of access to information is an indispensable element for individuals to be able to make free and informed decisions regarding intimate aspects of their health, body

and personality, including decisions on the application of medical procedures or treatments. In this sense, informed consent has been particularly referred to as an ethical principle of respect for the autonomy of individuals, which requires that they understand the different treatment options available to them and that they be involved in their health care.

118. The IACHR has pronounced along the same lines and has specified that informed consent is an appropriate process of disclosure of all the information necessary for a patient to freely make the decision to give or (withhold) consent to a medical treatment or intervention. This process seeks to ensure that individuals see their human rights fully respected in the field of health, and are able to make truly free choices.

119. A systematic interpretation of the doctrine and jurisprudence in this area makes it possible to establish that an informed consent process must include the following three closely related elements: i) informing about the nature of the procedure, treatment options and reasonable alternatives, including the possible benefits and risks of the proposed procedures; ii) taking into account the needs of the person and ensuring that the person understands the information provided; and iii) ensuring that the consent given is free and voluntary. Compliance with this process includes legislative, political and administrative measures and extends to physicians, health professionals and social workers, both in public and private hospitals, as well as in other health institutions and detention centers.

127. As part of this analysis, it is important to emphasize that sterilization is a contraceptive and family planning method that should be available to individuals in an accessible, acceptable, high-quality manner and without discrimination, coercion or violence. Because it is a procedure of major consequence to a person's reproductive health, controls to ensure that consent is given in an informed, free, and voluntary manner must be particularly stringent.

130. These obligations are based on the recognition of the limitations that women often face in accessing the information necessary to exercise their sexual and reproductive health rights, especially when they are at greater risk of suffering violations of their rights due to the intersection of different forms of discrimination for other related reasons, such as their race, ethnicity, age, sexual orientation, social status, etc. As the IACHR has pointed out, one of the structural factors that limit women's access to sexual and reproductive health services, and therefore to information in this area, are gender stereotypes that limit women's access to sexual and reproductive health services, and therefore to information in this area. As the IACHR has pointed out, one of the structural factors that limit women's access to sexual and reproductive health services, and therefore to information in this area, are the persistent gender stereotypes in the health sector.

The right to privacy is in turn related to women's reproductive autonomy, which includes the right to decide freely and responsibly on the number and spacing of their children and to have access to information, education, and the means to facilitate the exercise of this right. It also extends to their access to reproductive health services and to have free choice and access to safe, effective, easily accessible and acceptable methods of fertility regulation. This implies that the right to privacy can be undermined when the means by which a woman can exercise her right to control her fertility are obstructed.

159. Particularly in the area of maternal health, the IACHR has considered that States have the duty to adopt positive measures to guarantee the accessibility, availability, acceptability, and quality of maternal health services, as part of their obligations derived from the principle of equality and non-discrimination.

160. However, the Commission has recognized that certain groups of women, as in the case of I.V., a migrant woman with few economic resources, suffer discrimination throughout their lives based on more than one factor combined with their sex, which increases their risk of suffering acts of violence and other violations of their human rights (...).

On the other hand, the IACHR reiterates that States have the duty to guarantee adequate access to justice for women when all their human rights are violated, including those related to their sexual and reproductive health. This is a two-fold duty. A first dimension is criminal punishment when acts occur that may constitute a form of violence against women, an aspect that will be discussed later in this report. A second dimension relates to the need to address the causes and systemic failures that gave rise to the human rights violations under review. Impunity for violations of women's rights - including their sexual and reproductive rights - constitutes a form of discrimination against women and an undermining of the obligation not to discriminate under Article 1(1) of the American Convention.

***Luis Rolando Cuscul Pivaral and other persons with HIV/AIDS (Case 12.484) v. Guatemala (April 13, 2016).***

Both the IACHR and the Court have ruled on the relationship between the rights to life and personal integrity and the right to health. In this regard, both bodies of the inter-American system have taken into account, for the purpose of interpreting the rights to life and personal integrity in relation to the right to health, the contents of the American Declaration of the Rights and Duties of Man and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). The right to health has also been included in instruments of the universal human rights system and other regional systems.

106. In order to avoid violations to life and personal integrity as a consequence of inadequate health services, these services must comply with the principles of availability, accessibility, acceptability and quality of medical services, indicating that those obligations must be "oriented" towards the satisfaction of such principles, which were conceptualized by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 as "essential and interrelated", in the following terms:

- a) *Availability*. Each State Party shall have a sufficient number of public health facilities, goods and services and health-care facilities and programs. However, these services shall include the underlying determinants of health, such as hospitals, clinics and other health-related facilities, trained medical and professional personnel, as well as essential drugs as defined in the WHO Action Programme on Essential Drugs.
- b) *Accessibility*. Health facilities, goods and services must be accessible to all, without discrimination, within the jurisdiction of the State Party. Accessibility has four overlapping dimensions:
  - (i) Non-discrimination: health facilities, goods and services must be accessible, in law and in fact, to the most vulnerable and marginalized sectors of the population, without

discrimination on any of the prohibited grounds. (ii) **Physical accessibility:** health facilities, goods and services must be geographically accessible to all sectors of the population, especially vulnerable or marginalized groups, such as women, children, adolescents and persons with HIV/AIDS. [...]

(iii) **Economic accessibility (affordability):** health facilities, goods and services should be available to all. Payments for health care services and services related to the underlying determinants of health should be based on the principle of equity to ensure that such services, whether public or private, are available to all, including socially disadvantaged groups. Equity requires that poorer households should not bear a disproportionate burden in terms of health expenditures compared to richer households. (iv) **Access to information:** such access includes the right to seek, receive and impart information and ideas about health-related matters. However, access to information should not undermine the right to have personal health-related data treated confidentially.

- c) **Acceptability.** All health facilities, goods and services should be respectful of medical ethics and culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples and communities, while being sensitive to gender and life-cycle requirements, and should be designed to respect the confidentiality and improve the health status of the individuals concerned.
- d) **Quality.** In addition to being culturally acceptable, health facilities, goods and services should also be scientifically and medically appropriate and of good quality. This requires, among other things, trained medical personnel, scientifically approved and well-maintained drugs and hospital equipment, clean potable water, and adequate sanitation.

107. Under these principles, the Commission and the Court have indicated that the States are responsible for regulating on a permanent basis the provision of services and the execution of national programs related to the achievement of quality public health services, in such a way as to deter any threat to the right to life and physical integrity of persons undergoing health treatment. The Court has indicated that the State has the duty to regulate, supervise and oversee health services, ensuring, among other aspects, compliance with the aforementioned principles of availability, accessibility, acceptability and quality of medical services, both in the public and private spheres.

110. The IACHR has indicated that people living with HIV/AIDS have historically been subjected to discrimination as "HIV/AIDS-related stigma is endemic in the Americas, which not only hinders an effective response to the epidemic, but also has a negative impact on the exercise of human rights".

133. The Commission has highlighted the reinforced obligation of the States in cases where multiple vulnerability factors converge for the victims, such as their status as persons with HIV/AIDS with very limited resources.

***Vinicio Antonio Poblete Vilches and Family Members (Case 12.695) v. Chile (April 13, 2016).***

On the other hand, and in order to give greater content to the right to health in connection with the rights to life and personal integrity, the Commission notes that comparative law has spoken of the essential elements of the medical obligation, namely, comprehensiveness, timeliness and identity.

135. Along the same lines, the Commission considers that for the purposes of the international responsibility of the State for failure to comply with any of the principles associated with the right to health and related to the right to life and personal integrity, it is not necessary to establish reliably what the cause of death was. It is sufficient to determine that despite the fact that the indicated treatment was intensive care with the infrastructure of the ICU, this was not possible due to a shortcoming of the public hospital consisting of the absence of beds in the aforementioned unit, without any corrective or alternative measures being adopted so that Mr. Poblete Vilches could be treated in accordance with his health needs. Consequently, the Commission considers that there were measures that the State, through the Sótero del Río public hospital, could reasonably have adopted and did not adopt to offer Mr. Poblete Vilches the treatment that his condition required.

136. Likewise, the Commission considers that all the circumstances analyzed caused Mr. Poblete Vilches physical and psychological suffering both at the time of his discharge in serious conditions, in the context of his stay at home with rapid deterioration and without his family members having any information on how to care for him, and throughout his stay at the Hospital after his readmission and up to the time of his death.

137. By virtue of the foregoing considerations, the Commission considers that both the decision to discharge Mr. Poblete Vilches from the public hospital, and the failure to provide the intensive treatment he required during his second admission to said medical center, lead to the conclusion that the State is responsible for the violation of the rights to life, to humane treatment and to health established in Articles 4 and 5 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mr. Vinicio Antonio Poblete Vilches.

***Opario Lemoth Morris et al. (Buzos miskitos) (Case 12.378) v. Honduras. OEA/Ser.L/V/II.168 Doc. 74 (May 8, 2018).***

251. As for the right to health, the same Article 45 of the OAS Charter mentioned above enshrines it. Article 34 (i) of the same instrument also underscores the role of the State in the "defense of human potential through the extension and application of modern knowledge of medical science", thus underlining the importance of guaranteeing health for the integral development of the individual. Likewise, Article XI of the American Declaration establishes that "every person has the right to have his health preserved by sanitary and social measures relating to food, clothing, housing, and medical care, corresponding to the level of public and community resources. Article 10 of the Protocol of San Salvador states that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being, and indicates that health is a public good.

***Paola del Rosario Guzmán Albarracín and family members (Case 12.678) v. Ecuador (October 5, 2018).***

With regard to the right to health, both the IACHR and the Court have ruled on the relationship between the right to personal integrity and the right to health. The Inter-American Court has repeatedly interpreted that the right to personal integrity is directly and immediately linked to human health care and that "the lack of adequate medical care" can lead to its violation. The Commission considers that this intrinsic relationship is a manifestation of the interdependence and indivisibility of civil and political rights and economic, social and cultural rights. In the words of the Court, both groups of rights must be "understood integrally as human rights,

without hierarchy between them and enforceable in all cases before those authorities that are competent to do so.

121. Bearing in mind what has been developed above with respect to Article 26 of the ACHR, Article 45 b) of the OAS Charter enshrines the guarantee of health through decent working conditions. Article 34 i) of the same instrument also underscores the role of the State in the "defense of human potential through the extension and application of modern knowledge of medical science", thus underlining the importance of ensuring health for the integral development of the person, and paragraph l) of the same article mentions the search for urban conditions or factors that allow the guarantee of a healthy life. Likewise, Article XI of the American Declaration establishes that "every person has the right to have his health preserved by sanitary and social measures relating to food, clothing, housing, and medical care, corresponding to the level of public and community resources. Article 10 of the Protocol of San Salvador states that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being, and indicates that health is a public good. In this sense, for the IACHR, the right to health is included within the protection of Article 26 of the ACHR.

126. The IACHR has already indicated that gender stereotypes are persistent in the health sector and that "attitudes such as indifference, mistreatment and discrimination by health sector officials that harm women and girls who are victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address these situations of violence, constitute barriers in access to health services." Therefore, for the IACHR, States must adopt appropriate measures to eliminate all types of violence and discrimination against girls and adolescents in the field of health. This includes not only the duty to refrain from reproducing such practices but also to act with due diligence towards acts of violence against girls and adolescents that occur in this area, which includes, for example, the implementation of regulatory frameworks, including health protocols, that address sexual violence against girls and adolescents, health personnel duly trained to detect and treat sexual violence against this age group, and access to effective judicial remedies to protect the rights of girls and adolescents for acts of sexual violence.

***Luis Eduardo Guachalá Chimbó and family (Case 12.786) v. Ecuador (October 5, 2018).***

154. The Inter-American Court has indicated that "the [American] Declaration contains and defines those essential human rights to which the Charter refers, so that the Charter of the Organization cannot be interpreted and applied in the field of human rights without integrating the relevant norms of the Charter with the corresponding provisions of the Declaration, as is the practice followed by the organs of the OAS. Thus, the American Declaration represents one of the relevant instruments for the identification of the economic, social and cultural rights referred to in Article 26 of the ACHR Convention. As already indicated, recourse to other international instruments may be necessary to point out the derivation of a right from a public policy measure or objective included in an economic, social, cultural, educational or scientific norm of the OAS Charter.

155. From the foregoing, the Commission considers it clear that the right to health constitutes one of the economic and social standards mentioned in Article 26 of the Convention and, in this

sense, the States Parties have the obligation to ensure its progressive development, as well as to respect, guarantee and adopt the necessary measures to make this right effective.

156. Regarding the contents of the right to health, the Committee on Economic, Social and Cultural Rights has pointed out that all health services, goods and facilities must meet requirements of availability, accessibility, acceptability and quality. Both the Commission and the Court have taken these concepts into account and have incorporated them into the analysis of various cases. In this framework, and taking into account the facts described above, for the IACHR the States must ensure the availability of adequate mental health facilities and services, which must be integrated into general health services, limiting the approach of segregated, centralized and long-term psychiatric care.

158. Likewise, the IACHR has recognized that the right of access to information - which in turn is included under Article 13 of the American Convention - is an indispensable element for persons to be able to make free and informed decisions regarding intimate aspects of their health, body and personality, including decisions on the application of medical procedures or treatments. In this sense, informed consent has been particularly referred to as an ethical principle of respect for the autonomy of individuals, which requires that they understand the different treatment options available to them and that they be involved in their health care.

160. The international community has recognized informed consent as an active and ongoing process that seeks to ensure that no treatment is performed without the agreement of the person to whom it is to be performed and without having been duly informed of its effects, risks and consequences. The IACHR has specified that informed consent is an appropriate process of disclosure of all the information necessary for a patient to freely make the decision to give or (withhold) consent to a medical treatment or intervention. This process seeks to ensure that individuals see their human rights fully respected in the field of health, and are able to make truly free choices.

171. For this reason, all medical and health-care personnel should ensure that appropriate consultation takes place directly with the person with a disability. Such personnel should also ensure, to the best of their ability, that assistants, family members or support persons do not substitute for, or have undue influence over, the person with a disability in his or her decisions. In doing so, they must ensure that (i) accurate and accessible information is provided about available service options; (ii) non-medical alternatives are offered; and (iii) access to independent support is provided.

***Martina Rebeca Vera Rojas (Case 13.039) v. Chile. OEA/Ser.L/V/II.160 Doc. 124 (October 5, 2018).***

60. Applying the above parameters to the present case, the Commission begins by noting that Article 45 of the OAS Charter incorporates references to the rights to health and social security. Article 34. i) of the same instrument also underscores the role of the State in the "defense of human potential through the extension and application of modern knowledge of medical science," thus emphasizing the importance of the guarantee of health for the integral development of the individual. Likewise, Article XI of the American Declaration and Article 12 of the ICESCR incorporate this right. The right to social security is derived from Article 45(b) and (h) of the OAS Charter, which establish, respectively, protection against unforeseen or social risks related to work and the need to develop an efficient social security policy. More

generally, Article 46 refers to the work of harmonizing social security regulations at the regional level. As already indicated, recourse to other international instruments may be necessary to indicate the derivation of a right from a public policy measure or objective included in an economic, social, cultural, educational or scientific norm of the OAS Charter.

61. From the foregoing, the Commission considers it clear that the rights to health and social security constitute one of the economic and social standards mentioned in Article 26 of the Convention and, in this sense, the States Parties are under the obligation to ensure their progressive development, as well as to respect, guarantee and adopt the necessary measures to give effect to those rights.

62. Regarding the contents of the right to health, in line with the international corpus iuris on the right to health identified by the Court, in the present case it is possible to derive the applicable standards from the development of the scope of the right to the enjoyment of the highest attainable standard of health. According to the ICESCR "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and establishes that among the measures to be taken by States to ensure the full realization of this right is "the creation of conditions which would assure to all medical care and medical services in the event of sickness".

***Manuela and family (Case 13.069) v. El Salvador (December 7, 2018).***

108. The IACHR recalls that Article 11 of the American Convention protects private and family life against arbitrary actions by State institutions. Although this right is not absolute, any restriction to it must be provided by law, pursue a legitimate aim, and comply with the requirements of suitability, necessity, and proportionality. The Commission emphasizes that the right to privacy has been interpreted broadly by the Inter-American Court and includes aspects such as access to reproductive health services in acceptable conditions, which includes the confidentiality of medical information.

Regarding the contents of the right to health, in line with the international corpus iuris on the right to health identified by the Court, the Committee on Economic, Social and Cultural Rights has pointed out that all health services, goods and facilities must meet the requirements of availability, accessibility, acceptability and quality. Both the Commission and the Court have taken these concepts into account and incorporated them into the analysis of various cases.

Acceptability implies that health facilities and services should respect medical ethics and culturally appropriate criteria. In addition, they should include a gender perspective, as well as the patient's life-cycle conditions, and should be designed to respect confidentiality and improve the health status of the individuals concerned. In relation to sexual and reproductive health, respect for privacy and confidentiality of health data are essential and are part of the basic obligations of States to respect this right, in turn, to ensure the element of availability of sexual and reproductive health services, States must ensure that medical providers and personnel are properly qualified and trained for the specific care of women and girls. The IACHR Court has also considered that "the lack of legal safeguards to take reproductive health into consideration may result in a serious impairment [of] reproductive autonomy and freedom." Likewise, the lack of information and the existence of certain practices, attitudes and stereotypes, both within the family and the community, as well as among the personnel

working in health facilities, can act as barriers to women's access to sexual and reproductive health services, and condition their decision to seek medical assistance or health information in a timely manner.

121. The IACHR recalls that the form of organization and structure of health services, as well as the degree of knowledge that women have about health care services and the protection of their right to health, are essential to give effect to this right. The Commission has also indicated the need to promote policies that propose specific measures for prevention and care of maternal health and to make adequate health services available to women, especially poor women, as well as information and assistance programs on reproductive health, including measures and dissemination campaigns on the obligations of the authorities and the rights of women in this area. In this sense, it is necessary for States to adopt measures to eliminate preventable risks and harm faced by women in the area of sexual and reproductive health, including not only treatment and medical care based on women's own needs and interests, but also the elimination of stereotyped roles and concepts that affect the enjoyment of the right to health.

131. The IACHR recalls that in relation to persons who have been deprived of their liberty, the State is in a special position of guarantor, since the prison authorities exercise a strong control or dominion over those who are subject to their custody. This is the result of the special interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his rights and obligations and by the circumstances of confinement, in which the prisoner is prevented from satisfying on his own a series of basic needs essential for the development of a dignified life, in the terms that are possible in those circumstances.

132. The right to life is directly linked to the right to health. In relation to persons deprived of liberty, the health service must be provided in conditions of equivalence, that is, comparable to those enjoyed by patients in the outside community. The State's obligation to guarantee the physical and mental health of persons deprived of liberty implies, among other issues: (i) an initial medical diagnosis to assess the prisoner's state of health and provide him with the medical care he may require; ii) adequate, timely, and, where appropriate, specialized medical treatment commensurate with the special care needs required by the detainees in question, including appropriate diets, physiotherapy, rehabilitation and other necessary specialized facilities; iii) when required by the nature of a medical condition, monitoring should be regular and systematic, aimed at curing the detainee's illnesses; iv) persons deprived of their liberty who suffer from serious, chronic or terminal illnesses should not be held in prison facilities, except where states can ensure that they have adequate medical care units to provide them with appropriate treatment.

133. With respect to violations of the right to life attributable to a State for failure to provide health services, the IACHR has emphasized that for purposes of the international responsibility of the State for failure to comply with any of the principles associated with the right to health and linked to the right to life, it is not necessary to establish the cause of death, but rather to determine that there were measures that the State could reasonably adopt and did not adopt to offer a person the treatment that his or her condition required. For its part, the Honorable Court has indicated that the right to life is violated by the omission of basic health services when there is a high probability that adequate assistance would have prolonged the life of a person. According to the Inter-American Court, the lack and/or deficiency in the provision of

medical care, or negligent or deficient medical treatment, is not in accordance with the obligation to protect the right to life of persons deprived of liberty.

***Tagaeri and Taromenane Indigenous Peoples (in voluntary isolation) (Case 12.979) v. Ecuador.***  
OEA/Ser.L/V/II.173 Doc. 167 (September 28, 2019).

114. Among the positive obligations, recognized by the Commission and the Court, that arise from the guarantee of a life and existence with dignity are the provision of health, education and sanitation services and the protection of their labor and social security rights and, in particular, the protection of their habitat. Although several of these provisions imply a different scope and effects for FIVIMS due to their particularities and mainly to the no-contact principle, it is relevant to emphasize that "the special affectations of the right to health, and intimately linked to it, those of the right to food and access to clean water have an acute impact on the right to a dignified existence and the basic conditions for the exercise of other rights, such as the right to education or the right to cultural identity".

115. In line with the above, according to the United Nations Guidelines, the strict integration of the indigenous peoples in voluntary isolation with the ecosystems in which they live, added to the vulnerability to which they are exposed due to the lack of knowledge of the functioning of the majority society, generates that threats and aggressions to their territories produce disproportionate effects on the maintenance of their cultures and ways of life. In these terms, in the case of the FIVIMS, territorial protection becomes a fundamental condition for protecting the life, health, physical and psychological integrity, and culture of indigenous peoples in voluntary isolation and initial contact.

116. Both bodies of the inter-American system have already recognized that the right to health is integrated into the content of Article 26 of the American Convention and have derived various standards for its protection, in particular based on the systematic interpretation of the OAS Charter and other relevant international instruments on the subject. They have also repeatedly stated that the right to personal integrity is directly and immediately linked to human health, which is a manifestation of the interdependence and indivisibility that exists between civil and political rights and economic, social and cultural rights. Bearing in mind that in order to comply with international obligations on the right to health, States, among other measures, must guarantee its cultural relevance, the Committee on Economic, Social and Cultural Rights has indicated the importance of "providing resources for indigenous peoples to establish, organize and control these services so that they may enjoy the highest attainable standard of physical and mental health", for the purposes of the FIVIMS this will imply organizing the State apparatus so that it does not generate practices that may limit their traditional medicinal practices and state of health based on the principles of self-determination and no contact referred to above.

***Djamel Ameziane (Case 12,865) v. United States (April 22, 2020)***

155. The obligation to provide medical care to persons deprived of liberty arises from the State's duty to guarantee their humane treatment under Article I of the American Declaration in light of the intimate correlation between physical and mental health and the integrity of the person. The IACHR has also established that "in the case of persons deprived of liberty, the obligation of States to respect physical integrity, not to use cruel and inhuman treatment and

to respect the inherent dignity of the human being, extends to guaranteeing access to adequate medical care". The Commission has thus defined the right to health of persons deprived of liberty as "the enjoyment of the highest attainable standard of physical, mental and social well-being, which includes, inter alia, adequate medical, psychiatric and dental care; the permanent availability of suitable and impartial medical personnel [...]". In this sense, medical treatment "must be based on scientific principles and apply best practices" and "[i]n all circumstances the provision of health services must respect the [...] confidentiality of medical information; the autonomy of patients with respect to their own health; and informed consent in the doctor-patient relationship".

156. In this sense, medical care is a minimum and indispensable material requirement for the State in order to guarantee humane treatment during the time in custody. It is not tolerable for incarceration to add additional physical and mental illness and suffering to the deprivation of liberty. In fact, "the lack of adequate medical care could in itself be considered in violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the particular person, the type of ailment, the length of time without care and its cumulative effects". The State's duty to provide adequate and appropriate medical care to persons in its custody is even greater when the prisoner's injuries or health problems are the direct result of the action of the authorities. Likewise, the right to health of persons in detention implies the provision of emergency care, regular and independent medical check-ups, medical treatment with access to medication when necessary, and even specialized care according to the particular physical and mental needs of the individual in these circumstances. The State is obliged to ensure that the situation of persons deprived of liberty does not imply *de facto* or *de jure* discrimination in access to medical care, which means that it must guarantee, at least, reasonable levels of availability, accessibility, acceptability and quality of health facilities, goods or services in relation to persons in detention.

158. To protect prisoners against torture and other physical and mental abuse, it is crucial for health professionals in charge of the medical care of those in state custody to operate with due autonomy and independence, free from any form of interference, coercion or intimidation by other authorities. In this regard, health professionals cannot be compelled through contract or other considerations to compromise their professional independence, and physicians working for state security services must refuse to comply with any procedure that injures patients or leaves them physically or psychologically vulnerable to injury. When the detainee is a vulnerable adult, physicians have an additional duty to act as advocates. Physicians also have a duty to speak out and denounce any unethical, abusive or inappropriate treatment of patients by members of law enforcement while avoiding exposing patients, their families or themselves to unintended risk of harm.

***T.B. and S.H. (Case 13.095) v. Jamaica. OEA/Ser.L/V/II.173 Doc. 419 (31 December 2020).***

111. The Commission recalls that, in order to fulfill their international obligations with respect to the right to health, States must not only ensure the provision of health services, but also maintain conditions conducive to a life of dignity and equality in society with respect to the right to health. In other words, the Commission stresses the obligation of States to include in their health policies and regulatory frameworks the basic social determinants that enable the effective enjoyment of the right to health. These policies include the guarantee of other rights that enable the enjoyment of a healthy life, such as access to adequate food and water, the prohibition of torture and healthy working conditions. Similarly, it is essential to integrate the

social determinants of health into the measures taken by States with respect to this right, such as the equitable distribution of resources; cultural, ethnic and gender perspectives; the effective participation of the population in health policies; the identification of power relations, violence, regulations, institutional and social discrimination or harmful family and community environments that hinder the enjoyment of the right to health. In this framework, in the opinion of the IACHR, States must take measures with respect not only to the provision of adequate medical goods and services, but also to the physical and psychosocial environments that condition the individual's enjoyment of the right to physical and mental health.

112. In this context, the Commission observes that, in many cases, the threats to the enjoyment of the right to health of LGBTI persons, among other vulnerable populations, and the violation of this right are also due to the omission of States that do not precisely address the social determinants of the right to health, such as the validity of a regulatory framework that discriminates against these persons or population groups. In this context, the IACHR considers that laws, practices or policies that criminalize sexual relations between two persons of the same sex not only prevent States from formulating and implementing health policies specifically oriented to these groups, but also affect in a direct, serious and discriminatory manner the enjoyment of the right to health.

113. With respect to the content of the right to health, in line with the body of international law, the Committee on Economic, Social and Cultural Rights has observed that all health services, goods and facilities must meet the requirements of availability, accessibility, acceptability and quality<sup>83</sup>. Both the Commission and the Court have taken these concepts into account and incorporated them in the analysis of numerous cases.

114. Specifically, the element of accessibility implies, among other things, that health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sectors of the population, in fact and in law, without discrimination on any of the prohibited grounds. The Commission considers it appropriate to recall that the standard of accessibility invoked by the Court implies that States must ensure equal treatment for all persons who have access to health services. In other words, according to Article 1.1 of the Convention, States must ensure that all persons subject to their jurisdiction have access to health services "without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Court has pointed out that the phrase "any other social condition" encompasses sexual orientation, which, in turn, is not limited to the fact of being homosexual, but includes its expression and its consequences in a person's life.

115. The Commission notes that both it and the Inter-American Court, as well as several national and international bodies, have found that sodomy laws create obstacles to access to the right to health without discrimination.

### ***Thematic reports***

#### ***Guidelines for the Development of Progress Indicators in the Area of Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14 (July 19, 2008)***

89. Article 10 of the Protocol of San Salvador states in relation to this right that: "Everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being. In order to give effect to the right to health, the States Parties undertake to recognize health as a public good and, in particular, to adopt the following measures to guarantee this right: (a) Primary health care, understood as essential health care made available to all individuals and families in the community; (b) The extension of the benefits of health services to all individuals subject to the jurisdiction of the State; (c) Full immunization against the major infectious diseases; d) The prevention and treatment of endemic, occupational and other diseases; e) The education of the population on the prevention and treatment of health problems; and f) The satisfaction of the health needs of the groups at highest risk and which, because of their conditions of poverty, are most vulnerable".

90. The Protocol refers to the satisfaction of the right in the context of the development of a health system, which, however basic it may be, must guarantee access to the Primary Health Care (PHC) system and the progressive development of a system with coverage for the entire population of the country. At the same time, it pays special attention to the care of vulnerable groups or those living in poverty.

91. The right to health has a greater number of measurement instruments, especially quantitative ones, at the same time that three of the MDGs refer to this right (on infant mortality, maternal mortality and HIV/AIDS, malaria and other diseases) and for which information is available in most of the countries of the region. In these cases, it is up to the reporting State to combine progress in terms of the MDGs with the indicators suggested here.

***The Right of Access to Information in the Inter-American Legal Framework. OEA/Ser.L/V/II IACHR/RELE/INF. 1/09 (December 30, 2009).***

32. The right of access to information imposes an obligation on the State to provide the public with the maximum amount of information on an informal basis, at least with respect to: (a) the structure, functions and operating and investment budget of the State; (b) information required for the exercise of other rights—for example, that which concerns the satisfaction of social rights such as pension, health or education rights; (c) the supply of services, benefits, subsidies or contracts of any kind; and (d) the procedure for filing complaints or inquiries, if any. Such information must be complete, understandable, in accessible language and up to date. Likewise, given that important sectors of the population do not have access to new technologies and, nevertheless, many of their rights may depend on knowing the information on how to make them effective, the State must find effective ways to fulfill the obligation of active transparency in such circumstances.

***Access to maternal health services from a human rights perspective. OEA/Ser.L/V/II. Doc. 69 (June 07, 2010)***

23. The right to personal integrity in the area of health is closely related to the right to health, given that the provision of adequate and timely maternal health services is one of the main measures for guaranteeing the right to personal integrity of women. Article 10 of the Protocol of San Salvador states that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being. Likewise, Article 3 of the Protocol of San Salvador establishes that States undertake to guarantee the rights set forth in this instrument 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.

39. Under the Inter-American system, barriers in access to maternal health services can result in the violation of women's right to physical, psychological and moral integrity. Although each particular situation will have to be analyzed, the IACHR considers that in cases in which surgical interventions and medical treatments are performed on women without their consent or that put their health at physical risk, such as forced sterilization, may constitute a violation of the right to personal integrity. Likewise, cases in which the dignity of women is violated, such as the denial of medical care related to the reproductive sphere that causes harm to their health, or that causes them considerable emotional stress, would constitute a violation of the right to personal integrity. In all these cases, the provisions contained in the Convention of Belém do Pará, as a specific instrument for the special protection of women's human rights, should be used to clarify the obligations derived from Article 5 of the American Convention and Articles I and XI of the American Declaration of the Rights and Duties of Man.

75. In the area of access to maternal health services, health care practices, such as the refusal to provide medical care to women when required without the consent of the partner or sterilization performed by health personnel without the informed consent of the woman, as well as the physical and psychological consequences of such intervention, are examples of forms of violence against women. The IACHR has also underscored the positive obligations of States in terms of access to health services and their relationship to violence, establishing that the health of victims of sexual violence should be a priority in legislative initiatives and in the health policies and programs of States, including maternal health services.

76. The IACHR also considers that the lack of positive measures to guarantee both accessibility to maternal health services, as well as to guarantee all the characteristics of the right to health such as availability, acceptability and quality, may constitute a violation of the obligations derived from the principle of equality and non-discrimination that permeate the inter-American system.

81. In the inter-American system, the American Declaration and the Protocol of San Salvador expressly enshrine the obligation of the States to provide adequate protection to women, especially to grant special care and assistance to the mother before and during a reasonable period of time after childbirth. The Protocol of San Salvador specifically establishes the obligation of States to adopt, to the maximum of their available resources and taking into account their level of development, in order to progressively achieve the full realization of the right to health, the following measures to guarantee the right to health, which apply to maternal health: primary health care, understood as essential health care made available to all individuals and families in the community; the extension of the benefits of health services to all individuals subject to the jurisdiction of the State; full immunization against the major infectious diseases; the prevention and treatment of endemic, occupational and other diseases; the education of the population on the prevention and treatment of health problems; and the satisfaction of the health needs of the groups most at risk and most vulnerable because of their conditions of poverty.

82. The Protocol of San Salvador refers to the satisfaction of the right to health in the context of the development of a health system, which, however basic it may be, must guarantee access

to the Primary Health Care (PHC) system and the progressive development of a system with coverage for the entire population of the country. At the same time, it gives special attention to vulnerable groups or those living in poverty.

95. The IACHR emphasizes the duty of States to ensure that maternal health services are provided through respectful care for women. In the case of indigenous and Afro-descendant women, States must adapt health services, both for prevention and for care and treatment, respecting their cultures, for example, through the informed choice of the type of delivery.

It should be noted that the Inter-American Commission on Human Rights developed a series of guidelines for the evaluation and monitoring of economic, social and cultural rights provided for in the Protocol of San Salvador. Specifically, the document develops a series of structural, process and outcome indicators related to pregnancy and maternity. Among the outcome indicators to measure progress in the right to health are the percentage of people with access to basic sanitation services, the number of births attended by professionals and the percentage of women of reproductive age with anemia. Among the outcome indicators to measure progress in the right to health in relation to equality are specified: maternal and perinatal mortality rate, distribution of maternal mortality according to causes by age group, perinatal mortality rate, percentage of children born weighing less than 2.5 kg, rate of care for domestic violence and estimates of cases of illegal abortion, by age, place of residence (urban and rural) and socioeconomic conditions of the pregnant woman or other available data.

***Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78 (July 13, 2011).***

480. The Commission echoes the above standards, and reiterates that States are obliged to guarantee children deprived of liberty access to health programs, including preventive health and health education programs, as well as special programs for sexual and reproductive health, oral health, HIV/AIDS prevention, mental health, treatment for children dependent on psychoactive substances, special programs to prevent suicide, among others.

491. The Commission affirms that in order to guarantee the right to health of children deprived of their liberty, the centers that house them must ensure access to properly equipped medical and health facilities with trained and independent medical personnel. The centers must keep a record of all medical treatment and medication administered to children deprived of their liberty. Likewise, centers for the deprivation of liberty of child offenders must have mental health services to adequately attend to their needs, especially considering that the subhuman and degrading conditions of detention, added to the violence that often characterizes detention centers, necessarily have an impact on their mental health, as they adversely affect the psychic development of their life and personal integrity. States should pay special attention to the sexual and reproductive health of child offenders deprived of liberty, as well as to the specific needs of those who require treatment for drug use.

***Report on the human rights of persons deprived of liberty in the Americas. OEA/Ser.L/V/II. Doc. 64 (December 31, 2011).***

525. As has already been established in this report, persons deprived of their liberty are in a position of subordination vis-à-vis the State, on which they are legally and de facto dependent for the satisfaction of all their needs. Therefore, when a person is deprived of liberty, the State acquires a special level of responsibility and becomes the guarantor of his fundamental rights,

in particular his rights to life and personal integrity, from which derives its duty to safeguard the health of prisoners by providing them, among other things, with the required medical care.

526. The provision of adequate medical care is a minimum and indispensable material requirement that must be met by the State in order to guarantee humane treatment of persons in its custody. The loss of liberty should never represent the loss of the right to health. Likewise, it is not tolerable that imprisonment should add additional physical and mental illness and suffering to the deprivation of liberty.

530. This duty of the State to provide adequate and appropriate medical care to persons in its custody is even greater in those cases in which the injuries or health affectations of the inmates are the result of direct action by the authorities. As well as in those cases of persons deprived of liberty who suffer from illnesses whose lack of treatment may result in death.

531. On the other hand, it is important to emphasize that even in those cases in which the State has delegated the provision of prison health services to private companies or agents -as is the case, for example, in Colombia- the State continues to be responsible for the adequate provision of such services. This has its general basis in the doctrine widely developed and established in the Inter-American System, according to which States are not only responsible for the direct actions of their agents, but also for those of private third parties when they act at the behest of the State, or with its tolerance or acquiescence.

532. The IACHR considers that, with respect to persons deprived of liberty, in a broad sense, the State's duties to regulate and oversee the health care provided by private agents is even greater, precisely because of the special position of guarantor in which the State places itself vis-à-vis the persons subject to its custody.

535. Likewise, the IACHR reiterates that States must adopt special measures to meet the particular health needs of persons deprived of liberty belonging to high-risk groups such as: the elderly, women, children, youth and adolescents, persons with disabilities, persons with HIV/AIDS, tuberculosis, and persons with terminal illnesses.

***Access to justice for women victims of sexual violence: Education and health. OEA/Ser.L/V/II. Doc. 65 (December 28, 2011).***

87. In line with the CEDAW precedent, the IACHR highlights as immediate obligations: (a) the incorporation of a gender perspective and the elimination of forms of de facto and de jure discrimination that impede women's access to maternal health services, which is applicable to cases of sexual violence; b) prioritization of efforts and resources to guarantee access to health services for women who may be at greater risk because they have been subjected to various forms of discrimination, such as indigenous women, women of African descent and adolescents, women living in poverty and women living in rural areas; and c) timely access to effective judicial remedies to ensure that women who consider that the State has not complied with its obligations in this area have access to effective judicial remedies.

***Child's right to a family. Alternative care. Ending institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 (October 17, 2013).***

595. Access to the right to physical and mental health is indispensable for the child to be able to maintain himself or herself in a good state and preserve his or her personal integrity. The Court and the Commission have referred to the child's right to physical and mental health as a right closely linked to the child's personal development and to the conditions necessary for the child to lead a life of dignity. States must ensure that the right to health, understood as the enjoyment of the highest attainable standard of physical, mental and social well-being, is respected and promoted in foster care and residential institutions, taking special account of the specific needs and requirements of children and adolescents, according to the stage of growth and development in which they find themselves. Additionally, the Court has considered the indivisibility and interdependence of the right to health with other fundamental rights of children, as the Court has stated in these terms:

The special effects on the right to health, and intimately linked to it, those on the right to food and access to clean water, have an acute impact on the right to a dignified existence and the basic conditions for the exercise of other human rights, such as the right to education or the right to cultural identity.

596. As previously stated, the State is in a reinforced position of guarantor in relation to children under the guardianship of a foster care center or residential institution. As a result, the State has the duty to ensure and guarantee effective access to the physical and mental health services that the child requires due to his or her condition, in appropriate conditions.

598. Considering that children are in a stage of continuous growth and development, they will require periodic medical check-ups and normal treatment appropriate to their age. Access to a quality health service presupposes that it is adapted to the particular needs and requirements of children and adolescents at different ages. Thus, young children, children with some type of disability, adolescents in puberty, children with some type of chronic disease, as well as any other group with special requirements or needs, will require health services and medical attention adapted to their condition.

603. The Commission considers that the principle of the best interests of the child should govern all decisions regarding the child's health, after having heard the child's own opinion and taken it into consideration, in accordance with the child's age and maturity. The Committee on the Rights of the Child has also underlined the importance of the best interests of the child being the basis for decisions on the provision, maintenance and termination of treatment, as well as the right of the child to participate in decisions affecting his or her health, in accordance with his or her age and maturity. Without prejudice to considerations of respect for the child's evolving capacities and progressive personal autonomy, the Commission has also already referred to the child's right to have a legal guardian to look after his or her rights, with legal responsibilities for the child's safety, health, development and well-being.

604. The Commission understands that the provision of health services should include: the right of the child to obtain information on health-related issues in a clear, accessible, appropriate and age-appropriate manner; the right to informed consent for medical treatment; and the confidentiality of medical information. States should ensure that children and adolescents in care or residential institutions are not subjected to medical experimentation or treatment that does not have the necessary scientific and medical backing.

605. Regarding access to health information, States must guarantee the right of children and adolescents to obtain adequate and relevant information and advice on health-related issues and aspects, as well as to be supported in understanding this information. Children and adolescents require health information, counseling and education that is understandable and adapted to their age, in order to be able to make informed decisions regarding a healthy lifestyle and access to various health services. The information should include how and where the child can access health information and services.

606. Likewise, the right to informed consent is also an integral part of the right to health, enshrined in numerous international human rights treaties, and guarantees that health practices respect the principle of non-discrimination, autonomy and self-determination, physical and psychological integrity, and the dignity of every person. In order to be able to give informed consent for medical treatment, it is a prerequisite to have access to the relevant information and health information requested on a voluntary basis. The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereinafter, the Special Rapporteur on the right to health), noted that informed consent is not the mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision. Ensuring informed consent is a fundamental aspect of respect for the autonomy, self-determination and human dignity of the individual, in an appropriate continuum of health care services sought on a voluntary basis.

***Human rights of migrants and other persons in the context of human mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13 (December 30, 2013).***

611. In accordance with Article 10 of the Protocol of San Salvador, all persons have the right to health, understood as the enjoyment of the highest level of physical and mental well-being. To guarantee this right, States must, inter alia, adopt measures aimed at: (a) providing primary health care, understood as essential health care made available to all individuals and families in the community; (b) extending the benefits of health services to all individuals subject to the jurisdiction of the State; (c) full immunization against the major infectious diseases; d) preventing and treating endemic, occupational and other diseases; e) educating the population on the prevention and treatment of health problems; and f) meeting the health needs of the most vulnerable and high-risk groups, including migrants, due to their conditions of poverty.

612. In addition to the above, Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families establishes that migrant workers and members of their families shall have the right to receive any type of emergency medical care necessary to preserve their lives or to avoid irreparable damage to their health under conditions of equal treatment with nationals of the State concerned. In greater detail, it establishes that emergency medical care may not be denied on the grounds of irregularity with respect to stay or employment.

613. In the Commission's view, States have an obligation to respect the right to health of migrants, asylum seekers and refugees. As noted by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, the Commission reaffirms the obligation of States to respect the right of non-citizens, migrants in irregular migratory situations, asylum seekers and refugees to an adequate standard of physical and

mental health, which includes, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.

***Access to Information, Violence against Women and the Administration of Justice in the Americas. OEA/Ser.L/V/II.154 Doc. 19 (March 27, 2015).***

The IACHR has developed a series of standards on the right of access to reproductive information, which include: (i) respect for the principle of informed consent; (ii) the duty of health providers to protect the confidentiality of patient information; (iii) the state obligation to "provide all available information regarding family planning methods as well as other sexual and reproductive health services provided under legal conditions"; (iv) ensuring women access to their medical history; and (v) the state obligation to produce reliable statistics in this area.

109. By way of conclusion, the IACHR recalls that the effective guarantee of the right of access to information requires that the States adapt their legal system and internal institutions to the requirements of this right and that they adequately implement the norms on access to information with a gender perspective. Consequently, the Commission notes with concern the lack of availability of specific information on the implementation of these standards in the States, and in particular, on the measures adopted to effectively guarantee this right in spheres of State activity that have a special impact on the exercise of women's human rights, such as the provision of sexual and reproductive health services.

***Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36 (12 November 2015).***

194. The IACHR notes that the principle of free, prior, and informed consent is of the utmost importance and should guide all decisions related to surgeries, procedures, hormone treatments, and any other medical treatment of intersex persons. The Inter-American Commission on Human Rights recommends that Member States make the necessary legislative and public policy modifications to prohibit unnecessary medical procedures for intersex persons, when performed without the free and informed consent of intersex persons. Modifications should be made to medical protocols to ensure the right to autonomy of intersex persons: intersex persons should decide for themselves whether they wish to undergo surgery, treatment or procedures. Considering that these medical interventions are mostly not medically necessary and given that, in general, they carry high risks of irreversible damage to the physical and mental health of intersex persons, such interventions could only be carried out when the intersex person can directly express his or her free, prior and informed consent. Surgeries and other medical interventions that are not medically necessary should be postponed until intersex persons can decide for themselves.

***Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities. OEA/Ser.L/V/II. Doc. 47/15 (December 31, 2015).***

279. The impacts of the presence of heavy metals in the human body can be irreparable if the States do not take urgent and special measures to address each specific case. For this reason, the IACHR considers that it is necessary for the States to adopt measures that allow for the reparation of territories degraded and contaminated by extractive activities, which should

include the implementation of special programs that include, as one of their central lines of action, attention to the health of indigenous peoples.

***Indigenous women. OEA/Ser.L/V/II. Doc. 44/17 (April 17, 2017).***

As recognized in Article XVIII of the American Declaration on the Rights of Indigenous Peoples, "indigenous peoples have the right collectively and individually to the enjoyment of the highest attainable standard of physical, mental and spiritual health. According to the Committee on Economic, Social and Cultural Rights, this right to health has certain essential and interrelated elements: availability, accessibility, acceptability and quality. Indigenous communities in general are dealing with deteriorating health as a result of the poor availability and accessibility of health services. Health facilities tend to be located far from communities, while the services they offer tend to be culturally inadequate.

201. For its part, the requirement of acceptability of health services requires that health facilities, as well as health-related goods and services, respect the culture of peoples and communities. It is therefore essential that States provide interpreters to enable full access to services. It is also important to note that the health of indigenous women is not only the responsibility of individual women, but is also a collective responsibility of all members of the community, since the health and well-being of these women influences the cultural, spiritual and social life of the community. In order to address this need, an intercultural approach has been promoted in the Americas, which involves supporting and promoting indigenous medicine systems and adopting health care models that respect and apply care systems based on traditional knowledge.

203. The IACHR has noted that there are cultural factors that can constitute barriers to women's access to health services. In the case of indigenous women, health services are often offered without taking into account their expectations, traditions and beliefs, which, coupled with the poor quality of service they often receive, can be a disincentive to use the services. Access to health care can be seriously undermined by cultural insensitivity or disrespectful treatment by medical personnel, which can lead women and their families to simply choose not to receive the medical care they need. It should also be noted that indigenous people, and women in particular, often face discrimination when they go to health facilities for medical care. When they have preserved their own language as their only means of communication, they also face a language barrier in communicating with health system personnel...

204. Regarding reproductive health, although some indigenous communities are reluctant to address this issue because of the role of women, many indigenous women want to exercise their sexual and reproductive rights. The IACHR has noted that, along with other groups of women, Indigenous women encounter the greatest barriers to obtaining sexual and reproductive health information. These barriers have led to massive human rights violations, such as in cases of sterilization without consent, which curtail their rights to humane treatment, to privacy and family life, and to a life free from violence and discrimination. States have an obligation to ensure that women are able to obtain information on this issue, taking into account the specific needs that indigenous women may have.

206. The IACHR considers that States have certain fundamental obligations that require the immediate adoption of priority measures in the area of maternal health. One of these is to

prioritize efforts and resources to ensure access to maternal health services for women who tend to be at higher risk, such as indigenous women. The Inter-American Court ruled in the case of *Sawhoyamaya Indigenous Community v. Paraguay* that States have an obligation to adopt special measures so that mothers can have access to adequate medical care, especially during pregnancy, childbirth and breastfeeding.

***Progress and challenges towards the recognition of the rights of LGBTI persons in the Americas. OAS/Ser.L/V/II.170 Doc. 184 (7 December 2018).***

157. The right to health, understood as the enjoyment of the highest attainable standard of physical, mental and social well-being, is also recognized in various instruments of the Inter-American system, such as the American Declaration (Article XI) and the Protocol of San Salvador (Article 10). According to Article II of the Declaration and Article 3 of the Protocol of San Salvador, moreover, the right to health must be guaranteed without distinction of any kind, including on grounds of sexual orientation, gender identity or expression, and bodily diversity. In the same sense, the Inter-American Court has ruled that the dimensions of the right to health include not only "the absence of disease or illness, but also a complete state of physical, mental and social well-being, derived from a lifestyle that allows people to achieve an integral balance" and has also emphasized that discrimination of the LGBTI population, "not only harms the right to individual health [...], but also public health (Article 26 of the Convention and Article 10.1 of the Protocol of San Salvador), which is the result of the health conditions of the inhabitants".

158. For their part, with respect to State obligations regarding the right to health, the Yogyakarta Principles +10 establish a series of additional obligations, including "to protect all persons from discrimination, violence and other harm based on their sexual orientation, gender identity, gender expression, and sexual characteristics in the health sector"; and "to ensure access to the highest attainable standard of health care for gender affirming treatment, based on the free, prior, and informed consent of individuals. In relation to this last point, on the health of trans persons, the IACHR warns that their economic situation, in general, determines the quality of the medical services they receive, including gender affirmation surgeries and other related body modifications.

On the other hand, with respect to LGBT persons, one of the main concerns highlighted by the IACHR in the aforementioned report has to do with the so-called "therapies" with the purpose of "modifying" a person's sexual orientation or gender identity (commonly known as "gay cure"). In this regard, the IACHR has urged States to adopt measures to ensure "effective regulation and control processes for physicians and health professionals who offer these services" and, in general, that "[such] practices that generate harm to physical, mental and social health should not be accepted as medical therapies" and should, therefore, be prohibited.

***Situation of the human rights of the indigenous and tribal peoples of Panamazonia. OAS/Ser.L/V/II. Doc. 176 (September 29, 2019).***

303. The right to enjoy the highest attainable standard of physical and mental health is a fundamental human right considered indispensable for the exercise of other rights and, in turn, depends on other rights, such as food, housing, or rights of a similar nature, such as water. The IACHR recalls that the jurisprudence of the Inter-American Human Rights System has considered that Article 26 of the American Convention protects the right to health, and has understood this not only as the absence of illness or disease, but also as a complete state of

physical, mental and social well-being, derived from a lifestyle that allows people to achieve an integral balance. Within this framework, the general obligation to protect health translates into the State's duty to ensure access to essential health services, goods and medicines, guaranteeing quality and effective medical care, as well as to promote the improvement of the population's health conditions. It also recalls that both the American Declaration (Article XI) and the Protocol of San Salvador (Article 10) expressly include the protection of the right to health. For its part, according to the United Nations Committee on Economic, Social and Cultural Rights (hereinafter, ESCR Committee), this right includes 4 essential elements: availability, accessibility, acceptability and quality.

304. Along these lines, the right to health of indigenous peoples is expressly recognized in instruments such as ILO Convention 169 (Article 25), the United Nations Declaration on the Rights of Indigenous Peoples (Article 24) and the American Declaration on the Rights of Indigenous Peoples (Article XVIII). All these instruments recognize as a component of the right to health of peoples the right to their own health systems and practices, as well as to the use and protection of plants, animals and minerals, and other resources for medicinal use, in their ancestral lands and territories. According to the ESCR Committee, indigenous peoples have the right to specific measures to improve their access to health services and health care. These services must be culturally appropriate, which means taking into account preventive care, healing practices and traditional medicines.

305. The Inter-American system, the Inter-American Court has also ruled in this regard, recognizing that indigenous and tribal peoples have the right to access their territory and natural resources necessary for the practice of traditional medicine for the prevention and cure of diseases. Therefore, in scenarios in which indigenous peoples are deprived of nutrition, health and access to drinking water because they are unable to access their ancestral territories, the State must adopt urgent measures to guarantee access to that land and the natural resources on which they depend, and thus prevent violations of their rights to health and life.

306. Along the same lines, the IACHR has recognized the link between environmental protection and the right to health, given that the environment is essential for a healthy population. Therefore, when there is contamination and degradation of the environment, this constitutes a threat to the life and health of the people who live there. Thus, in the context of extractive industries, the IACHR has expressed its concern regarding the presence of substances in the body that can cause neurological diseases, bacteria in the body, malformations, skin diseases, disabilities of various kinds, among others, as is the case of mercury. This mineral is deposited in rivers and other water sources and accumulates in animals such as fish, which are part of the traditional diet of many indigenous peoples, especially in the Amazon.

307. It is also important to bear in mind that there are health effects that can be devastating for certain groups, as in the case of indigenous peoples in voluntary isolation or in initial contact, affected by the invasion of settlers, company workers, or by the State itself. Since these peoples are not in contact with members of the majority society, they have not developed sufficient immunological defenses to combat common diseases.

308. It is clear that these peoples require the adoption of specialized and culturally appropriate action plans and protocols for prevention and contingency in the area of health, taking into account their special condition of vulnerability, as established in the Guidelines for the Protection of Indigenous Peoples in Isolation and Initial Contact of the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay and in the Report on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas. It should also be noted that the IACHR has pointed out that the best measure in the case of these peoples in particular is to respect the principle of no contact, given that "if unwanted contact is eliminated, most threats are eliminated and respect for the rights of such peoples is guaranteed".

310. Within this framework, the State is obliged to provide resources for indigenous peoples to establish, organize and control such services with the objective of being able to enjoy the highest level of physical and mental health. Along these lines, it must adopt measures to protect medicinal plants, animals and minerals that are necessary for the full enjoyment of the right to health of these peoples.

***Report on Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

313. The right to health is enshrined in numerous international human rights instruments, both universally and regionally. In the framework of the Inter-American system, Article XI of the American Declaration establishes that "[e]very person has the right to have his health preserved by sanitary and social measures relating to food, clothing, housing and medical care," thus expressly enshrining the right and articulating a broad concept of health. In turn, Article 10 of the Protocol of San Salvador confirms this postulate by proclaiming that "[e]very person has the right to health, understood as the enjoyment of the highest level of physical, mental and social well-being" and categorized as a "public good", while imposing a State commitment to guarantee "primary health care", "the extension of the benefits of health services to all individuals subject to [its] jurisdiction", "full immunization against the main infectious diseases", "the prevention and treatment of endemic, occupational and other diseases", "the education of the population on the prevention and treatment of health problems" and "the satisfaction of the health needs of the groups most at risk and which, due to their conditions of poverty, are most vulnerable".

314. For its part, the Inter-American Convention against all forms of Discrimination and Intolerance stipulates in Article 7 that the States undertake to adopt legislation that defines and prohibits discrimination, among others, in the area of health and defines in Article 1. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem Do Para Convention) recognizes in Article 5 that the State must protect the economic, social, cultural and environmental rights of all women and that they may exercise them freely and fully; it also specifically states that violence against women may occur in health facilities (Article 3). Other regional legal instruments also enshrine the right to health, taking into account new national and international developments in this area, such as the Social Charter of the Americas and the Inter-American Convention on the Protection of the Human Rights of Older Persons.

315. The American Convention, on the other hand, does not contain a specific provision in this regard. However, as the Inter-American Court has held in its recent pronouncements on the subject, a literal, systematic, teleological interpretation and in the light of other complementary

methods of the treaty makes it possible to maintain that the right to health, to which the aforementioned international *corpus iuris* gives content and scope, is protected by Article 26 of the Convention. This implies, as a starting point, the subjection to the general obligations of respect and guarantee contained in articles 1.1 and 2 and the application of the principles of non-regressivity, progressivity and equality and non-discrimination to this last duty.

316. In its Resolution 1/2020, the Commission noted that health is a public good that must be protected by all States and that the human right to health is an inclusive right, which corresponds to the enjoyment of other rights, which includes its basic and social determinants as the set of factors that condition its effective exercise and enjoyment. In this Resolution, the IACHR recommended the States to adopt immediate and diligent measures to prevent the occurrence of violations of the right to health, personal integrity and life.

317. In the Inter-American System, the right to health is conceived "not only as the absence of disease or illness, but also as a complete state of physical, mental and social well-being, derived from a lifestyle that allows individuals to achieve an integral balance", an aspect that was highlighted in the aforementioned Resolution 1/2020. It is also defined on the basis of its instrumental nature and of four essential and interrelated elements that States must ensure in the provision of medical services, whether public or private, based on their permanent duties of regulation, supervision and oversight.

320. The Commission and its REDESCA underscore that in order to comply with their international obligations in this area, States must guarantee not only the provision of health services without discrimination, but also duly observe the conditions conducive to a life of dignity and equality in society in relation to the right to health. In other words, the Commission underscores the obligation of States to include in their health policies and regulatory frameworks the basic and social determinants that allow for the effective realization of the right to health, particularly for those populations in vulnerable situations.

321. Among the first determinants is the guarantee of other rights that allow for the enjoyment of a healthy life, such as access to water and adequate food or healthy working conditions. The Commission notes that the right to health should be understood as a right in itself, but it is also essential to take into account the social determinants that have a direct impact on health, such as the equitable distribution of resources, cultural, ethnic-racial and gender perspectives, the effective participation of the population in health policies, the impact of harmful stereotypes and stigmatization in services, as well as the identification of power relations, violence, normative, institutional and social discrimination or harmful family and community environments that impede the effective and practical realization of this right. In this framework, for the IACHR, States must adopt measures not only with respect to the provision of adequate medical services and goods in particular, but also with respect to the physical and psychosocial environments that condition the enjoyment of the right to health, both physical and mental.

***Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)***

169. Numerous instruments in international human rights law recognize the right to health autonomously. In this regard, the right to enjoy the highest attainable standard of physical and

mental health is a fundamental human right considered indispensable for the exercise of other rights and, in turn, depends on other rights, such as food, housing, or rights of a similar nature, such as water. The American Declaration emphasizes that this right implies the adoption of health and social measures, which are related to food, housing and medical care; while the Protocol of San Salvador understands health as a public good that implies the highest level of physical and mental well-being.

171. The IACHR and its REDESCA have also emphasized that in order to comply with the international obligations of respect, guarantee, progressiveness and cooperation regarding the right to health of Afro-descendants, it is essential that the States place the content of this right at the center of the schemes and policies that define its realization, including those in which private agents or companies intervene, such as the production and distribution of medicines and health technologies or the provision of medical services. States must establish clear regulatory frameworks and public policies based on the content of the right to health. They should also subject private providers to full accountability for their operations and rigorous scrutiny under transparent and effective monitoring systems, providing for effective sanctions and adequate remedies for non-compliance.

172. The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance stipulates that States must undertake to adopt legislation prohibiting discrimination, inter alia, in the area of health; Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Belem Do Para Convention") recognizes that States must protect the free and full exercise of the economic, social and cultural rights of all women, and specifically prevents violence against women that may occur in health facilities. Other regional legal instruments also enshrine the right to health with the incorporation of new national and international developments in this area, such as the Social Charter of the Americas and the Inter-American Convention on the Protection of the Human Rights of Older Persons.

In addition, the Commission and its REDESCA observe that, in order to comply with their international obligations in this area, States must guarantee not only the provision of health services but also duly observe the conditions conducive to a life of dignity and equality in society in relation to the right to health. In other words, the Commission stresses the obligation of States to cover the basic and social determinants that allow for the effective realization of the right to health. Among the former is the guarantee of other rights that enable the enjoyment of a healthy life, such as access to water, the prohibition of torture, healthy working conditions, a healthy environment and adequate food. Likewise, it is essential to integrate the social determinants of health in the actions that States implement with respect to this right, such as the equitable distribution of resources, cultural, ethnic, age, migratory, disability and gender perspectives, and the effective participation of the population in health policies. They must also identify other determinants such as power relations, violence, normative, institutional and social discrimination or harmful family and community environments that impede the realization of the right to health. In this framework, for the IACHR and its REDESCA, the States must adopt measures not only with respect to the provision of adequate medical services and goods in particular, but also with respect to the physical and psychosocial environments that condition the enjoyment of the right to health, both physical and mental, of Afro-descendants.

177. The Commission considers it necessary to emphasize that the Pan American Health Organization has indicated that health cannot be understood only as the absence of disease,

nor as an idealization of the concept of well-being because it is insufficient, but that it depends on factors such as the cultural context. In this sense, the content of the right to health must be understood taking into account intercultural guidelines that allow the coexistence of medical systems with diverse cultural systems and the development of communication strategies that are aligned with the validation of Afro-descendant cultural traditions. Therefore, the Commission calls on States to adopt special measures that guarantee access to health care with an ethnic, intercultural and social approach for people of African descent. To this end, they should guarantee medical treatment, palliative care and disease prevention strategies for the well-being of their physical and mental integrity, with the implementation of coordinated institutional strategies at all levels; involve this population in all plans and projects involving them; and provide clear, accessible and inclusive information on the medical procedures performed on them.

178. Along the same lines, the Commission and its REDESCA call on the States of the region to respect, protect, and promote the practices of traditional Afro-descendant ancestral medicine and the processes of knowledge generation in this area, both in the individual and collective sphere, the latter in the case of tribal Afro-descendant communities. The IACHR recalls that intercultural health and the therapeutic systems of ethnic communities are part of their cultural expressions and are rooted in their worldview and spirituality, therefore, they enjoy special protection, as well as their traditional authorities, healers and healers. In this regard, the Commission has emphasized that the use of plants and other natural resources in ancestral territories are part of the components of the right to health of ethnic-racial peoples. Hence, it is essential to ensure intercultural dialogues between state institutions and health systems of Afro-descendant and tribal communities, to ensure the validation and integration of traditional ancestral medicine.

179. In this framework, the Commission and its REDESCA underscore the duty of the States of the region to design and implement health policies focused on the Afro-descendant population to guarantee their access and insurance in the health system, as well as the guarantee without discrimination of the exercise and enjoyment of this right. For the design of such policies from a human rights perspective, it is crucial to take into account the intersection between this ethnic-racial origin and other conditions such as gender, disability, status as a child, adolescent or elderly person, deprivation of liberty, sexual orientation, or socioeconomic origin, among others.

### ***Country reports***

#### ***Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OEA/Ser.L/V/II. Doc. 43/15 (31 December 2015)***

93. The IACHR considers that one of the main challenges in the area of indigenous health is the cultural adaptation of the health care service, since the State health system is perceived as alien to the indigenous peoples' own conception, and its design and application has been systematically determined without their participation..... Likewise, the IACHR considers that the fulfillment of these duties must take into account as central axes the strengthening and consolidation of traditional medicine through the establishment of instruments and mechanisms that allow its implementation; as well as the special relationship that links indigenous peoples with their territories and the natural resources found therein.

***Democratic Institutionalism, Rule of Law and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 209 (December 31, 2017).***

In light of the report's findings, the IACHR made the following recommendations to the State regarding the right to health:

66. Adopt measures to guarantee the availability and quality of health services, ensuring that health care facilities and centers have trained medical personnel, medicines and adequate hospital equipment.

67. Prioritize the adoption of the necessary measures to ensure that women and girls enjoy their sexual and reproductive rights, concentrating efforts on combating the high rates of maternal mortality, as well as the prevention of unwanted pregnancies and the care of victims of sexual violence.

68. Monitor the availability and access of the population to medicines and health services and their consequences, as well as collect information in this regard in order to publish, regularly and in detail, epidemiological bulletins, mortality statistics, inventories and procurement of medicines, supplies and equipment, and other public documents on the situation of health services at the national level.

Guarantee the right to health and life of people living with HIV/AIDS, mobilizing the necessary and available resources, including international cooperation.

***Serious human rights violations in the context of the social protests in Nicaragua. OEA/Ser.L/V/II. Doc. 86 (June 21, 2018).***

152. Under the right to health, States have an obligation to ensure the right of access to health facilities, goods and services. Where individuals are unable to assert this right themselves, as may be the case for those who are injured or ill, States should take the necessary measures to facilitate such access, which may include the search and collection of such persons, as well as their immediate care.

153. As established by the organs of the Inter-American Human Rights System, the rights to life and personal integrity are closely related to the right to health, so that the lack of adequate medical care can lead to the violation of these rights. In this sense, health services must be adequate, immediate, non-discriminatory and prepared for emergency situations such as social protests and widespread violence, in particular to guarantee the rights of wounded, injured and at high risk of losing their lives. To this end, law enforcement officials and health personnel have an obligation to facilitate and proceed to provide medical assistance and services to these persons as soon as possible, as well as to promptly notify family members or close friends of injured persons.

158. The IACHR emphasizes that States should not prevent health personnel from providing medical treatment to persons in need. Detention or harassment of health personnel for providing medical care should not be permitted. Nor should health personnel be punished for carrying out activities that are compatible with medical ethics, or forced to commit acts that contravene such standards. The IACHR also emphasizes that States must provide humanitarian

organizations and personnel with all the necessary facilities to enable them to carry out their activities and functions and to have access to the population in need of relief. The State must refrain from hindering these activities and must respect and protect humanitarian personnel as well as their facilities and means of transportation.

162. The Commission underscores the need and urgency for the State to adopt measures to ensure that emergency medical care is provided adequately, immediately and with quality in public and private hospitals and health centers in the country without any discrimination in the context described. Along these lines, the State should not only refrain from hindering the humanitarian work of health personnel, but also protect them from possible attacks or aggressions. In particular, it is necessary for the Nicaraguan State to promptly follow up on the medical treatment required by the people treated in the context of the protests, and if necessary, to facilitate and seek international cooperation support in order to guarantee the right to health and access to medicines for these people.

163. Regarding the issue of mental health and emotional well-being, given the facts described above, the Commission considers it necessary to implement a program to address the traumatic impacts of these events in a multidisciplinary manner. Such a program should be based on a human rights approach and include a gender perspective. In particular, with respect to the people most affected, such as those who were injured and kidnapped, people who were harassed or threatened, as well as the relatives of the murdered persons.

164. The IACHR also reiterates the call made in its preliminary observations on the importance of the State ensuring an impartial, diligent, and timely investigation of the complaints related to the denial, obstruction, and poor medical care in public hospitals, as well as with respect to the alleged attacks and obstruction of humanitarian assistance personnel. Such investigations should take into account the elements that constitute the crime of torture or cruel, inhuman or degrading treatment in order to determine the existence of its commission due to the lack of medical care or inadequate assistance. They should also cover the clarification and eventual sanctions for the facts denounced regarding the manipulation of medical records and false records.

165. Finally, the Commission recalls the importance of systematizing and updating the information on persons treated in public and private hospitals as a result of the social protests throughout the country, and that the State should safeguard the privacy, identity and consent of patients. The Commission recognizes the valuable role played by all those individuals and institutions that despite the circumstances and the existing risks, have put the right to health above any political consideration, even risking their safety, at the cost of their own economic means or leaving aside the profit motive in the case of private hospitals.

***Situation of human rights in Honduras. OEA/Ser.L/V/II. Doc. 146 (August 27, 2019).***

134. The IACHR recalls that the jurisprudence of the Inter-American Human Rights System has affirmed that health is a fundamental human right and indispensable for the adequate exercise of other human rights, and that every human being has the right to the enjoyment of the highest attainable standard of health that allows him or her to live in dignity, health being understood not only as the absence of disease or illness, but also as a complete state of physical, mental and social well-being, derived from a lifestyle that allows people to achieve an integral balance.

Within this framework, the general obligation to protect health translates into the State's duty to ensure people's access to essential health services, goods and medicines, guaranteeing quality and effective medical care, as well as to promote the improvement of the population's health conditions, including sexual and reproductive health.

144. In this regard, the IACHR establishes that indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental and spiritual health. They have the right to use, without any discrimination whatsoever, all health and medical care institutions and services accessible to the general population, as well as to exercise their own health systems and practices. In this regard, States, in consultation and coordination with indigenous peoples, should promote intercultural systems or practices in the medical and health services provided in indigenous communities, including the training of indigenous health technicians and professionals.

***Situation of human rights in Brazil. OEA/Ser.L/V/II. Doc. 9 (12 February 2021)***

459. The IACHR recognizes that Brazil achieved an important milestone by establishing a universal health system that integrates and articulates services at all levels of complexity, having them present throughout the national territory. The Unified Health System (SUS), despite its historical challenges in issues such as obstetric violence, availability of medicines, among others, is presented as a model of universalization of public and free health care, and constitutes the commitment of the Brazilian State to the realization of the right to health. The Indigenous Health Subsystem also stands out within the SUS, which has been an unparalleled example of a health policy that defends the right to be different in the application of the right to health.

460. Although there have been important institutional, regulatory, and public policy advances, the IACHR notes that there are still challenges of concern. Some of these are intertwined with the exclusions, preconceptions and structural inequalities noted in the earlier chapters of this report. For example, the World Health Organization has stated that adolescent women, single women, women of low socioeconomic status, women belonging to an ethnic minority, immigrant women, and women living with HIV, among others, suffer disrespectful and offensive treatment. In other cases, these challenges are the result of decisions adopted and implemented by the State, contrary to what would be necessary to enforce the right to health for all.

461. The Commission observed relevant impacts in the area of the right to health of Afro-descendant persons, particularly in relation to maternal care and obstetric procedures for Afro-descendant women. During the visit, the IACHR received information on the high rates of maternal mortality among Afro-descendant women. According to the 2014 Annual Socioeconomic Report of Women, 62.8% of maternal deaths were among Afro-descendant women. According to figures in this report, as deaths among white women decreased from 39 to 15 ca sos per 100,000 births, among Afro-descendants it increased from 34 to 51 deaths per 100,000 births.

462. In addition, there were complaints of mistreatment, verbal and physical aggression, as well as acts of racism on the part of health professionals. Likewise, cases of medical racism by omission or negligence in the care of pregnant women, as well as in the relativization of the suffering of these women, stand out. In particular, the Commission highlights the international

condemnation of the State by the Committee for the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the case of Alyne da Silva Pimentel Teixeira. Also the case of a woman of African descent living in the municipality of Belford Roxo, in the state of Rio de Janeiro, who died in 2002 as a result of several failures in the care received at a public hospital. According to the report, the Committee held the State responsible for medical negligence caused by institutional racism based on the victim's ethno-racial origin and socioeconomic status.

463. In this regard, the IACHR also recommends the adoption of a federal law requiring all medical professionals to have training on the African Diaspora, Brazilian social studies and human rights, including the responsibility to respect and protect fundamental rights, such as the rights to life and personal integrity, without discrimination.

470. The IACHR points out to Brazil, however, that under the terms of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, violence against women encompasses physical, sexual and psychological violence occurring in the community and committed by any person, including violence perpetrated or condoned by agents of the State, which includes, among other forms, rape, sexual abuse, torture, trafficking in women, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational establishments, health services or any other place.

471. Thus, it emphasizes that the State must guarantee the prompt, complete, independent and impartial investigation of incidents of obstetric violence and medical negligence, ensuring the investigation of all potentially responsible parties and, as the case may be, their prosecution and punishment. Likewise, the State should eliminate all legal and factual mechanisms to prevent internal investigations, criminal prosecutions, civil proceedings and federal investigations.

476. On the other hand, the Federal Council of Psychology approved, in January 2018, Resolution No. 001/18, which prohibits psychologists from "proposing, carrying out or collaborating with any event or service, in the public or private sphere, that refers to the conversation, reversal, readjustment or reorientation of gender identity" of trans and gender-diverse people. The document provides that professionals in the area must act with ethical principles and knowledge of the profession to help eliminate prejudice and will not collude with any action that favors discrimination. The resolution is similar to the one adopted by the Council in the case of sexual orientation, whose promise or inversion of sexual orientation was forbidden for almost two decades in Brazil.

477. The Commission reminds the State that these treatments "have no medical basis and represent a serious threat to the health and human rights of the persons concerned". It also emphasizes that different sexual orientations and gender identities are not diseases and that they have already been removed from the World Health Organization's international list of diseases. In this regard, the Commission recommends that the State adopt measures so that the governing body of the State's health services guarantee effective processes of regulation and control of doctors and health professionals who offer these services, as well as the dissemination of information based on scientific and objective evidence on the negative impact that these "therapies" have on health.

## ***Annual reports***

### ***Annual Report 2018. Chapter V: Follow-up on recommendations formulated by the IACHR in its country or thematic reports. Follow-up on recommendations made by the IACHR based on the working group on the implementation of human rights policies in the Dominican Republic.***

The IACHR recalls that the effective enforcement of the rights of women, girls, and adolescents requires guarantees for the accessibility of information and the comprehensive education necessary to make free decisions about the number and spacing of their children and aspects related to family planning, particularly for girls and adolescents. Likewise, the IACHR reiterates that the States of the region have the obligation to undertake a detailed review of all laws, norms, practices and public policies whose drafting or practical implementation may have discriminatory repercussions on women's access to all reproductive health services. These measures must take into account the situation of special risk, lack of protection and vulnerability of girls and adolescents, as well as women in particular situations of exclusion.

### ***II Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), 2018 "Working for the effective indivisibility and interdependence of all human rights for all people in the Americas".***

244. On the other hand, REDESCA is particularly concerned about the regional situation of the right to health in relation to other ESCER. In its monitoring work, as with the IACHR case system, REDESCA draws attention to the fact that this is a right for which it has identified serious violations in different countries in the region, making it urgent and a priority to adopt national and regional measures and actions to highlight the most serious situations, identify good practices in terms of legislation and public policies, as well as to coordinate efforts in this area. Along these lines, one of REDESCA's strategic projects revolves precisely around the right to health.

### ***III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas "Until dignity becomes customary". OEA/Ser.L/V/II. 24 February 2020.***

674. On the other hand, the right to health is one of the most worrisome for REDESCA's mandate, having noted profound deficiencies and violations of this right in numerous States in the region, which has made it one of the priorities of the mandate despite not being a right originally mentioned in the IACHR's Strategic Plan, which was the main basis for the mandate's own strategic agenda.

For the Office of the Special Rapporteur, the right to health is in a red zone for millions of inhabitants of the Americas, which is especially serious in the case of Venezuela and other States such as Nicaragua and Haiti that are experiencing serious human rights crises, as well as for groups and collectives that are in a particularly vulnerable situation, such as women, children and adolescents, indigenous peoples, Afro-descendants, the LGBTI population, the elderly and persons with disabilities.

676. In 2019, the right to health in the Americas has been affected by the development of preventable and epidemiological diseases, such as dengue, zika, chikungunya, measles and the

lack of treatment and infrastructure of health centers to meet the national demand for basic medical care. By way of illustration, according to figures from the Pan American Health Organization (PAHO) and the World Health Organization (WHO), 2,733,635 cases of dengue have been identified, including 1,206 deaths, with the greatest presence in Brazil (2,069,502 cases), Nicaragua (142,740 cases), Mexico (181,625 cases) and Colombia (101,129 cases). 677. Also, 11,487 confirmed cases of measles have been reported, particularly in Brazil (9,304 cases), United States (1,250 cases), Venezuela (520 cases), Colombia (212 cases), Canada (112 cases), the highest number of cases has been presented in 2019. REDESCA recognizes the efforts made by the States in the American continent to develop measures with the objective of reducing the high numbers registered during this year of preventable and epidemiological diseases detected, while calling to deepen such efforts through comprehensive public health policies with a focus on rights, gender equality and intersectionality.

678. In relation to sexual and reproductive health services, there is still a high rate of pregnancies in adolescent women between 15 and 19 years of age in the region. According to figures from the United Nations Population Fund, in 2018, the rate of adolescent pregnancies, in the aforementioned age range, is 66.5 adolescents per 1,000 women, not all of whom have the assistance of health sector professionals to perform the delivery procedure. WHO defines sexual health as: "a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence". However, measures persist on the part of the States that prevent access to medical and educational services so that children, adolescents and women can exercise their sexual and reproductive rights, which affects the enjoyment of their right to health, as well as other human rights due to their interdependence and indivisibility.

***IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas. "Human and planetary health face an unprecedented crisis." OAS/SER.L/V/II. Doc. 28 March 30, 2021.***

1212. In 2020, the pandemic affected the physical and mental health of the populations of the Americas, causing more than three million infections and up to 850,000 deaths. Thus, a new and immense group of people who require specific protection of their human rights came to light: people with COVID-19. In this regard, REDESCA makes a special call to the Inter-American community to take into account and organize all state apparatuses to implement the Inter-American Guidelines established by the IACHR in its Resolution 4/2020.

## ***Resolutions***

***Resolution 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (7 December 2019).***

### Principle 35: Right to health

Every migrant has the right to the enjoyment of the highest attainable standard of physical and mental health and the underlying determinants of health; a migrant cannot be denied health care on the basis of his or her migratory status, nor can he or she be denied health

services for lack of identity documents. All persons, regardless of their migratory status or origin, have the right to receive the same health care as nationals, including sexual, reproductive and mental health services. States should take into account that certain groups, such as women, children and adolescents, require differentiated attention.

The right to confidentiality must be guaranteed, which entails prohibiting the notification and exchange of information related to the immigration status of patients or their parents with immigration authorities, as well as the conduct of immigration control operations in or near hospitals. In the cases considered, the health condition may be linked to temporary processes of regularization of the migratory situation.

***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

Emphasizing that health is a public good that must be protected by all States and that the human right to health is an inclusive right, which corresponds to the enjoyment of other rights, including its basic and social determinants as the set of factors that condition its effective exercise and enjoyment. That the content of the right to health refers to the right of every person to enjoy the highest level of physical, mental and social well-being. Likewise, that this right includes timely and appropriate health care, as well as the essential and interrelated elements of availability, accessibility, acceptability and quality of health services, goods and facilities, including medicines and the benefits of scientific progress in this area, under conditions of equality and non-discrimination.

Emphasizing that pandemic contexts and their consequences, including the containment measures implemented by States, generate serious impacts on mental health as part of the population's right to health, particularly with respect to certain individuals and groups at greater risk.

*C. Resolutive part*

4. Guarantee that the measures adopted to face pandemics and their consequences incorporate as a priority the content of the human right to health and its basic and social determinants, which are related to the content of other human rights, such as life and personal integrity and other ESCER, such as access to drinking water, access to nutritious food, access to clean means of cleaning, adequate housing, community cooperation, mental health support, and integration of public health services; as well as responses for the prevention of and attention to violence, ensuring effective social protection, including, among others, the granting of subsidies, basic income or other economic support measures.

8. Ensure equitable distribution of and access to health facilities, goods, and services without discrimination of any kind, whether public or private, ensuring care for persons with COVID-19 and groups disproportionately affected by the pandemic, as well as persons with pre-existing conditions that make them especially vulnerable to the virus. Scarcity of resources does not justify direct, indirect, multiple or intersectional acts of discrimination.

9. Ensure access to medicines and health technologies needed to address pandemic contexts, particularly by paying attention to the use of strategies, such as the application of flexibility or exception clauses in intellectual property schemes, that avoid restrictions on generic

medicines, excessive prices of medicines and vaccines, abuse of patents, or exclusive protection of test data.

10. Ensure the availability and timely provision of sufficient quantities of biosecurity materials, supplies and essential medical supplements for use by health personnel, strengthen their technical and professional training for the management of pandemics and infectious crises, guarantee the protection of their rights, as well as the provision of specific minimum resources to deal with this type of health emergency situations.

11. Improve the availability, accessibility, and quality of mental health services without discrimination in the face of the effects of pandemic contexts and their consequences, including the equitable distribution of such services and commodities in the community, particularly to populations most at risk or at greater risk of being affected, such as health professionals, the elderly, or persons with medical conditions requiring specific mental health care.

12. Guarantee the prior and informed consent of all persons in their health treatment in the context of pandemics, as well as the privacy and protection of their personal data, ensuring dignified and humanized treatment of persons carrying or being treated for COVID-19. It is forbidden to subject people to experimental medical or scientific tests without their free consent.

***Resolution No. 4/20: Human rights of persons with COVID-19 (July 27, 2020)***

2. The main purpose of any attention or health and care service directed to persons with COVID-19 is the protection of life, health, both physical and mental, the optimization of their well-being in a comprehensive manner, the non-abandonment, the respect of their dignity as human beings and their self-determination, making use of the maximum of available resources, for the best possible care and treatment. In no case should people be subjected to torture or cruel, inhuman or degrading treatment, as there is an absolute and non-derogable prohibition in this regard.

6. In order to guarantee adequate and timely access to health care, it is necessary to avoid the collapse of health systems, as well as greater risks to the rights of persons with COVID-19 and health workers. Therefore, it may be necessary for States to enable efficient platforms and channels of care for suspected cases or cases with mild or moderate symptoms of the disease. Among the measures used by States are: telemedicine, telephone consultations, home medical visits or community support for basic health assistance and care that includes continuous monitoring of risk factors and health status that may require referral for more specialized medical attention and care.

11. In order to guarantee and respect the exercise of the rights to life and health of persons with COVID-19, States should ensure equal accessibility and affordability of the technological-scientific applications that are essential to guarantee such rights in the context of a pandemic. The right to benefit from scientific progress and its applications in the field of health requires States to adopt measures aimed, in a participatory and transparent manner, at access to essential medicines, vaccines, medical goods and technologies developed from scientific knowledge and practice in this context to prevent and treat the spread of SARS-COV-2.

18. For the protection of the right to health of persons with COVID-19 it is necessary to recognize and guarantee the right to receive adequate health services through a regulatory framework and protocols for care and treatment with clear parameters of care. Likewise, they must be constantly reviewed and updated, according to the best scientific evidence, and maintain mechanisms for supervision and oversight of health and care institutions, facilitating simple channels for filing complaints and requests for related urgent protective measures, investigating and responding to them.

19. Any type of medical treatment of persons with COVID-19 should seek the prior, free and informed consent of the affected persons. When it is proven that their health condition does not allow it, it is necessary to have the consent of their relatives or representatives. This rule only admits as an exception an emergency situation where life is at imminent risk and it is impossible for the person with COVID-19 to make a decision regarding his or her health. Urgency or emergency refers to the imminence of a risk and, therefore, to a situation in which the intervention is necessary and cannot be postponed, excluding those cases in which it is possible to wait to obtain consent. Children or adolescents with COVID-19 should be consulted and their opinion should be duly considered by their relatives, caregivers and the health team.

29. In order to guarantee the rights of persons with COVID-19, States should clearly require that non-state or private actors related to the health sector respect human rights and adopt due diligence in their operations in this field. This includes activities related to the direct provision of health services and care or the development of scientific medical research, private health insurers, as well as to the production, marketing and distribution of medical biosafety materials, such as medicines, vaccines, health technologies and equipment, or essential goods for the health care and treatment of this disease, among others.

31. In order to guarantee access to and affordability of health care for persons with COVID-19, States should adopt measures that prevent private actors or companies from causing shortages, such as disproportionate price increases in relation to essential health or biosafety goods, equipment, materials and services. This includes the use of flexibility clauses related to the patent and intellectual property regime, as well as other measures aimed at preventing and combating speculation, private hoarding or improper use of such goods.

***Resolution No.1/2021: COVID-19 vaccines in the framework of inter-American human rights obligations (April 6, 2021)***

*B. Consideration*

AFFIRMING that, in accordance with the principle of equality and non-discrimination, universal and equitable access to available vaccines constitutes an obligation of immediate compliance by the States, so that vaccines, technologies and treatments developed to address COVID-19 should be considered as public health goods, freely accessible to all people.

EMPHASIZING that, in an interdependent and intersectional manner, the rights to health, to enjoy the benefits of scientific progress, to access to information and the principle of equality and non-discrimination are intimately related to the decisions that States must make regarding vaccines to prevent COVID-19.

TAKING INTO ACCOUNT that, from a joint reading of these rights and the correlative obligations of the States, it follows that vaccines are health goods and services that must comply with the standards of availability, accessibility, acceptability and quality related to the right to health.

7. States should prioritize the inoculation of persons at higher risk of infection and those who are most at risk from the pandemic, while overcoming the context of shortages and limitations in access to vaccines. The WHO SAGE principles should be taken into consideration for the criteria and parameters to be implemented by the States. These include health care workers, the elderly, people with disabilities or with pre-existing medical conditions that put their health at risk; as well as people who, due to underlying social, occupational or geographic factors, are at greater risk of the pandemic, such as indigenous peoples, people of African descent, people in conditions of human mobility and people living in overpopulated urban areas in poverty or extreme poverty. Without prejudice to the prioritization made by the States, the main purpose of this public policy should be to guide the planning of vaccine distribution from a human rights and equity approach.

9. Regarding the definition of prioritization criteria for access to vaccination to prevent COVID-19, the applicable parameters should take into account the medical needs of public health, which should be based on: i) best available scientific evidence; ii) binding national and international human rights standards; iii) applicable principles of bioethics; and iv) criteria developed on an interdisciplinary basis. Likewise, such criteria should be established based on the principle of maximum dissemination, seeking to make the process and parameters for their adoption transparent. The prioritization criteria defined should be subject to accountability mechanisms, including possible legal claims in case such criteria are discriminatory or are defined in violation of other rights.

10. States should ensure that persons under their jurisdiction are not discriminated against due to lack of inventory of goods and supplies for inoculation. When increasing efficiency in the distribution of vaccines, human rights guarantees, and in particular the right to life and health, should be observed.

### ***Press releases***

#### ***IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights urge the State of Venezuela to guarantee and respect the rights to food and health. CP No. 016/18 (February 1, 2018)***

[The standards of the Inter-American Human Rights System have established that health and food must also be understood as a fundamental and indispensable guarantee for the exercise of the rights to life and personal integrity, which implies obligations for the States to adopt measures for the exercise of such rights. In this regard, Soledad García Muñoz, Special Rapporteur on ESCER of the IACHR indicated that "although international human rights law understands that there are certain aspects of the rights to health and food of progressive realization, it is necessary to emphasize that in relation to them there are also immediate obligations for States, including the provision without discrimination of essential medicines and food, particularly to individuals, groups and collectives in a situation of greater vulnerability and poverty. This clearly applies to Venezuela in its current context and should be the object of immediate action by the State".

[Likewise, considering that access to medicines is an integral part of the right to health, this component must be guaranteed and respected, among other actions, by providing essential medicines to address diseases that present a public health risk or those priority needs for the health of the population in Venezuela. The process of selection of such medicines and prioritization of diseases must also be evidence-based, transparent and participatory, particularly for the most severely affected groups.

***The IACHR and its REDESCA urge to ensure comprehensive human rights and public health protection perspectives in the face of the COVID-19 pandemic. CP No. 060/20 (March 20, 2020)***

With respect to health care measures, the IACHR and its REDESCA remind States that the right to health must be guaranteed to all persons within their jurisdiction, without discrimination of any kind, in accordance with inter-American and international human rights standards and instruments. Thus, they emphasize that in order to realize the right to health, the following elements are essential and interrelated: availability, accessibility, acceptability and quality. By virtue of this right, States must provide timely and appropriate health care and treatment; emphasizing that all health facilities, goods and services must be accessible without discrimination, and adapted to circumstances such as those posed by the present pandemic in accordance with the "pro persona" principle, so that the due and timely care of the population prevails over any other guideline or interest of a public or private nature. Given the nature of the pandemic and the containment measures, particular attention should also be given to the mental health of the population.

In addition, the IACHR and its REDESCA recall that the States must prioritize the integrity and well-being of health professionals in the face of the pandemic, also considering it essential that States take specific measures for the protection and recognition of people who socially assume care tasks, formally or informally, with recognition of the pre-existing social conditions and their aggravation at times of special demand for health and social assistance systems. In relation to health sector workers, the importance of adopting protocols to be applied in the treatment of COVID19 is emphasized, as well as special measures for the protection and training of health workers, including the provision of personal protective equipment and equipment for disinfection of environments, as well as the due guarantee of their labor and social security rights. [...]

In this line, the competent state authorities should cooperate and guide companies in the implementation of mitigation measures on the effects of this health crisis from a human rights approach. In particular, it should be ensured that private health and education institutions are not exempted from fulfilling their responsibilities to respect human rights, but are called upon to cooperate with the authorities and join efforts to mitigate the impacts that may be generated on the rights to health and education.

***The States of the region must take urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access. CP No. 243/20 (October 2, 2020)***

[...] it is essential that the States include mental health as a right in the health coverage, and not only attend to the problems, symptoms and physical ailments derived from COVID-19. Likewise, these services should respond to the particular needs of the different population

groups impacted and should have a human rights approach that goes far beyond a biomedical understanding. Mental health is an inextricable component of the right to health, and its realization is intrinsically linked to the full enjoyment of human rights. For this reason, there is an imperative need to adopt a human rights approach to mental health that pursues the dignity and psychological and psychosocial well-being of all persons.

Therefore, the IACHR and its REDESCA remind the States of their obligation to guarantee the right to mental health - under the criteria established by the Inter-American Human Rights System such as: availability, accessibility, acceptability and quality. Accordingly, it recommends:

1. Include comprehensive mental health care services and their financing as an essential factor in health systems, from a human rights approach and under an intersectional, gender and ethno-cultural diversity perspective, both during and after the current health emergency.
2. Consider mental health in the different areas in which policies are adopted in response to the pandemic (health, labor, education, taxation, among others), which should include psychological and psychosocial welfare services, palliative care and addiction treatment.
3. Actively combat stigmatization and neglect of mental health services.
4. Guarantee the right to timely, accurate and impartial information, culturally appropriate and uncensored, in order to reduce uncertainty and the main mental impacts of the pandemic on the population.
5. To advance campaigns of emotional and psychological well-being accessible to the population, including the necessary and appropriate modifications and adaptations to ensure their reception by persons with disabilities, children and adolescents or indigenous peoples.

### ***I. Right to social security***

83. The Protocol of San Salvador contemplates the right to social security in Article 9, which states that it should cover different items, including old age, disability, retirement, medical care, maternity leave, among other elements. Article XVI of the American Declaration on the Rights and Duties of Man also contemplates it, as well as the Charter of the Organization of American States in its Articles 45 and 46.
84. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to social security, developed within the framework of its different mechanisms.

### ***Cases filed with the Court***

#### ***Case 12.670. National Association of Former Servants of the Peruvian Institute of Social Security and others v. Peru. Admissibility and Merits (March 27, 2009)***

The right to a pension, as an integral part of the right to social security, is also within the scope of Article 26 of the American Convention, which refers to the economic, social, educational, scientific and cultural standards contained in the OAS Charter. Article 45 of the OAS Charter incorporates the right to social security in the following terms:

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, accompanied by economic development and true peace, agree to devote their utmost efforts to the implementation of the following principles and mechanisms:

(...)

b) Work is a right and a social duty, it gives dignity to those who perform it and must be provided under conditions that, including a fair wage system, ensure life, health and a decent economic level for the 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;

(...)

h) Development of an efficient social security policy.

132. The American Declaration of the Rights and Duties of Man establishes the right to social security in Article XVI in the following terms:

Every person has the right to social security to protect him against the consequences of unemployment, old age and incapacity which, arising from any other cause beyond his control, renders him physically or mentally unable to obtain the means of subsistence.

133. In this regard, the Commission concludes that the right to social security constitutes one of the economic and social standards mentioned in Article 26 of the American Convention and, in this sense, the States Parties have the obligation to ensure the progressive development of this right.

143. [The Commission considers that the creation of pension ceilings does not in itself constitute a retrogressive measure, unless such a ceiling is manifestly incompatible with the essential content of the right....

**Case 12.834. *Undocumented workers v. United States of America*. (November 30, 2016)**

115. Article XVI of the American Declaration provides: "Everyone has the right to social security for protection against the consequences of unemployment, old age, and disability arising from any cause beyond his control, which renders him physically or mentally incapable of earning his livelihood.

116. As explained in the preceding section, the OAS Charter provides in Article 45(b) that acceptable conditions of work are those that "ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstances deprive him of the possibility of working. The Commission also considers it

appropriate to point out in this regard that Article 45(h) of the Charter explicitly calls for the "development of an efficient social security policy", while in Article 46, on the subject of regional integration, the Member States consider it necessary to "harmonize social legislation [...] especially in the field of labor and social security, so that the rights of workers may be equally protected".

117. The Commission considers that the right of all workers to receive benefits arising from the employment relationship, such as those covered by workers' compensation systems, is part of a group of economic and social rights that must accompany civil and political liberties for the full protection of human rights, such as the rights to property or legal personality. Benefits such as access to employer-paid medical treatment and services to defray the cost of cure for injuries sustained on the job, as well as disability payments to provide a source of income for the injured worker to support himself during the time the disability prevents him from working, are crucial and necessary to meet the social security standards set forth in the OAS Charter and Article XVI of the American Declaration. Access to medical treatment and services is also related to the right to personal integrity. Workers earn these benefits, which are part of workers' compensation. Therefore, the Commission considers that workers' compensation programs in general, in the form they take in the states of the United States, seek to provide protections to workers in times of vulnerability and therefore fall squarely within the realm of "social security".

***Opario Lemoth Morris et al. (Buzos miskitos) (Case 12.378) v. Honduras. OEA/Ser.L/V/II.168 Doc. 74 (May 8, 2018).***

252. With regard to the right to social security, in addition to the last part of Article 45 b) of the OAS Charter referred to above, this instrument establishes in paragraph h) of the same article the commitment of the Member States to develop an efficient social security policy. In turn, in a more general manner, Article 46 refers to the work of harmonization of social security regulations at the regional level. The American Declaration includes this same right in Article XVI and the Protocol of San Salvador in Article 9; both recognize the right of every person to be protected in order to lead a decent life in the face of the consequences of unemployment, old age and disability. In addition, one of the most reiterated themes in the Charter refers to the eradication of poverty and better distribution of wealth (arts. 2.g, 3.f, and 34.b), from which it can be inferred the need for broad consideration of the right to social security for the achievement of these objectives, whether in its contributory or social assistance facet.

267. Due to the redistributive nature of social security, this right has a key role and is an essential instrument for combating poverty and social inequalities, so it should not be treated solely from an economic perspective, but taking into account a rights-based approach. In particular, the IACHR emphasizes that in order for social security to be accessible, existing coverage must include the most vulnerable and poorest people, for which reason the State must provide for plans that cover them (...)

268. Likewise, the IACHR recognizes that social insurance from a health approach increases the use of health facilities, goods and services, promotes equal access, and can afford higher levels of financial protection for the poor. Thus, for the State's health-related social insurance programs to have a rights-based approach, their design and scope must not only take into

account the financial capacity and employment situation of the recipient populations, but also their specific health needs.

***Martina Rebeca Vera Rojas (Case 13.039) v. Chile. OEA/Ser.L/V/II.160 Doc. 124 (October 5, 2018).***

65. The content of the right to social security includes consideration of its close relationship with other rights, such as the right to health, and that the suppression, reduction or suspension of the benefits to which one is entitled must be limited, based on reasonable grounds and provided for in national legislation. In addition, the State retains the responsibility to regulate and oversee the social security system when third parties administer insurance schemes, as well as to reasonably ensure that private sector actors do not violate this right, including framework legislation, independent oversight, genuine public participation, and the imposition of sanctions in the event of non-compliance. The IACHR also recognizes that social insurance from a health approach increases the use of health facilities, goods and services, promotes equal access, and can afford higher levels of financial protection for those who are normally excluded, such as children with disabilities. Thus, for public or private health-related social insurance programs to have a rights-based approach, their design and scope must take into account not only the financial capacity and employment status of the recipient populations, but also the specific health needs of those who benefit.

68. The Commission also finds that the regulation and control of treatment coverage, through public or private financing systems, must take into consideration the special situation of children with disabilities. In these terms, in the framework of a precautionary measure on a child with disabilities, the Commission has established *prima facie* that the state of health and the lack of comprehensive support could jeopardize the right to life and integrity. In this line, the IACHR notes that the development of the rights of children with disabilities recognizes the right to live independently and to be included in the community, which implies the right to grow up in the family environment, as well as "the existence of adequate and age-appropriate support services for children with disabilities is essential for them to enjoy their human rights on equal terms".

71. The Commission considers that in terms of the right to health, the regulation and oversight of the aspects that govern the health systems, not only in the final provision of the service, but also in the design of its financing through private insurers, is a prerogative of the State that must be understood as part of its obligations in the creation of conditions that ensure medical assistance and medical services to all in the event of illness. For the IACHR, this facet evidences the indivisibility and interdependence of the right to social security regarding health plans and the right to health, where the former acquires an instrumental or procedural character to satisfy the content of the latter. When these plans are managed by private companies, the State has the obligation to ensure that the design and administration of health insurance take into account the elements of the rights to social security and to health. Hence, the State's obligation to ensure the effectiveness of human rights has effects on relations between private individuals, who consequently have the obligation to respect them; that is, with respect to insurance companies, for example, the search for profitability and economic gain in the health insurance system should not nullify the enjoyment of the rights protected by the American Convention.

***Thematic reports***

***Guidelines for the Development of Progress Indicators in the Area of Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14 (July 19, 2008)***

81. With regard to social security, Article 9 of the Protocol states that "Everyone has the right to social security for protection against the consequences of old age and incapacity which renders him physically or mentally incapable of securing the means for a decent and dignified life. In case of death of the beneficiary, the social security benefits will be applied to his dependents. In the case of persons who are working, the right to social security shall cover at least medical care and subsidy or retirement in cases of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth".

82. In the first place, the guiding concept in the field of social security is that of contingency, which refers to a future event or fact that, should it occur, entails harmful consequences for the individual. It is, therefore, a future event -with a high degree of probability of occurrence- that leads to the need to protect the individual, or a group of individuals, in the face of such an eventuality.

83. Social security protection begins to act once a contingency has arisen, the effect of which is that a person, or the members of his family, or both, are adversely affected in their standard of living, either as a consequence of an increase in consumption, or a decrease or suppression of income.

84. Contingencies are classified in most of the legislation of Latin American and Caribbean countries into three types: i) pathological contingencies: those situations that must be protected in the event of the individual contracting an illness (health insurance), accident or occupational disease (disability or illness pensions); ii) socio-economic contingencies: are those precautions taken in the event of loss of income (retirement or pension) or lack of work (unemployment insurance), or because of the "expansion of the family" such as the birth of children, marriage, (family allowances); iii) biological contingencies: group those precautions taken in active life to ensure the protection of the beneficiaries (pension for the surviving spouse or minor children), in case of death (burial expenses), or a pension for those non-workers lacking resources (ex gratia or non-contributory pensions).

85. In other words, in all cases, what is "protected" is that which, in the case of absence, is understood as deprivation. For this reason, the contingency is indissolubly linked to the lack - in the more traditional concept of Social Security-, or to the state of need of this person -in the current vision. In either case, it must be linked to protection -coverage- that is, its overcoming.

86. With the development of the right to social security, mechanisms were designed for the effective receipt of the benefit, including dependent workers and in some cases their families. For non-salaried workers, coverage was reduced to certain and specific contingencies, although in most cases, protection is provided as a result of voluntary adherence. In other words, the principle of universality has not been sufficiently developed, and it remains an indispensable requirement to prove certain circumstances in order to have access to them.

87. These particularities are contemplated in the Protocol, since it incorporates the difference in coverage between salaried workers and those who are not gainfully employed. In addition,

as a result of the reforms that have taken place in the countries of the region over the past decade, each of the forms of organization of social security in each country have undergone significant transformations, especially in terms of access, coverage and related rights.

88. Strictly speaking, in addition to seeking to record the degree of realization of the right and the conditions of access to it, the indicators are intended to capture in greater detail the transformations that have taken place in the systems of responsibility, in order to identify who is responsible for guaranteeing social security coverage. That is, whether the State continues to be the main guarantor - and provider - or whether the central responsibility has been transferred to private individuals, through specific and private forms of insurance. The latter systems only preserve a protective role for the State in domestic legislation, or even less clear or even more attenuated responsibilities in some legal frameworks. These circumstances are considered relevant to the work of monitoring compliance with the Protocol.

***Report on Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

282. In this regard, the IACHR also recalls that the organs of the inter-American system have already recognized the protection of the right to social security through both Article 26 of the ACHR and Article XVI of the American Declaration. In particular, the Commission has indicated that States must ensure that legislation, policies, programs and allocated resources facilitate access to social security for all members of society. Within this framework, they should adopt specific measures for the implementation of social security schemes, in particular those designed to protect disadvantaged and marginalized individuals and groups, and adopt monitoring measures to ascertain the extent to which this right is being exercised. It has also indicated that the State's social insurance programs relating to health should have a right-based approach, their design and scope should not only take into account the financial capacity and labor situation of the recipient populations, but also their specific health needs.

***Country reports***

***Situation of human rights in Honduras. OEA/Ser.L/V/II. Doc. 146 (August 27, 2019).***

129. Due to the official recognition of the limited characterization of the problem of poverty in Honduras, the State reported that it made efforts to improve the analysis and evaluation of public policies in social matters by implementing the methodology of the "Multidimensional Measurement of Poverty", for that purpose it used various indicators for the analysis of the guarantee of four rights: health, education, labor and housing. According to the data analyzed, for example, for the year 2013, it found that 7 out of 10 people were in a situation of multidimensional poverty, of which the majority of people of working age were not contributors to a social security system, 71% of people between 15 and 49 years old have less than 7 years of schooling and more than half use firewood for cooking. The IACHR emphasizes the need for these studies to address the existence of inequality, poverty and extreme poverty in an institutional manner; however, the persistence of the aforementioned figures and the findings made in situ by this Commission, call for the urgency of the State to increase its efforts by articulating such actions in a more systematic and participatory manner. To this end, the linking of regulations, programs, plans or public policies with the human rights approach as well as the direct strengthening of the performance of the respective state agencies within the

framework of the commitments made in the 2030 Agenda on Sustainable Development Goals, will be essential.

268. With regard to their labor rights, women in Honduras receive almost half the salary compared to their male counterparts, work mostly in the informal sector, and are particularly affected by unemployment. The Commission also received information regarding the conditions of domestic work in the country and the situation of labor exploitation in which approximately 125,000 women and adolescents are reportedly found. According to information received by the Commission during its visit to the country, many women and adolescent domestic workers face working hours of more than 15 hours, without social security, with salaries below legal standards, with informal contracts and deprived of communication with their families, in contradiction with national and international labor provisions on the subject. In this regard, the Commission has learned of the draft Law on Domestic Work under discussion in Congress which, although it would represent an advance in the protection of the rights of persons working in the domestic sphere, has gaps such as the determination of an adequate minimum remuneration, the obligation to affiliate the worker to social security, and the regulation of working hours, among others. The Commission also notes that the State of Honduras has not signed Convention 189 of the International Labor Organization concerning domestic workers, and urges the State to consider doing so.

### ***Situation of human rights in Cuba. OEA/Ser.L/V/II. Doc. 2 (3 February 2020)***

Testimonies from Cubans collected by the IACHR confirm dissatisfaction with the minimum retirement age and the weakness of social assistance coverage. When asked about social security, one of the persons interviewed stated:

You have to meet certain parameters. Many people had their checkbooks withdrawn. In 2008, a law was written where it explains that social security is to help people who have no parents, children or people living with them. Your two children can get married tomorrow. As you have children, they are obliged to take care of her. Her mother is obligated to help her. Since you have family, social security does not help them for first.

#### *Conclusions and recommendations:*

On the right to social security without discrimination, adopt measures to ensure that social benefits are sufficient in amount and duration to provide an adequate standard of living.

### ***Annual reports***

***Annual Report of the Inter-American Commission on Human Rights 1984-1985. OEA/Ser.L/V/II.66 Doc.10 rev. 1 (October 1, 1985). Chapter V. Areas in Which Measures Are to Be Taken to Give Greater Effect to Human Rights in Accordance with the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Section II. Additional Protocol to the American Convention on Economic, Social and Cultural Rights.***

871. With respect to the right to social security, it should be borne in mind that although this right is closely linked to the right to work and in many situations covers the provisions granted to workers, it must also be considered to refer to persons who are not working. Such is the

case of the inclusion of provisions on unemployment insurance, for example, and those provisions referring to health benefits and which are linked to the consideration of that specific right. In this field of the right to social security, the task of drafting standards should take into account the experience of the International Labor Organization, which has conventions regulating this right, such as Convention No. 102, to which several OAS Member States are States Parties. In this regard, the observations made in connection with the Preliminary Draft Additional Protocol are also of great interest.

## ***J. Trade union rights***

85. Trade union rights contemplate the exercise of freedom of association for work-related purposes; in this sense, they demonstrate the indivisibility, interrelation and interdependence of civil, economic and social rights. Article 8 of the Protocol of San Salvador contemplates the right to organize and join trade unions, as well as the exercise of the right to strike.
86. For its part, the right of association contemplated in the American Declaration on the Rights and Duties of Man contemplates association for trade union purposes in Article XXII. The Inter-American system has progressively recognized the exercise of these rights, through their potential justiciability in accordance with Article 19.6 of the Protocol of San Salvador.
87. This section presents an update of the material contained in the Compendium on Labor and Trade Union Rights, approved in 2020 by the Inter-American Commission on Human Rights. It then compiles some of the most representative documents and paragraphs of the IACHR regarding trade union rights, developed in the framework of its different mechanisms.

### ***Case filed with the Court***

#### ***Former Workers of the Judiciary (Case 12.432) v. Guatemala. OEA/Ser.L/V/II.173 Doc. 172 (September 28, 2019).***

75. The Commission begins by emphasizing that the right to strike is protected by Article 26 of the ACHR, while Article 45(c) of the OAS Charter expressly incorporates it by establishing that: "Employers and workers, both rural and urban, have the right to associate freely for the defense and promotion of their interests, including the right of collective bargaining and the right to strike on the part of workers.

78. Beyond the direct reference to the right to strike in the OAS Charter, the IACHR considers that it is appropriate to take into account the sources, principles and criteria of international law to determine the scope and content of said right, taking into account Article 29 of the American Convention, which expressly refers to the norms of general international law for its interpretation and application.

83. In sum, for the IACHR it is clear that the protection of the right to strike, together with freedom of association and collective bargaining, are fundamental pillars to guarantee the right to work and its fair and equitable conditions as a right to which workers and their organizations can have recourse in defense of their economic, social and professional interests. Bearing in mind that the exercise of the right to strike consists of the collective suspension of

labor activity in a voluntary and peaceful manner, generally for the purpose of obtaining some type of improvement related to certain socioeconomic or labor conditions, the IACHR emphasizes its instrumental component for the achievement of other fundamental rights within the labor sphere, the balance in relations between employers and workers, the resolution of collective labor conflicts and the materialization of respect for human dignity and labor rights, that is, it becomes a channel for the participatory democratic principle within the sphere of labor.

84. Although the right to strike is not absolute and may be limited by law, restrictions must take into account the purpose of the right, so that workers are not unduly restricted or rendered inoperative in practice. Now, like the freedom of association and the right to collective bargaining, the IACHR understands that the right to strike can be qualified as a freedom insofar as it is necessary for the State to refrain from unduly interfering in the exercise of this right and to ensure that the necessary conditions and guarantees exist for its effective realization. The IACHR observes that the enjoyment of the right to strike is a prerequisite, and at the same time, the result of the enjoyment of other human rights; for example, it can make it possible to evidence irregular or unsatisfactory labor practices that then lead to the realization of the right to work and its fair and equitable conditions; in turn, it can be a corollary to the exercise of the freedoms of expression and assembly, being a temporary collective demonstration in defense of the interests of workers, and therefore be directly related, depending on the facts of each case, to those rights.

85. On this basis, and as with freedom of association and the right to collective bargaining, the IACHR also considers it important to specify that the element of progressivity present in Article 26 of the ACHR, which can usually affect the evaluation of certain components of economic and social rights, does not generate substantive consequences on the analysis of the right to strike because of the way in which this right is materialized in practice. Hence, the threshold for allowing limitations related to the obligation of progressivity of the States on the right to strike should be much stricter and higher, and in no way imply the lack of protection of workers against acts of discrimination, interference or retaliation in the exercise of their rights in the labor sphere.

89. The IACHR will evaluate whether such legal limitation to the right to strike was conventionally acceptable. The IACHR recalls that in order to determine whether a restriction to a right is conventionally acceptable, both the Commission and the Court have resorted to a graded proportionality test that includes the following elements: (i) the existence of a legitimate aim; (ii) appropriateness, i.e., whether there is a conventionally acceptable restriction to the right to strike: (i) the existence of a legitimate aim; (ii) appropriateness, that is, the determination of whether there is a logical relationship of means-to-ends causality between the distinction and the aim pursued; (iii) necessity, that is, the determination of whether there are less restrictive and equally suitable alternatives; and (iv) proportionality in the strict sense, that is, the balance of the interests at stake and the degree of sacrifice of one with respect to the other.

90. Regarding the legitimate purpose, the IACHR considers that in principle, the requirements of prior voting by workers in order to be able to strike are intended to ensure that strikes have the collective support of workers in the demand for labor rights, which constitutes a legitimate purpose. On the other hand, as to suitability, the IACHR considers that the measure contributes

in a certain way to the achievement of the indicated purpose, since the sense of the vote demonstrates the will to go on strike.

88. On July 31, 2019, the IACHR and its REDESCA submitted to the Inter-American Court of Human Rights a request for an advisory opinion on the scope of States' obligations, within the framework of the Inter-American system, on guarantees to freedom of association, its relationship with other rights and its application with a gender perspective. On May 5, 2021, the Court issued advisory opinion n. 27/2021, interpreting Articles 13, 15, 16, 24, 25 and 26 in relation to Articles 1.1 and 2 of the American Convention on Human Rights, Articles 3, 6, 7 and 8 of the Protocol of San Salvador, Articles 2, 3, 4, 5 and 6 of the Convention of Belém do Pará, Articles 34, 44 and 45 of the Charter of the Organization of American States, and Articles II, IV, XIV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man.
89. The request was also prepared based on the work of monitoring economic, social, cultural and environmental rights carried out by the IACHR and its REDESCA. This activity carried out by the Commission and its Special Rapporteurship made it possible to present the context of freedom of association in the Americas, analyzing the exercise of freedom of association in the Americas, its impact on working conditions and the use of new technologies at work, the scope of restrictions and anti-union acts, and the place of women in the labor market and in union entities.

***Request for an advisory opinion to the Inter-American Court of Human Rights: Scope of States' obligations under the Inter-American system on guarantees to freedom of association, its relationship with other rights and application from a gender perspective (July 31, 2019).***

2. Freedom of association and freedom of association are fundamental human rights which, together with the right to collective bargaining, assembly and strike, form the basic core for protecting and promoting the right to work and to just and favourable conditions of work. For the ILO, the rights to organize and to bargain collectively are enabling and make it possible to promote democracy, good governance of the labor market and decent working conditions. For its part, the development of the content of the right to work is key to strengthening economic and social systems from a rights-based approach, and in particular is of vital importance for the guarantee and enjoyment of other human rights and the autonomous development of the individual. This includes the existence of a system that guarantees every worker access to decent employment and the right not to be unjustly deprived of it.

7. In this regard, the purpose of this request is to provide a joint interpretation of several key inter-American standards on the obligations of States in relation to the exercise of freedom of association, and collective bargaining and strikes as part of this, as catalysts for the protection of labor rights, as well as the interpretation of these standards from a gender perspective. In contexts of anti-union practices, unemployment, loss of the real value of wages, labor precariousness, discrimination and gender-based violence against women at work and labor impacts due to the intensive use of new technologies in the continent, it is relevant and timely for the Inter-American Court to develop these issues and provide guidance to States for the proper fulfillment of their obligations.

68. The advances of new technologies in the labor market can potentiate the gender inequalities that have been identified in the workplace. For this reason, the Report of the World Commission on the Future of Work has recommended the creation of a transformative agenda

to achieve gender equality, including policies that promote the sharing of care and domestic responsibilities between men and women, measures to ensure accountability in order to promote gender equality, and the empowerment of women's voice, representation and leadership.

69. The IACHR considers that in order for the States to be able to face the challenges regarding the realization of freedom of association in the regional context, and in particular in relation to its effects on labor conditions, gender equality, and the use of new technologies in this area, it is appropriate to develop and specify the standards and actions that they must comply with under inter-American human rights norms. This becomes even more important if it is held that the exercise of freedom of association is a right that promotes and helps to ensure fair and equitable working conditions. Hence, it is also understood that ensuring the active participation of women in this process is central to the promotion of gender equality in the world of work.

***Written observations submitted by the IACHR on the request for an advisory opinion to the IACHR Court***

14. The IACHR observes that both the right to assembly (Art. 15 of the ACHR and XXI of the American Declaration) and the right to freedom of association (Art. 16 of the ACHR and XXII of the American Declaration) are closely related to the exercise of the rights to freedom of association, collective bargaining and strike recognized in Art. 8 of the Protocol of San Salvador and Art. 45(c) and (g) of the OAS Charter. Also, taking into account that both organs of the Inter-American system have reaffirmed their competence to rule on possible violations of Article 26 of the American Convention by States, the Commission understands that the latter clause also relates to the rights to freedom of assembly and freedom of association under the object of this request for an advisory opinion. In this regard, the IACHR recalls that in its pronouncements on the matter, the Court has emphasized the interdependence and indivisibility of economic, social and cultural rights with respect to civil and political rights.

21. The IACHR has noted that the right to elect and be elected and to organize labor unions are rights recognized in the American Convention and in the Inter-American Democratic Charter. Free union organization, without undue State interference, is an important element of any democratic system. These decisions are the sole responsibility of the members of trade union organizations, as part of their right to elect and be elected freely within their organizations and to develop their activities without undue interference from the State or other actors with an interest in interfering in them, such as the companies or entities where they work or business associations in general. The role of the State is to ensure that no arbitrary or illegal acts are committed in such processes and that the rights of their members are not violated.

35. Freedom of association and freedom of association are fundamental human rights that, together with the right to collective bargaining, assembly and strike, form the basic core for protecting and promoting the right to work and to just and favourable conditions of work. For the ILO, the rights to organize and to bargain collectively are enabling and make it possible to promote democracy, good governance of the labor market and decent working conditions. For its part, the development of the content of the right to work is key to strengthening economic and social systems from a rights-based approach that guarantees every worker access to decent employment and the right not to be unfairly deprived of it.

40. In addition, States should: develop public policies to promote unionization and business associations, strengthen unions, eliminate anti-union practices, provide education on freedom of association and labor citizenship, resolve labor disputes and monitor collective bargaining; develop campaigns to promote freedom of association; guarantee resources for programs to protect and promote freedom of association; develop legal mechanisms, programs or campaigns to guarantee the right to freedom of association, strike and collective bargaining for outsourced workers; create programs to encourage the organization and collective bargaining spaces of outsourced workers; create programs to promote the organization and collective bargaining spaces of outsourced workers; develop legal mechanisms, programs or campaigns to guarantee the right to freedom of association, strike and collective bargaining of outsourced workers; create programs that encourage the organization and collective bargaining spaces of vulnerable or traditionally discriminated population; publish bulletins or information on the enjoyment of freedom of association by the population, in a culturally appropriate manner, taking into account the diversity of languages and the population with disabilities.

50. The Commission has established that the right to collective bargaining is closely related to fundamental labor rights. The Commission begins by noting that the right to collective bargaining is protected by Article 26 of the ACHR, while Article 45(c) of the OAS Charter expressly incorporates it in relation to the collective exercise of the right to work, stating that "employers and workers, both rural and urban, have the right to associate freely for the defense and promotion of their interests, including the right of collective bargaining and the right to strike on the part of workers. In view of this, the Commission considers that the right to collective bargaining should be considered as part of the basic collective labor rights. Notwithstanding the foregoing, the IACHR also takes into account that, although the right to collective bargaining is generally associated with the functioning of trade unions, as it is an essential part of the effective exercise of the right of workers to organize and join trade unions, it is also an autonomous right in that it has its own content and scope in light of international standards in this area.

65. The Commission has also established that the right to strike is closely related to fundamental labor rights. The Commission notes that the right to strike is protected by Article 26 of the ACHR, while Article 45(c) of the OAS Charter expressly incorporates it, stating that "employers and workers, both rural and urban, have the right to associate freely for the defense and promotion of their interests, including the right to collective bargaining and the right to strike on the part of workers. Similarly, Article 8.1.b of the Protocol of San Salvador states that States must guarantee the right to strike. In view of this, the Commission considers that the right to strike should be considered as an integral part of the basic collective labor rights within the inter-American system.

84. The Inter-American Commission has observed that women's access to greater educational opportunities and training has not translated into equal access to employment, job promotions and managerial or higher-ranking positions, and equal pay in employment for equal value. The IACHR has stated that adequate respect for and guarantee of women's right to work, free from all forms of discrimination and under conditions of equality, is a key component for the eradication of poverty, empowerment, and autonomy of women. In this framework, taking into account that freedom of association and the rights to collective bargaining and strike serve as catalysts and active instruments for the protection of the right to work and its fair and equitable conditions, for the IACHR the States must necessarily incorporate a gender perspective within

their policies and related regulatory frameworks so that, on the one hand, actions that generate discrimination and violence against women at work are avoided, as well as active measures that protect and promote both their labor and trade union rights.

### ***Resolutions***

#### ***Resolution No. 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (December 7, 2019).***

##### Principle 30: Freedom of assembly and association

Every migrant has the right to freedom of peaceful assembly and association.

This right includes the freedom to form associations and trade unions in the State of residence for the promotion and protection of the economic, social, cultural and other interests of migrants.

##### Principle 36: Right to work

Every migrant has the right to work, which entails the possibility of obtaining the means to lead a dignified life by performing a freely chosen or accepted lawful activity.

Every migrant shall have equal access to just and favorable conditions of work and to all labor rights, including the right to form and join trade unions, the right to social security, and the right to just and favorable conditions of work, including fair and equitable remuneration, minimum age for employment, maximum hours of work, health and safety standards, protection against unjustified dismissal, discrimination and reprisal, freedom to change employers, and collective bargaining. A person's immigration status shall not constitute justification for depriving him/her of the enjoyment and exercise of his/her labor rights. Discrimination or harassment in the workplace should not be tolerated under any circumstances.

#### ***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

5. Protect the human rights, and particularly the ESCER, of working people most at risk from the pandemic and its consequences. It is important to take measures to ensure economic income and livelihood security for all workers, so that they have equal conditions to comply with containment and protection measures during the pandemic, as well as access to food and other essential rights. Those who will continue to work should be protected from the risks of contracting the virus and, in general, adequate protection should be given to jobs, wages, freedom of association and collective bargaining, pensions and other social rights interrelated to the labor and trade union sphere.

#### ***Resolution No. 4/2020: Human rights of persons with COVID-19 (July 27, 2020)***

42. Persons with COVID-19 should be protected against unjustified dismissal, both in the public and private spheres, as a guarantee of employment stability, which includes special measures aimed at protecting the rights and conditions derived from the same. Similarly, it is

recommended that States take measures that include sick leave related to COVID-19-related illnesses, compensation for exercising caregiving functions, as well as facilitating active participation in trade unions and workers' groups, among other aspects.

### ***K. Right to work***

90. The right to work is recognized in Article 6 of the Protocol of San Salvador. Similarly, the Charter of the Organization of American States recognizes the right to work, or some of its elements, in Articles 34 and 45, while the American Declaration on the Rights and Duties of Man contemplates it in Article XIV.
91. Likewise, the right to work establishes a more general perspective of labor rights, which includes the opportunity to obtain the means to lead a dignified and decent life through the performance of a lawful activity, freely chosen or accepted. It also implies not being forced in any way to exercise or perform a job and the right of access to a system of protection that guarantees each worker access to employment.
92. This section presents an update of the material contained in the Compendium on Labor Rights, approved in 2020 by the Inter-American Commission on Human Rights. In this regard, some of the most representative documents and paragraphs of the IACHR regarding the right to work, developed in the framework of its different mechanisms, are compiled below.

### ***Case filed with the Court***

#### ***Opario Lemoth Morris et al. (Buzos miskitos) (Case 12.378) v. Honduras. OEA/Ser.L/V/II.168 Doc. 74 (May 8, 2018).***

248. In applying the above parameters to the present case, the Commission begins by emphasizing that Article 45 of the OAS Charter incorporates the rights to work and the conditions necessary for its realization in the following terms:

Member States [...] agree to devote their best efforts to the implementation of the following principles and mechanisms:

b) Work is a right and a social duty, it gives dignity to those who perform it and must be provided under conditions that, including a fair wage system, ensure life, health and a decent economic level for the 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.

249. More generally, Article 34 g) of the Charter also includes among the goals for achieving integral development, "fair wages, employment opportunities and acceptable working conditions for all.

259. For their part, in Articles 6 and 7 of the Protocol of San Salvador, the States Parties undertake to adopt measures that guarantee the full effectiveness of the right to work and recognize that all persons must enjoy the same under just, equitable and satisfactory conditions; These include the right to a living wage, safety and hygiene, the prohibition of hazardous work for minors under 18 years of age and all work that may endanger their health,

safety or morals, as well as the reasonable limitation of working hours, particularly in the case of dangerous, unhealthy or night work.

261. Likewise, the IACHR understands that in order to comply with the minimum content of this right, one of the essential elements is that the States regulate and carry out actions aimed at ensuring its effective compliance, in particular by monitoring and sanctioning its violation by public and private employers. This becomes even more important in view of the existence of unequal and abusive forms of labor treatment derived from precarious labor relations. This means that when a company or employer has generated harmful effects on the enjoyment of this right, the State must carry out actions for the investigation and eventual sanction of these, as well as the integral reparation of the victims through legitimate processes that comply with the recognized standards of due process.

262. The IACHR considers that labor inspections are among the essential measures that States must deploy to prevent and monitor respect for this right; in particular, they must guarantee their independence, the existence of trained personnel, prior mapping of sensitive and at-risk areas and industries, the authority to enter workplaces without prior notice, and facilitate victims' access to justice. It must also ensure that sanctions against private actors are adequate and proportional to the seriousness of the damage, including criminal sanctions, administrative sanctions and pecuniary measures.

279. For the IACHR, it is clear that the facts described above fall within the scope of occupational health, given the close relationship between the behavior of the companies in the lack of provision of safe working conditions, the State's omissive attitude in supervising them, and the harmful effects on the right to health of the Miskito divers. Precisely, one of the basic obligations of the States in this area is the supervision and evaluation of the effectiveness of their policies on the matter, which must include at least "an examination of the consequences of exposure to harmful substances during work, the specific modalities of working conditions, the work environment, work relations and the social, environmental and political context in which the work is carried out". The Commission also highlights the essential duty of the State to ensure that workers participate and have access to adequate and timely information on occupational health in the process of developing standards and policies in this area. In sum, the Commission considers that the human rights violations that occurred in the present case did not occur in isolation, but rather in the context of a situation of abandonment, discrimination, indifference and lack of presence on the part of the State, which had full knowledge of the problems affecting the indigenous Miskito population and the abuses committed by the companies in the area, all without adopting measures to offer the population conditions to satisfy the most minimum content of the rights to work and to fair, equitable and satisfactory working conditions, health and social security; and, as will be analyzed below, access to justice. Nor did it comply with its oversight and supervision obligations, since it did not require due diligence measures from the companies involved in said activities that would allow the protection of said rights, nor did it sanction them once the deplorable situation of the workers had been verified.

***Neusa dos Santos Nascimento and Gisele Ana Ferreira (Case 12.571) v. Brazil. Report n. 5/2020, OEA/Ser.L/V/II.175 Doc. 11, March 3, 2020, presented on July 29, 2021 before the IACHR Court.***

40. The IACHR reiterates that among the immediate obligations with respect to the right to work protected by Article 26 of the ACHR is the obligation to guarantee its exercise without discrimination and to adopt deliberate and concrete measures aimed at the full realization of the right in question; these obligations are not subject to progressive implementation or subordinated to available resources. According to the Committee on Economic, Social and Cultural Rights, "discrimination in employment consists of a wide range of violations that affect all stages of life [...] and can have a non-negligible impact on the employment status of individuals"; therefore, among the core obligations is to "prevent measures that lead to increased discrimination and unequal treatment in the public and private sectors against disadvantaged and marginalized individuals and groups" in this area. In other words, States have the obligation to take all appropriate and reasonable measures to protect persons under their jurisdiction against violations of the right to work attributable to third parties, including investigation and, where appropriate, judicial or administrative sanction.

45. The IACHR also emphasized that States must ensure that Afro-descendants have access to decent work in the main economic and occupational sectors without discrimination, which includes programs to promote their rights within companies, whether public or private, as well as policies aimed at eradicating discrimination and segregation in this area. Specifically, it recommended that States require companies to conduct human rights due diligence in the context of their operations. Within the United Nations framework, it also indicated that States should use all tools at their disposal to promote human rights due diligence as part of standard business practice.

### ***Thematic reports***

#### ***Report on Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

241. The human right to work and to just, equitable and satisfactory conditions are widely recognized within the Inter-American system. The Inter-American Court and the Commission have indicated that this right is protected by Article 26 of the American Convention by deriving it from the economic, social and educational, scientific and cultural norms contained in the OAS Charter. In particular, it has been indicated that Article 45.b of the Charter establishes that "[l]abor is a right and a social duty," and Article 34(g) of the Charter includes among the goals for achieving integral development, "(f)alse wages, employment opportunities and acceptable working conditions for all. Likewise, Article XIV of the American Declaration provides that "[e]very person has the right to work under decent conditions and to freely follow his vocation [...]"

242. The Protocol of San Salvador also enshrines the right to work and its just and equitable conditions in Articles 6 and 7. Article 6 requires States to adopt measures that guarantee the full realization of the right to work, especially those referring to the achievement of full employment, vocational guidance and the development of technical and professional training projects. Article 7 deals with working conditions, such as remuneration, stability, rest, among others. Article 8 of the Protocol also protects the right to organize and join trade unions and the right to strike.

246. The IACHR has emphasized that one of the substantive elements of the content of the right to work implies the free choice or acceptance of work, which in turn entails, either through the

creation of opportunities that allow or through the adoption of measures that do not impede, following the vocation that each person has and engaging in the activity that reasonably responds to his or her expectations or life plans. It has also indicated that in order to comply with the minimum content of this right, one of the essential elements is that the States regulate and carry out actions aimed at ensuring its effective fulfillment, in particular by monitoring and sanctioning its violation by public and private employers. This becomes even more important given the existence of unequal and abusive forms of labor treatment derived from precarious labor relations; it has also underscored the obligation of the States to combat discriminatory practices in the workplace with respect to the LGBTI population, that is, not only must they refrain from generating such practices, but also establish a comprehensive system that actively combats discrimination based on gender identity or expression in the workplace.

### ***Country reports***

#### ***Situation of human rights in Cuba. OEA/Ser.L/V/II. Doc. 2 (3 February 2020)***

##### *F. Right to work*

266. The IACHR received information regarding the existence of official and independent analyses on racial inequalities in the guarantee and quality of the right to work. In this regard, the Citizens' Committee for Racial Integration has denounced historical racial inequalities in income levels, and that Afro-Cubans are marginalized in the tourism and foreign investment sectors, and that Afro-Cubans are overrepresented in low-status occupations and underrepresented as owners in the self-employed sector.

267. The Commission also gathered information indicating that the Labor Code does not identify gender identity as a prohibited ground for discrimination. In general, employers do not take gender identity into account when there is a vacancy. Trans persons in Cuba do not have access to dignified occupations and their options are restricted to low-paying positions. As a result, they constitute one of the most vulnerable sectors of the population in the labor market. The IACHR had access to reports that address the limitations to the access of trans persons to management or promotion positions in employment and the practice of homophobic attitudes against LGBT persons in the workplace.

268. The IACHR also heard the report *Una mirada desde la juventud cubana: education, employment and participation*, by the Social Platform Centro Esperanza (CE), Cuba Independiente y Democrática (CID), the Social Platform Juventud Activa Cuba Unida (JACU), and the Patriotic Union of Cuba (UNPACU), who, among their main conclusions, pointed out that young people, once they finish their studies, are placed to work by the State, "and must pay the State for their period of study with mandatory social service or else they lose their academic degree." They also indicated that the Cuban State is the main employer on the island and does not necessarily offer jobs that are in line with the interests and needs of young people. In addition, it does not always offer jobs that correspond to the interests, needs and studies of young people.

269. The IACHR also collected testimonies from Cubans on the right to work in Cuba, and the persons interviewed pointed out cases of racial discrimination in access to work, insufficient

wages for family subsistence, lack of employment and precarious labor conditions. One of the persons interviewed stated:

There is something that happens in Cuba that is a serious violation of workers' rights; in foreign companies, free hiring is impossible. No one can hire freely. The one that hires or subcontracts is a state institution and takes over the salary benefits of this worker. It is paying the government for that person's work. It is never going to reach 10 percent of what the man works.

*Conclusions and recommendations:*

23. On the right to work, take action to prohibit any discrimination in access to employment and in retaining employment. It is recommended that measures be taken to ensure that remuneration provides decent living conditions, taking into account external factors such as the cost of living and other prevailing economic and social conditions, as well as being sufficient to enable the worker and his or her family to enjoy other rights.

**Situation of human rights in Brazil. OEA/Ser.L/V/II. Doc. 9 (12 February 2021)**

*1. Victims of forced labor or labor under conditions analogous to slavery*

126. Despite the differences in the definition of slave labor and work in conditions analogous to slavery, the Inter-American Commission, in line with the decision of the Inter-American Court of Human Rights, understands that these concepts are not limited to the maintenance of a property function over a certain person or group, but are related to the presence of two central elements: the situation or condition of the person and the exercise of power or control over the enslaved person to such an extent that the victim's personality is annulled. On many occasions, workers do not see themselves or do not identify themselves as people in a condition analogous to slavery, even when they are subjected to degrading working conditions, when they are induced to contract artificial debts, when they are deprived of personal identity documents and when they are subjected to exhausting working hours.

127. The IACHR notes that, according to the information received, in Brazil there is a cycle of perpetuation of work in conditions analogous to slavery, due to which many workers are rescued more than once from these conditions in a continuous cycle. The situation of extreme socioeconomic vulnerability in which they find themselves forces them to leave their city of origin in search of better paid activities. Lured by false promises from tricksters or by the poor living conditions in the places where they live, the workers are subjected to working conditions in which these violations take away their dignity and freedom and often expose them to situations of extreme physical or psychological violence. The information received confirms that, in the cases in which these workers manage to escape from slavery-like conditions as a result of control measures or because they escape from workplaces, due to the lack of effective public policies to mitigate their socioeconomic vulnerability they are prone to accept another job that, again, takes away their dignity or freedom. In this way, the exploited person remains tied to the cycle of contemporary slave labor. According to information from the Brazilian State, in the last 20 years, around 50 thousand workers have been rescued from this situation.

***Annual Report***

***IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas. "Human and planetary health face an unprecedented crisis." OAS/SER.L/V/II. Doc. 28 March 30, 2021.***

1155. The pandemic has also severely affected people's labor and trade union rights. According to the ILO, unemployment in Latin America and the Caribbean rose by 10 percent in 2020 due to the COVID-19 pandemic, especially impacting women. According to data published in 2020 by the International Trade Union Confederation (ITUC), the global rights index on the situation of workers shows that, of the 10 worst countries to work in the world, 3 would be in Latin America. In addition, there are record levels of informal labor, as well as violent responses to strikes and demonstrations. The pandemic is leaving workers more vulnerable to dismissal or lack of protection, with a disproportionate impact on women and vulnerable populations. In particular, we note that: "working people, especially those living in poverty or with low wages, depend by definition on their labor income for their subsistence and taking into account that there are certain categories of jobs that expose people to greater risks of seeing their human rights affected by the pandemic and its consequences, such as health workers, food production and distribution, cleaning, care, rural, informal or precarious workers, among others".

1156. In this scenario, REDESCA reinforces the call made in Resolution 1/2020 of the IACHR, in the sense of: "Protecting the human rights, and particularly the ESCER, of those workers most at risk due to the pandemic and its consequences. It is important to take measures to ensure economic income and livelihoods for all workers, so that they have equal conditions to comply with containment and protection measures during the pandemic, as well as conditions of access to food and other essential rights. Those who will continue to work should be protected from the risks of contracting the virus and, in general, adequate protection should be given to jobs, wages, freedom of association and collective bargaining, pensions and other social rights interrelated to the labor and trade union sphere".

1157. During 2020, all societies in the Americas and around the world have benefited from the immeasurable efforts of health and caregiving workers, as well as those who perform essential jobs. People who have given up their rest, their health and even their lives in the attempt to care for others. REDESCA is deeply concerned that "health and care workers face a series of obstacles, threats, harassment and aggressions or risks in their front line work, acting as human rights defenders, when they make a special effort to guarantee access to the rights of people who require health and care services; and that they have faced situations of stigmatization, as well as inadequate protection. Also, expressing concern about the number of COVID-19-related infections and deaths of health and care workers. In this regard, REDESCA recalls and calls for effective compliance with the Inter-American Guidelines on the protection of health and care workers who care for people with COVID19.

### ***Resolutions***

***Resolution No. 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (December 7, 2019).***

Principle 36: Right to work

Every migrant has the right to work, which entails the possibility of obtaining the means to lead a dignified life by performing a freely chosen or accepted lawful activity.

Every migrant shall have equal access to just and favorable conditions of work and to all labor rights, including the right to form and join trade unions, the right to social security, and the right to just and favorable conditions of work, including fair and equitable remuneration, minimum age for employment, maximum hours of work, health and safety standards, protection against unjustified dismissal, discrimination and reprisal, freedom to change employers, and collective bargaining. A person's immigration status shall not constitute justification for depriving him/her of the enjoyment and exercise of his/her labor rights. Discrimination or harassment in the workplace should not be tolerated under any circumstances.

***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

5. Protect the human rights, and particularly the ESCER, of working people most at risk from the pandemic and its consequences. It is important to take measures to ensure economic income and livelihood security for all workers, so that they have equal conditions to comply with containment and protection measures during the pandemic, as well as access to food and other essential rights. Those who will continue to work should be protected from the risks of contracting the virus and, in general, adequate protection should be given to jobs, wages, freedom of association and collective bargaining, pensions and other social rights interrelated to the labor and trade union sphere.

52. Offer differentiated attention to women health professionals working on the front line of response to the COVID-19 health crisis. In particular, offer adequate resources for the execution of their tasks, mental health care, as well as means to reduce the double workload they have by accumulating the professional role and domestic care tasks.

***Resolution No. 4/2020: Human rights of persons with COVID-19 (July 27, 2020)***

42. Persons with COVID-19 should be protected against unjustified dismissal, both in the public and private spheres, as a guarantee of employment stability, which includes special measures aimed at protecting the rights and conditions derived from the same. Similarly, it is recommended that States take measures that include sick leave related to COVID-19-related illnesses, compensation for exercising caregiving functions, as well as facilitating active participation in trade unions and workers' groups, among other aspects.

***Press releases***

***The IACHR and its REDESCA urge to ensure comprehensive human rights and public health protection perspectives in the face of the COVID-19 pandemic. CP No. 060/20 (March 20, 2020)***

In addition, the IACHR and its REDESCA recall that States should prioritize the integrity and well-being of health professionals in the face of the pandemic, and also consider it essential that States take specific measures for the protection and recognition of people who socially assume care tasks, formally or informally, with recognition of the pre-existing social conditions and their aggravation at times of special demand for health and social assistance systems. In relation to health sector workers, it is important to adopt protocols to be applied in the

treatment of COVID19 , as well as special measures for the protection and training of caregivers, including the provision of personal protective equipment and equipment for disinfection of environments, as well as the due guarantee of their labor and social security rights.

***Written observations submitted by the IACHR on the request for an advisory opinion to the IACHR Court on the scope of States' obligations under the Inter-American system on guarantees to freedom of association, its relationship with other rights and application from a gender perspective (June 2020).***

84. The Inter-American Commission has observed that women's access to greater educational opportunities and training has not translated into equal access to employment, job promotions and managerial or higher-ranking positions, and equal pay in employment for equal value. The IACHR has stated that adequate respect for and guarantee of women's right to work, free from all forms of discrimination and under conditions of equality, is a key component for the eradication of poverty, empowerment, and autonomy of women. In this framework, taking into account that freedom of association and the rights to collective bargaining and strike serve as catalysts and active instruments for the protection of the right to work and its fair and equitable conditions, for the IACHR the States must necessarily incorporate a gender perspective within their policies and related regulatory frameworks so that, on the one hand, actions that generate discrimination and violence against women at work are avoided, as well as active measures that protect and promote both their labor and trade union rights.

85. The IACHR recalls that limitations on the exercise of women's right to work also have repercussions on the exercise of all their human rights, including their economic, social and cultural rights in general. The Commission considers that it is important that States not only refrain from discriminating or tolerating forms of discrimination in the labor sphere, including the trade union sphere, but also notes their obligation to create conditions that facilitate the insertion and permanence of women in these spheres. For example, in the area of maternity, the IACHR recommends that States adopt a comprehensive strategy that addresses not only the adoption of maternity leave, but also paternity and parental leave, so that the reproductive role of women does not become an excluding and discriminatory variable.

### ***L. Right to housing***

93. The right to housing is protected by the American Convention on Human Rights and, similarly to the right to water, is not expressly provided for in the Protocol of San Salvador. However, the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man do, as well as other regional instruments. The former refers in Article 34 to the dedication of efforts to achieve adequate housing for all sectors of the population; the latter refers to it in Article XI, where the right to housing (among others) is also considered from a perspective of progressive realization.
94. The Inter-American Commission has addressed the right to housing from various perspectives: in relation to the right to property of indigenous peoples, with respect to persons in a situation of mobility, and with respect to the measures to be adopted in the context of forced evictions.

95. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding the right to housing, developed within the framework of its different mechanisms.

***Thematic reports***

***Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities. OEA/Ser.L/V/II. Doc. 47/15 (December 31, 2015).***

312. The Commission considers that indigenous and tribal peoples have special protection under international law against forced displacement, derived from the reinforced obligations of the State with respect to their right to collective property. This is because forced displacement directly threatens the very existence of indigenous and tribal peoples, since it breaks the fundamental relationship that they have with their territories, both in terms of physical survival, since they derive their material sustenance from said territory, and cultural survival, insofar as their culture is directly linked to the territory.

***Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15 (December 31, 2015).***

234. In accordance with the American Convention on Human Rights and other norms of international and domestic law, IDPs are entitled to freely enjoy the same rights and freedoms as other nationals. However, in practice, they are rarely able to do so, since internal displacement per se contradicts the effective enjoyment of human rights. This is because one of its main characteristics is that its victims have been forced to flee their homes or places of habitual residence, which implies leaving behind their life projects and, in most cases, the loss of land, housing and other assets and components of their patrimony, as well as the affectation of various rights that derive from uprooting and displacement.

235. As the Commission has already emphasized, forced internal displacement leads to multiple violations of the human rights of its victims. Some of the rights violated as a result of internal displacement are: i) the right not to be internally displaced; ii) the right to move freely within the territory of the State; iii) the right to freely choose one's place of residence; iv) the right to personal integrity; v) the right to private and family life; vi) the right to property; and vii) the right to work. In the case of children and adolescents, specific rights are, in addition, the right not to be separated from the family, the right to special protection and care, and the right to education. In the case of women, the right to the adoption of measures due to their vulnerability to violence as displaced persons. In the case of indigenous and Afro-descendant communities and peoples, the right to their ancestral and traditional lands and territories, and the right to their culture.

***Forced migration of Nicaraguan persons to Costa Rica. OAS/Ser.L/V/II. Doc. 150 (September 8, 2019).***

267. The Commission recalls that the right to housing is recognized in a vast international corpus iuris such as Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, Article 23.1 of the Universal Declaration of Human Rights, Article 14.2 of the Convention

on the Elimination of All Forms of Discrimination against Women, article 27.3 of the Convention on the Rights of the Child, article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and article 21 of the Convention Relating to the Status of Refugees. In the American sphere, Article 26 of the American Convention, Article 34.k of the OAS Charter, Article XI of the American Declaration and other norms related to the protection of human rights that include provisions on housing, such as Article III.1.a. of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Article 24 of the Inter-American Convention on the Protection of the Human Rights of Older Persons and various articles of the American Declaration on the Rights of Indigenous Peoples are relevant.

268. Regarding the content and scope of this right, the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 noted that the right to housing should be interpreted broadly, "as the right to live somewhere in security, peace and dignity," for the following reasons:

(i) First, ... "the inherent dignity of the human person", from which the Covenant rights are said to derive, requires that the term "housing" should be interpreted in a sense which takes into account various other considerations, and principally that the right to housing should be guaranteed to everyone, regardless of income or access to economic resources; (ii) Secondly, the reference in article 11 (1) should not be understood to mean housing for the sake of it, but adequate housing. As recognized by the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 in its paragraph 5: "the concept of 'adequate housing' ... means having a place in which to isolate oneself if desired, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure, and an adequate situation in relation to work and basic services, all at a reasonable cost".

278. On the other hand, the IACHR also emphasizes that although the right to water and sanitation is a right with its own content, there is a close relationship with the enjoyment of the right to adequate housing. In this regard, the Commission recalls that: "no household should be denied the right to water on the basis of the classification of its housing or the land on which it is located [...] Refugees and asylum seekers must be granted the right to water under the same conditions as nationals". In contexts such as the one analyzed, the realization of the minimum essential content of the human rights to water and sanitation cannot be an option conditioned on the financial, human or technical capacity of the State. It is therefore necessary for the State of Costa Rica to have an inclusive approach to access to water and sanitation, incorporating this specific group of people, and taking into account the particular needs of women in this situation in the planning and emergency response of water supply and sanitation services, in order to ensure and meet the specific needs of refugees, asylum seekers or internally displaced persons. Likewise, the IACHR recognizes that as long as these persons have access to decent jobs, as developed above, the possibilities of living autonomously are greater and, therefore, the financial sustainability for the payment of water and sanitation services is also strengthened.

279. While the Commission recognizes that the full realization of economic, social and cultural rights must be achieved progressively, this should not be misinterpreted to mean that the international obligations of States with respect to these rights are devoid of any substantive

content. States have a minimum obligation to ensure the satisfaction of at least essential levels of each economic, social and cultural right, such as the right to adequate housing.

293. Lack of adequate housing can have a profound impact on children and adolescents, given the integral link between housing rights and their cognitive, physical, cultural, emotional and social development. A safe living environment is crucial for children and adolescents to effectively exercise other human rights, such as the rights to education, health, and personal security.

***Protest and Human Rights: Standards on the Rights Involved in Social Protest and the Obligations that Should Guide State Response. OEA/Ser.L/V/II IACHR/RELE/INF.22/19 (September 2019).***

149. Resistance to eviction may, in some cases, constitute a form of protest when the operation represents a violation of the right to housing. The Committee on Economic, Social and Cultural Rights has considered that "tenure [of housing or land] takes a variety of forms, such as rental (public and private), cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Whatever the type of tenure, all people should enjoy some degree of security of tenure that guarantees them legal protection against eviction, harassment and other threats."

150. In these cases, evictions can only be justified in exceptional situations, warning that they should not result in people being left homeless or exposed to violations of other human rights. In the presence of children, the elderly, indigenous people or other groups or persons in vulnerable situations, States should exhaust all existing measures for the peaceful channeling of conflicts, dialogue and negotiation, in compliance with the principles of absolute necessity and proportionality in the use of force.

151. In the case of a violent eviction of a landless encampment by private actors, the Inter-American Court emphasized that when the authorities have knowledge of a situation of real risk to an individual or group of individuals due to acts committed by third parties or private parties, they have the responsibility to prevent or avoid that risk.

**Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)**

185. Under this premise, the IACHR and its REDESCA consider that the States must establish and direct concrete actions aimed at promoting and implementing special measures for access to housing with special attention to the Afro-descendant population. Furthermore, taking into account that one of the substantial elements of this right is cultural adequacy, such actions should be particularly focused on people facing conditions of extreme vulnerability, such as those who are homeless, migrants, displaced or forcibly evicted.

186. Therefore, the IACHR and its REDESCA urge States to have differentiated strategies and public policies on the right to housing aimed not only at providing access to decent housing for Afro-descendants but also at addressing the deficiencies and inequalities in the current systems that reinforce discrimination, marginalization and stigmatization of Afro-descendants in this area. These actions should include understanding housing as a human right and adopting measures that protect people from business or third party activities that may affect

the realization of the right to housing, including the financing of housing, the prevention of forced displacement and eviction, and the affordability of housing for lower income groups in order for Afro-descendants to have access to decent and adequate housing with security of tenure. All of the above, taking into consideration factors of intersectionality that could aggravate the contexts of poverty and extreme poverty in this population due to the structural discrimination to which it has been exposed, such as belonging to historically discriminated groups such as children and adolescents, women, the elderly or people with disabilities, LGBTI groups, migrants and rural communities.

### ***Country reports***

#### ***Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OEA/Ser.L/V/II. Doc. 43/15 (December 31, 2015).***

480. The IACHR considers that legal amendments and the development of inter-institutional instruments should be carried out as soon as possible, with the main focus that, according to international norms and standards, States must refrain from carrying out forced evictions and are obliged to adopt measures to protect persons and communities under their jurisdiction from evictions. In this regard, the Committee on Economic, Social and Cultural Rights (ESCR Committee) has stated that "cases of forced evictions are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law". This is because, as warned through the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (Basic Principles and Guidelines on Evictions and Displacement), they constitute "serious violations of a number of internationally recognized human rights", such as the right to property, the right to protection against arbitrary or unlawful interference with one's home, the right to adequate housing, among other related rights.

481. In light of international norms and standards, an order of forced eviction of indigenous communities or peoples requires the Public Prosecutor's Office and the Judiciary to determine it through a strict and exhaustive scrutiny that takes into account as fundamental elements, not only the existence of a registered title, but also the broadest and most complete registry and cadastral information possible, the determination of the existence of a land process in process before a judicial or administrative authority, elements of a historical and anthropological nature regarding the occupation of the land, among others. In the event that it is determined that the land could be lands of traditional use and occupation of indigenous communities illegitimately acquired, they must refrain from ordering their eviction without the prior consent of the indigenous communities. Likewise, the IACHR considers it fundamental that all institutions involved, including the Ministry of the Interior and the PNC, act with the conviction to comply with the obligation to refrain from forced evictions and provide protection against them, which, in the case of indigenous peoples and communities, implies an obligation of special protection, according to the same Constitution and international law.

483. The IACHR reiterates the call made to the State to effectively and fully comply with its international duties, taking into account that, according to international standards on forced evictions in cases of lands and territories that do not belong to or are not claimed by indigenous peoples and communities, States must provide sufficient alternative housing that meets certain

minimum requirements such as essential food, drinking water, basic shelter and housing; fair and impartial compensation for any damages incurred; and restitution and return, where feasible, immediately after eviction, except in cases of force majeure. The Commission emphasizes that, in the case of ancestral lands of indigenous peoples or communities, States must adopt all necessary measures to allow the return of indigenous peoples to their traditional territories in safety and dignity, which, in the case of forced displacement caused by violence, includes the duty of the State to take measures to combat impunity of the actors responsible for such violence.

***Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17 (December 31, 2017).***

12. The IACHR notes that evictions affect the most vulnerable people and intensify inequality, social conflict, segregation, and ghettoization. Forced evictions are often linked to the lack of legal certainty over their land, which is an essential element of the right to adequate housing.

232. The IACHR warns that the practice of forced evictions that the Guatemalan State has been implementing in recent years, as well as the internal displacement that has resulted from the evictions. In accordance with human rights norms and standards, the IACHR considers it pertinent to specify that evictions should only be carried out in observance of international human rights norms and standards and the principles of exceptionality, legality, proportionality and suitability, with the legitimate purpose of promoting social welfare and guaranteeing solutions to the evicted population that may consist of restitution and return, resettlement to a different, better or equal quality land, and rehabilitation or fair compensation. Likewise, in the event that an eviction is necessary, States must provide protection for the dignity, life and security of the evicted persons, ensuring at a minimum access to nutritionally and culturally adequate food, potable water and sanitation, housing with adequate conditions of habitability, as well as clothing that offers protection from inclement weather and other threats to health, access to medical services, means of subsistence, education and access to justice, as well as guaranteeing access to humanitarian aid and independent monitoring. In addition, secure access to common property resources on which they previously depended must be guaranteed, including the ability to harvest their goods, belongings, crops and harvests.

(Guarantee that evictions are carried out only in observance of human rights norms and standards and the principles of exceptionality, legality, proportionality and suitability, with the aim of promoting social welfare and guaranteeing solutions to the evicted population that may consist of restitution and return, resettlement and rehabilitation or fair compensation.

(Recommendations) 52. Adopt measures to guarantee the protection of the dignity, life and security of evicted persons, ensuring at a minimum access to food, potable water and sanitation, shelter, clothing, access to medical services, livelihoods and access to justice, as well as guaranteeing access to humanitarian assistance and independent monitoring.

***Situation of human rights in Cuba. OEA/Ser.L/V/II. Doc. 2 (3 February 2020)***

*A. Right to adequate housing*

236. The IACHR notes that the State has adopted measures to promote the right to adequate housing, however, the housing deficit in Cuba has reportedly increased, estimated at 1,400,000 dwellings. Taking into account that, according to state information, there is a national average

of 2.98 persons per housing unit, the deficit would affect about 4,200,000 inhabitants, or 37% of the population. In addition to the housing deficit, 38% of the existing housing units are reported to be in poor or fair condition. According to press information, the provinces most affected by the housing deficit are Havana, Holguin and Santiago de Cuba.

237. The Commission also takes note of academic analyses of the measures taken by the State of Cuba to protect the right to housing. One of them stresses that, despite the new policies in this regard, the housing problem in Cuba is related to issues "not only economic-social, but also regulatory, associated with the issue of home ownership, financing, demographic problems and subsidies," and adds that it is important to harmonize the forms of ownership, with the forms of production of materials for construction and repair of housing in order to create an effective public policy. Another analysis highlights the importance of modifying the current housing subsidy process so that people with low economic solvency can carry out construction work on their homes.

*Conclusions and recommendations:*

18. On the right to adequate housing, adopt measures that guarantee this right, taking into account the need to provide permanent access to potable water, energy, sanitation and washing facilities, as well as waste disposal. It is also recommended that measures be taken to ensure that adequate housing is affordable, ensuring full and sustainable access to adequate resources for housing to which they are entitled.

***Situation of human rights in Brazil. OEA/Ser.L/V/II. Doc. 9 (12 February 2021)***

*2. People in street situations, homeless population and inhabitants of favelas and peripheral areas.*

111. In accordance with inter-American standards, "the right to housing should not be interpreted in a narrow or restrictive sense that equates it, for example, with the shelter that results from the mere fact of having a roof over one's head or considers it exclusively as a comfort. Rather, it should be considered as the right to live somewhere in security, peace and dignity". The IACHR stresses that the right to housing must encompass adequate habitation, i.e., "having a place where one can isolate oneself if desired, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure, and an adequate situation in relation to work and basic services, all at a reasonable cost." During the on-site visit to Brazil, the IACHR received information on the long absence of effective public policies for the occupation of urban land and the concrete exercise of the right to housing in Brazil, where the interests of real estate companies often prevail over those of the population in a historically vulnerable situation, who end up living on the streets.

119. Another aspect of the vulnerability of persons in street situations is linked to the ability to maintain family nuclei. The IACHR received information on cases in which the assistance provided to street women with newborns does not take into account their right to motherhood and to care for their children. Mother and child are reportedly separated early. The child is sent to a shelter on a temporary basis (when there is a possibility of return to the biological family) or permanently, in which case there is an irreversible loss of family custody, which may lead to an adoption process or to the child remaining in the shelter until the age of 18. The Commission

took cognizance of the 2016 technical note of the Ministry of Health, Social Development and Fight against Hunger that establishes a flow of care for women in this situation. However, the lack of dissemination of the technical note and a budget undermines its effectiveness.

The IACHR stresses the importance of addressing violations of the right to housing as they intersect with poverty and vulnerability caused by other exclusion processes. These factors have led, on the one hand, to a disorderly increase in urban squatter settlements, commonly known as favelas, and, on the other hand, to a large increase in the number of people living on the streets. In addition, the relocation of poor families forces them to leave the central areas to live in more remote neighborhoods without infrastructure. In this sense, it is necessary that, despite fiscal austerity measures, housing and homelessness policies be maintained and expanded.

*Recommendations:*

6. Design, implement and finance comprehensive housing policies with the objective of reducing precarious housing and socioeconomic equity from an ethnic-racial and gender perspective. Such policies should take into account the physical characteristics of the territory, the configuration of the infrastructure in place, the availability of equipment and basic services, as well as the interests of economic agents and the organic links that populations establish with the place of reproduction of their daily lives.

***Resolutions***

***Resolution 4/19: Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (7 December 2019).***

Principle 38: Housing

Every migrant has the right to adequate housing, including: (i) availability of services, materials, facilities and infrastructure, including permanent access to natural and common resources, potable water, energy for cooking, heating and lighting, sanitation and toilet facilities, food storage, waste disposal, drainage and emergency services; and (ii) habitability, in the sense of being able to provide convenient space for its occupants and protect them from cold, humidity, heat, rain, wind or other health hazards, as well as structural hazards and disease vectors. Accessibility, affordability, physical protection, and cultural appropriateness for occupants must also be ensured.

***Resolution 1/20: Pandemic and human rights in the Americas (April 10, 2020)***

68. Ensure the inclusion of LGBTI people, particularly trans people who are in a cycle of poverty, exclusion and lack of access to housing, in the formulation of social assistance policies during the pandemic-including access to safe housing and shelter-as well as in eventual economic reactivation measures.

***Press releases***

***IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic. CP 124/20 (June 2, 2020)***

On the other hand, the pandemic context has also made visible the extreme difficulties faced by people living in poverty and particularly by the population living on the streets or lacking access to adequate housing for the exercise and enjoyment of their rights to housing, as well as to a healthy environment, drinking water and sanitation. Thus, the Commission and REDESCA are aware that the effectiveness of any health prevention measure in the region will depend on the general condition of the social determinants that make up the full enjoyment of the right to health. This includes factors such as air, soil and water quality, especially when it is well known that the most polluted sectors are those where people living in poverty, extreme poverty and other historically discriminated groups also live. Likewise, measures to contain the virus imply the pre-existence of access to housing and adequate spaces where people can stay and comply with social distancing, as well as affordable access to drinking water on a continuous basis to prevent health affectations and possible risks of contagion.

### ***M. Poverty, inequality and pandemic***

96. This compendium is prepared with full consideration of the inter-American context in which the obligations of States in the area of economic, social, cultural and environmental rights are developed. On the one hand, it highlights the poverty and inequality in the region, known for being the most unequal on the planet; both circumstances represent, from the perspective of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur, serious obstacles to the exercise of different rights, particularly economic, social, cultural and environmental rights. Moreover, considering the interdependence, interrelation and indivisibility of rights, it may also imply violations of civil and political rights. Thus, in certain circumstances, the international responsibility of the State may be engaged, when violations may be attributable to it.
97. In the context of the inter-American system, poverty is also understood as a situation of inequality and discrimination. To combat it, it is necessary that public action be developed with the objective of achieving not only formal but also material equality, which imposes on the States the obligation to develop affirmative actions that allow those groups whose rights have traditionally been violated to achieve their effective realization.
98. In addition to this regional context, the pandemic caused by the COVID-19 virus presents a particularly important challenge for the States of the Americas, especially considering the containment measures that have been adopted and that have had important economic and budgetary effects for the countries of the region. The pandemic has exacerbated and given visibility to the pending needs and challenges for the institutional framework, not only in the area of health, but also in other rights widely recognized in the inter-American instruments, including social security, labor rights and education.
99. In addition, the pandemic has specifically affected different groups in vulnerable situations, which underscores the need for the actions of the States of the Americas to provide for the adoption of structural measures with a human rights perspective, in order to propose appropriate responses that contribute to reducing the inequality that has been accentuated in the current context. This will be particularly important in the context of economic recovery and

reactivation, situations that must be addressed with public policies and other public action measures based on human rights in their integrality, indivisibility and interdependence.

100. The IACHR, through its interpretative and normative development function, has generated relevant standards with respect to the inter-American context, which should be observed by the States in order to comply with their treaty obligations derived from inter-American law.
101. The following is a compilation of some of the most representative documents and paragraphs of the IACHR regarding poverty and inequality, as well as the pandemic context, within the framework of its different mechanisms.

### ***Thematic reports***

#### ***Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017).***

90. Through its various mechanisms, the Commission has observed that the high levels of discrimination and social exclusion to which certain groups living in poverty are subjected have made their citizen participation, access to justice and effective enjoyment of rights illusory. Taking into account the indivisibility of rights, the IACHR has pointed out that the violation of economic, social and cultural rights generally entails a violation of civil and political rights. In this context, a situation of maximum violation of economic, social and cultural rights will mean a maximum violation of civil and political rights.

91. For the purposes of this report, poverty constitutes a problem that translates into obstacles to the enjoyment and exercise of human rights in conditions of real equality by individuals, groups and collectivities living in such a situation. The situation of poverty brings with it a heightened exposure to human rights violations; vulnerability increased by the restrictions derived from the socioeconomic situation of individuals. Likewise, in certain cases, poverty could also imply human rights violations attributable to the international responsibility of the State.

94. In sum, although the situation of poverty may vary in its intensity, becoming extreme, and in its duration, being a chronic situation, from a human rights perspective, the Commission considers that it is the duty of the States to remove the obstacles to the enjoyment and exercise of the human rights of the persons, groups and collectivities living in this situation. As well as to create the necessary conditions that guarantee a dignified life for people living in poverty until it is eradicated.

95. The Commission, through its various working tools, has shown that poverty and extreme poverty generally translate into situations that constitute a violation of the basic right to non-discrimination. They constitute a framework of social exclusion, material deprivation, vulnerability to different forms of violence and inaccessibility to basic public services. Therefore, there is a consensus that poverty can always entail the denial of civil and political rights as well as economic, social and cultural rights.

96. In contexts of poverty and extreme poverty, human rights violations add up, and each one of them has a negative impact on the others, causing a vicious circle of interrelated affectations and violations based on multisectoral discrimination, with very serious consequences for the dignity of individuals.

160. Specifically, the inter-American system not only takes up a formal notion of equality, limited to requiring objective and reasonable criteria for distinction and, therefore, prohibiting unreasonable, capricious or arbitrary differences in treatment, but also moves toward a concept of material or structural equality that is based on the recognition that certain sectors of the population require the adoption of affirmative measures of equalization. This implies the need for differential treatment when, due to the circumstances affecting a disadvantaged group, equal treatment implies suspending or limiting access to a service, good or the exercise of a right.

161. The IACHR has held that, in accordance with inter-American standards to guarantee equality and the principle of non-discrimination, States are obliged to adopt affirmative action measures and to establish distinctions based on de facto inequalities for the protection of those who should be protected. Otherwise, the omission of affirmative action measures to reverse or change discriminatory situations, de jure or de facto, to the detriment of a certain group of persons, generates the responsibility of the State.

179. In sum, the Inter-American Commission emphasizes that the international obligations regarding the principle of non-discrimination and equality before the law constitute obligations of immediate compliance that must be considered by the States when adopting the pertinent public measures and policies with respect to persons, groups and collectivities living in poverty and extreme poverty.

***Public policies with a human rights approach. OEA/Ser.L/V/II. Doc. 191 (September 15, 2018).***

118. The IACHR has pointed out that public expenditure planning should promote equality in the Americas and that an adequate fiscal policy can contribute to the redistribution of wealth to reduce inequality gaps, to the correction of market failures, to the investment necessary for the fulfillment of human rights, particularly economic and social rights, and to accountability between the State and the citizenry.

119. In this regard, the Commission understands that, from a human rights perspective, the following principles and obligations are particularly relevant for fiscal policy: ensuring minimum essential levels; mobilization of the maximum available resources for the progressive realization of economic, social, cultural and environmental rights; compliance with the principle of progressivity and non-regression; and the application of the principle of equality and non-discrimination.

***Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

398. The main recommendations made by the IACHR in this area refer, in general, to the social inclusion of trans persons in the eventual economic reactivation measures; the adoption of protocols for health care and complaints of domestic violence; the adoption or strengthening of policies that guarantee respect for gender identity in the hospital setting and guarantee the continuity of medical services provided to trans persons; and the adoption of campaigns to prevent and combat homophobia, transphobia and discrimination based on sexual orientation, guaranteeing the protection of the right to gender identity.

405. In light of this, the Commission called on the States to guarantee access of LGBTI persons to social care programs with a comprehensive human security perspective, guaranteeing safe shelter, access to food and medicine for LGBTI persons in street situations, particularly taking into account transgender women who engage in sex work.

408. Finally, the IACHR stresses the importance that, during national, regional or global emergencies, such as pandemics, States redouble their efforts to combat homophobia, lesbophobia, transphobia and biphobia, sending clear messages condemning all acts of violence and discrimination based on prejudice and ensuring their prevention, investigation, prosecution, punishment and reparation.

### **Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)**

80. Through its monitoring mechanisms, the IACHR has observed that older persons of African descent face permanent obstacles to the guarantee of their rights related to social security; specifically in access to health services, treatment of illnesses and palliative care; as well as difficulties in obtaining pensions; a context that is aggravated when there are situations of special vulnerability such as economic poverty, disability and gender, as a result of the structural discrimination to which they have been exposed.

83. The IACHR notes that in the context of the COVID-19 pandemic, racial disparities have deepened and become more visible, which has had a differential impact on people of African descent, who experience a high risk of infection and death from this disease due to different factors such as place of residence and physical environment, Afro-descendants, due to the conditions of vulnerability to which they have been subjected, are increasingly exposed to contexts of poverty and extreme poverty, facing difficulties in accessing quality housing, precarious access to basic services such as electricity, water and sanitation, as well as barriers to access to available public transportation; These situations increasingly expose them to conditions of overcrowding, homelessness, informal settlements, among others.

84. Another factor is the health systems and health care. In this regard, the IACHR notes that there is a lack of data disaggregated by ethnic and racial origin in the epidemiological records, and therefore a lack of specific information on people of African descent in the health systems. Additionally, a third factor refers to the informal characteristics of the occupation and working conditions, since people of African descent represent high numbers in essential jobs -activities that cannot be performed from home-, and also in unskilled work environments -lacking social benefits-, situations that make them more exposed to the virus contagion due to frequent contact with the general public. This situation means that people of African descent have lower incomes and increasingly higher levels of indebtedness.

88. The IACHR understands that, notwithstanding the aforementioned data, the disproportionate impact of the COVID-19 pandemic on people of African descent cannot only be reduced to an analysis of statistical data, since, as stated in paragraphs 83 and 84, not only is the right to health affected, but other economic, social, cultural and environmental rights are also affected in an interdependent and disproportionate manner. Along these lines, the IACHR warns that it is not "being of African descent" that facilitates the spread of COVID-19; on the

contrary, it reaffirms that it is the structural and systematic discrimination historically faced by the Afro-descendant population that makes them more vulnerable to infection.

90. The IACHR and its REDESCA urge States to implement a vaccine distribution plan that guarantees equal access to Afro-descendants and tribal communities, considering cultural relevance and taking into account priority conditions such as socioeconomic origin and geographic location; gender, disability, age, being head of household, migratory status/forced displacement, sexual orientation and gender identity/expression, among others.

### ***Annual Reports***

#### ***IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) Working for the effective indivisibility, interdependence and protection of all human rights for all people in the Americas. "Human and planetary health face an unprecedented crisis." OAS/SER.L/V/II. Doc. 28 March 30, 2021.***

66. For REDESCA, the fight against poverty and inequality is the overarching umbrella of the entire mandate, in line with the United Nations 2030 Agenda. Considering that in the last decade significant progress was made in the region in terms of ESCER, which allowed large sectors of the population to escape poverty and extreme poverty, it is particularly worrying that these achievements are now at serious risk of regression at the regional level. For this reason, REDESCA recalls that States have the obligation to take deliberate and concrete steps to advance in the eradication of poverty, addressing this problem from a human rights approach and developing strategies to guarantee at least essential social and environmental rights to their entire population.

In addition to expressing its concern about the persistence of poverty and inequality in the region, as well as the risk of increasing poverty and extreme poverty in countries where serious human rights crises are occurring, REDESCA emphasizes that these aspects of particular concern have guided the preparation of this Report. However, taking into consideration the circumstances of the pandemic, REDESCA indicated from the outset that the health crisis represents a series of extraordinary challenges from the point of view of health systems, the daily lives of people and for the enforcement of human rights within the framework of democratic systems. In this sense, REDESCA took the right to health as its main focus of work, taking into consideration the social determinants of health from a cross-cutting and intersectional perspective.

1210. From this report as a whole, as well as from the preceding paragraphs, REDESCA notes with deep concern how the situation of ESCER in the region has worsened during 2020. This is largely due to the impact of the COVID-19 pandemic, which has produced devastating figures, in addition to those of poverty, hunger and unemployment, since, as this report makes clear, we are facing a health, economic, social and environmental crisis, which in addition to causing an unprecedented impact on the lives of people in the region and the world, has revealed what for many was already true, that social inequalities are present and have not gone away despite the progress that we as societies have made in various areas. In this line, what we are observing is a multidimensional crisis, which is affecting the most basic human rights of people who were already in a position of extreme vulnerability before the pandemic.

## ***Resolutions***

### ***Resolution 1/18: Corruption and human rights (March 2, 2018), Section 3.***

B) Corruption in the management of public resources compromises the capacity of governments to comply with their social rights obligations, including health, education, water, transportation and sanitation, which are essential for the realization of economic, social, cultural and environmental rights, particularly of the most vulnerable populations and groups. Among these groups, women, social leaders, land rights defenders, Afro-descendant and indigenous peoples are the most affected. Likewise, the impact of corruption is very serious in guaranteeing the rights of persons deprived of liberty, migrants, and LGBTI persons.

C) The administration of assets seized as a result of acts of corruption must incorporate an economic, social and cultural rights approach, in such a way that reparation of the rights of the persons affected by these crimes must be contemplated.

### ***Resolution No. 1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

#### ***B. Considering part***

##### **I. The Human Right to Health and other ESCER in the Context of Pandemics**

Considering that, although there are impacts on all human rights in the diverse contexts caused by the pandemic, especially in relation to the right to life, health and personal integrity, the right to work, social security, education, food, water and housing, among other ESCER, are seriously affected.

Emphasizing that pandemic contexts and their consequences accentuate the importance of compliance with and observance of international human rights obligations, particularly those related to ESCER, in the economic and political decisions adopted by States, whether individually or as members of multilateral financing institutions or international bodies.

Recalling that, in the context of the pandemic, States have a heightened obligation to respect and guarantee human rights in the context of business activities, including the extraterritorial application of this obligation, in accordance with inter-American standards on the matter.

Recalling that in the specific context of a pandemic, States have the duty to encourage applied research, innovation and dissemination of new scientific technologies directly applicable to the fight against the spread of the pathogen and, especially, to the discovery of new alternatives for its treatment, even while making compatible the integral protection of human life with rules and procedures that regulate intellectual property on such technologies and findings.

Recalling that the States of the hemisphere have recognized the high relevance of the protection of ESCER as an essential condition for democracy, the rule of law and sustainable development; and that health is a human right recognized in the international corpus iuris of human rights.

Noting that pandemics have the potential to seriously affect the right to health directly and indirectly, due to the health risk inherent in the transmission and acquisition of infection, the

exposure of health personnel and the high incidence on social organization and health systems, saturating general health care.

Emphasizing that health is a public good that must be protected by all States and that the human right to health is an inclusive right, which corresponds to the enjoyment of other rights, including its basic and social determinants as the set of factors that condition its effective exercise and enjoyment.

That the content of the right to health refers to the right of every person to enjoy the highest level of physical, mental and social well-being. Likewise, that this right includes timely and appropriate health care, as well as the essential and interrelated elements of availability, accessibility, acceptability and quality of health services, goods and facilities, including medicines and the benefits of scientific progress in this area, under conditions of equality and non-discrimination.

Emphasizing that pandemic contexts and their consequences, including the containment measures implemented by States, generate serious impacts on mental health as part of the population's right to health, particularly with respect to certain individuals and groups at greater risk.

Noting that the majority of working people, especially those living in poverty or with low wages, depend by definition on their labor income for their subsistence and taking into account that there are certain categories of jobs that expose people to greater risks of seeing their human rights affected by the pandemic and its consequences, such as health workers, food production and distribution, cleaning, care, rural, informal or precarious workers, among others.

### III. Groups in situations of special vulnerability

Recalling that when issuing emergency and containment measures in the face of the COVID-19 pandemic, the States of the region should provide and apply intersectional perspectives and pay special attention to the needs and differentiated impact of such measures on the human rights of groups historically excluded or at special risk, such as: older persons and persons of any age with pre-existing medical conditions, persons deprived of liberty, women, indigenous peoples, persons in a situation of human mobility, children and adolescents, LGBTI persons, Afro-descendants, persons with disabilities, workers, and persons living in poverty and extreme poverty, especially informal workers and persons in street situations; as well as human rights defenders, social leaders, health professionals and journalists.

Taking into particular consideration that in the context of pandemics, in general, the care of sick people or those in need of special attention falls mainly on women, at the expense of their personal or professional development, with a low level of institutionalization and social or economic recognition for such care tasks, which in times of pandemics become even more necessary and demanding.

#### *C. Resolutive part*

1. Adopt immediately, urgently and with due diligence, all appropriate measures to protect the rights to life, health and personal integrity of persons in their jurisdictions from the risk posed by the present pandemic. Such measures shall be adopted in accordance with the best scientific evidence, in accordance with the International Health Regulations (IHR), as well as with the recommendations issued by WHO and PAHO, as applicable.

2. Immediately and intersectionally adopt a human rights approach in any strategy, policy or State measure aimed at addressing the COVID-19 pandemic and its consequences, including the plans for social and economic recovery that are formulated. These must adhere to unrestricted respect for inter-American and international human rights standards, in the framework of their universality, interdependence, indivisibility and mainstreaming, particularly of ESCER.

3. d. Given the current circumstances of the COVID-19 pandemic, which constitute a situation of real risk, the States must adopt immediate and diligent measures to prevent the occurrence of damages to the right to health, personal integrity and life. Such measures must be focused primarily on preventing contagion and providing adequate medical treatment to those who require it.

#### Economic, Social, Cultural and Environmental Rights

4. Guarantee that the measures adopted to face pandemics and their consequences incorporate as a priority the content of the human right to health and its basic and social determinants, which are related to the content of other human rights, such as life and personal integrity and other ESCER, such as access to drinking water, access to nutritious food, access to clean means of cleaning, adequate housing, community cooperation, mental health support, and integration of public health services; as well as responses for the prevention of and attention to violence, ensuring effective social protection, including, among others, the granting of subsidies, basic income or other economic support measures.

5. Protect the human rights, and particularly the ESCER, of working people most at risk from the pandemic and its consequences. It is important to take measures to ensure economic income and livelihood security for all workers, so that they have equal conditions to comply with containment and protection measures during the pandemic, as well as access to food and other essential rights. Those who will continue to work should be protected from the risks of contracting the virus and, in general, adequate protection should be given to jobs, wages, freedom of association and collective bargaining, pensions and other social rights interrelated to the labor and trade union sphere.

6. Ensure the design of an action plan that guides the procedures to be followed for the prevention, detection, treatment, control and follow-up of the pandemic based on the best scientific evidence and the human right to health. These procedures should be transparent, independent, participatory, clear and inclusive.

8. Ensure equitable distribution of and access to health facilities, goods and services without discrimination of any kind, whether public or private, ensuring care for persons with COVID-19 and groups disproportionately affected by the pandemic, as well as persons with pre-existing conditions that make them especially vulnerable to the virus. Scarcity of resources does not justify direct, indirect, multiple or intersectional acts of discrimination.

9. Ensure access to medicines and health technologies needed to address pandemic contexts, particularly by paying attention to the use of strategies, such as the application of flexibility or exception clauses in intellectual property schemes, that avoid restrictions on generic medicines, excessive prices of medicines and vaccines, abuse of patents, or exclusive protection of test data.

10. Ensure the availability and timely provision of sufficient quantities of biosecurity materials, supplies and essential medical supplements for use by health personnel, strengthen their technical and professional training for the management of pandemics and infectious crises, guarantee the protection of their rights, as well as the provision of specific minimum resources to face this type of health emergency situations.

11. Improve the availability, accessibility, and quality of mental health services without discrimination in the face of the effects of pandemic contexts and their consequences, including the equitable distribution of such services and goods in the community, particularly to populations most at risk of being affected, such as health professionals, the elderly, or persons with medical conditions requiring specific mental health care.

12. Guarantee the prior and informed consent of all persons in their health treatment in the context of pandemics, as well as the privacy and protection of their personal data, ensuring dignified and humanized treatment of persons carrying or being treated for COVID-19. It is forbidden to subject people to experimental medical or scientific tests without their free consent.

13. Make available and mobilize the maximum of available resources, including actions to permanently seek such resources at the national and multilateral levels, to realize the right to health and other ESCER in order to prevent and mitigate the effects of the pandemic on human rights, including by taking fiscal policy measures that allow for equitable redistribution, including the design of concrete plans and commitments to substantially increase the public budget to guarantee the right to health.

14. Ensure that, in exceptional cases where measures limiting an ESCER are unavoidable, States should ensure that such measures are fully and strictly justified, necessary and proportional, taking into account all rights at stake and the proper use of the maximum available resources.

15. Integrate mitigation and attention measures specifically focused on the protection and guarantee of ESCER given the serious direct and indirect impacts that pandemic contexts and infectious health crises can generate. The economic, political or any other type of measures adopted should not accentuate existing inequalities in society.

16. Ensure the existence of accountability mechanisms and access to justice for possible violations of human rights, including ESCER, in the context of pandemics and their consequences, including abuses by private actors and acts of corruption or State capture to the detriment of human rights.

17. Ensure that multilateral financing and investment institutions to which States are party implement specific safeguards to protect human rights in their risk assessment processes and

operating systems relating to investment projects or monetary loans that occur in the context of responding to the pandemic and its consequences on human rights, in particular ESCER.

18. Suspend or ease foreign debt and international economic sanctions that may threaten, weaken or impede State responses to protect human rights in the context of pandemics and their consequences. This in order to facilitate the timely procurement of essential medical supplies and equipment and allow for priority emergency public spending on other ESCER, without further jeopardizing all human rights and efforts advanced by other States at this juncture, given the transnational nature of the pandemic.

19. Demand and monitor that companies respect human rights, adopt human rights due diligence processes and be accountable for potential abuses and negative impacts on human rights, particularly due to the effects that pandemic contexts and infectious health crises tend to generate on the ESCER of the most vulnerable populations and groups and, in general, on workers, people with sensitive medical conditions and local communities. Businesses have a key role to play in these contexts and their conduct should be guided by applicable human rights principles and standards.

#### *Senior Citizens*

40. Include as a priority the elderly in pandemic response programs, especially in access to COVID-19 testing, timely treatment, access to medicines and necessary palliative care, ensuring that they give their prior, full, free and informed consent and taking into account particular situations such as belonging to indigenous or Afro-descendant peoples.

41. Adopt the necessary measures to prevent the spread of COVID-19 among the elderly population in general and, in particular, among those in long-stay homes, hospitals and detention centers, adopting humanitarian aid measures to guarantee the provision of food, water and sanitation and establishing shelters for people in situations of extreme poverty, homelessness or abandonment, or in situations of disability.

42. In this context, strengthen monitoring and surveillance measures against violence against the elderly, whether within the family, in long-stay homes, hospitals or prisons, facilitating accessibility to reporting mechanisms.

43. Oversee that medical protocols, decisions on medical resources and treatments in relation to COVID-19 are implemented without discrimination on the basis of age and paying special attention to elderly people with disabilities or chronic conditions and diseases, patients with HIV or AIDS, requiring medication and regular care such as patients with diabetes, hypertension, senile dementia, Alzheimer's, among others.

44. Consider in the implementation of contingency measures the balance that should exist between protection from COVID-19 and the particular need of the elderly to connect with their families, for those who are alone or in long-term residences, facilitating alternative means of family contact such as telephone or Internet communication, taking into account the need to remedy the digital divide.

#### *Persons Deprived of Liberty*

47. Adapt the conditions of detention of persons deprived of liberty, particularly with regard to food, health, sanitation and quarantine measures to prevent the intramural transmission of COVID-19, ensuring in particular that all units have medical care.

#### *Women*

52. Offer differentiated attention to women health professionals working on the front line of response to the COVID-19 health crisis. In particular, offer adequate resources for the execution of their tasks, mental health care, as well as means to reduce the double workload they have by accumulating the professional role and domestic care tasks.

Guarantee the availability and continuity of sexual and reproductive health services during the pandemic crisis, increasing, in particular, comprehensive sexuality education measures and the dissemination of information by accessible means and with appropriate language, in order to reach women in their diversity.

#### *Indigenous Peoples*

56. To take extreme measures to protect the human rights of indigenous peoples in the context of the COVID-19 pandemic, taking into consideration that these groups have the right to receive culturally relevant health care that takes into account preventive care, curative practices and traditional medicines.

#### *Children and adolescents*

64. Regarding the right to education, States must have mechanisms that allow children and adolescents to continue with access to education and with the stimuli that their age and level of development require. In particular, States should provide tools for responsible adults to carry out activities with their children, giving priority to strengthening family ties and preventing domestic violence. Ensure that children with disabilities can access online education without exclusion, through support systems, communication strategies and accessible content.

67. Give special attention to children and adolescents living on the street or in rural areas. The measures of special attention should consider the economic and social conditions and, in addition, consider that the effects of the pandemic are different for each population group of children and adolescents due to the social context in which they are inserted, including the digital divide. The Commission recommends that States use the media to guarantee access to education for all children and adolescents without any type of discrimination.

#### *LGBTI people*

68. Adopt or strengthen health care protocols and complaint systems for LGBTI people - including children and adolescents- that take into account prejudice, discrimination and violence in their homes in the context of social distancing or quarantine.

70. Adopt or strengthen policies that guarantee respect for gender identity in the hospital setting and guarantee the continuity of medical services provided to trans persons.

*People of African descent*

73. Implement economic support measures, vouchers, subsidies, among others, for Afro-descendants and tribal communities in situations of poverty and extreme poverty, and other situations of special vulnerability in the context of the pandemic.

Guarantee access to comprehensive public health services in a timely manner to Afro-descendants and tribal communities, incorporating an intercultural approach and guaranteeing this population clear, accessible and inclusive information on the medical procedures performed on them.

*People with disabilities*

76. Ensure preferential medical care to persons with disabilities, without discrimination, including in cases of medical resource reasoning.

*International cooperation*

81. To effectively implement the commitment to adopt measures, both domestically and through international cooperation, to ensure the realization of the right to health, other ESCER and all human rights, in the context of pandemic contexts and their consequences, in accordance with the general rules of international and Inter-American law.

***Resolution No. 4/2020: Human rights of persons with Covid-19 (July 27, 2020)***

2. The main purpose of any attention or health and care service directed to persons with COVID-19 is the protection of life, health, both physical and mental, the optimization of their well-being in a comprehensive manner, the non-abandonment, the respect for their dignity as human beings and their self-determination, making use of the maximum of available resources, for the best possible care and treatment. In no case should people be subjected to torture or cruel, inhuman or degrading treatment, as there is an absolute and non-derogable prohibition in this regard.

4. The existence of up-to-date medical capacities and knowledge, both at the institutional level and among health care personnel, are necessary for an effective and humane epidemiological response that includes culturally appropriate criteria and takes into account an integrated response involving the participation of impacted populations, as well as the perspectives of gender and intersectionality, and the particular medical needs of each person with COVID-19. In addition, care should be taken to maintain a sufficient number of health care personnel to provide a timely response to health needs in this pandemic context.

5. For the prevention, comprehensive treatment, and care of persons with COVID-19, States should adopt immediate measures aimed at ensuring, on a sustained, equal, and affordable basis, the accessibility and provision of quality goods, services, and information. In terms of accessibility and supply of goods, this includes diagnostic tests, access to accepted medicines and drugs, available equipment and technologies, and, where appropriate, vaccines, according to the best available scientific evidence for the preventive, curative, palliative, rehabilitative or care of persons with COVID-19.

6. In order to guarantee adequate and timely access to health care, it is necessary to avoid the collapse of health systems, as well as greater risks to the rights of persons with COVID-19 and health workers. Therefore, it may be necessary for States to enable efficient platforms and channels of care for suspected cases or cases with mild or moderate symptoms of the disease. Among the measures used by States are: telemedicine, telephone consultations, home medical visits or community support for basic health assistance and care that includes continuous monitoring of risk factors and health status that may require referral for more specialized medical attention and care.

9. In order to provide an adequate first response, primary health care centers, as relevant health contact points, should have the essential elements including the provision of information, prevention, care and essential medical treatment, as well as immediate referral channels to other medical centers with specialized and culturally appropriate facilities and services.

10. The States must guarantee the provision of intensive treatment and hospitalization medical benefits for persons with COVID-19 in medical emergencies where life is at risk if the required life support is not provided; in particular, ensuring that humanized treatment is provided, with the dignity and integral health of the person at the center, as well as the availability and accessibility of essential and basic goods for the emergency and urgent treatment of this disease. Among the measures that could be adopted for this purpose are: the increase in the response capacity of Intensive Care Units, the availability and, if necessary, the acquisition or production of medical oxygen, related medication or mechanical respirators, palliative care supplies, availability of ambulances, sufficient trained health personnel, as well as an increase in the number of beds and adequate spaces for hospitalization. This also includes the possibility of facilitating the timely transfer, including by river or air, of persons in need of urgent or emergency medical care to health centers with the capacity to respond adequately to the person's medical needs, as well as facilitating the communication of the person with immediate family members by the most appropriate means.

18. For the protection of the right to health of persons with COVID-19 it is necessary to recognize and guarantee the right to receive adequate health services through a regulatory framework and protocols for care and treatment with clear parameters of care. Likewise, they must be constantly reviewed and updated, according to the best scientific evidence, and maintain mechanisms for supervision and oversight of health and care institutions, facilitating simple channels for filing complaints and requests for related urgent protective measures, investigating and responding to them.

***Resolution No.1/2021: COVID-19 vaccines within the framework of inter-American human rights obligations.***

*B. Considering part*

EMPHASIZING that the full effectiveness of the right to health and other ESCER are subject to the maximum use of available resources, and therefore their use must be subject to effective mechanisms of responsibility, accountability and control by public institutions, as well as civil society.

RECOGNIZING that acts of corruption such as state capture, undue influence and abuses of power by persons exercising public functions and/or by private actors constitute obstacles to the equitable distribution of vaccines under conditions of equality and non-discrimination.

UNDERLINING that States, in the context of the pandemic, have a heightened obligation to respect and ensure human rights in the context of business activities, including the extraterritorial application of this obligation. Furthermore, that they may be responsible for human rights violations arising from business activities that lack proper state regulation, supervision or oversight, or when they fail to adopt measures to prevent the impact of business activities on the enjoyment of the rights of persons under their jurisdiction, as developed in detail by the IACHR and its REDESCA in the Report on Business and Human Rights: Inter-American Standards.

*C. Resolutive part*

*Access to vaccines, goods and health services in accordance with the principle of equality and non-discrimination.*

1. States must ensure the distribution of vaccines, and their equitable and universal access, through the development and implementation of a national vaccination plan; and consequently, refrain from discriminatory treatment through the removal of normative, regulatory or any other type of obstacles that could lead to this practice, as well as create conditions of real equality for groups whose rights have been historically violated, or who are at greater risk of suffering discrimination.
2. In their vaccination plans and/or public policies, States should guarantee economic accessibility or affordability for all persons, which implies free access to vaccines. In principle, for those living in poverty or with lower incomes, so that the level of income or purchasing power is not a determining factor that prevents or favors their immunization.
3. With respect to groups in situations of special vulnerability or that have been historically discriminated against, based on the principle of equality and non-discrimination, States should adopt public policies that respond to differentiated, intersectional and intercultural approaches that allow them to address the multiple discrimination that can accentuate the obstacles people face in accessing health and vaccines. Similarly, factors associated with existing digital divides should be taken into account, particularly those derived from generational aspects that disproportionately affect older people. The above, without prejudice to others resulting from factors associated with socioeconomic status, disability, among others.
4. States should address the particular needs that derive from factors of discrimination, such as age, particularly with respect to older persons; migratory status or documentary migratory status; gender, gender identity and expression; disability; cultural, ethnic and racial affiliation; socioeconomic status; and context of deprivation of liberty. Likewise, vaccination policies should take into consideration geographical particularities or distrust of such measures, especially on the part of vulnerable groups, such as Afro-descendants and indigenous people.
5. It is imperative to ensure that all persons under the jurisdiction of States have physical access to vaccines. To this end, States should have the means to strengthen the necessary

infrastructure and logistics, including transportation, facilities and storage for the distribution of vaccines throughout their territory. States should give special consideration to individuals and groups, such as indigenous and tribal peoples and rural communities, who live in remote areas in contexts of profound disparities in the availability of health goods and services compared to other areas of the country, as may be the case in rural versus urban areas, or in the peripheries. Likewise, States must ensure accessible environments for persons with disabilities and reduced mobility in their vaccination schedules.

6. States should take into account the worsening of poverty-related diseases and the impact of social determinants on health. Likewise, they should avoid setbacks in public health campaigns, such as general vaccination of children, pregnancy care, sexual and reproductive health, and cancer prevention, among others. Likewise, they should keep in mind the need to continue with non-pharmacological prevention measures, carrying out public campaigns aimed at improving healthy lifestyle habits and strengthening people's immune systems. Such measures have a direct impact on the mental health of the population and on the reduction of chronic diseases linked to lifestyle, which have a negative impact on the prognosis of those infected with COVID-19 and also have a strong impact on public health budgets.

## ***N. Business and Human Rights***

102. Businesses play a fundamental role in the region's economic development. Their contribution occurs not only through compliance with their fiscal obligations -which allow States to adopt measures for the progressive realization of economic, social, cultural and environmental rights- but also through direct contributions, often as part of their social responsibility programs, in addition to those established in the domestic legal system of the States. The call for their participation in the fulfillment of the UN Sustainable<sup>44</sup> Development Goals has reinforced the focus on corporate actions as an important element in contributing to the achievement of the different goals set forth therein. This, of course, implies the adoption of actions that have a direct impact on the realization of economic, social, cultural and environmental rights.

103. On the other hand, the privatization of various public services, the proliferation of extractivist industries and projects, among other contextual issues, have repeatedly led to corporate activity generating adverse impacts on the realization and enjoyment of economic, social, cultural and environmental rights. Of particular relevance for the region are the impacts on the rights to water, food, education, health, housing and social security, in addition to labor rights, as has been shown in relation to these rights throughout this chapter. Likewise, due to the interrelation and interdependence of all human rights, these effects have a direct impact on the enjoyment of different civil and political rights, including the rights to personal integrity and life, including life with dignity.

104. Considering this situation, it is important to note that despite the positive contribution that business activities can make to the realization of human rights, the prevention of adverse impacts resulting both from their own activities and from their business relationships is fundamental for the effective realization of human rights in the hemisphere. In this sense, the

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<sup>44</sup> General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (Sept. 25, 2015).  
Inter-American Commission on Human Rights - **IACHR**

Inter-American Commission on Human Rights and REDESCA reiterate the importance of companies, regardless of their size, adopting measures that allow them to identify, prevent, mitigate and repair adverse impacts that may be generated on the different human rights, either through their activities or business relationships.

105. The foregoing, of course, does not replace the obligation of States to guarantee human rights, including through the adoption of legislative and regulatory measures in this regard. Thus, in order for States to comply with their treaty obligations, they must take the necessary measures to effectively regulate business activities, including those of public, private or mixed enterprises, as well as to ensure the effectiveness of their mechanisms of redress for those whose rights are affected by business activity.

106. The following is a compilation of some of the most representative documents and paragraphs of the IACHR on the subject of human rights and business developed within the framework of its different mechanisms. This is done for illustrative and updating purposes, referring first and foremost to the thematic report on the subject, which to date constitutes the largest inter-American compendium on the subject.

### ***Cases filed with the Court***

***Martina Rebeca Vera Rojas (Case 13.039) v. Chile. OEA/Ser.L/V/II.169 Doc. 124 (October 5, 2018).***

58. Likewise, the IACHR understands that in light of the duty to guarantee provided for in Article 1(1) of the ACHR and the interpretation that the organs of the inter-American system have made of it, the States Parties must reasonably prevent the violation of the rights contained in Article 26 in the context of business activities. This includes adopting a legal framework that ensures the protection of these rights and provides effective access to remedies for the victims of such violations. Among the actions to ensure an adequate legal framework, the State should require companies under its jurisdiction to exercise human rights due diligence in order to identify, prevent and mitigate the risks of rights violations in the context of their activities.

***Community of La Oroya (Case 12.718) v. Peru. Report n. 330/20. (November 19, 2020)***

158. With respect to the State's duty to regulate in the context of business activities, States must ensure the compatibility and effectiveness of their regulatory frameworks with international human rights provisions in order to guarantee human rights, since the regulation of certain private activities in society is an essential requirement for the realization of human rights. Thus, for example, the Inter-American Court has indicated that States have the obligation to regulate all activities that may cause significant damage to the environment, which can certainly include certain business practices and operations. Along the same lines, the IACHR has been clear in establishing that State responsibility may arise from the lack of regulation or inappropriate regulation of extractive, exploitation or development activities carried out under the jurisdiction of a State. The specific duty to regulate implies having solid and effective legislation, both in its material and procedural content. This regulatory framework must be accompanied by public policies that demand respect for human rights by the different business actors, including those referring to respect for human rights in their transnational operations.

159. For its part, the duty to prevent requires the corresponding authorities to adopt adequate measures to prevent the actual risks to human rights arising from the actions of companies of which they are or should be aware from materializing. Therefore, once the potential impacts and specific risks have been identified, States must adopt or, as the case may be, require and ensure that the company involved implements the corresponding corrective measures.

States also have a duty to monitor business activities that may affect human rights, including those that affect the environment. The IACHR has indicated that this obligation becomes stricter in certain cases, such as when the nature of the activity represents high risks to human rights. Thus, in cases of extractive industries or exploitation of natural resources, the IACHR has stressed that the monitoring systems must offer effective and culturally appropriate responses to negative consequences on the enjoyment of human rights and must establish procedures that take into account the technical aspects of the activity in question, the identification of shortcomings in the processes involved, the errors committed by those responsible at different levels, and the particular characteristics of the affected population.

161. Even actions or omissions attributable to States in these contexts could lead to non-compliance with their obligation to respect human rights. The assessment of the actions due in each case will depend to a large extent on the level of relationship between the State's behavior and the factors that threaten or permit human rights violations related to business activities. Thus, the IACHR has indicated that, within the field of business and human rights, the State's obligation to respect implies that States must refrain from engaging in conduct related to business activities that contravene the exercise of human rights.

### *Thematic reports*

#### ***Business and Human Rights: Inter-American Standards. OEA/Ser,L/V/II/IACHR/REDESCA/INF.1/19 (November 1, 2019).***

43. The recognition of the universal, indivisible, interdependent, and interrelated nature of human rights through the adoption and application of various instruments and treaties on the subject implies the need to close the existing gaps in the protection of economic, social, cultural, and environmental rights in comparison with civil and political rights in the various fields that affect them. Given the connection and close relationship between them, as well as their universal nature and inter-American roots, these principles must be reaffirmed by paying special attention to the realization of human rights, taking into account the multiple impacts that may be generated in the framework of business activities and operations.

Based on the premise that public services related to the enjoyment of human rights are part of the functions of the States, the Inter-American Court has indicated that in contexts in which they are provided by private agents, the States retain the right to protect the respective public good in order to guarantee effective protection of the human rights of the persons under their jurisdiction. In these contexts, various civil society organizations have drawn the attention of the IACHR and its REDESCA to government policies and trade and investment treaties within the region that would facilitate and promote the provision of services directly related to the rights to health, education, social security, water or security, among others, by private companies or public-private partnerships, warning that in many circumstances dynamics are generated in which the provision of these services is subordinated to business interests,

instead of ensuring their conformity with the human rights at stake and the principle of non-discrimination.

***Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

303. While the Commission understands that it is the States that have the duty to comply with international obligations, internalizing in their legal frameworks and public policies actions that promote the protection that benefits trans and gender-diverse persons, it has also indicated in general terms that such obligations generate effects on companies, and involve the legal responsibility of these in terms of avoiding causing or contributing to cause human rights violations through their operations, the duty to exercise due diligence in this area and to be accountable for the consequences they cause. In addition, it is also incumbent upon States to ensure that companies, whether public or private, operating under their jurisdiction, including their transnational activities, operate under such regulatory frameworks and international guarantees assumed by the States, allowing trans and gender-diverse people to realize their rights to work and their fair and equitable conditions. Likewise, it is necessary to complement such obligation with articulated tasks of promotion and visibility and culture change in order to contribute to break the circle of labor exclusion through public-private partnerships.

***Resolutions***

***Resolution No.1/2020: Pandemic and Human Rights in the Americas (April 10, 2020)***

19. Demand and monitor that companies respect human rights, adopt human rights due diligence processes and are accountable for potential abuses and negative impacts on human rights, particularly in the context of pandemics and infectious health crises, which often have an impact on the ESCER of the most vulnerable populations and groups and, in general, on working people, people with sensitive medical conditions and local communities. Businesses have a key role to play in these contexts and their conduct should be guided by applicable human rights principles and standards.

***Resolution No.1/2021: COVID-19 vaccines in the framework of Inter-American human rights obligations (April 6, 2021).***

24. States should ensure that decisions regarding the development, use and distribution of vaccines by companies take into account cross-cutting human rights principles, such as transparency, information, equality and non-discrimination, accountability and respect for human dignity, as well as the fundamental Inter-American criteria on business and human rights established in the thematic report on the subject.

In order to comply with their international obligations to respect, guarantee, progressiveness and cooperation in the area of human rights, in relation to the rights to health, life and personal integrity, it is essential that the States apply this approach in the schemes and policies for their enjoyment and exercise, including those in which private agents or companies intervene in the production, marketing and distribution of medicines, vaccines, technologies and sanitary equipment or essential goods for health care and treatment in the face of COVID-19.

With respect to the extraterritorial scope of State obligations in the context of business activities related to COVID-19 vaccines, the home States of companies that produce, distribute or market such vaccines have a duty to regulate, supervise, prevent or investigate behavior by those domiciled in their territory that may affect the realization of human rights outside their territory. Omissions or actions on the part of States with respect to such obligations may have effects on their international responsibility for acts that do not occur strictly within their jurisdictions.

Without prejudice to the reasonable compensation that the investments and research generated by private companies and public research institutions deserve, given the magnitude of the pandemic and its danger to global health, national and international intellectual property regimes must cease to be an obstacle that impedes the production of safe and effective vaccines in order to guarantee universal and equitable access to them, in accordance with the provisions of this Resolution. To this end, it is urgent that the States take the necessary measures to achieve the adequacy of the flexibilities and exceptions provided for in such regimes when public health is at risk, as well as other relevant complementary measures. In particular, the IACHR joins the call of special mandates of the Human Rights Council and the UN Committee on ESC rights in favor of the temporary exemption of some of the provisions of the TRIPS<sup>7</sup> agreement for vaccines and treatment for COVID-19 that some States have raised before the World Trade Organization, urging the American States to favor its prompt adoption.

28. States should promote, in terms of intellectual property regimes, the exchange of information on the development of vaccines, as well as to ensure that economic value and regulation do not constitute an obstacle to the acquisition of inputs, technologies and vaccines. The harm and public interest tests set out in paragraph 23 of this Resolution should be applied when there are tensions between intellectual property, trade secrets and the right of access to information.

29. Decisions of a commercial or other nature adopted by States in this context should seek the best outcome in terms of public health and human rights, avoiding competitive approaches between countries that affect those that are at a greater economic and financial disadvantage. Thus, States should avoid health nationalism in the context of a pandemic, promoting actions to eliminate obstacles to the acquisition of supplies, medical technology and vaccines that impede access for low- and middle-income countries and, in particular, for people living in poverty and extreme poverty. Preventive measures should be adopted through the application of flexibility clauses related to the patent and intellectual property regime, as well as other measures aimed at preventing and combating speculation, private hoarding or the improper use of such goods.

### ***Press Release***

#### ***Joint Statement by ILO, OECD, OHCHR, IACHR REDESCA, UNICEF, UN Global Compact and the UN Working Group on Business and Human Rights Joining Forces in Latin America and the Caribbean to help minimize the Coronavirus crisis (COVID-19) and promote responsible and sustainable business (28 April 2020)***

LAC States, businesses and employers, as well as workers' organizations, play an important role in the design and implementation of responses to the COVID-19 crisis, and in mitigating

the adverse impacts that the crisis itself and these responses may have on people, the environment and society. These actors have begun to adopt emergency measures to address not only the health aspects of the COVID19 pandemic in the region, but also its immediate economic, financial and social consequences, with special attention to the protection of jobs and employment.<sup>4</sup> Long-term policy responses will also be needed, based on a whole-of-government approach, in dialogue with businesses, workers and affected people. It is of utmost importance that respect for human, labor, and children's rights, consideration of gender issues, protection of the environment, and the promotion of integrity and the fight against corruption are fully integrated into both the business and social sectors, with particular attention to the protection of jobs and employment.<sup>4</sup> Long-term policy responses will also be needed, based on a holistic approach to governance, in dialogue with business, workers and affected people.

in both immediate and long-term responses, promoting sustainable enterprises and responsible business conduct (REC).

## CHAPTER 4

# GROUPS IN SITUATIONS OF VULNERABILITY AND ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

## **GROUPS IN SITUATIONS OF VULNERABILITY AND ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS**

107. Throughout this compendium, we have highlighted standards developed by the IACHR in relation to the ESCER of the various groups in situations of vulnerability to which it pays special attention through its different thematic mandates. In a complementary and intersectional manner, this section presents a representative sample of some of the pronouncements or standards developed by the Commission with respect to groups in situations of vulnerability or historical discrimination, particularly with regard to the effects they suffer disproportionately in their economic, social, cultural and environmental rights.

### **A. Women**

#### ***Precautionary Measures***

##### ***Precautionary Measure No. 216-21 7 pregnant women of the Wichí ethnic group vis-à-vis Argentina (April 16, 2021)***

62. Notwithstanding the foregoing, the Commission considers that it is not appropriate in these proceedings to rule on the relevance of cesarean section procedures or any other type of procedure in the specific or general cases alleged in the information presented by both parties, on the understanding that certain procedures may respond to a need for technical knowledge in medicine, nursing and obstetric specialties, or those that may correspond. However, the Commission reminds the State that in accordance with the obligations established in the Convention of Belem do Para (infra paras. 65-66), all situations of abusive, disrespectful, negligent treatment or denial of treatment in the pre-pregnancy stage, during pregnancy and in the postpartum period must be avoided. This kind of violence can manifest itself at any time and in various forms, such as forced or coerced medical interventions, forms of physical violence, invasive practices, among many other manifestations.

63. In the same vein, the Commission has extensively developed inter-American standards related to the protection of the sexual and reproductive rights of women, girls and adolescents, with special attention to those in situations of vulnerability, such as indigenous women. As guarantors of their culture, indigenous women possess an invaluable ancestral heritage and, therefore, violence against them has repercussions at both the individual and collective levels. In particular, the IACHR has noted the duty to obtain free, prior and fully informed consent before any medical procedure is performed. This duty requires that qualified medical personnel provide adequate, complete, reliable, understandable and accessible information without threats, coercion or inducements of any kind. In the case of indigenous women, the information must be presented in their own language and in a culturally appropriate manner, respecting their traditions and beliefs. Likewise, the IACHR has observed the existence of cultural factors that may operate as barriers to access to maternal health services, such as, for example, health services that are offered without taking into consideration the expectations, traditions and beliefs of indigenous women.

71. In accordance with the aforementioned Convention, the States have the duty to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing and eradicating such violence<sup>19</sup>, taking special account of situations of vulnerability, as in the case of their ethnic condition, when they are pregnant or are in an unfavorable socioeconomic situation<sup>20</sup>. In this order of ideas, the Commission emphasizes that the fear referred to does not refer to random issues, but to situations of particular gravity when talking about violence against women, which would even affect the proposed beneficiaries in a differentiated manner due to their belonging to the Wichí indigenous ethnic group.

### ***Cases filed with the Court***

#### ***Application before the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al (Case 12.579) v. United Mexican States (August 2, 2009)***

71. The IACHR has established the need for States, through the administration of justice, to incorporate the specific needs of indigenous women in their actions, respecting their cultural and ethnic identity, language and idiosyncrasy, including the creation of systems and methods of cultural expertise in cases of violence.

#### ***I.V. (Case 12.655) v. Bolivia (August 15, 2014).***

97. The Commission has established that the right to personal integrity is a very broad concept, encompassing women's maternal health. The protection of the right to personal integrity of women in the area of maternal health entails the obligation to ensure that women have equal access to the health services they require according to their particular needs related to pregnancy and the postpartum period and to other services and information related to maternity and reproductive matters throughout their lives. In this area, guaranteeing the right to personal integrity has implications for women's equality, autonomy, privacy, autonomy and dignity.

98. On these principles, the Commission has held that one of the main measures to guarantee women's right to integrity is the provision of adequate and timely maternal health services. These include services relevant to reproductive health, and to have adequate access to the information necessary to make free, autonomous, and informed decisions in this area. Indeed, as detailed in the following section, access to information and informed consent in the provision of health services are essential instruments for the effective satisfaction of women's right to personal integrity, especially in the area of their sexual and reproductive rights. In this regard, the Commission has asserted that:

"[t]he protection of women's right to integrity under conditions of equality is materialized in the area of maternal health, through the provision of information and education on the subject so that women can make free, informed and responsible decisions regarding reproduction, including family planning."

99. In this sense, the IACHR has considered that the practice of a surgical intervention without the required informed consent may constitute a violation of the right to personal integrity, enshrined in Article 5 of the American Convention.

The IACHR has also recognized the link between the content of Article 5(1) of the American Convention and the principle of non-discrimination enshrined in Article 1(1) of the American Convention. It has considered it pertinent to highlight that many women in the region suffer affectations of their right to personal integrity in the access to services and interventions relevant to their health that only they require because of their sex, biological differences, and their reproductive ability. In this sense, the IACHR has considered that the States have the duty to adopt positive measures to guarantee the accessibility, availability, acceptability, and quality of maternal health services, as part of their obligations derived from the principle of equality and non-discrimination. As a correlative principle, the Inter-American Court has also affirmed that it is necessary to consider the scope of women's right to health from a perspective that takes into account their interests and needs "in view of the factors and distinctive features that differentiate them from men, namely: (a) biological factors [...], such as [...] their reproductive function." It follows from these principles that failure to fully respect women's right to personal integrity in the reproductive sphere may in turn contravene their right to live free from all forms of discrimination protected by Article 1(1) of the American Convention.

## ***B. Children and adolescents***

### **Case filed with the Court**

***Paola del Rosario Guzmán Albarracín and family members (Case 12.678) v. Ecuador (October 5, 2018).***

126. The IACHR has already indicated that gender stereotypes are persistent in the health sector and that "attitudes such as indifference, mistreatment and discrimination by health sector officials that harm women and girls who are victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address these situations of violence, constitute barriers to access to health services"<sup>158</sup>. Therefore, for the IACHR, States must adopt appropriate measures to eliminate all types of violence and discrimination against girls and adolescents in the field of health. This includes not only the duty to refrain from reproducing such practices but also to act with due diligence towards acts of violence against girls and adolescents that occur in this area, which includes, for example, the implementation of regulatory frameworks, including health protocols, that address sexual violence against girls and adolescents, health personnel properly trained to detect and treat sexual violence against this age group, and access to effective judicial remedies to protect the rights of girls and adolescents for acts of sexual violence.

### ***Thematic reports***

***Rights of indigenous and tribal peoples over their ancestral lands and natural resources. Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09 (December 30, 2009).***

162. The loss of cultural identity due to lack of access to ancestral territory has a direct impact on the rights of children of dispossessed communities. The Inter-American Court has explained: "With respect to the cultural identity of children of indigenous communities, the Court notes that Article 30 of the Convention on the Rights of the Child establishes an additional

and complementary obligation that gives content to Article 19 of the American Convention, which consists of the obligation to promote and protect the right of indigenous children to live in accordance with their own culture, their own religion and their own language. // Likewise, this Court considers that within the general obligation of the States to promote and protect cultural diversity, there is a special obligation to guarantee the right to cultural life of indigenous children. // In this sense, the Court considers that the loss of traditional practices, such as female or male initiation rites and the languages of the Community, and the harm derived from the lack of territory, particularly affect the development and cultural identity of the children of the Community, who will not even be able to develop that special relationship with their traditional territory and that particular way of life proper to their culture if the necessary measures are not implemented to guarantee the enjoyment of these rights".

***Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78 (July 13, 2011).***

469. Considering that children are still developing subjects, the right to adequate and sufficient food acquires a fundamental relevance and States that have in their custody children who have infringed criminal laws have the obligation to guarantee this right.

470. With regard to the right to adequate and sufficient food for persons deprived of their liberty, Rule 20 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that:

[...] every prisoner shall receive from the administration ... food of good quality, well prepared and served, the nutritional value of which is sufficient for the maintenance of his health and strength.

492. The Commission considers that the objectives of juvenile justice sanctions require the implementation of educational programs, including formal schooling, vocational and job training, and recreational and sports activities.

493. Children deprived of liberty should have access to educational programs, without discrimination. In the juvenile justice system, the treatment and education of children should be oriented to promote respect for human rights and take into account cultural diversity. Likewise, the education and vocational training provided in places of deprivation of liberty should be recognized by the general education system and operate in close coordination with it.

***C. Persons with disabilities***

***Cases filed with the Court***

***Opario Lemoth Morris et al. (Buzos miskitos) (Case 12.738) v. Honduras. OEA/Ser.L/V/II.168 Doc. 74 (May 8, 2018).***

289. Finally, in relation to the components of habilitation and rehabilitation, the IACHR notes that States must adopt the necessary measures to generate the inclusion of persons with disabilities in community, labor and social life. The United Nations Committee on the Rights of Persons with Disabilities has indicated that under the CRPD, States have the obligation to

support persons with disabilities in seeking, obtaining and maintaining employment. In the same vein, Article 28.2.c) of the CRPD establishes that States must "ensure access by persons with disabilities and their families living in poverty to assistance from the State with disability-related expenses, including training, counseling, financial assistance and appropriate respite care services".

***Luis Eduardo Guachalá Chimbó and family (Case 12.786) v. Ecuador (October 5, 2018).***

167. Finally, the Commission recognizes that there are exceptional situations in which consent does not apply. These exceptions are related to situations linked to emergencies, for example when a person must be medically treated to preserve his or her life or health but neither he or she nor a close relative can give consent.

168. As indicated above, in relation to persons institutionalized in mental health facilities, the States are responsible for ensuring their personal integrity and health, which follows from their special position as guarantors.

169. Thus, States have various obligations towards institutionalized persons with disabilities. The CRPD Committee has held that States must provide health care on the basis of the free and informed consent of persons with disabilities prior to any treatment. This is based on the fact that legal capacity takes on special importance when these persons have to make fundamental decisions regarding their health. Thus, for the IACHR, free and informed consent is a fundamental element in guaranteeing the right to health; in particular, in the area of mental health, coercive measures perpetuate power imbalances in the relationship between patients and their caregivers and facilitate situations of abuse, stigma and discrimination.

States should also train the staff of such institutions and provide care that is inclusive and meets the specific needs of persons with disabilities, taking into account their wishes. The CRPD Committee has held that forced treatment by psychiatrists and other health and medical professionals constitutes a violation of the right to personal integrity. This is because the practice denies a person's legal capacity to choose the medical treatment he or she receives.

171. For this reason, all medical and health-care personnel should ensure that appropriate consultation takes place directly with the person with a disability. Such personnel should also ensure, to the best of their ability, that assistants, family members or support persons do not substitute for, or have undue influence over, the person with a disability in his or her decisions. In doing so, they must ensure that (i) accurate and accessible information is provided about available service options; (ii) non-medical alternatives are offered; and (iii) access to independent support is provided.

***Thematic report***

***Child's right to a family. Alternative care. Ending institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13 (October 17, 2013).***

609. The Commission considers that children and adolescents, in accordance with their evolving capacities and personal autonomy, have the right to access to health information, including in a confidential manner and without the need for the presence or consent of parents

or adults in legal guardianship. Likewise, children and adolescents can and should participate in decisions affecting their health, unless their conditions of maturity or discernment do not allow it.

613. Children and adolescents with physical, mental, sensory or intellectual disabilities are entitled to access to the right to health and medical care appropriate to their needs and requirements, which guarantee the achievement of their maximum level of personal development and autonomy, personal integrity and dignity. In particular, the Court has expressly ruled in relation to the duty of States to ensure the provision of effective medical care to persons with mental disabilities, an obligation that "translates into the State's duty to ensure access of persons to basic health services; the promotion of mental health; the provision of services of this nature that are the least restrictive possible, and the prevention of mental disabilities".

638. Children with disabilities have the right to be guaranteed access to adapted education to enable them to realize their right, as well as access to culture, recreation and vocational training programs that are accessible and adapted. The Committee on the Rights of the Child has on several occasions expressed concern that the effects of disability-based discrimination have been particularly severe in the areas of education and vocational training; in addition, the Committee has expressed concern about the cycle of discrimination, marginalization and segregation to which children with disabilities are exposed:

"Discrimination in the provision of services excludes them from education (...). Lack of appropriate education and vocational training discriminates against them by denying them future job opportunities. Social stigma, fears, overprotection, negative attitudes, misconceptions and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities". Children and adolescents with disabilities who are in a residential institution, if they are not guaranteed their right to adapted education and training for an autonomous life within their community, will hardly be able to realize their life project and leave the institution."

## ***D. Elderly people***

### ***Precautionary Measure***

***Precautionary Measure No. 51-15. Elderly persons belonging to the Shipia Wayúu Association of the Wayúu Indigenous Community in the municipalities of Manaure, Riohacha and Uribía with respect to Colombia (Extension) (December 1, 2017).***

21. The Commission notes that the present request for extension was submitted in favor of elderly members of the Wayúu people. When assessing the seriousness requirement, the Commission takes into account that the proposed beneficiaries play an essential role in the worldview of the Wayúu indigenous community, both in the transmission of customs and in the dynamics of their society. In this regard, the Commission recalls that international law has recognized the importance of adopting measures with specific approaches to protect the rights of indigenous elders. As identified in its report on the Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources, "in many indigenous communities, the oral

transmission of culture to younger generations is primarily the responsibility of elders. Likewise, as indicated by the Inter-American Court:

With regard to the special consideration that the elderly deserve, it is important that the State adopt measures aimed at maintaining their functionality and autonomy, guaranteeing the right to adequate food, access to clean water and health care. In particular, the State should care for the chronically and terminally ill elderly, sparing them avoidable suffering.

## ***E. LGBTI+ People***

### ***Thematic reports***

#### ***Progress and challenges towards the recognition of the rights of LGBTI persons in the Americas. OEA/Ser.L/V/II.170 Doc. 184 (December 7, 2018).***

132. Specifically concerning LGBTI persons, or those perceived as such, the IACHR has condemned acts of intimidation and harassment in educational environments (commonly known as bullying), and has urged OAS Member States to adopt and enforce effective measures for the prevention of violence and discrimination against LGBTI persons in both public and private educational institutions. The Commission also recommended that States should implement "comprehensive sex education in the school curriculum, which includes a perspective of bodily, sexual and gender diversity". Additionally, it referred to the fact that "comprehensive sex education is a basic tool for eliminating discrimination against LGBTI persons and that special attention should be given to diversity, given that all persons have the right to decide on their own sexuality without being discriminated against based on their sexual orientation or gender identity.

151. With respect to this issue, the IACHR further emphasizes that education is an essential means to promote cultural change in a society, and includes not only formal educational processes, related to schools and universities, but also all means that contemplate the production of information for society in general. In this sense, the IACHR urges States to assume their role as guarantors of a society free of all forms of prejudice, discrimination and violence, and to undertake efforts aimed at developing an appropriate educational project in formal educational environments, while at the same time promoting a process of cultural change in all sectors of society in general. With regard to formal education, programs should be designed to include gender education, free of prejudice and based on a model that guarantees the autonomy of all persons, and States should create a safe home for children and adolescents who have a sexual orientation, gender identity -real or perceived-, or body characteristics different from the male-female binary.

153. In addition, the IACHR cannot fail to highlight the fundamental role that educators must play with regard to the respect and protection of the rights of LGBTI persons. Indeed, educational processes must be carried out by duly trained and qualified professionals to promote an inclusive education free of stereotypes and to create safe environments for all. Likewise, in their work relationships, these professionals should enjoy spaces that are respectful of their own sexual orientation, gender identity - real or perceived, or bodily characteristics different from the male-female binary. The Commission urges States to ensure

the development and adoption of rules aimed at promoting ongoing training and education on sexual orientation, gender identity and bodily diversity, as well as the creation of mechanisms aimed at protecting education professionals against discrimination and violence on the basis of their real or perceived sexual orientation, gender identity or bodily diversity.

***Trans and Gender Diverse People and their Economic, Social, Cultural and Environmental Rights. OEA/Ser.L/V/II. Doc. 239 (August 7, 2020).***

166. For the Commission and its REDESCA, the right to education of trans and gender-diverse persons serves as a key element to break the cycles of poverty and provide them with skills that allow them to ensure decent living conditions. The IACHR also stresses that the principle of equality and non-discrimination must govern the education and training of all persons, and therefore it is necessary for the State to ensure that both public and private educational institutions do not discriminate or promote hate speech and intolerance against trans persons. The Commission also underscores the importance and urgency for States to ensure that education systems incorporate a gender perspective, and particularly sexual and reproductive health education, appropriate to the age of its target audience, which should be based on scientific evidence and human rights standards. In general, the Commission and its REDESCA underscore the importance that pedagogical methods, educational processes and curricula, mainly at the primary and secondary levels, do not undermine the enjoyment of the human rights of trans persons, but rather, on the contrary, strengthen the active participation of these persons, motivate their empowerment and promote collective work with other students.

167. The IACHR and its REDESCA understand that an inclusive education system not only allows progress in guaranteeing the human rights of trans persons in all their life cycles, but also broadens the teaching and learning of all its recipients and strengthens coexistence in society by promoting diversity, mutual respect, tolerance, and solidarity as principles within democratic societies. In this sense, States must ensure that trans persons are not directly or indirectly marginalized within the education system. They must also ensure that the education provided to them is of good quality, that it includes training and awareness-raising on aspects that affect them, respects the development of their personality and autonomy, and includes mechanisms to overcome and eradicate harassment, stigmatization, violence and discrimination against trans persons. The State must prioritize access to an inclusive education for trans children and adolescents that protects their best interests, must pay attention to the establishment of mechanisms for the education and training of young trans persons, and eliminate obstacles to the education of older persons of diverse gender.

212. In turn, access to comprehensive sex education with a diversity perspective, among other aspects, provides critical judgment tools to form and express one's own opinions on inequality in gender relations, which is a necessary step in creating awareness of diversity. Therefore, the IACHR urges States to implement effective comprehensive sexual education policies with a diversity perspective.

250. Lack of access to employment, the impossibility of obtaining identification that reflects their gender and name, as well as disrespect for their acquired name and gender expression in the workplace, or harassment and bullying by employers or work colleagues, are problems that the IACHR, together with REDESCA, have already identified as obstacles to the realization of the right to work of trans persons. As indicated throughout this report, the lack of access to

formal employment often exposes trans persons to dangerous working conditions and, in many cases, forces them to resort to sex work as a survival strategy.

251. Additionally, and taking into account the obligations of the States on this matter, the Commission and its REDESCA consider it important that the States include trans persons in their employment plans and policies at the national level as a group in a particularly vulnerable situation, as well as include specific evaluation indicators for these persons in public policies that address the different elements of this right, including the reduction of the unemployment rate, the salary level, safety and health at work, rest or paid vacations, among others.

287. In this framework, one of the primary measures for the protection of trans and gender-diverse persons in relation to their right to work is the enactment of regulations that explicitly prohibit discrimination based on gender identity and gender expression. The regulations must have the scope to protect those who are already working, as well as those who are seeking employment, so that they are protected from discriminatory treatment or decisions in the selection process. In this regard, the *Yogyakarta Principles* call on States to prohibit discrimination on the basis of gender identity and expression in public and private employment, including with regard to professional training, hiring, promotion, dismissal, working conditions and remuneration.

322. In this context, the Commission and its REDESCA observe that, as with other populations in situations of vulnerability and historical discrimination, in many cases the existing threats and violations produced with respect to the enjoyment of the right to health of trans and gender-diverse persons, These people often face obstacles in the enjoyment of this right not only because of the lack of access to appropriate health services and goods, but also because of the failure to take into account several basic and social determinants that aggravate the realization of their human rights in an interconnected manner. The main challenges in this regard will be identified below.

414. Consequently, the IACHR reiterates that OAS Member States must design and implement regulatory frameworks and public policies that explicitly address the concrete effects of the situation of historical exclusion suffered by trans and gender-diverse persons and that are part of a comprehensive strategy aimed at reducing the inequalities they suffer. Additionally, States have tools and conceptual frameworks that should accompany efforts to effectively comply with the general duty to guarantee all human rights of trans and gender-diverse people under their jurisdiction, particularly with respect to economic, social, cultural and environmental rights. Finally, courts of justice must also take into account inter-American norms and standards in this regard when applying, analyzing, and interpreting domestic norms when resolving appeals aimed at protecting the rights of trans and gender-diverse persons.

### ***Press releases***

***CP No. 185/17. On International Trans Day of Remembrance, the IACHR urges States to guarantee full access of trans persons to their economic, social, and cultural rights (November 20, 2017).***

The IACHR noted in its report on "Violence against LGBTI persons" that "widespread violence, prejudice and discrimination in society in general and within the family, hinder the possibilities

for trans persons to have access to education, health services, housing and the formal labor market". The violence, discrimination and stigmatization that transgender people experience places them in a cycle of exclusion that tends to culminate in poverty, based on the lack of access to basic services, educational and employment opportunities and social benefits. This cycle of exclusion generally begins at a very early age, due to the rejection and violence suffered by trans and gender-diverse children and adolescents in their homes, communities and educational centers. This situation tends to prevent this group from accessing and completing different levels of education, which has a negative impact on their quality of life.

The Commission notes that exclusion and poverty often push trans persons into the informal economy and, especially in the case of trans women, into sex work. According to the information received by the IACHR, approximately 90% of trans women in Latin America and the Caribbean engage in sex work as a means of survival, which exacerbates their vulnerability to violence and exposes them to criminalization. The information received also indicates that trans women who are involved in sex work usually work and even live on the streets, where they face constant harassment, persecution and the constant threat of arrest. In general, the IACHR notes that transgender persons, due to the family, labor and social exclusion they face, have serious difficulties in accessing housing.

On the other hand, the Commission highlights the difficulties faced by trans persons in accessing the health system and quality, medically supervised body transformations, which can lead to health complications and even death. Likewise, the IACHR has become aware of the lack of training of health personnel to care for trans persons. Stigma, discrimination, abuse and violence discourage trans persons from seeking health services.

***IACHR calls on States to guarantee the rights of LGBTI persons in response to the COVID-19 pandemic. CP 081/2020 (April 20, 2020)***

In this regard, the Commission has stated on various occasions that police and other security forces in the States of the region often share the same attitudes and prejudices against LGBTI persons that prevail in society in general. Considering the functions that the police and other security forces perform during the period of containment measures, the IACHR calls on the States to adopt awareness-raising policies aimed at law enforcement and judicial authorities regarding gender identity and expression, which take into account that trans and gender-diverse persons often do not have a personal identification document that adequately reflects their gender identity and/or expression.

The Commission also calls on States to issue public statements categorically rejecting any act of discrimination based on sexual orientation, gender identity or gender expression by security forces in their interventions with civilians. In cases of allegations of acts of violence or discrimination against LGBTI persons, or who are perceived as such, the Commission reminds States of their duty to observe due diligence in conducting investigations and proceedings, both judicial and administrative, that result in the sanctioning of the conduct.

In addition, the Commission reiterates its recommendation to guarantee simple and expeditious legal mechanisms that make it possible for all persons to register and/or change, rectify or adapt their name and other essential components of their identity, such as image, or reference to sex or gender, as a matter of priority during the pandemic.

On the other hand, the Commission has repeatedly called attention to the situation of poverty affecting LGBTI people, characterized by social exclusion and high rates of homelessness, which pushes them into the informal economy and into sex work. Trans persons, in particular, face high rates of exclusion from income-generating opportunities and access to social welfare programs and health services. In this regard, the IACHR has received information from trans women and sex workers who continue to carry out their activities even in the context of COVID-19 containment because they have no other sources of income.

In light of the above, the Commission urges the States to guarantee LGBTI persons access to social care programs with a comprehensive human security perspective. In particular, the IACHR calls on the States to guarantee safe shelter, access to food and medicine for LGBTI persons in street situations, particularly taking into account trans women engaged in sex work. In addition, the Commission calls on States to include LGBTI persons as beneficiaries of any economic reactivation measures adopted to mitigate the impacts of COVID-19.

***On International Bisexual Awareness Day, the IACHR calls on States to guarantee the right to mental health of bisexual people. CP. No. 226/20 (September 23, 2020)***

The Commission urges OAS Member States to adopt public policies that promote awareness at all levels -including the mental health care sector- about the diversity of sexual orientations, making visible the life experiences and needs of bisexual persons. In addition, it calls on States to implement strong measures to avoid the deterioration of mental health and prevent death by suicide among bisexual people, ensuring that they can develop their life projects fully, based on their own individual experiences.

The IACHR reiterates that, according to Inter-American standards, States have the obligation to respect and guarantee the rights of LGBTI persons; in that line, it urges States to observe the specific recommendations on the human rights of LGBTI persons in the context of the pandemic, contained in its [Resolution 1-2020](#) and [Press Release 81/2020](#).

***On International Intersex Awareness Day, the IACHR calls on States to guarantee the right to health of intersex persons. CP No. 259/20 (October 26, 2020)***

The Commission emphasizes that, in light of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and other inter-American legal instruments, the rights of intersex persons must be respected and guaranteed by the States of the region in accordance with the principle of equality and non-discrimination. Thus, in compliance with their international obligations, States must adopt protocols that take into account that intersex persons are particularly vulnerable to violence in the medical field and to discrimination due to prejudice in a social context of rejection of bodily diversity.

The IACHR has received information on the performance of irreversible surgeries on intersex persons, particularly during childhood and adolescence, without their informed consent, for the purpose of aesthetic modifications. In many cases, these surgeries result in involuntary sterilization, irreversible infertility and the reduction or loss of sexual sensitivity. In this regard, the Commission has indicated in its report [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#) that forced and involuntary sterilization of intersex persons represents a serious violation of human rights. In addition, intersex people are

exposed to excessive medical examinations, photographs and exposure of genitalia, which invade their bodily privacy. As a consequence of all the above, according to a recent study, there is a high percentage of diagnoses related to the mental health of intersex people, highlighting depressive disorders, anxiety and post-traumatic stress disorder.

In light of this, the Commission stresses the need for States to adopt comprehensive health protocols that address the specific needs of intersex persons, including, as a priority, attention to their mental health. In addition, these protocols should adopt a human rights perspective, guaranteeing health services in an environment free of discrimination, violence and mistreatment of any kind, and prohibiting any unnecessary medical intervention on intersex children without their free, prior and informed consent. Furthermore, the IACHR reiterates its recommendation to adopt training measures for medical personnel regarding bodily diversity, as well as to adopt strategies to guarantee the effective communication and transfer of adequate information to intersex persons and their families regarding the consequences of surgical and other medical interventions, with a perspective of cultural and linguistic relevance.

## ***F. People of African descent***

### ***Thematic report***

***Women's Work, Education, and Resources: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59 (November 3, 2011).***

210. Girls and women living in poverty, in rural areas, indigenous women and women of African descent face particular barriers in terms of accessibility and permanence in school. These barriers include those related to the school itself, such as its geographic location. For example, some educational facilities are insufficient or distant. Both the distance and the cost of transportation constitute a barrier that will affect both access and permanence in school. In addition, the persistence of additional costs for school supplies and textbooks is a barrier to school access. Likewise, the lack of adequate infrastructure in schools, such as not having complete and functioning toilets, will affect girls and adolescents, particularly when they begin puberty.

**Report on the Economic, Social, Cultural and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, (March 16, 2021)**

59. The Commission has held that there are various forms of discrimination based on ethno-racial origin that prevent Afro-descendants from having equal access to quality education and employment, adequate housing, decent health services, and full enjoyment of their territorial rights. Therefore, the IACHR understands that intersectional discrimination has a direct and disproportionate impact on the exercise of economic, social, cultural and environmental rights, particularly affecting ethnic-racial groups and rural communities that are at greater risk of suffering harm to their personal integrity because they are exposed to conditions of poverty and extreme poverty.

60. The Commission understands that, as a consequence of this structural discrimination, patterns of institutional racism persist and are reflected in the invisibility of historically

excluded groups in public policy-making processes and, consequently, in the implicit and explicit denial of the existence of this population as part of society. Therefore, respect for the self-identification of ethnic-racial populations is the first step towards the recognition of their rights and their effective guarantee; failure to identify them deepens inequality gaps and exclusion.

61. The Commission notes that, according to research by international organizations, there are approximately 200 million people of African descent living in the Americas, a term that covers people of African origin living in the hemisphere and in all areas of the African diaspora as a result of slavery; This form of self-identification vindicates the cultural, economic, political and scientific contributions of the African heritage, and consequently makes visible the persistence of phenomena such as racial discrimination, xenophobia and various related forms of intolerance that specifically affect them. With this reference, the appropriation of the term Afro-descendant is part of a process of recognition of rights, self-recognition and self-identification of ethnic-racial origin.

67. In this framework and following ECLAC guidelines for the 2020 census round and other statistical operations, the IACHR reaffirms that it is essential that State institutions have the national resources to carry out censuses; specifying the phenomenon to be measured, why and for what purpose, since the aim of measuring the diversity of a country is not only the purpose of demographic identification of the population and the targeting of certain ethnic-racial groups, such as indigenous peoples and Afro-descendants, but also aims to make visible the situation faced by these ethnic-racial groups to raise awareness towards coordinated proposals that contribute to overcoming obstacles and promote the guarantee of their rights. It also recalls the need to incorporate an intercultural approach and ethnic-racial perspective in the technical teams during all phases of census implementation, question design; data collection; data analysis and systematization, ensuring the reliability and security of the data, and whose use does not generate stigmatization or reinforce racial stereotypes.

### ***Press Release***

#### ***The IACHR and its REDESCA call on the States of the region to guarantee the rights of Afro-descendants and prevent racial discrimination in the context of the COVID-19 pandemic. CP 092/20 (April 28, 2020)***

In this context, the IACHR and its REDESCA, recall the need for emergency health policies and comprehensive protection to ensure access to health services for all people with an intersectional approach to different conditions that may aggravate situations of structural discrimination, such as ethnicity, age, gender, socioeconomic status, immigration status, disability, sexual orientation and gender identity and / or expression, among others.

In this regard, the IACHR and its REDESCA emphasize that the measures of containment and mandatory social isolation may have a differentiated impact on the economic life of Afro-descendants, who would have more difficulty accessing public health services. They also highlight the negative impact that may result from the increase in labor terminations and the decrease in per capita economic income due to the institutional strategies adopted in the context of the pandemic; which could exacerbate and disproportionately impact population

groups in conditions of poverty and extreme poverty, such as people living on the street or in informal settlements.

Regarding Afro-descendant tribal communities, the IACHR reiterates to the States the importance of recognizing the collective territorial property rights of Afro-descendant communities and guaranteeing them the effective right to consultation and free, prior, and informed consent, respecting their free self-determination. It also urges States to refrain from promoting legislative initiatives or projects that affect ethnic territories during the duration of this pandemic, due to the impossibility of carrying out such consultation processes.

Finally, the Commission highlights the different strategies adopted by the States of the region to reduce the risk of contagion and the health impact of COVID-19, and the need for a coordinated response among them. Aware of this, the IACHR calls for the situation of Afro-descendants and tribal communities to be made visible in the context of this pandemic, especially to include an ethnic-racial perspective with an intersectional approach in all response measures implemented at the national level, as well as in regional responses that may be articulated.

## ***G. Indigenous peoples***

### **Precautionary Measures**

#### **Precautionary Measure No. 754/20 Members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land with respect to Brazil, (January 4, 2021)**

37. In relation to gravity, the Commission notes that the dissemination of COVID-19 among the proposed beneficiaries in the Araribóia TI in Brazil has been alleged. In particular, it is noted that, according to the applicants, the proposed beneficiaries would be exposed to the dissemination of COVID-19 due to forced contact with unauthorized third parties present in the Indigenous Land who would serve as potential vectors of the virus given their constant passage through the area and outside that Land. It is essential to take into account the serious impact on the rights to life, personal integrity and health of the proposed beneficiaries due to the multiplication of unwanted contacts, control of which is beyond their reach. Such contacts would have a special impact on the situation of those indigenous people who are in a situation of isolation.

44. In light of the foregoing, the Commission does not have elements that indicate that State actions have been sufficient and effective to protect the indigenous peoples living in the TI Araribóia from the multiplicity and complexity of the alleged risks, particularly considering that indigenous peoples in Brazil have historically presented immunological vulnerability to respiratory infections (see *supra* paras. 5 and 24). Thus, considering the present context of the COVID19 pandemic, in which the proposed beneficiaries would be in frequent contact with unauthorized third parties in the lands they inhabit, who would be potential vectors of the disease, coupled with the lack of sufficient and efficient health care measures in their favor; and, recalling the particular situation of historical vulnerability of the indigenous peoples, mainly the peoples in voluntary isolation, the Commission considers that, from the *prima facie* standard applicable to the precautionary measures mechanism, the rights to life, personal

integrity and health of the members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land are in a situation of serious risk.

### **Case filed with the Court**

#### ***Complaint in the case of the Sawhoymaxa Indigenous Community of the Enxet-Lengua People and its Members (Case 12.419) against the Republic of Paraguay (February 2, 2005).***

208. The relationship between the members of the Community and of the members with the Community is what gives meaning to their indigenous existence, it is what gives meaning not only to an ethnic origin but to the possibility of possessing and transmitting their own culture, which includes elements such as language, spirituality, lifestyles, customary law and traditions. As already expressed, being and belonging to an indigenous people, in this case the Enxet-Lengua people, includes the idea of a distinct and independent culture and lifestyle, based on ancient knowledge and traditions, fundamentally linked to a specific territory.

### ***Thematic report***

#### ***Situation of the human rights of the indigenous and tribal peoples of Panamazonia. OAS/Ser.L/V/II. Doc. 176 (September 29, 2019).***

306. Along the same lines, the IACHR has recognized the link between environmental protection and the right to health, given that the environment is essential for a healthy population. Therefore, when there is contamination and degradation of the environment, this constitutes a threat to the life and health of the people who live there. Thus, in the context of extractive industries, the IACHR has expressed its concern regarding the presence of substances in the body that can cause neurological diseases, bacteria in the body, malformations, skin diseases, disabilities of various kinds, among others, as is the case of mercury. This mineral is deposited in rivers and other water sources and accumulates in animals such as fish, which are part of the traditional diet of many indigenous peoples, especially in the Amazon.

307. It is also important to bear in mind that there are health effects that can be devastating for certain groups, as in the case of indigenous peoples in voluntary isolation or in initial contact, affected by the invasion of settlers, company workers, or by the State itself. Since these peoples are not in contact with members of the majority society, they have not developed sufficient immunological defenses to combat common diseases.

308. It is clear that these peoples require the adoption of action plans and specialized and culturally appropriate prevention and contingency protocols in the area of health, taking into account their special condition of vulnerability, as established in the Guidelines for the Protection of Indigenous Peoples in Isolation and Initial Contact of the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay and in the Report on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas. It should also be noted that the IACHR has pointed out that the best measure in the case of these peoples in particular is to respect the principle of no contact, given that "if unwanted contact is eliminated, most threats are eliminated and respect for the rights of such peoples is guaranteed".

310. Within this framework, the State is obliged to provide resources for indigenous peoples to establish, organize and control such services with the objective of being able to enjoy the highest level of physical and mental health. Along these lines, it must adopt measures to protect medicinal plants, animals and minerals that are necessary for the full enjoyment of the right to health of these peoples.

### ***Annual Report***

#### ***Annual Report of the Inter-American Commission on Human Rights 2015, OEA/Ser.L/V/II, Doc. 48/15 (Dec. 31, 2015). Chapter IV.A: Access to Water in the Americas. An approach to the human right to water in the Inter-American System.***

40. Special mention should be made of the right to property and access to water in relation to indigenous peoples. In the words of the Court, the close ties of indigenous peoples to their traditional territories and the natural resources linked to their culture that are found there, as well as the incorporeal elements that derive from them, must be safeguarded by Article 21 of the American Convention.

41. Consequently, indigenous peoples' access to their ancestral lands and to the use and enjoyment of the natural resources found therein is directly linked to obtaining food and access to clean water. Indeed, according to the jurisprudence of the Court, the members of indigenous and tribal peoples have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have the right to own the land they have traditionally used and occupied for centuries, without them, the economic, social and cultural survival of these peoples is at risk. Hence the need to protect the lands and resources they have traditionally used to sustain their ways of life.

42. Relatedly, the IACHR has indicated that the cultural rights of an indigenous or tribal people may encompass activities related to natural resources, such as fishing or hunting. The IACHR has also noted that among indigenous communities, the lives of their members "depend fundamentally" on the subsistence activities - farming, hunting, fishing, gathering - that they carry out in their territories, and that therefore, "the relationship that the community maintains with its lands and resources is protected under other rights contemplated in the American Convention, such as the right to life, honor and dignity, freedom of conscience and religion, freedom of association, protection of the family, and the right of movement and residence". The preservation of the particular connection between indigenous and tribal peoples and the natural resources they have traditionally used and which are linked to their culture "is fundamental to the effective realization of the human rights of indigenous peoples more generally and, therefore, merits special measures of protection".

### ***H. Persons in a situation of human mobility***

#### **Case filed with the Court**

##### ***I.V. (Case 12.655) v. Bolivia (August 15, 2014).***

160. However, the Commission has recognized that certain groups of women, as in the case of I.V., a migrant woman with few economic resources, suffer discrimination throughout their

lives based on more than one factor combined with their sex, which increases their risk of suffering acts of violence and other violations of their human rights.

161. The IACHR considers that the instant case is an example of the multiple forms of discrimination that affect the enjoyment and exercise of human rights by some groups of women, such as I.V., based on the intersection of various factors such as their sex, migrant status and economic position. In this regard, the Commission considers that migrant women with limited economic resources are in a particularly vulnerable situation as they are often forced to use public health services that are not suitable to meet their needs, given the limited care options available to them.

### ***Thematic reports***

#### ***Human rights of migrants and other persons in the context of human mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13 (December 30, 2013).***

607. With regard to the right to education, Article 13 of the Protocol of San Salvador establishes that education shall be a right of all persons and that among the various measures that States must adopt to achieve the full exercise of this right is that "primary education shall be compulsory and available free of charge to all". In greater detail, Article 30 of the International Convention for the Protection of All Migrant Workers and Members of Their Families establishes that all children of migrant workers shall enjoy the fundamental right of access to education on the basis of equality of treatment with nationals of the State concerned.

#### ***Due process in the procedures for the determination of refugee and stateless person status and the granting of complementary protection. OEA/Ser.L/V/II. Doc. 255 (August 5, 2020)***

277. In order to guarantee economic, social and cultural rights during the processing of procedures, it is essential to consider the so-called "firewall barriers", which "consist of the real and strict separation between immigration control and other public services and imply that the immigration authorities cannot access information about the immigration status of persons who use public services and that the institutions responsible for providing these services are not obliged to inquire or share information about the immigration status of users".

279. Similarly, the institutions that provide public services may not require regularity of migratory status or recognized refugee status in order to provide the respective services to persons requesting them. It is important to note that access to economic, social and cultural rights should not be conditioned by administrative status or level of protection (regular migrant, recognized refugee or other status). In this regard, the mere fact of "being a person" is sufficient to ensure the effective enjoyment of ESC rights. In this sense, all applicants for international protection must have access to health, education, housing, security and others, on an equal footing with nationals.

284. In its Resolution 04/19 on the Inter-American Principles on the Human Rights of Migrants, Refugees, Stateless Persons and Victims of Trafficking, the Commission notes, in Section IX (on the adequate standard of living), the need to guarantee certain rights, access to which should be facilitated for all migrants, refugees, asylum seekers and other persons in need of international protection. Such protection includes access to the full range of economic, social,

cultural and environmental rights, such as to health (principle 35), to work (principle 36), to education (principle 37), to housing (principle 38), to culture (principle 39).

285. The enjoyment of these rights is what enables persons in need of international protection to obtain local integration (considered a durable solution), which will only be effective if access to rights occurs under conditions of equality and non-discrimination with respect to nationals. The Commission stresses that access to ESCER must be facilitated from the moment of the application and throughout the procedures, thus preventing people from being rendered invisible and subjected to situations of exploitation. In this sense, and due to their special situation of vulnerability, any solution in favor of persons in need of protection requires certain steps to guarantee access to ESCER.

367. In particular, the Commission urges States to guarantee to stateless persons recognized as such, at a minimum, the following rights:

- Economic and Social Rights:

- The right to have access to work with the possibility of finding employment in the formal sector, which includes work in a relationship of dependence and the exercise of liberal professions, as long as compliance with the requirements for the exercise of each profession is guaranteed.
- Right to education, public whenever available, and always on a non-discriminatory basis;
- Right to health: including access to health services in all dimensions and levels, specifically sexual and reproductive health services;
- Access to social assistance services and any public assistance policies;
- Right to benefit from social security;
- Right to housing

390. Third, the Commission stresses the need to effectively guarantee access to economic, social and cultural rights, especially by ensuring that persons seeking protection can access the labor market, health services, assistance and education. In this regard, it identifies that such conditions are essential so that their rights are not further affected while they are waiting for their applications to be processed.

### ***Press releases***

#### ***IACHR urges States to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 pandemic. CP 077/20 (April 17, 2020)***

In this regard, the Commission recalls that, in accordance with the provisions of its Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons, States must provide them with conditions for an adequate standard of living compatible with the dignity of the human person, and prevent those that hinder or impede the enjoyment of the rights to health, environmental sanitation, as well as basic social services, as part of their inherent right to life, including respect for their dignity and their sexual, psychological and moral integrity, regardless of their migratory status or place of origin. In addition, it is incumbent upon States, as part of their obligations to protect the human rights of all persons in their territory and under their jurisdiction, to provide the conditions for them to enjoy the highest possible standards of physical and mental health, provided by the same medical care provided to their nationals, as well as bonds, financial aid and other internal protection mechanisms. [...]

The Commission emphasizes that migratory phenomena, whether for economic reasons or in search of protection, require a priority approach by States based on the principles of solidarity, cooperation and shared responsibility in the context of the pandemic, with a focus on guaranteeing access to protection mechanisms and ensuring non-refoulement of persons whose lives and integrity are at risk. In addition, it recognizes that the pandemic may not only aggravate the situation of previously displaced persons, but may also become the cause of new migratory movements, internal or international, with forced characteristics, and notes that non-discriminatory inclusion in host countries is the most effective prevention mechanism.

In this regard, the IACHR is particularly concerned about the absence of specific measures by host States for refugee and displaced persons under their jurisdiction, who, as a result, may be forced to move again. In this regard, it notes that many refugees, asylum seekers, and persons in need of protection return to their countries of origin where the risks to their lives, health, and safety persist. In this regard, the Commission recognizes the forced nature of such displacements to the countries of origin, and calls special attention to the scenarios of human mobility in Central America and Venezuela, urging host States to take additional affirmative measures to protect the integrity and lives of such persons and to refrain from applying refugee cessation clauses to those who have this protection status.

In the context of the pandemic, the Commission stresses the need to adopt an intersectional approach to the factors that potentiate and aggravate its impacts, such as age, gender, race and ethnicity. In this regard, the additional risks to which women and girls in a situation of human mobility are subjected in the context of the pandemic and the closing of borders, which implies greater exposure to domestic violence, often accompanied by continuous contact with the aggressors, and labor and sexual exploitation. The IACHR also highlights the need for a special approach to public policies for older migrants, considering their reception needs and, in the countries of origin, the impact suffered by older persons and other dependents of migrant workers who contribute remittances to their family's domestic economy.

In relation to situations of tension, the Commission recalls that States have the obligation to respect and guarantee the rights and freedoms recognized to all persons in their territory and subject to their jurisdiction, without discrimination based on nationality, migratory status, or statelessness. Linked to the above, the IACHR urges States to include migrant, refugee and stateless populations in their territory in all plans, measures and actions for protection in the areas of health, social and economic assistance developed in response to the HIV/AIDS pandemic. In addition, it reminds States of the need for structural adequacy and presence of medical and health personnel in camps, settlements, shelters and other institutions hosting migrants, refugees or displaced persons.

Likewise, the IACHR reiterates the need to make health containment measures that generate a reduction or suspension of freedoms compatible with the possibilities of guaranteeing groups fleeing persecution, generalized violence, serious humanitarian crises and other threats to life and physical integrity, access to territories and protection procedures, especially refugee procedures, under conditions that ensure the protection of the health of applicants and the health protocols of the host countries.

## ***I. People living in poverty, extreme poverty or on the street.***

### ***Thematic reports***

#### ***Women's Work, Education, and Resources: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59 (November 3, 2011).***

210. Girls and women living in poverty, in rural areas, indigenous women and women of African descent face particular barriers in terms of accessibility and permanence in school. These barriers include those related to the school itself, such as its geographic location. For example, some educational facilities are insufficient or distant. Both the distance and the cost of transportation constitute a barrier that will affect both access and permanence in school. In addition, the persistence of additional costs for school supplies and textbooks is a barrier to school access. Likewise, the lack of adequate infrastructure in schools, such as not having complete and functioning toilets, will affect girls and adolescents, particularly when they begin puberty.

#### ***Violence, children and organized crime. OEA/Ser.L/V/II. Doc. 40/15 (November 11, 2015).***

364. The right to education is particularly affected in contexts where there is a generalized situation of insecurity and violence. In this regard, information has been gathered from the responses to the questionnaires and from the reports of various United Nations agencies that indicate that communities, areas and neighborhoods exposed to violence usually lack quality educational services, have high levels of absenteeism and school dropout rates, and the number of adolescents who pursue higher education after completing compulsory education is low. As a result, professional opportunities are restricted due to the low level of education received, and the jobs young people have access to are often informal or in precarious working conditions - in terms of salary level, benefits, and job stability. This results in low rates of social mobility in these sectors and the reproduction of conditions of poverty and social exclusion.

365. Taking into account that social exclusion and economic inequalities are among the conditions that facilitate the emergence of social tensions, violence, insecurity and crime, the failure to ensure the provision of a quality educational service that provides opportunities for labor insertion contributes to the reproduction of the aforementioned scenarios of exclusion, insecurity and violence, in addition to violating the right to education. In this sense, the public policies of the States must take into consideration the investment of the necessary resources to guarantee a quality educational service in equal conditions to those accessed by other students, in contexts that present particular circumstances and challenges such as those described.

382. In general, in the region, for many students in poor and marginalized neighborhoods, the environment in their schools is not conducive to the role that school and education should play in their lives; overcrowded classrooms, lack of qualified teachers and sufficient funding for quality education, or lack of services such as counseling and special education services, discourage and frustrate students and create a climate conducive to absenteeism and defiance of the school's rules of conduct. The lack of support for students who require it through counseling or special education services means that the school is unable to respond to the diverse needs of children and adolescents. Instead, some schools have responded by tightening discipline and introducing police in school hallways.

**Press releases*****IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic. CP 124/20 (June 2, 2020)***

In this regard, it is imperative that the States of the region place the content of the human right to health as the articulating and central axis of the health systems, giving it the necessary priority for its effective protection, with specific consideration for people living in poverty or in precarious conditions. For the Commission and its REDESCA, the persistent gaps and high costs in the coverage and quality of health services, as well as the increasingly accentuated fragmentation of these systems in the region, reinforce the urgency of effective compliance with the obligations of the States in this area. In this regard, they underscore the importance of States ensuring sufficient emergency funds for health, including its basic and social determinants; prioritizing public health financing in their general budgets; and moving firmly towards guaranteeing universal access to this right, including mental health. REDESCA recalls that States must also ensure that the elements of availability, accessibility, cultural acceptability and quality of the right to health are guaranteed.

For their part, individuals and families living in poverty run a high risk of losing their sources of employment, or of experiencing a drastic reduction or loss of subsistence income due to the provisions and orders on distancing, social isolation and quarantines that lead to the closure or limitation of various economic activities. When these measures do not incorporate a human rights approach, they not only tragically expose the drastic and complex situations in which these populations find themselves; in turn, they generate greater risks of contagion and damage to their health, as they are forced to fail to comply with the measures established in order to achieve essential access to water and food sources. In short, the pandemic context produces disproportionate, unfair and often unmanageable burdens, and they must face the daily dilemma of maintaining social isolation or failing to comply with the measures established in order to survive.

***J. Other persons or groups in situation of vulnerability******Thematic reports******Persons deprived of liberty in Nicaragua in the context of the human rights crisis that began on April 18, 2018. OEA/Ser.L/V/II. Doc. 287 (Oct. 5, 2020).***

131. In this context, the IACHR recalls that in accordance with inter-American standards on the matter, the State must ensure that a person is detained in conditions that are compatible with respect for his human dignity, that the manner and method of exercising the measure does not subject him to anguish or hardship that exceeds the inevitable level of suffering intrinsic to detention, and that, given the practical demands of incarceration, his health and well-being are adequately ensured. Likewise, the State has the obligation to adopt measures aimed at ensuring that persons deprived of liberty are not held in overcrowded conditions that violate human dignity.

137. The IACHR emphasizes that providing adequate medical care to persons deprived of liberty is an obligation that derives directly from the State's duty to guarantee the right to personal integrity contained in Articles 1(1) and 5 of the American Convention and Article I of the American Declaration. Similarly, the IACHR has established that, in the case of persons deprived of liberty, the obligation of States to respect physical integrity, not to use cruel, inhuman treatment and to respect the inherent dignity of the human being, extends to guaranteeing access to adequate medical care.

138. Likewise, Principle X of the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establishes that "persons deprived of liberty shall have the right to health, understood as the enjoyment of the highest attainable standard of physical, mental, and social well-being, which includes, inter alia, adequate medical, psychiatric, and dental care; the permanent availability of qualified and impartial medical personnel; access to appropriate and free treatment and medication; the implementation of programs of health education and promotion, immunization, prevention, and treatment of infectious, endemic, and other diseases; and special measures for the prevention and treatment of infectious, endemic, and other diseases; access to appropriate and free treatment and medication; the implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high-risk groups, such as: elderly persons, women, children, persons with disabilities, persons with HIV/AIDS, tuberculosis, and persons with terminal illnesses." In addition, in all circumstances, the provision of health services must respect the following principles: confidentiality of medical information; autonomy of patients with respect to their own health; and informed consent in the doctor-patient relationship.

144. In light of the foregoing, the IACHR reiterates the State's obligation to adopt measures aimed at ensuring that persons deprived of liberty receive sufficient food with high nutritional value. In this regard, the Inter-American Court has established that it is the duty of the State to ensure that all detainees live in conditions compatible with their human dignity, including access to adequate, timely and sufficient food and health care. With respect to drinking water, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establish that all persons deprived of liberty shall have access at all times to sufficient and adequate drinking water for their consumption. Its suspension or limitation, as a disciplinary measure, shall be prohibited by law. The lack of provision and treatment of drinking water, as well as of food in good condition, is a permanent factor in the illnesses and health complications of persons deprived of liberty.

### ***Press releases***

#### ***The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic. CP 066/20 (March 31, 2020)***

In accordance with its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the IACHR reminds States that all persons deprived of liberty under their jurisdiction have the right to receive humane treatment, with unrestricted respect for their inherent dignity, their fundamental rights, especially their right to life and personal integrity, and their fundamental guarantees, such as access to the judicial guarantees essential to protect rights and freedoms. States are in a special position of guarantor vis-à-vis persons

deprived of liberty, which implies that they must respect their life and personal integrity, as well as ensure minimum conditions that are compatible with their dignity. Thus, States are obliged to carry out concrete and immediate actions to guarantee the rights to life, integrity and health of persons deprived of liberty, in the context of the pandemic.

***IACHR calls on States to protect and guarantee the work of human rights defenders in the face of the COVID-19 pandemic. CP 101/20 (May 5, 2020)***

The Commission emphasizes that human rights defenders are an essential pillar for the strengthening of democracies in the region, because the purpose that motivates the work they perform is the full enjoyment of fundamental rights in the region. Their activities of vigilance, denunciation and dissemination, as well as support for victims, representation and defense of persons whose rights may be threatened, contribute in a special way to the respect, protection and promotion of human rights and fundamental freedoms of all persons in the Americas, a fundamental task in the current context of the COVID-19 pandemic.

In light of the above, the IACHR calls on the States of the region to implement protocols that allow human rights defenders to carry out their work while observing the corresponding health measures. In this regard, States should facilitate the work and movement of journalists and human rights defenders who play a central role during the public health emergency, in order to inform and monitor the actions of the State. In this sense, they should refrain from persecuting or detaining human rights defenders for their vigilance regarding the actions of the State in the face of the pandemic and possible violations of fundamental rights, which includes not subjecting them to civil or criminal proceedings for their opinions, not detaining them based on the use of broad or ambiguous criminal definitions, and not exposing them to the risk of physical or virtual attacks.

Finally, the IACHR expresses its concern regarding criminalized human rights defenders who are deprived of their liberty, particularly those in pretrial detention. The Commission recently expressed its deep concern about the alarming conditions of health, hygiene and overcrowding of the prison population in the region, which poses a greater risk in the face of the advance of COVID-19.





# CHAPTER 5

# CONCLUSIONS

## CONCLUSIONS

108. The IACHR and REDESCA reiterate the importance of recognizing the indivisible, interdependent and interrelated nature of all human rights, as is evident in the inter-American normative and jurisprudential framework. This implies that States should adopt measures to ensure respect for and guarantee both civil and political rights, as well as economic, social, cultural and environmental rights (ESCER).
109. Recognizing the obligations of progressive realization and non-regression of ESCER, the IACHR and REDESCA recall that there are also immediate obligations that impose duties on States regardless of the existing capacity to guarantee the right in a generalized manner. In addition, attention must be paid to populations in situations of vulnerability or historical discrimination, in order to ensure the satisfaction of their ESCER when they are not in a position to enjoy them on their own.
110. In this sense, immediate obligations imply that States must, on the one hand, ensure equal access to and exercise of economic, social, cultural and environmental rights, i.e., non-discrimination. On the other hand, regardless of their budgetary capacity, they must take measures to ensure that the different rights are realized progressively.
111. The IACHR and REDESCA fulfill a hemispheric mandate in relation to the promotion and protection of ESCER, since all States of the Organization of American States have assumed obligations in relation to them. This, both in logic of connection with civil and political rights, based on the invidisibility and interdependence of all human rights, as well as their recognition in various provisions of Article 34.k) of the OAS Charter, as well as the American Declaration, instruments that have full legal effect and from which obligations are derived for all OAS member states, including the provisions referring to ESCER.
112. On the other hand, as a result of the framework of obligations deriving from the American Convention on Human Rights, States must respect the exercise of economic, social, cultural and environmental rights, as well as guarantee them. Within this last obligation, the right of access to justice must be present in relation to all the rights covered by Article 26 of the Convention, as well as other inter-American treaties on the matter, including the Protocol of San Salvador.
113. The Commission and REDESCA urge States that have not yet done so to ratify the American Convention, as well as the Protocol of San Salvador and other human rights treaties of the system, as a way to strengthen their commitment and applicable legal framework for guaranteeing ESCER. In this regard, they place themselves at the disposal of the States, in order to provide technical assistance and support efforts in this direction.
114. This first compendium on ESCER has been created with a view to its periodic updating, as well as to serve as a model for the creation of new compendiums by right or of an intersectional and thematic nature, as the interpretative parameters on ESCER continue to evolve.
115. The compendium reflects the IACHR's increasing attention to ESCER through its various mechanisms, especially since the decision to create and implement REDESCA as a specific mandate in this area within the framework of the Commission's Strategic Plan 2017-2021. The work carried out by the new office has been of particular relevance to promote a

comprehensive response by the Commission, focused on the right to health and other ESCER, in the face of the challenges that the pandemic poses in particular for such rights and for groups in situations of greater vulnerability or historical discrimination.

116. The priority lines of work of REDESCA's strategic agenda 2021-2023, approved by the IACHR at the beginning of its second period of mandate, focus on the greatest challenges in the region in the area of ESCER, including the situation of ESCER in the face of the pandemic and the impact of climate change on human rights. To address such an urgent and challenging agenda, the office requires financial resources and qualified technical equipment, reiterating the call of the Commission and REDESCA for States and donors to contribute to the voluntary fund created by the Commission when it decided to launch REDESCA, so that it can sustain and strengthen the services it provides to the IACHR, as well as to the inter-American system as a whole.
117. On the other hand, the systematization carried out, with a focus on the different rights, offers a first diagnosis as to the degree of evolution and need for further development of each specific right. In this sense, this compendium is also an internal and strategic tool for the Commission itself and its different mandates, especially for REDESCA. By virtue of the above, it identifies areas of opportunity for the normative development of the rights addressed in the compendium, which the IACHR and its REDESCA can carry out through the interpretative function, monitoring, or the system of cases and petitions.
118. The Commission and REDESCA make available this reference tool to make visible and disseminate existing advances in the area of economic, social, cultural and environmental rights in the framework of the IACHR mechanisms. The purpose of this compendium is to promote the knowledge and adoption of Inter-American standards on the subject, with the objective of strengthening the capacities of actors at the internal level of the States of the Americas, as well as the Inter-American system itself. The IACHR and REDESCA appeal to the efforts of the States and the Inter-American community as a whole to achieve maximum dissemination of the document. Likewise, the IACHR and in particular REDESCA are available to promote and provide training on its contents in the OAS Member States.