



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

**PRELIMINARY REPORT  
ON POVERTY, EXTREME POVERTY, AND  
HUMAN RIGHTS IN THE AMERICAS**



**PRELIMINARY REPORT ON POVERTY, EXTREME POVERTY,  
AND HUMAN RIGHTS IN THE AMERICAS**

INTRODUCTION.....	3
<b>I. LEGAL FRAMEWORK AND THE CONCEPTUALIZATION OF POVERTY AND EXTREME POVERTY.....</b>	<b>7</b>
A. The Universal and Inter-American Regulatory Framework relating to Poverty .....	7
1. Universal System .....	7
a. Human Rights Mechanisms and Steps toward ESCR .....	7
b. The 2030 Agenda Sustainable Development Goals .....	9
2. Inter-American System for the Protection of Human Rights.....	12
a. Efforts by the Organization of American States (OAS) Aimed at Eradicating Poverty and Extreme Poverty.....	12
b. The Inter-American System for Protecting Human Rights and the Work of the IACHR.....	15
c. Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador .....	42
B. Conceptualizing poverty and extreme poverty in the Americas .....	43
1. Conceptualizing international and national poverty.....	43
2. Definition of poverty and extreme poverty for the purposes of this report.....	54
<b>II. IMPACT OF POVERTY ON THE EXERCISE OF ESC RIGHTS OF PERSONS, GROUPS, AND COMMUNITIES HISTORICALLY SUBJECTED TO DISCRIMINATION.....</b>	<b>57</b>
A. Brief Overview of General Poverty and Extreme Poverty Figures for the Americas .....	57
B. Impacts of Poverty and Extreme Poverty on Persons, Groups, and Communities Historically Subjected to Discrimination .....	58
1. Women .....	59
2. Children and adolescents.....	62
3. Migrants.....	73
4. Persons Deprived Of Liberty .....	76
5. Persons with disabilities .....	80
6. LGBTI Persons, Groups and Communities .....	83

<b>III. ACCESS TO JUSTICE: CHALLENGES AND PRIORITY ISSUES FACING PERSONS LIVING IN POVERTY IN GAINING ACCESS TO THE COURTS AND OBTAINING AN EFFECTIVE RESPONSE TO THEIR CLAIMS .....</b>	<b>88</b>
<b>IV. CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>96</b>

## INTRODUCTION

1. The inter-American system, and the Inter-American Commission on Human Rights in particular, have been progressively taking stock of the poverty and extreme poverty of a significant number of people in the Americas. In 2001, the Commission issued a Report on the Human Rights Situation in Paraguay which suggests that poverty is, overall, a major human rights concern in the Americas,<sup>1</sup> and a phenomenon that constitutes "an across-the-board violation of all human rights: civil, political, social, economic, and cultural."<sup>2</sup>

2. Now, as it prepares this report, the IACHR considers that poverty constitutes a human rights problem manifested in obstacles to the enjoyment and exercise of human rights on a genuinely equal basis by the persons, groups and communities experiencing it. Under certain circumstances, it also involves violations of human rights for which the State may bear international responsibility. At the same time, extreme poverty constitutes a serious human rights issues because of the intensity with which it undermines the enjoyment and exercise of human rights.

3. Bearing in mind that human rights are indivisible and interdependent, the Inter-American Commission (hereinafter the "IACHR" or "Commission") has pointed out that the violation of economic, social, and cultural rights usually also entails a violation of civil and political rights. Through its various mechanisms, the Commission has observed that the high degree of structural discrimination and social exclusion to which certain groups living in poverty are subjected renders citizen participation, access to justice, and the effective enjoyment of human rights illusory as far as they are concerned.<sup>3</sup> In that sense, from a human rights perspective, poverty and extreme poverty impair both categories of rights and overcoming them, therefore, is associated with access to, and satisfaction of, human rights across the board.

4. The Commission considers that, while poverty is usually associated with a shortage of financial resources, that does not necessarily mean that economic factors are the only determinants of poverty. Economic growth does not automatically translated into a higher standard of living for excluded and marginalized individuals and groups, unless appropriate measures or public polices, with a human rights perspective, are adopted so as to generate conditions for real equality. Likewise, notwithstanding the close ties between democracy, the rule of law, and human rights, they do not mean that democracy *per se* and the rule of law translate into full and effective enjoyment of human rights by persons living in poverty.

5. One of the great challenges faced by persons living in poverty is the fact that they go unnoticed (their "invisibility"), a circumstance that makes it more likely that their human rights are violated. The IACHR has highlighted that bias when it has pointed out that ""The torture of a single individual rightly raises public outrage. Yet the deaths of more than 30,000 children every day from mainly preventable causes go unnoticed."<sup>4</sup> Consequently, a key first step is to pay due heed to the poverty problem and bring it out into the open.

---

<sup>1</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001., par. 5

<sup>2</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 17; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143. Doc. 59, November 3, 2011, par. 1. Available at: <http://www.cidh.oas.org/pdf%20files/mujeresdesc2011.pdf>

<sup>3</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

<sup>4</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), 2001, Chapter V, par. 10. See, Human Development Report, op. cit. p. 8.

6. The IACHR has received abundant information indicating that natural and climate-related disasters can exacerbate the vulnerability of people living in poverty and extreme poverty in the Americas. A World Bank study has shown that the possible effects of climate severely and disproportionately affect persons living in poverty, given that they are more exposed to climate-related hazards such as drought, flooding, heat waves, and so on. That disadvantage is even more pronounced when there is a sharp drop in food output.<sup>5</sup>

7. As to how the problem should be conceptualized, since the 1990s the IACHR has been insisting that a human rights approach is indispensable in all State-sponsored public policies and in actions by multilateral organization to address the issue.<sup>6</sup> Intergovernmental organizations, such as the World Bank and the Inter-American Development Bank, and specialized agencies have published numerous reports addressed the issue of poverty from an economic and social perspective, based mainly on indicators of changes in the level of development.

8. For its part, within the United Nations, the Economic Commission for Latin America and the Caribbean (ECLAC) has pointed out in one of its more recent publications that "Poverty represents a critical level of deprivation that threatens survival, dignity and the effective enjoyment of rights —notions which exceed the concept of sufficient monetary income to meet basic needs" <sup>7</sup>, and it has adopted a right approach in its publications.

9. Poverty analysis based on a human rights perspective begins with the recognition of the individuals, groups, and communities living in poverty as human rights holders and as agents of change.<sup>8</sup> That is to say that persons living in poverty cease to be regarded as "passive recipients of aid" or "charity" and instead are treated as holders of rights who can play an active part in taking decisions that affect them and demand protection and accountability from State authorities.

10. The human rights approach starts from the premise that poverty is not inevitable.<sup>9</sup> In many States, for instance, the exclusion of certain groups is thought to be largely due to the fact that, historically, social policies have ignored them or did not target them directly.<sup>10</sup> Structural and systemic inequalities – social, political, economic and cultural – often remain unaddressed and further entrench poverty.<sup>11</sup>

11. The drafting of this report provides a first opportunity for the IACHR and the inter-American human rights system to delve more deeply into, and develop, this subject matter using a right-based approach, by analyzing the effects that poverty has on the enjoyment and exercise of those rights. The report also seeks to pave the way for further development of the legal framework governing the international responsibility of States for poverty and extreme poverty. It further affords an opportunity to present States with clear standards within the framework of international human rights norms to enable them to address the obstacles to the enjoyment and exercise of human rights faced by more than 165 million people in the Hemisphere, 69 million of whom live in extreme poverty.

---

<sup>5</sup> United Nations, [World Bank: El cambio climático podría añadir 100 millones de pobres](https://openknowledge.worldbank.org/bitstream/handle/10986/22787/9781464806735.pdf). [See: World Bank Group. 2016. Shock Waves: Managing the Impacts of Climate Change on Poverty] <https://openknowledge.worldbank.org/bitstream/handle/10986/22787/9781464806735.pdf>

IACHR. Fourth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.83, doc. 16 rev, June 1, 1993. Available at: <http://www.cidh.org/countryrep/Guatemala93eng/toc.htm>

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

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

<sup>9</sup> United Nations [Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda](#), A/HRC/21/39, 18 July 2012, para. 6.

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

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

12. Given the vast scope and complexity of the human rights problem posed by poverty and extreme poverty and which the individuals, groups, and communities living in those conditions have to contend with, this report seeks to achieve an initial, by no means exhaustive, approximation to the consolidation and development of inter-American standards in this area. At the same time, the Commission hopes that this report will serve to highlight the principal impairments to human rights in these contexts (of poverty and extreme poverty) and to single out the core challenges crying out for more attention by OAS member states. Together with the above, the Commission makes recommendations echoing its main concerns in this field.

13. The focal points of the report underscore: a) the importance of addressing the problem of poverty and extreme poverty from a human rights perspective; b) the need to standards at the inter-American level; c) the importance of highlighting the special difficulties that certain historically discriminated-against groups face in exercising their human rights; and d) the timeliness of making a series of recommendations on this subject to the member states.

14. Adopting a human rights approach to poverty eradication means that the policies and institutions aimed at promoting strategies in that direction must be founded upon and shaped by the rules, principles, and standards of international human rights law. International law thus provides an explicit and imperative regulatory framework to guide or orient the formulation of national and international policies and strategies.<sup>12</sup>

15. A human rights approach opens up a new perspective for efforts to eradicate poverty, based on respect for the dignity and autonomy of persons living in poverty, and empowers them to effectively participate in public life, including in the design of public policy.<sup>13</sup> In this way, a human rights approach constitutes a tool for improving and strengthening legislation, practices, and public policies for tackling poverty, by promoting clear efforts to perfect the day-to-day performance of democratic institutions.

16. As for the depicting of inter-American standards in this field, given that so far neither the Commission nor the Inter-American Court have developed them in full via specific and systematic jurisprudence, this report could represent a major historical step as the first time that the IACHR explores in detail the international obligations of the State to address poverty and extreme poverty from a human rights perspective.

17. Defining such obligations will serve to determine the standards needed to prevent the human rights violations resulting from those circumstances (of poverty and extreme poverty); to guarantee the equal exercise of rights for persons and groups living in poverty; and to make effective reparation in cases of human rights violations attributable to the State.

18. With respect to highlighting the poverty problem in the region, this report provides an overview of the principal forms of structural discrimination and social exclusion encountered by individuals and groups who have historically been victims of discrimination and who live in poverty and extreme poverty. The report addresses the disproportionate impacts that poverty and extreme poverty have on the effective enjoyment of their rights.

19. Regarding the background to this report, it is worth mentioning that in recent years, as part of what is referred to as the process of strengthening the inter-American system, both the OAS member states and other players in the system, expressed interest in seeing more attention paid in the work of the IACHR to discussion and consideration of economic, social, and cultural rights.

---

<sup>12</sup> CEPAL Review 88, Víctor Abramovich, [An Approximation to a Rights Approach to Development Strategies and Policies in Latin America](#).

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

20. As a result of that process, at its 146th regular period of sessions in November 2012, the IACHR decided to establish its "Unidad DESC", i.e. a Unit on Economic, Social, and Cultural Rights (ESCR), which was charged with drafting this report. That Unit's Work Plan included developing international standards for interpreting inter-American human rights instruments in respect of economic, social, and cultural rights, and seeking to broaden inter-American case law on the subject.

21. At the international level, it is important to underscore the consensus achieved by the United Nations with the adoption of the Sustainable Development Goals on September 25, 2015, when 193 states committed to achieving 17 goals by 2030, the first of them being to eradicate all forms of poverty.<sup>14</sup> That call for action can and must be considered entirely feasible, given the successes achieved by the Millennium Development Goals, which were set in 2000 and spurred most countries to halve their poverty rates by 2015.

22. With respect to the methodology used to draft this report, it should be noted that, in February 2016, with a view to eliciting information regarding the progress made and challenges still facing individuals, groups, and communities that have historically been victims of discrimination and who live in poverty, the Commission sent OAS member states a request for information along with a questionnaire, which is appended to this report. It also published the questionnaire in order to ensure ample access for civil society organizations and other stakeholders.

23. The States that replied to the questionnaire were: Argentina, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Suriname, and Uruguay. The civil society organizations that replied to the questionnaire were: Fundación Biopsicosis, TECHO, CIIDH-Centro Internacional para Investigaciones en Derechos Humanos, FUNDAR, Ramón Navarro Ceballos, Columbia Law School Human Rights Institute, ProVene/Fundación Pro Bono Venezuela, Provea, Grupo de Monitoreo Independiente de El Salvador GMIES, ACIJ, AFIC argentina/O'Neill Institute, WIEGO and Observatorio de Derecho a la alimentación de América Latina y el Caribe. Information was also furnished by the Public Defenders' Office of Argentina.

24. In connection with the preparation of this report, seven visits were conducted to OAS member states: Bolivia, the United States (two visits), Guatemala, Guyana, Paraguay, and Peru. The visits were designed to elicit information through three channels: directly from the individuals, groups, and communities, especially those traditionally discriminated against, living in poverty and extreme poverty; from public authorities regarding the poverty reduction measures and public policies they have implemented; and from social movements and civil society organizations concerned with poverty issues.

25. The report also includes information presented before the IACHR within the framework of the petitions and individual petitions mechanism, precautionary measures, and requests for information pursuant to Article 41 of the American Convention, as well as during the hearings held twice a year in IACHR regular periods of sessions and hearings, and visits conducted by the whole Commission or by country and thematic rapporteurs.

26. In addition, in preparing this report, the Commission conducted a consultation with experts on the subject, including representatives of multilateral organizations, universities, and NGOs, with a view to garnering additional inputs and validating the consistency of all the information and statements.. During the 159th period of sessions, held in Panama between November 29 and December 7, 2016, the IACHR decided to provide an opportunity for government and civil society representatives to contribute inputs as well.

---

<sup>14</sup> United Nations, General Assembly, [Resolution adopted by the General Assembly on September 25, 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#), October 21, 2015. 2015 was the target year for the eight "Millennium Development Goals" (MDGs) envisaged in the Millennium Declaration, which was signed by 189 member states of the United Nations at the Millennium Summit in 2000. Acknowledging the achievements and the need for a new post-2015 agenda, in 2012, at Rio+20, the countries agreed to establish an open working group to develop a set of sustainable development goals. After more than a year of negotiations, the Open Working Group submitted its proposal for 17 sustainable development goals. Thus, there are currently 17 sustainable development goals (SDGs) with 169 targets, as opposed to the 8 Millennium Development Goals (MDGs) with 21 targets.



27. The information provided by States, civil society organizations and academics, in the replies to the questionnaire, and the information provided during visits and the inputs culled from consultations were enormously useful for the Commission, which is very grateful for that cooperation.

28. The report has four main chapters. The first summarizes the progress made thus far by the Organization of American States (OAS), in international rules and regulations, and in inter-American norms and standards with respect to poverty. Next, the report analyzes how poverty has been conceptualized in international circles and by the member states. In the second section, based on the principle of nondiscrimination, the report identifies the impact of poverty on the exercise of the human rights of persons, groups, and communities that have traditionally been victims of discrimination. After that, the report focuses on the principal challenges facing those who live in poverty in accessing the justice system and obtaining effective responses to their demands. Finally, the IACHR makes recommendations.

29. This report would not have been possible without the valuable and resolute support of the European Commission.

## **I. LEGAL FRAMEWORK AND THE CONCEPTUALIZATION OF POVERTY AND EXTREME POVERTY**

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

### ***A. The Universal and Inter-American Regulatory Framework relating to Poverty***

#### **1. Universal System**

##### **a. Human Rights Mechanisms and Steps toward ESCR**

31. The universal system has recognized that poverty is a human rights-related issue and that there is a link between comprehensive enjoyment of all human rights and poverty reduction. The joint preamble to the two binding treaties adopted by the United Nations in 1966 (the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights [ICESCR]) establishes that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."<sup>15</sup>

---

<sup>15</sup> [United Nations Committee on Economic, Social and Cultural Rights. Substantive Issues arising in implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights 1.](#)

32. In view of the indivisibility and interdependence of human rights, reaffirmed at the World Conference on Human Rights in Vienna, in 1993, it is worth stressing that poverty is also a pertinent issue for other universal treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of Persons with Disabilities; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Other relevant instruments include the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169)<sup>16</sup>

33. For the Committee that monitors compliance with the ICESCR (CESCR), poverty has been a core issue and one of its principal concerns. Over the years, the Committee has pointed out that the right to work, the right to an adequate standard of living,<sup>17</sup> the right to adequate housing, the right to health, and the right to education, lie at the heart of the aforementioned Covenant, and have a direct and immediate bearing on the eradication of poverty<sup>18</sup>.

34. Through its General Comments, that Committee elucidates the contents of the demands posed by the Covenant. Its General Comment No. 3 established "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" listed in the Covenant. Without this minimum core obligation, the Covenant "would be largely deprived of its raison d'être."<sup>19</sup> The Committee has established, in specific resolutions, that the essential levels of the rights to food, education, and health constitute non-derogable minimum obligations.<sup>20</sup>

35. At the universal level, it is also necessary to stress that the Human Rights Council established the mandate of the United Nations Special Rapporteur on extreme poverty and human rights above all to assess the link between enjoyment of human rights and extreme poverty.<sup>21</sup> Successive Special Rapporteurs have conducted a series of country visits and referred to specific issues such as The impact of austerity measures on the enjoyment of human rights (2013), Participation of persons living in poverty (2013), Access to justice (2012), The penalization of poverty (2011) and Social protection and the Millennium Development Goals (2010), Older persons and social protection(2009), among others.

36. Other United Nations Special Rapporteurship mandates have a bearing on poverty, such as the mandate on the human rights to safe drinking water and sanitation, to food, to education; on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment ; on the rights of indigenous peoples; on the right of everyone to the enjoyment of the highest attainable standard

---

<sup>16</sup> United Nations, [Core International Human Rights Instruments](#). There are 10 core international human rights treaties. Each of these instruments has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

<sup>17</sup> Article 11 of the ICESCR and Article 25 of the Universal Declaration recognize the right to an adequate standard of living, which includes access to adequate food, clothing, and housing, as well as the right to water and the continuous improvement of living conditions. See United Nations Committee on Economic, Social and Cultural Rights. Substantive Issues arising from implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights 10. Also, CESCR, General Comment N° 15, The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), para. 3.

<sup>18</sup> United Nations Committee on Economic, Social and Cultural Rights. [Substantive Issues arising in implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights](#).

<sup>19</sup> United Nations, [CESCR, General Comment N° 3, The Nature of the Obligations of the States Parties \(paragraphs 1 and 2 of the Covenant\)](#), para. 10.

<sup>20</sup> United Nations, CESCR, General Comment N° 14, the right to the highest attainable standard of health, para. 47.

<sup>21</sup> United Nations, [Special Rapporteur on extreme poverty and human rights](#) The Special Rapporteur is an independent expert appointed by the Human Rights Council to examine the situation in a country or a specific human rights matter and to report on it. He or she performs that role in an honorary capacity, is not a member of the United Nations staff, and does not receive a salary for performing her or his mandate. The person who is currently performing that mandate (and has been doing so since June 2014) is Mr. Philip Alston. His predecessors were Ms. Magdalena Sepúlveda Carmona (May 2008 - June 2014), Mr. Arjun Sengupta (August 2004 - April 2008) and Ms. A. M. Lizin (April 1998 - July 2004).

of physical and mental health; on adequate housing as a component of the right to an adequate standard of living, and so on<sup>22</sup>.

37. Worth noting, too, is that through a resolution dated 12 October 2012, the Human Rights Council adopted the Guiding Principles on Extreme Poverty and Human Rights, a document that provides for the first time global policy guidelines focusing specifically on the human rights of people living in poverty.<sup>23</sup> Those Principles constitute a practical tool for policy-makers to ensure that public policies reach the poorest members of society, respect and uphold their rights, and take into account the significant social, cultural, economic and structural obstacles to human rights enjoyment faced by persons living in poverty.<sup>24</sup>

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

38. In September 2000, following a decade of conferences and summits, the United Nations adopted the Millennium Declaration,<sup>25</sup> committing nations to a new global partnership aimed to reduce extreme poverty and establishing the Millennium Development Goals (MDGs), with targets to be met by 2015.<sup>26</sup> The MDGs set out to pursue eight fundamental goals:

- Eradicate extreme poverty and hunger.
- Achieve universal primary education.
- Promote gender equality and empower women.
- Reduce the under-five mortality rate.
- Improve maternal health.
- Combat HIV/AIDS, malaria and other diseases.
- Ensure environmental sustainability.
- Develop a global partnership for development.<sup>27</sup>

39. A series of very encouraging outcomes were achieved by 2015:

- Globally, the number of people living in extreme poverty declined by more than half, falling from 1.9 billion in 1990 to 836 million in 2015.
- The number of out-of-school children of primary school age worldwide fell by almost half, to an estimated 57 million in 2015, down from 100 million in 2000.
- The literacy rate among youth aged 15 to 24 increased globally from 83 per cent to 91 per cent between 1990 and 2015.
- Women gained ground in parliamentary representation in nearly 90 per cent of the 174 countries with data over the past 20 years. The average proportion of women in parliament nearly doubled during the same period.
- The global under-five mortality rate declined by more than half, dropping from 90 to 43 deaths per 1,000 live births between 1990 and 2015.
- The maternal mortality ratio declined by 45 per cent worldwide.
- More than 71 per cent of births were assisted by skilled health personnel globally in 2014, an increase from 59 per cent in 1990.
- New HIV infections fell by approximately 40 per cent between 2000 and 2013.

<sup>22</sup> United Nations, [Thematic Mandates](#) Complete list of focal mandates.

<sup>23</sup> United Nations, [Resolution adopted by the Human Rights Council, Guiding Principles on Extreme Poverty and Human Rights](#), A/HRC/RES/21/11.

<sup>24</sup> United Nations, [Guiding Principles on Extreme Poverty and Human Rights](#).

<sup>25</sup> United Nations, General Assembly [Millennium Declaration](#), Fifty-fifth session, Agenda item 60b, September 13, 2000.

<sup>26</sup> United Nations, We can eradicate poverty: Millennium Development Goals and beyond 2015 Millennium Development Goals and beyond 2015. See [Millennium Summit](#).

<sup>27</sup> United Nations [Millennium Development Report: 2015 Report](#), 15 September 2016, pp. 4-7.

- The global tuberculosis mortality rate fell by 45 per cent and the prevalence rate by 41 per cent between 1990 and 2013.
- Globally, 147 countries have met the drinking water target, 95 countries have met the sanitation target and 77 countries have met both.<sup>28</sup>

40. In Latin American countries, between 1990 and 2008, the percentage of the population in extreme poverty fell from 22.5% to 13.7%, which translated into a decline in the number of people living in extreme poverty from 93 million to 71 million (in 20 Latin American countries).<sup>29</sup>

41. According to the information available, it transpires that it is difficult to know how much progress has been made with poverty reduction in the Caribbean, due to the scant information on the subject in that subregion.<sup>30</sup> Nevertheless, United Nations agencies have stated that official data using US\$1.25 and US\$2 per day criteria show that five countries (Belize, Guyana, Jamaica, Suriname, and Trinidad and Tobago) account for a little more than 75% of the subregional population and for much of the Caribbean population living in extreme poverty. Estimates based on national poverty lines suggest that in the early 2000s those five countries accounted for approximately 88% of the extreme poverty and more than 80% of total poverty.<sup>31</sup> United Nations (2010).

42. Notwithstanding the significant progress observed, it has been uneven across regions and countries, with huge disparities. Millions of people continue to live in poverty and extreme poverty in the world and in the Americas, whereby the hardest hit are those who suffer multiple discrimination, due to their gender, age, disability, ethnicity, or geographical location.

43. In response to the need to continue striving for the eradication of poverty and satisfaction of rights all over the world, a process was triggered that culminated in the adoption of the new "2030 Agenda." Indeed, given that the eight MDGs had a time frame through to 2015, the passing of that deadline made it necessary to propose new goals that would address both pending and future needs thereafter. That is precisely how the Sustainable Development Goals (SDGs) came about, as a strategy for addressing MDG matters still pending, but broadening their scope to cover the three dimensions of sustainable development: economic, social, and environmental.<sup>32</sup>

44. The starting point for the SDGs was established as January 1, 2016. They are universally applicable for the next 15 years and essentially geared to all countries on the planet stepping up efforts to end all forms of poverty, reduce inequalities, overcome discrimination, and protect the environment.<sup>33</sup>

45. The 2030 Agenda 2030 recognizes that ending poverty must go hand-in-hand with strategies that build economic growth and addresses a range of social needs including education, health, social protection, and job opportunities, while tackling climate change and promoting environmental protection.<sup>34</sup>

46. The SDGs recognize the fundamental nature of human dignity as a guiding principle and respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of

---

<sup>28</sup> United Nations [Millennium Development Goals Report 2015](#). 15 September 2016. pp. 4-7.

<sup>29</sup> United Nations (2010). [Millennium Development Goals. Achieving the Millennium Development Goals with equality in Latin America and the Caribbean: Progress and Challenges](#). 19 September 2016. p. 8.

<sup>30</sup> United Nations (2010). [Millennium Development Goals. Achieving the Millennium Development Goals with equality in Latin America and the Caribbean: Progress and Challenges](#). 19 September 2016. p. 8-11.

<sup>31</sup> United Nations (2010). [Millennium Development Goals. Achieving the Millennium Development Goals with equality in Latin America and the Caribbean: Progress and Challenges](#). 19 September 2016. p. 8-11.

<sup>32</sup> United Nations (2015). [United Nations General Assembly Resolution 70/1. Transforming our World: the 2030 Agenda for Sustainable Development](#). 25 September 2015. p. 3.

<sup>33</sup> United Nations (2015). [Resolution adopted by the General Assembly on 25 September 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#). A/RES/70/1, 21 October 2015.

<sup>34</sup> United Nations (2015). [Sustainable Development Goals](#). 19 September 2016. p. 1.

respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.<sup>35</sup>

47. While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the 17 Goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection. Regional follow-up and review will be based on national-level analyses and contribute to follow-up and review at the global level.<sup>36</sup>

48. Within the 17 goals, 169 specific -- integrated and indivisible -- targets were set. It is incumbent upon this report to detail the goals that are closely related to the elimination of poverty worldwide and the targets chosen to achieve the effective implementation of each:

49. Goal 1 is to end poverty in all its forms everywhere. The targets for meeting this goal include: implement nationally appropriate social protection systems and measures for all, including floors; ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property; build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programs and policies to end poverty in all its dimensions.<sup>37</sup>

50. Goal 2 is: End hunger, achieve food security and improved nutrition and promote sustainable agriculture. Targets for meeting this goal include: By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round; Adopt measures to ensure the proper functioning of food commodity markets and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility; Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect.<sup>38</sup>

51. Goal 8 is to promote inclusive and sustainable economic growth, employment and decent work for all. Targets for meeting it include: Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries; Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labor-intensive sector; Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services.<sup>39</sup>

52. Goal 10 is to Reduce inequality within and among countries. Several targets have been set to reach this goal, including: Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard; Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality; Encourage official development assistance and financial flows, including foreign

<sup>35</sup> United Nations, General Assembly, [Resolution adopted by the General Assembly on September 25, 2015: Transforming our World: the 2030 Agenda for Sustainable Development](#). Wednesday, October 21, 2015. Introduction.

<sup>36</sup> United Nations (2015). [The sustainable development agenda](#). 19 September 2016. p. 1.

<sup>37</sup> United Nations (2015). [Goal 1: End poverty in all its forms everywhere](#). 19 September 2016. p. 1.

<sup>38</sup> United Nations. [Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture](#). 19 September 2016. p. 1.

<sup>39</sup> United Nations. [Goal 8: Goal 8 is to promote inclusive and sustainable economic growth, employment and decent work for all](#). 19 September 2016. p. 1.

direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries.<sup>40</sup>

53. Each country is committed to planning a work agenda designed to comply with these goals so as to ensure compliance by 2030 with the fundamental goal of ending of all forms of poverty.<sup>41</sup>

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

### **a. Efforts by the Organization of American States (OAS) Aimed at Eradicating Poverty and Extreme Poverty**

54. In the Organization's charter and other constituent instruments, OAS member states have considered the need to adopt poverty reduction measures a prerequisite for achieving solid and inclusive democracies.

55. Article 2 of the Charter of the Organization of American States (OAS) states that one of the purposes of the Organization is to promote the economic, social, and cultural development of its member states and to eradicate extreme poverty. Likewise, Article 3 of the OAS Charter identifies the elimination of extreme poverty as an essential part of the promotion and consolidation of representative democracy. For its part, Article 34 of the Charter provides that, in the pursuit of integral development, the member states agree to devote their utmost efforts to accomplishing a series of basic goals, including, for instance, proper nutrition and conditions that offer the opportunity for a healthful, productive, and full life. Achieving these goals of satisfying human rights, on a genuinely equal footing, lays the foundations for integral development.

56. Since 1994, the Heads of State in the Hemisphere have been meeting periodically at the Summits of the Americas to discuss common concerns, seek solutions, and forge a shared vision of the region's development. The mandates established have included giving consideration to the adoption of measures aimed at enhancing the standard of living of all peoples of the Americas. For example, in the 1998 Plan of Action of Santiago, the Heads of State acknowledged that "extreme poverty and discrimination continue to afflict the lives of many of our families and impede their potential contribution to our nations' progress."<sup>42</sup>

57. The High-Level Meeting on Poverty, Equity and Social Inclusion on Isla Margarita, Venezuela produced the Declaration of Margarita (2003),<sup>43</sup> which included novel considerations on combating poverty and inequality.<sup>44</sup> The Declaration of Margarita pointed explicitly to the need for a multidimensional vision for achieving effective results in improving the living standards for all the inhabitants of the Americas.<sup>45</sup> The States commit to according priority to eradicating hunger, accessing adequate food and potable water, and ensuring access for all to basic social services, with special attention to quality education and the health care safety net.

58. Worth mentioning, too, is the Declaration of Mar del Plata of the Fourth Summit of the Americas, in which the States in the Hemisphere recognized that "one of the major challenges to democratic stability is to generate productive and quality employment in the interest of ensuring that all our people benefit from economic prosperity." And they committed to:

---

<sup>40</sup> United Nations. [Goal 10: Reduce inequality within and among countries](#). 19 September 2019. p. 1.

<sup>41</sup> United Nations. [Sustainable Development Agenda](#). 19 September 2016. p. 1.

<sup>42</sup> [\(Plan of Action of Santiago, 1998\)](#)

<sup>43</sup> [OAS Press Release N° C-197/03: Declaration of Managua affirms Hemispheric Commitment to Fight Poverty](#)

<sup>44</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

<sup>45</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

implementing active policies to generate decent work and create the conditions for quality employment that imbue economic policies and globalization with a strong ethical and human component, putting the individual at the center of work, the company, and the economy.<sup>46</sup>

59. To achieve that goal of decent work, the States committed to building a "more solid and inclusive institutional framework, based on the coordination of economic, labor, and social public policies." Accordingly, the document lists eight measures or concrete actions to be comprised in those public policies geared to achieving decent work. Operationally, the Plan of Action of the Fourth Summit of the Americas established a series of national and hemispheric commitments, as well as commitments in respect of international organizations that must be met in order to implement the commitments adopted in the Declaration.<sup>47</sup>

60. Also important in this context is the Social Charter of the Americas, Article 3 of which states that: "Member states, determined and committed to combating the serious problems of poverty, social exclusion, and inequity and to address their underlying causes and their consequences, have the responsibility to create favorable conditions for achieving development with social justice for their peoples, thus contributing to strengthening democratic governance." It also provides that: "Member states will strengthen and foster policies and programs directed towards the achievement of societies that offer all people opportunities to benefit from sustainable development with equity and social inclusion."<sup>48</sup> The Social Charter of the Americas likewise points out that extreme poverty constitutes an obstacle to development and, in particular, to the full democratic development of the peoples of the Hemisphere. In particular, it establishes that the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and the consolidation of democracy in the states of the Hemisphere.<sup>49</sup>

61. The commitments entered into by the member states with regard to poverty in the region are to be found in the Declaration of Asunción: Development with Social Inclusion, which considered that, "while American states have taken measures to achieve the integral development of their inhabitants, buttress democracy, and promote and protect human rights, there still remain challenges in terms of poverty and extreme poverty; food security and nutrition; discrimination, equity, equality and social inclusion; inclusive and quality education; universal health coverage; decent, dignified and productive work; and citizen security."<sup>50</sup>

62. The Plan of Action of the Social Charter of the Americas was adopted during the General Assembly held in Washington, D.C. in 2015.<sup>51</sup> The idea of the Plan of Action is to establish objectives and strategic lines of action in the areas of work, social protection, health, food and nutrition, education, housing, basic public services, and culture, aimed at contributing to the fulfillment of the principles, purposes and priorities contained in the Social Charter of the Americas.<sup>52</sup>

63. The Plan reflects the decision and commitment of the member states to eradicate poverty and hunger and to address, as a matter of urgency, the serious problems of social exclusion and inequality as every level in order to achieve equity, inclusion, and social justice, while at the same time recognizing that the member states differ in terms of the progress they have made in the areas proposed.<sup>53</sup> This Plan of Action will

<sup>46</sup> OEA, [Declaration and Plan of Action of Mar del Plata](#), 2005.

<sup>47</sup> OEA, [Declaration and Plan of Action of Mar del Plata](#), 2005.

<sup>48</sup> OAS, [Social Charter of the Americas](#), adopted during the second plenary session of the OAS General Assembly in Cochabamba, on June 4, 2012. Article 3.

<sup>49</sup> OAS, [Social Charter of the Americas](#).

<sup>50</sup> OAS, [Declaration of Asunción: Development with Social Inclusion](#). Adopted at the second plenary session, held on June 4, 2014.

<sup>51</sup> [OAS General Assembly resolution AG/RES. 2878 \(XLV-O/15\): Plan of Action of the Social Charter of the Americas](#) (adopted at the fourth plenary session, held on June 16, 2015).

<sup>52</sup> [OAS General Assembly resolution AG/RES. 2878 \(XLV-O/15\): Plan of Action of the Social Charter of the Americas](#) (adopted at the fourth plenary session, held on June 16, 2015).

<sup>53</sup> [OAS General Assembly resolution AG/RES. 2878 \(XLV-O/15\): Plan of Action of the Social Charter of the Americas](#) (adopted at the fourth plenary session, held on June 16, 2015).Americas (adopted at the fourth plenary session, held on June 16, 2015).

remain in force for five years from the date of its adoption, that is to say, until 2020. At the end of that period, the General Assembly may order a review and update of the Plan within the terms of the purposes and principles adopted in the Social Charter of the Americas.<sup>54</sup>

64. It is also important to mention the Inter-American Democratic Charter, which delves in even greater detail into the link between fighting poverty and the stability and consolidation of democracy. One of its sections focuses specifically on the link between "Democracy, Integral Development, and Combating Poverty" and points out that "democracy and social and economic development are interdependent and mutually reinforcing" (Article 11) and that "[p]overty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy" (Article 12).<sup>55</sup> Here it is important to underscore that the IACHR has highlighted the link between a robust democracy and the strength of its judiciary, especially with respect to protecting groups, communities, and sectors particularly at risk of human rights violations and persons affected by poverty and exclusion.<sup>56</sup>

65. More recently, during the OAS General Assembly in 2016, the member states adopted the Declaration on Promotion and Strengthening of the Social Charter of the Americas, which declared their commitment to "promoting and to progressively realizing the full achievement of economic, social, and cultural rights and principles, through policies and programs that they consider are the most effective and appropriate for their needs."<sup>57</sup> It also indicated the "need for member states to renew their commitment to implementing the Plan of Action of the Social Charter of the Americas based on their domestic laws, national realities, strategies, plans, and available resources, and to maintain a dialogue to exchange information on progress, experiences and lessons learned."

66. Further worth mentioning is the "Declaration on Institutional Strengthening for Sustainable Development in the Americas," which reaffirms the nature, purposes, and principles established in the OAS Charter and the commitments adopted by the member states in the 2030 Agenda for Sustainable Development, as well as other international commitments relating to the three dimensions of sustainable development: economic, social, and environmental.<sup>58</sup> That inter-American document declares that the States:

Adopt a steadfast commitment to implement the 2030 Agenda in the Americas and to attain the Sustainable Development Goals and Targets, which are integrated and indivisible in nature, and reaffirm the commitment to eradicate hunger and poverty in all its forms and dimensions, including extreme poverty, to combat inequality, to protect the environment, to foster disaster risk management, and to fight climate change, among others.<sup>59</sup>

67. Accordingly, it can be said that the OAS member states have recognized that sustainable development requires an approach that encompasses its three dimensions (economic, social, and environmental), in order to support development, eradicate poverty, and promote equality, equity, and social inclusion. The OAS member states have reiterated their support for sustainable development through numerous General Assembly resolutions and the adoption of national, subregional, regional, and international

---

<sup>54</sup> [OAS General Assembly resolution AG/RES. 2878 \(XLV-O/15\): Plan of Action of the Social Charter of the Americas](#) (adopted at the fourth plenary session, held on June 16, 2015). (adopted at the fourth plenary session, held on June 16, 2015).

<sup>55</sup> OAS, [Charter of the Organization of American States](#) Inter-American Democratic Charter. It is likewise important to point out that, in the Summits of the Americas framework, States have recognized the universality, indivisibility, interdependence, and interrelatedness of human rights as essential to the functioning of democratic societies. Fifth Summit of the Americas, Port of Spain, Trinidad and Tobago, Declaration of Commitment of Port of Spain, April 17-19, 2009, par. 82, Third Summit of the Americas, Quebec City, Canada, April 20-22, 2001, Plan of Action, p. 5.

<sup>56</sup> IACHR, [Considerations Related to the Universal Ratification of the American Convention and other inter-American Human Rights Treaties](#), par. 10.

<sup>57</sup> OAS, [Declaration on Promotion and Strengthening of the Social Charter of the Americas](#) AG/DEC. 85 (XLVI-O/16). Adopted at the second plenary session, held on June 14, 2016.

<sup>58</sup> OAS, [Declaration on Institutional Strengthening for Sustainable Development in the Americas](#) AG/DEC. 81 (XLVI-O/16). Adopted at the fourth plenary session, held on June 15, 2016.

<sup>59</sup> OAS, [Declaration on Institutional Strengthening for Sustainable Development in the Americas](#) AG/DEC. 81 (XLVI-O/16). Adopted at the fourth plenary session, held on June 15, 2016.



commitments.<sup>60</sup> In September 2015, in the United Nations framework, the member states adopted the 2030 Agenda for Sustainable Development and the new global Sustainable Development Goals (SDGs), which entered into force on January 1, 2016.<sup>61</sup> The States committed to working toward full implementation of the 17 SDGs and their targets, which are "integrated and indivisible in nature and combine the three dimensions of sustainable development."<sup>62</sup>

68. To support the above-mentioned commitments by States to meeting the goals and targets agreed to in the 2030 Agenda for Sustainable Development, the Inter-American Committee on Sustainable Development (CIDS) approved the Inter-American Program for Sustainable Development (PIDS), at its fifth regular meeting held in Washington, D.C. on June 1-3, 2016, after having completed its review and updating of the Program.<sup>63</sup> The PIDS was then adopted by the OAS General Assembly at its forty-sixth regular session, held in Santo Domingo, in the Dominican Republic.<sup>64</sup> The adoption of this Program makes the Organization of American States the first regional organization in the United Nations system to adopt an institutional policy aligned with the 2030 Agenda. The Program establishes the strategic areas in which the OAS will assist member states that so request with implementing the Sustainable Development Goals.<sup>65</sup>

69. Also worth mentioning is the Inter-American Social Protection Network (IASPN) of the OAS General Secretariat, which has been providing forums and tool for countries in the region to share their experiences and knowledge in the area of social protection and social development policies for eradicating poverty. In this way the OAS facilitates the sharing of experience and know-how among Ministries of Social Development, related government agencies, and other key actors.<sup>66</sup> Likewise, it builds institutional capacity in national social development and other relevant agencies, by assisting with the formulation and implementation of effective and efficient policies and programs for eradicating extreme poverty and facilitates broader intersectoral cooperation in social protection.<sup>67</sup>

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

70. As regards the inter-American legal framework for addressing poverty and extreme poverty, it should be pointed out, first, that the IACHR has been considering poverty as a multidimensional phenomenon that involves not just material shortages or a lack of income for purchasing goods and services, but circumstances characterized by multiple and interrelated violations of civil, political, economic, social, and cultural rights; all of which translates into situations of marginalization and social exclusion.

71. Consequently, the IACHR has referred to extreme poverty as the materialization of the denial or violation of economic, social, and cultural rights, to the detriment of human beings in all spheres of their lives, including their civil and political lives, thereby clearly demonstrating the interrelated or indivisible nature of human rights.<sup>68</sup> In this way, inter-American norms play an integral part in the overcoming of poverty and extreme poverty. This section shows how all these instruments and the subsequent

<sup>60</sup> OAS, [Inter-American Program for Sustainable Development \(PIDS\)](#) Adopted at the third plenary session, held on June 3, 2016.

<sup>61</sup> OAS, [Inter-American Program for Sustainable Development \(PIDS\)](#)

<sup>62</sup> OAS, [Inter-American Program for Sustainable Development \(PIDS\)](#)

<sup>63</sup> OAS General Assembly resolution: [Inter-American Program for Sustainable Development](#), AG/RES. 2882 (XLVI-O/16). Adopted at the second plenary session, held on June 14, 2016.

<sup>64</sup> OAS General Assembly resolution: [Inter-American Program for Sustainable Development](#), AG/RES. 2882 (XLVI-O/16). Adopted at the second plenary session, held on June 14, 2016.

<sup>65</sup> [Article in: La Prensa, "OEA aprueba Programa para el Desarrollo Sostenible", June 4, 2016.](#)

<sup>66</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

<sup>67</sup> OAS, Contributions by the Inter-American Social Protection Network (IASPN), of the Department of Social Inclusion (DSI) of the Secretariat for Access to Rights and Equity (SARE). Reply to the IACHR Questionnaire on Poverty and Human Rights.

<sup>68</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 2. Citing Cançado Trindade, Antonio A., "La Justicia de los derechos económicos, sociales y culturales en el plano internacional", published in *Revista Lecciones y Ensayos*, 1997-98, University of Buenos Aires, Law and Social Sciences Faculty, Abeledo-Perrot, Buenos Aires, 1998, p. 80.

development of case law in the system have gradually addressed the issue and clarified the obligations of State in connection with it.

72. As the regulatory start point in the inter-American system, mention must be made of 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.<sup>69</sup> The American Declaration establishes a series of rights closely related to overcoming poverty, namely the right to equality before law; the right to life, liberty and personal security; the right to preservation of health through sanitary and social measures relating to food, clothing, housing and medical care; to education; to work and to fair remuneration; to social security; and others.<sup>70</sup>

73. In addition, it is worth pointing out that the American Convention on Human Rights (the American Convention) states in its preamble that "the ideal of free men enjoying freedom from [...] want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights."<sup>71</sup> Thus, the American Convention calls for attention to be paid to the link between poverty and the effective exercise of human rights.

74. In particular, it needs to be stressed that Article 1.1 of the American Convention recognizes that States Parties are obliged to respect and ensure the rights and freedoms recognized therein and to ensure the free and full exercise to all persons subject to their jurisdiction, without discrimination, while Article 2 contains the duty to adopt such legislative or other measures as may be necessary to give effect to the rights and freedoms upheld in the American Convention. Article 24 of the American Convention establishes the principle of equal protection of the law, without discrimination. That provision is applicable to the entire legal system of the States Parties, including the norms establishing or regulating economic, social, and cultural rights.

75. Since 1988, the inter-American system has had an instrument specifically addressing economic, social, and cultural rights, namely, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador" (hereinafter "the Protocol"). Listed in its articles is a lengthy catalogue of these kinds of rights, the satisfaction of which is closely linked to the overcoming of poverty. They include, in particular, the right to work, to health, social security, food, education, a health environment,<sup>72</sup> and the benefits of culture.

76. This report, because of its focus on poverty, will highlight the principal instruments adopted in recent decades to protect the rights of persons and groups that, historically, have been victims of discrimination.

77. Since 1995, Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women<sup>73</sup> established that States Parties "shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."

---

<sup>69</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 17, citing I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory opinion OC-10-89 of June 14, 1989, Series A, No.10.

<sup>70</sup> [American Declaration of the Rights and Duties of Man](#).

<sup>71</sup> Both treaties reiterate the provisions of the Universal Declaration of Human Rights.

<sup>72</sup> Article 11 of the Protocol of San Salvador on the right to a health environment provides:

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

<sup>73</sup> OAS, [The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women \(Convention of Belém do Pará\)](#), adopted on September 6, 1994.

78. The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities,<sup>74</sup> adopted in 2001, provides in Article III that states parties shall undertake to adopt the legislative, social, educational, labor-related, or any other measures needed to "eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities."

79. The Inter-American Convention against All Forms of Discrimination and Intolerance,<sup>75</sup> of 2013, provides that the States Parties shall undertake "to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to discrimination or intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups" and "formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons" including "policies of an educational nature, labor or social measures, or any other kind of promotional policies and the dissemination of legislation on the subject by all possible means."

80. That same year, the Inter-American Convention against Racism, Racism discrimination and Related Forms of intolerance added the duty of States "to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of intolerance,"<sup>76</sup> and expressly prohibited "denying access to any social, economic, and cultural rights."

81. The Inter-American Convention on Protecting the Human Rights of Older Persons,<sup>77</sup> of 2015, prohibits age discrimination and establishes that States shall develop specific approaches in their policies, plans, and legislation on ageing and old age, guaranteeing the right to work, social security, health, education, culture, and housing, as well as other rights.<sup>78</sup>

82. The American Declaration of the Rights of Indigenous Peoples, adopted in 2016 after 16 years of debate, recognizes the fundamental right of indigenous peoples to self-determination and to their cultural traditions, collective ownership of the land in their ancestral territories, education, health, a health environment, and labor rights.<sup>79</sup>

83. Other key provisions for guiding States in their actions to combat poverty are to be found in the OAS Democratic Charter of 2001 and the Social Charter of the Americas, of 2012. Article 12 of the Democratic Charter stipulates: "The OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere. This shared commitment regarding the problems associated with development and poverty also underscores the

---

<sup>74</sup> OAS, [Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities](#), adopted on July 6, 1999 in Guatemala City, Guatemala. Twenty-ninth regular session of the OAS General Assembly, The Convention entered into force on September 14, 2001.

<sup>75</sup> OAS, [Inter-American Convention against All Forms of Discrimination and Intolerance](#). Adopted in Antigua, Guatemala on June 5, 2013 during the forty-third regular session of the General Assembly. At the time this report was written, this Convention had not yet entered into force (Entry into force: on the thirtieth day following the date on which the second instrument of ratification of, or accession to, the Convention is deposited with the General Secretariat of the Organization of American States).

<sup>76</sup> OAS, [Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance](#). This Convention had not yet entered into force when this report was written. It was adopted on June 15, 2013 during the forty-third regular session of the General Assembly and will enter into force when the second instrument of ratification or accession is deposited.

<sup>77</sup> OAS, [Inter-American Convention on Protecting the Human Rights of Older Persons](#), June 15, 2015.

<sup>78</sup> The Inter-American Convention on Protecting the Human Rights of Older Persons had not yet entered into force when this report was written. It was adopted on June 5, 2015 during the forty-fifth regular session of the General Assembly and will enter into force when the second instrument of ratification or accession is deposited.

<sup>79</sup> OAS, American Declaration of the Rights of Indigenous Peoples, adopted within the framework of the forty-sixth regular session of the OAS General Assembly, on June 15, 2016.

importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy."<sup>80</sup>

84. For its part, Article 21 of the Social Charter establishes that: "Fighting poverty, reducing inequities, promoting social inclusion, and conservation and sustainable use of natural resources are fundamental and interrelated challenges facing the Hemisphere, and overcoming these challenges is essential to achieving sustainable development. Member states will adopt and execute, with the participation of the private sector and civil society organizations, strategies, plans, and policies to meet these challenges as part of their development efforts and for the benefit and enjoyment of all persons and all generations."<sup>81</sup>

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

85. In their jurisprudence, both the IACHR and the Inter-American Court have tackled a range of questions in connection with poverty and extreme poverty and how they relate to the content of human rights recognized in inter-American instruments. In doing so they have given consideration contributions from the universal system and technical information from different specialized agencies. Both the IACHR and the Inter-American Court have indicated that human rights treaties are living instruments, the interpretation of which must be in line with evolving times and living standards. An evolving interpretation is consistent both with the general rules on interpretation enshrined in Article 29 of the American Convention,<sup>82</sup> and with those recognized by the Vienna Convention on the Law of Treaties.

86. It is important to point out that while the jurisprudence of the Inter-American system, which has included considerations on the special circumstances of people who live in poverty and extreme poverty, is still developing, both the Commission and the Inter-American Court have considered those circumstances as a unique contextual framework that translates into specific or heightened obligations for states based on the standards of the inter-American system.

87. In view of the relationship between poverty and extreme poverty—as both a cause and a consequence of human rights violations—and the satisfaction of human rights, as well as various obligations arising from those rights, the following analysis, without seeking to be exhaustive, examines the obligations of states. Where the Commission and the Inter-American Court have made particular progress has been in terms of the State's obligations in poverty situations with respect to the guarantees of equal protection and nondiscrimination, their impact in terms of stigma and violence, in terms of the rights to a life of dignity and to humane treatment, the obligation to ensure the progressive development of economic, social and cultural rights, and access to justice.

88. In that framework, it is important to note that the organs of the inter-American system for protection of human rights first began to address poverty situations and the inequality, exclusion, and structural discrimination into which they translates decades ago, upon analyzing the overall situation of human rights in different countries of the Hemisphere, having particular regard to the situation of economic, social, and cultural rights. Indeed, as part of its functions, the IACHR has put out country reports that shed light on the interrelation of structural poverty with discrimination, generalized violence, citizen insecurity, and lack of observance and guarantees of economic, social, and cultural rights. It is worth mentioning, to provide an example, what the IACHR said in its report on the situation of human rights in Haiti, in 1979, when it stated: "With regard to the effectiveness of the right to education, health, welfare, and the right to work and to a fair wage, it may be said that it is almost nonexistent, particularly because of the extreme poverty,

---

<sup>80</sup> OAS, [Charter of the Organization of American States](#) Inter-American Democratic Charter.

<sup>81</sup> OAS, [Social Charter of the Americas](#), adopted during the second plenary session of the OAS General Assembly in Cochabamba, on June 4, 2012. Article 3.

<sup>82</sup> According to Article 29(b) of the Convention, none of that treaty's provisions shall be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.

illiteracy, poor hygiene, high birth rate and high infant mortality rate, high rate of unemployment, the lack of medical materials, the low per capita income, etc.”<sup>83</sup>

89. Another example that is worth mentioning is the Fourth Report on the Situation of Human Rights in Guatemala, in which the Commission noted that at that time “the disparities in the actual enjoyment of economic, social and cultural rights are abysmal and effectively discriminate against large sectors of the population, particularly the Guatemalan Maya-Quiché.”<sup>84</sup> The report also said that “States Parties have undertaken to adopt measures to the extent of their resources to achieve progressively the effective realization of these rights. The Commission finds that the resources allocated to social problems represent a portion of GNP that is disproportionate to the magnitude of the inequalities in internal distribution.”<sup>85</sup>

90. In the framework of the system of individual cases and petitions, both the Commission and the Court have noted how poverty, exclusion, and marginalization can be factors that facilitate human rights violations,<sup>86</sup> aggravate them, or be a consequence thereof.<sup>87</sup> What follows is an analysis of standards and developments generated by the inter-American system in relation to certain key aspects in this area.

## **ii. Application of the Principle of Equality and Nondiscrimination with Respect to Persons Living in Poverty and Extreme Poverty**

91. The IACHR has repeatedly stated that the principle of non-discrimination is a pillar of any democratic system, and a fundamental basis of the system for protection of human rights established by the OAS.<sup>88</sup> The American Declaration and the American Convention were both inspired by the ideal that “[a]ll men are born free and equal, in dignity and in rights.”<sup>89</sup> The IACHR has underscored that the first obligation with “immediate effect and that arises from economic, social and cultural rights is to ensure their exercise in conditions of equality and without discrimination.”<sup>90</sup> The IACHR has also specified a dual conception of the right to equality and nondiscrimination: one has to do with the prohibition of any arbitrary difference in treatment; another concerns the obligation to create conditions of real equality for groups that have historically been excluded and are at greater risk of discrimination.<sup>91</sup>

92. In accordance with the above-referenced Article 1(1) of the American Convention, the principle of equality and non-discrimination is a protection that underlies the guarantee of all other rights and freedoms, since everyone is possessed of the human rights enshrined in those instruments, and the State

<sup>83</sup> IACHR, “[Report on the Situation of Human Rights in Haiti](#),” Chapter VIII (Right to Education and Right to the Preservation of Health and to Well-Being) and Chapter IX (Right to Work and to a Fair Wage), Conclusions, para. 10.

<sup>84</sup> IACHR, [Fourth Report on the Situation of Human Rights in Guatemala, Chapter I, The Socioeconomic Context, the Attendant Rights and The Planned Government Measures](#), Conclusions.

<sup>85</sup> IACHR, [Fourth Report on the Situation of Human Rights in Guatemala, Chapter I, The Socioeconomic Context, the Attendant Rights and The Planned Government Measures](#), Conclusions.

<sup>86</sup> See, for example, I/A Court H.R., [Case of Servellón García et al., Merits, Reparation and Costs, Judgment of September 21, 2006](#), Honduras, para. 117.

<sup>87</sup> I/A Court H.R., *Case of the Sawhoymaxa Indigenous Community v. Paraguay*, Submissions of the IACHR, para. 181.

<sup>88</sup> See, *inter alia*, IACHR, [Annual Report of the Inter-American Commission on Human Rights 1999](#), Chapter VI. The same can be said, in general, in the framework of the United Nations, as the Human Rights Committee has established: “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.” UN Human Rights Committee (HRC), [CCPR General Comment No. 18: Non-discrimination, 10 November 1989](#), para. 1.

<sup>89</sup> American Declaration of the Rights and Duties of Man, Preamble.

<sup>90</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#), OEA/Ser.L/V/II.132, July 19, 2008, para. 48. That principle was also advanced more recently by the Working Group on the Protocol of San Salvador. See Organization of American States, *Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador*, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 43.

<sup>91</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II.Doc.62, December 5, 2011, para. 89, citing, *inter alia*, IACHR, *Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80. For a more detailed explanation of the two concepts of the right to equality and nondiscrimination cited, see, IACHR, [The Situation of People of African Descent in the Americas](#), paras. 90-95.

is required to observe and ensure their full and free exercise without discrimination of any kind. The same principle applies to the second part of Article II of the American Declaration. In the words of the Inter-American Court, "Article 1(1) of the Convention is a general norm the content of which extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein 'without any discrimination.' In other words, whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is per se incompatible with it."<sup>92</sup>

93. For its part, Article 24 of the Convention recognizes that all persons are equal before the law and entitled, without discrimination, to equal protection of the law. The same applies to the first part of Article II of the American Declaration. In other words, Articles 24 of the American Convention and II of the American Declaration would be violated if "the discrimination refers to unequal protection by domestic law."<sup>93</sup>

94. It is important to note that Article 1(1) of the American Convention contains an express prohibition against discrimination, inter alia, by reason of "economic status" or "any other social condition." Thus, the Commission considers that based on the above provision and the advances in the case law of the inter-American system, the poverty or extreme poverty of an individual, group, or community may be regarded as a prohibited category of discrimination. Such an evolving interpretation is consistent with the general rules of interpretation recognized in Article 29 of the American Convention. Significantly, the Inter-American Court has held in that regard that:

The specific criteria by virtue of which discrimination is prohibited do not constitute an exhaustive or limitative list, but merely illustrative. Indeed, the wording of said article leaves open the criteria with the inclusion of the term "other social condition," allowing for the inclusion of other categories that have not been explicitly indicated. Consequently, the Court should interpret the expression "any other social condition" contained in Article 1(1) of the Convention in the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law.<sup>94</sup>

95. It is important to mention that the CESCR has stated that "[t]he nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of "other status" is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified." Concretely, with respect to poverty and extreme poverty, it has noted:

Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. Membership of a trade union, for example, should not affect a person's employment or their prospects of promotion. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.<sup>95</sup>

---

<sup>92</sup> I/A Court H.R., [Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparation and Costs. Judgment of October 24, 2012](#). Series C No. 251, para. 224; I/A Court H.R., [Case of Atala Riffo and Girls. v. Chile. Merits, Reparation and Costs. Judgment of February 24, 2012](#). Series C No. 239, para. 78; and I/A Court H.R., Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53.

<sup>93</sup> For the distinction between Articles 1(1) and 24 of the American Convention, see I/A Court H.R. [Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparation and Costs. Judgment of October 24, 2012](#). Series C No. 251, para. 226.

<sup>94</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 20: Non-discrimination in economic, social and cultural rights \(art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights\)](#), 2 July 2009, E/C.12/GC/20, para. 27.

<sup>95</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General comment No. 20: Non-discrimination in economic, social and cultural rights \(art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights\)](#), 2 July 2009, E/C.12/GC/20, para. 35.

96. It should be mentioned that the working group to follow up on implementation of the Protocol of San Salvador has underscored that the immediacy of the obligation of nondiscrimination and equality precludes differences in treatment based on factors expressly prohibited in the Protocol and requires that States:

... recognize and equally guarantee to all the rights contained in the PSS [Protocol of San Salvador], using objective and reasonable distinction criteria, and avoiding arbitrary differences of treatment, especially differences in treatment based on expressly proscribed factors, such as race, religion or social origin. However, it also requires that States recognize that there are certain sectors that are at a disadvantage in exercising their social rights and that they adopt positive measures and policies to ensure their rights.<sup>96</sup>

97. In its report Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, the IACHR said that in adopting social policies and measures to ensure this framework of rights, states should identify sectors that are traditionally discriminated against in terms of access to certain rights, including women, indigenous peoples, and people of African descent, among others, and in “in implementing ... social policies and services, establish special or differential measures to uphold and ensure the rights of those sectors.”<sup>97</sup>

98. The IACHR observes that in the United Nations human rights system, Articles 1 and 2 of the Universal Declaration of Human Rights provide that “[a]ll human beings are born free and equal in dignity and rights” and that everyone is entitled, therefore, to enjoy the rights recognized “without distinction of any kind” such as “property, ... or other status.” For its part, the CESCR has said:

Discrimination may cause poverty, just as poverty may cause discrimination. Inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities. Accordingly, the international norms of non-discrimination and equality, which demand that particular attention be given to vulnerable groups and individuals from such groups, have profound implications for anti-poverty strategies.<sup>98</sup>

99. A former United Nations independent experts on the question of human rights and extreme poverty has indicated that patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination.<sup>99</sup>

100. Specifically, the inter-American system espouses a formal notion of equality in the sense of requiring that any difference in treatment be based on reasonable and objective criteria, thus precluding any unreasonable, capricious or arbitrary differences in treatment. At the same time, however, it is moving toward a concept of material or structural equality that is premised upon an acknowledgement of the fact that for certain sectors of the population, special equalizing measures have to be adopted. The circumstances

<sup>96</sup> OAS, [Progress Indicators for Measuring Rights under the Protocol of San Salvador](#), OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 44. See also the related analysis on this subject in IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#), OEA/Ser.L/V/II.132, July 19, 2008, para. 48.

<sup>97</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#), OEA/Ser.L/V/II.132, July 19, 2008, paras. 53, 55; see also the discussion of this subject in Organization of American States, [Progress Indicators for Measuring Rights under the Protocol of San Salvador](#), OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 63.

<sup>98</sup> United Nations, [Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement adopted by the Committee on 4 May 2001](#) (E/C.12/2001/10), para. 11.

<sup>99</sup> United Nations, [Report of the Special Rapporteur on Extreme Poverty and Human Rights](#), A/63/274, 13 August 2008, para. 29.

of the disadvantaged group might necessitate a difference in treatment because equal treatment could have the effect of limiting or encumbering their access to some service or good or the exercise of a right.<sup>100</sup>

101. With regard to the principle of equal and effective protection of the law, the IACHR has held that, in accordance with inter-American standards ensuring equality and the principle of nondiscrimination, States have an obligation to adopt affirmative action measures and make distinctions based on *de facto* inequalities in order to protect those who have to be protected. Otherwise, the State's omission to adopt affirmative action measures to correct or alter discriminatory situations, whether *de jure* or *de facto*, that are detrimental to a certain group of persons engages its responsibility.<sup>101</sup>

102. The Commission has analyzed situations of structural discrimination and considered that “[t]he broad principles of non-discrimination and equality reflected in Articles 1 and 24 of the Convention require action to address inequalities in internal distribution and opportunity.”<sup>102</sup> For its part, the Inter-American Court has found that “States must ... adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.”<sup>103</sup>

103. Specifically, it follows from the foregoing that states have an obligation to refrain from adopting any measures that are in any way intended, either directly or indirectly, to create situations of discrimination, and must take positive steps to correct or change any discriminatory situations that exist in their societies, based on the notion of equality and the principle of nondiscrimination.

104. It should be mentioned that the Commission has said with respect to poverty and extreme poverty that, in view of the principles of nondiscrimination and equality of opportunity, the State should ensure “that the policies it adopts do not place a disproportionate burden on the marginalized and most vulnerable sectors of society, particularly those disadvantaged by poverty.”<sup>104</sup>

105. It is worth noting that in the Case of the Xákmok Kásek Indigenous Community, in which the duty to respect and ensure rights without any discrimination was examined, in light of a series of alleged human rights violations to the detriment of that community, the Commission argued that the case illustrated “the persistence of structural discrimination factors.”<sup>105</sup> In that connection, the Inter-American Court found that there was *de facto* discrimination against the members of the Xákmok Kásek Community, in view of the following:

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

In addition, the Court has indicated that, “the States must abstain from taking measures that are, in any way, directly or indirectly designed to create *de jure* or *de facto* situations of discrimination.” The States are obliged “to adopt positive measures to reverse or change discriminatory situations that exist in their societies and that prejudice a specific group of people. This includes the special obligation of protection that the State must exercise with

---

<sup>100</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 99.

<sup>101</sup> IACHR, [Report No. 36/09 \(Admissibility and Merits\), Case 12.440, Wallace de Almeida \(Brazil\)](#), March 20, 2009, paras. 145 and 147.

<sup>102</sup> IACHR, [Report on the Situation of Human Rights in Ecuador](#) (1997), Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador.

<sup>103</sup> I/A Court H.R., [Case of the Girls Yean and Bosico v. the Dominican Republic](#), Judgment of September 8, 2005. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005, Series C No. 130, para. 141.

<sup>104</sup> IACHR, [Report on the Situation of Human Rights in Ecuador](#) (1997), Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador.

<sup>105</sup> I/A Court H.R., [Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparation and Costs. Judgment of August 24, 2010](#), Series C No. 214, para. 265.



regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.<sup>106</sup>

106. In that connection, it is also important to highlight that people living in poverty and extreme poverty often suffer disadvantages and discrimination on the basis of race, sex, age, ethnic origin, cultural practices, language, and other factors. Indeed, individuals, groups and communities that have historically been discriminated against, such as women, children, the elderly, persons with disabilities, migrants and their families, refugees, asylum seekers, internally displaced people, and members of indigenous peoples, among others, who live in poverty and extreme poverty in the Americas have been and in many cases still are victims of what has been termed intersectional discrimination and structural discrimination.

107. Intersectional and structural discrimination have a major impact on access to economic, social, and cultural rights. As the IACHR explained in its report *Access to Maternal Health Care from a Human Rights Perspective*,<sup>107</sup> “the duty to protect women’s integrity under conditions of equality includes the States’ need to prioritize their resources and efforts to address the particular needs of the groups of women identified in this report who are most at risk of suffering injury to their integrity in terms of access to maternal health services, i.e., poor women, women in rural areas, including indigenous and/or Afro-descendent women, due to the multiple forms of discrimination they face.”<sup>108</sup>

108. As regards intersectional discrimination, the inter-American system broke new ground in its analysis of that concept in its jurisprudence in the case of *Gonzales Lluy et al. v. Ecuador*, in which poverty was considered one of several factors that combined to give rise to the discrimination suffered by the victim in that case. Among other things, the Inter-American Court found that the victim’s rights to life, humane treatment, and education were violated as a result of being infected with HIV when she was three years old.<sup>109</sup> The Inter-American Court used the concept of “intersectionality” in its analysis of the discrimination and found that in the case there was a confluence of multiple intersecting vulnerability factors and risks of discrimination associated with her status as a girl, a woman, a person living in poverty, and someone living with HIV.<sup>110</sup>

109. Thus, the Court determined that the discrimination experienced by the victim was caused not only by numerous factors, but also arose from a specific form of discrimination that resulted from the intersection of those factors; in other words, if one of those factors had not existed, the discrimination would have been different.<sup>111</sup> It also underscored that poverty had an impact on the initial access to health care that was not of the best quality and that, to the contrary, resulted in the infection with HIV. The situation of poverty also had an impact on the difficulties to gain access to the education system and to lead a decent life.<sup>112</sup>

---

<sup>106</sup> I/A Court H.R., [Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparation and Costs. Judgment of August 24, 2010](#), Series C No. 214, paras. 270 and 271.

<sup>107</sup> IACHR, [Access to Maternal Health Care from a Human Rights Perspective](#), OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 87.

<sup>108</sup> IACHR, [Access to Maternal Health Care from a Human Rights Perspective](#), OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 87.

<sup>109</sup> I/A Court H.R., [Case of Gonzales Lluy et al. v. Ecuador](#), XIII. Operative Paragraphs.

<sup>110</sup> I/A Court H.R., [Case of Gonzales Lluy et al. v. Ecuador](#), para. 290. According to the concurring opinion of Judge Juan Eduardo Ferrer MacGregor, it was the first time that the Court had used the concept of “intersectionality,” and it examined in depth the scope of the principle of non-discrimination, taking into account that in that case, multiple discrimination occurred based on the composite nature of the causes of discrimination.

<sup>111</sup> I/A Court H.R., [Case of Gonzales Lluy et al. v. Ecuador](#), para. 290.

<sup>112</sup> I/A Court H.R., [Case of Gonzales Lluy et al. v. Ecuador](#), para. 290.

110. The organs of the system have also specifically analyzed the relationship between poverty and the State's responsibility with respect to discrimination against persons with disabilities. For example, in the case of *Ximenes-Lopes v. Brazil*, the IACHR and the Court examined the links between mental disability, on one hand, and vulnerability and social exclusion, on the other. In that case, the Court found that:

any person who is in a vulnerable condition is entitled to special protection, which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights. The Court reaffirms that not only should the States refrain from violating such rights, but also adopt positive measures, to be determined according to the specific needs of protection of the legal person, either because of his personal condition or the specific situation he is in, such as his disabilities.<sup>113</sup>

111. In the analysis in this section, it is important to keep in mind that not all societies discriminate against the same people. Some societies discriminate against certain groups—for example, ethnic, religious, or political ones—that other societies integrate. In addition, historically, new groups have emerged that become subjects of a form of discrimination that did not previously exist, such as people with HIV/AIDS or older persons. Thus, “groups in a vulnerable situation” or “groups that historically suffer discrimination” will vary from one society to the next and from one point in history to another. Therefore, every State has a duty to determine who those groups are in order to devise appropriate inclusive policies that ensure them the free and full exercise of their rights.<sup>114</sup>

112. An example of the foregoing is the report on merits in the Case of *Jorge Odir Miranda Cortez et al.*, in which the IACHR expressly stated:

Generally speaking, it should be mentioned that persons living with HIV/AIDS very often suffer discrimination in a variety of forms. This circumstance magnifies the negative impact of the disease on their lives and leads to other problems, such as restrictions on access to employment, housing, health care, and social support systems. There can be no doubt that the principle of nondiscrimination must be very strictly observed to ensure the human rights of persons affected by HIV/AIDS.<sup>115</sup>

113. The IACHR also observes that the exclusion, disadvantage, and discrimination with which people in poverty live could be exacerbated by rules and practices that restrict certain acts, behavior, or activities in public places because they are considered “undesirable” or contrary to public order, as in among others the case of activities associated with the begging, sleeping rough, and loitering. The punishment or criminalization of such acts and behavior coupled with the obstacles that the poor often face upon seeking access to justice on equal terms with others contribute to their heightened exclusion and stigmatization. The IACHR believes it important to stress that banning begging and related activities could amount to a violation of the principles of equality and nondiscrimination.

114. In sum, the Inter-American Commission underscores that international obligations in relation to the principle of nondiscrimination and equal protection of the law are duties subject to immediate compliance that states must take into account when adopting appropriate measures and policies with regard to persons, groups, and communities living in poverty and extreme poverty.

---

<sup>113</sup> I/A Court H.R., [Case of Ximenes-Lopes vs. Brazil, Judgment of July 4, 2006](#), Series C No. 149, para. 104.

<sup>114</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 118.

<sup>115</sup> IACHR, [Jorge Odir Miranda Cortez et al. El Salvador](#), March 20, 2009, paras. 70 and 74.

### iii. ***Stigma, Social Exclusion, and Violence against People Living in Poverty and Extreme Poverty***

115. The commission has recognized how poverty and extreme poverty have increased levels of inequality and social exclusion, as well as encouraging a rise in violence and criminality. Indeed, the IACHR has noted how people who live in poverty and extreme poverty are often exposed to systematic violence and insecurity that endanger their lives and well-being.

116. Through its different working mechanisms, the Commission has been observing for several decades how violence has resulted from a process spawned by various factors, including social, economic, institutional, and cultural ones, that have helped to generate or replicate different forms of violent behavior.<sup>116</sup>

117. It is important to note, for example, that several decades ago, in its first report on the situation of human rights in El Salvador (1978), the IACHR observed how economic instability and unequal land distribution, among other factors, were behind the poverty in which most of the population, particularly peasant farmers, lived.<sup>117</sup> It also found that those circumstances showed that the economic and social imbalance that seriously affected the Salvadoran population at the time had negative repercussions on observance of human rights.<sup>118</sup>

118. The IACHR has examine particularly closely the disproportionate impact that violence, discrimination, and poverty has on individuals, groups, and communities that have historically endured discrimination. In its report *Violence, Children and Organized Crime*, the IACHR noted that if one compares levels of human development and respect for human rights with homicide rates, it transpires that there is an inverse relation between them: the countries with lower homicide rates have better rates of human development and guarantees for human rights than countries with higher homicide rates. While widespread contexts of poverty do not automatically lead to situations of insecurity and crime, the existence of sharp inequalities in a given community, coupled with other factors, such as the State's specific response or membership of a particular historically discriminated-against group, is more closely linked to violence and insecurity.<sup>119</sup>

119. The Commission has also mentioned that adolescent males living in poverty who belong to traditionally discriminated-against and excluded groups, such as Afro-descendants and other minorities, carry a particular stigma in such contexts and are the ones bear the brunt of the violence and insecurity.<sup>120</sup> In addition, the Commission has seen how poverty is a factor that disproportionately impacts discrimination against women and girls, who are especially affected by gender violence, including, inter alia, domestic violence, sexual abuse, and traditional practices that discriminate against women.<sup>121</sup>

120. It is worth noting, in this regard, that the Special Rapporteur on violence against women, its causes and consequences has drawn attention to the fact that the one of the goals (Goal 5) of the 2030 Agenda for Sustainable Development is to achieve gender equality and empower all women and girls. For the first

<sup>116</sup> IACHR, [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II.Doc. 57, December 31, 2009, paras. 217-219.

<sup>117</sup> IACHR, "[Report on the Situation of Human Rights and El Salvador \(1978\)](#), Chapter XI, *Economic and Social Rights*. The IACHR mentioned: "The excess supply of manpower in the field and the low productivity of the small rural properties contribute to the low income of the farm workers. Moreover, the uneven distribution of the land and the emphasis on exportation of agricultural products are factors influencing the poverty in which a large part of the population lives."

<sup>118</sup> IACHR, "[Report on the Situation of Human Rights and El Salvador \(1978\)](#), Chapter XI, *Economic and Social Rights*."

<sup>119</sup> IACHR, [Violence, Children and Organized Crime](#). OEA/Ser.L/V/II. Doc. 40/15, para. 52, November 11, 2015.

<sup>120</sup> IACHR, *Violence, Children and Organized Crime*, para. 576.

<sup>121</sup> See, for example, IACHR, [Report on the Situation of Human Rights in Jamaica](#), OEA/Ser.L/II.44, August 10, 2012, paras. 214, 216, and 218. In that report, the IACHR said that "the poorest and most excluded sectors of the population [are] being disproportionately victimized by the overall situation of insecurity. In the same way, the deep inequalities pervading Jamaican society are exacerbated by the State's inadequate measures to protect and guarantee the human rights of women, children and other vulnerable groups. (para. 6).

time, the elimination of violence against women is included as a target for the achievement of sustainable goals and that for the first time, a global gendered framework for development has been adopted that is inclusive and builds upon human rights instruments.”<sup>122</sup> The Special rapporteur further notes that violence against women is also a barrier to achieving other gender-related goals, such as those on health, education, reducing poverty in all its forms, and sustainable growth.<sup>123</sup>

121. The Commission has noted that discriminatory socio-cultural patterns influence gender-based violence and the lack of a diligent response. In that connection, in its report *Missing and Murdered Indigenous Women in British Columbia, Canada*, the IACHR said that “the creation and use of stereotypes becomes one of the causes and consequences of gender violence practiced against women. The stereotypes in an investigation are the result of the existing situation of inequality and discrimination that many women confront due to multiple factors that are interrelated with their sex, such as race, age, ethnicity, socioeconomic condition and others.”<sup>124</sup>

122. With respect to LGBTI persons, especially trans persons and trans persons from racial minority groups, the IACHR has found that they are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence.<sup>125</sup> In North America, discrimination and structural exclusion in the labor market, based on sexual orientation, gender identity and gender expression, is one of the triggers that “sets in motion an endless cycle of continued poverty.” Furthermore, persons at the intersection of having diverse sexual orientations and gender identities and being migrants face an increased risk of discrimination and violence, particularly persons who are forced to leave their countries, or who are internally displaced in their own countries, and who, as a consequence of their displacement, live in situations of poverty in their cities and countries of destination.<sup>126</sup>

123. As regards adversarial matters, evidence of how poverty is a factor in stigmatization, violence, and human rights violations is visible in a variety of cases analyzed by the organs of the inter-American system. The Case of *Servellón García et al. v. Honduras*, is a prime example of the above that occurred in a context of violence characterized by the stigmatization of at-risk children and youth living in poverty. In that case, the victims were detained as part of a planned collective detention operation without lawful cause. The Inter-American Court found that the events occurred because of “the victims’ condition of people in situations of social risk, which proves that the State did not provide [them] with an environment that would protect them from violence and abuse, nor did it allow them access to basic services and goods, in such a way that said absence without doubt deprived the minors of their possibility to emancipate, develop, and become adults that could determine their own future.”<sup>127</sup> Thus, it highlighted the State’s obligation to ensure the protection of children and youngsters affected by poverty and socially alienated and, especially, to avoid their social stigmatization as criminals.”<sup>128</sup>

124. In that case, the Court expressly held that the State could not allow its agents to engage in—or itself promote—practices in society that perpetuate the stigma that children and youth living in poverty are predisposed to delinquency, or necessarily involved in the increase in public insecurity, and that

<sup>122</sup> UN, [Report of the Special Rapporteur on violence against women, its causes and consequences](#), A/HRC/32/42, 19 April 2016, para. 38.

<sup>123</sup> UN, [Report of the Special Rapporteur on violence against women, its causes and consequences](#), A/HRC/32/42, 19 April 2016, para. 38.

<sup>124</sup> IACHR, [Missing and Murdered Indigenous Women in British Columbia, Canada](#), OEA/Ser.L/V/II, December 21, 2014, para. 175.

<sup>125</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser. L/V/II.rev.2. Doc.36, November 12, 2015, para. 371.

<sup>126</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser. L/V/II.rev.2. Doc.36, November 12, 2015, para. 371.

<sup>127</sup> I/A Court H.R., [Case of Servellón García et al. v. Honduras, Merits, reparations and costs, Judgment of September 21, 2006](#), Series C No. 152, para. 117.

<sup>128</sup> I/A Court H.R., [Case of Servellón García et al. v. Honduras, Merits, reparations and costs, Judgment of September 21, 2006](#), Series C No. 152, para. 117.

stigmatization of that sort creates a climate in which at-risk juveniles face a latent threat of having their lives or liberty illegally curtailed.<sup>129</sup>

125. Similarly, it is worth mentioning the case of *Rosendo Cantu et al. v. Mexico*, concerning the rape and torture of Mrs. Cantu, the failure of the State to conduct a proper investigation and punish those responsible, and the consequences of the facts in the case for the victim's daughter. In that case, with respect to the specific obligation to punish violence against women, the Commission said that the obstacles faced by indigenous women in obtaining access to justice, are generally related to social exclusion and ethnic discrimination and that such barriers can be particularly serious, since they represent "multiple forms of discrimination" because the alleged victims are women, indigenous people and poor.<sup>130</sup> In ruling on the case, the Inter-American Court found that:

... the State must pay special attention to the needs and rights of the child, considering her particular condition of vulnerability. In accordance with its treaty-based obligations, the State should have adopted special measures in favor of Mrs. Rosendo Cantú, not only when filing the criminal complaint, but also during the time when, as a minor, she was involved in the investigations into the offense of which she was the victim, particularly so since she was also an indigenous person, and indigenous children whose communities are affected by poverty find themselves in a situation of particular vulnerability.<sup>131</sup>

126. The link between poverty, discrimination, and violence against women and girls has also been addressed in the framework of the system of individual cases and petitions of the inter-American human rights organs. For example, in the case of *González et al. ("Cotton Field") v. México* the occasion arose to examine the structural situation of violence against women and girls from low-income sectors in Ciudad Juárez. The Commission noted in its application to the Court that a series of factors converged in the consummation of human rights violations, such as social inequalities and the proximity of the international border, which contributed to the development of diverse forms of organized crime, thus increasing the levels of insecurity and violence.<sup>132</sup>

127. In that case, the Court found, among other things, that "States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can respond effectively in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. This should take into account that, in cases of violence against women, the States also have, in addition to the generic obligations established in the American Convention, an enhanced obligation since the Convention of Belém do Pará entered into force."<sup>133</sup>

128. In that context, it should be recalled that the Commission has said: "The obligation of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned, imposes upon the States a parallel obligation. On the one hand, States should monitor the social situation by producing adequate statistical data for designing and assessing public policies. On the other hand, States should take into account the policies implemented by the civil society. The obligation undertaken

<sup>129</sup> I/A Court H.R., [Case of Servellón García et al. v. Honduras, Merits, reparations and costs, Judgment of September 21, 2006](#), Series C No. 152, para. 112.

<sup>130</sup> I/A Court H.R., [Case of Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010](#), Series C No. 216, para. 169.

<sup>131</sup> I/A Court H.R., [Case of Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010](#), Series C No. 216, para. 201.

<sup>132</sup> I/A Court H.R., [Case of González et al. \("Cotton Field"\) v. Mexico, Judgment of November 16, 2009, Preliminary Objection, Merits, Reparations and Costs](#), para. 113.

<sup>133</sup> I/A Court H.R., [Case of Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010](#), Series C No. 216, para. 258.

in Article 7.b of the Convention of Belém do Pará must be read in combination with the obligation established in Article 8.h to guarantee that statistics and other relevant data on the causes, consequences and incidence of violence against women are researched and compiled with a view to evaluating the effectiveness of measures to prevent, punish and eradicate violence against women and then formulating and introducing any needed changes.”<sup>134</sup>

129. The link between poverty and violence has also been taken into account in the analysis of the consequences, as in the case of *Uzcátegui et al. v. Venezuela*, which concerned the extrajudicial execution of a person who lived in poverty. In that case, Néstor José Uzcátegui was extrajudicially executed by State security forces (forces of Falcón State). According to the established facts, members of the security forces entered the victim’s home without a court order or legal authority and shot him in front of family members. The Court also found that the incident was part of a pattern of extrajudicial executions by police squads or units and that several state entities were aware of those circumstances, as was the personnel in charge of the investigation of Néstor José Uzcátegui’s homicide.<sup>135</sup> In its decision in the case, the Inter-American Court, finding that there had been a violation of Article 21 (right to property) of the Inter-American Convention, expressly stated:

The Court also finds that, given the circumstances in which the action took place and, in particular, the socioeconomic status and vulnerability of the Uzcátegui family, the damage to their property during the raid had a far greater impact than it would have had for other family groups with other means. In this regard, the Court considers that States must take into account that groups of people living in adverse circumstances and with fewer resources, such as those living in poverty, experience an increase in the extent to which their rights are affected, precisely because of their more vulnerable situation.<sup>136</sup>

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

130. Pursuant to the provisions of Article 4 of the American Convention, States are required to respect the right to life, which establishes that nobody can be arbitrarily deprived of life.<sup>137</sup> The Inter-American System has established that this right has two aspects: not only the right for every human to not be deprived of life arbitrarily, but also a right to guarantees ensuring the conditions necessary for a dignified existence.<sup>138</sup> Based on this dual perspective, it is possible under certain circumstances to view poverty, particularly extreme poverty, as a violation of the right to life interpreted broadly. Regarding this, the Commission has indicated that “Certainly the requirements of the human right to a dignified life go beyond the equally fundamental contents of the right to life (understood in its strictest sense), the right to humane treatment, the right to personal liberty, the rights related to the system of representative democracy, and all other civil and political rights.”<sup>139</sup>

131. Indeed, the Inter-American Court has referenced the concept of life with dignity under the obligations established in the Convention’s aforementioned Article 4. 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

<sup>134</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 42.

<sup>135</sup> I/A Court H.R., [Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012](#), Series C No. 249, paras. 133-143.

<sup>136</sup> I/A Court H.R., [Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012](#), Series C No. 249, para. 204.

<sup>137</sup> Article 4 of the American Convention recognizes the right to life in these terms:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. (...).

<sup>138</sup> Inter-American Court, [Case of the “Street Children” \(Villagrán-Morales et al.\) v. Guatemala. Merits. Judgment of November 19, 1999](#), para. 144. Also see [Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005](#). Series C No. 125, para. 162.

<sup>139</sup> IACHR, [Second Report on the Situation of Human Rights Situation in Peru](#), 2000, chap. VI.1 and 2. Also see IACHR, [Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia](#), August 7, 2009, para. 271.

the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.”<sup>140</sup>

132. This interpretation was echoed in the cases of the Yakye Axa, Sawhoyamaxa, and Xákmok Kásek indigenous communities v. Paraguay, in which the Inter-American Court found that the State had not taken the necessary measures to provide the conditions essential for a life with dignity on failing to guarantee provision of water, food, health, and education, among other issues.<sup>141</sup>

133. It is important to emphasize that in the inter-American system, one inescapable obligation that States must undertake to protect and guarantee the right to life is generating the minimum living conditions compatible with human dignity while not producing conditions that make this difficult or impeded it,<sup>142</sup> such as a situation that makes it impossible to access water that is safe for human consumption. Likewise, in its case law, the Court has made special reference to State obligations regarding individuals, communities, and groups facing historic situations of discrimination. It has established that the aforementioned obligation to take specific measures to guarantee the right to a life with dignity is strengthened when it comes to people facing historical discrimination and risk, as they require priority attention.<sup>143</sup>

134. Regarding the special consideration that the elderly should be granted, it should be noted that the Court has indicated that the State must adopt measures to ensure they remain functional and autonomous by guaranteeing the right to adequate food, access to clean water, and healthcare.<sup>144</sup>

135. Second, in the case of the Sawhoyamaxa Indigenous Community v. Paraguay, the Court observed that along with a lack of land, the lives of the members of the Sawhoyamaxa Community were characterized by unemployment, illiteracy, high rates of death from preventable diseases, malnutrition, poor living conditions and environment, limited access to and use of healthcare services and drinking water, and marginalization for economic, geographic, and cultural reasons.<sup>145</sup> Regarding this aspect of the case, the Court found that the State violated Article 4(1) of the American Convention, in conjunction with Article 1(1) of the Convention on having failed to adopt the necessary positive measures within its authorities that could

<sup>140</sup> Inter-American Court, [Case of the “Street Children” \(Villagrán-Morales et al.\) v. Guatemala, Merits, Judgment of November 19, 1999](#), paras. 144 and 191. Judges Antonio Augusto Cançado Trindade and Alirio Abreu Burelli, state in their concurring opinion in this case:

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

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

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

<sup>141</sup> Inter-American Court, [Case of the Yakye Axa Indigenous Community v. Paraguay, Request for Interpretation of the Judgment on Merits, Reparations and Costs. \(Art. 67 American Convention on Human Rights\). Judgment of February 6, 2006](#). Series C No. 142, para. 161; Inter-American Court, [Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of March 29, 2006](#). Series C No. 146; Inter-American Court, [Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparation and Costs, Judgment of August 24, 2010](#). Series C No. 214, paras. 194 to 217.

<sup>142</sup> Inter-American Court, [Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of June 17, 2005](#), para. 162. Additionally, in this case, the Court made specific reference to the impact of the lack of access to water on the right to life with dignity:

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

<sup>143</sup> Inter-American Court, [Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of June 17, 2005](#), Series C No. 125, para. 162.

<sup>144</sup> [Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment of June 17, 2005](#). Series C No. 125, para. 175.

<sup>145</sup> Inter-American Court, [Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006](#). Series C No. 146, para. 73.

reasonably have been expected to prevent or avoid risk to the right to life of members of the Sawhoyamaya Community.<sup>146</sup>

136. In other words, pursuant to Inter-American standards on obligations connected to the right to life, a State can be found internationally responsible based on its failure to adopt the measures necessary to enable individuals, groups, or communities facing poverty and extreme poverty to have access to the minimal conditions that would enable them to live a life with dignity. Specifically, the Court has indicated that special duties are derived from the general obligations established in articles 1(1) and 2 that can be determined according to the particular needs for protection of the bearer of the right, whether due to the bearer's personal condition or the specific situation facing the individual.<sup>147</sup>

137. In the case of the Xákmok Kásek Indigenous Community, the Inter-American Court found that the lack of access to water that was apt for human consumption, together with a lack of access to food, health, and education, which are considered the basics for protecting the right to a life with dignity and analyzed together, led to the aforementioned judgment's conclusion that the right to life had been violated.<sup>148</sup> Specifically, the Court stated:

Compliance with Article 4, in relation to Article 1(1) of the American Convention, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.<sup>149</sup>

138. In the case of the Yakye Axa Indigenous Community v. Paraguay, the indigenous communities demanded that the State of Paraguay return their ancestral lands. They said they were living outside them, in conditions of extreme instability and poverty,<sup>150</sup> including unemployment, malnutrition, poor housing, and lack of access to potable water and health care services. In this case, the Inter-American Court found that the right to life included the right to access to conditions that make a dignified existence possible. Based on this, the Court found it admissible to evaluate whether the State had complied with its positive obligations regarding the right to life "in view of the provisions set forth in Article 4 of the Convention, in combination with the general duty to respect rights, embodied in Article 1(1) and with the duty of progressive development set forth in Article 26 of that same Convention, and with Articles 10 (Right to Health), 11 (Right to a Healthy Environment), and 12 (Right to Food) of the San Salvador Protocol and the pertinent provisions of ILO Convention No. 169."<sup>151</sup> Analyzing the facts of the case, the Court found that the miserable conditions faced by the community and its detrimental effects on the health and nutrition of its members affected their ability to live life with dignity. It found that based on the circumstances of the case, this was attributable to the State. Among other reasons, this was because despite being aware of their

---

Inter-American Court. [Case of the Sawhoyamaya Indigenous Community v. Paraguay. Judgment of March 29, 2006](#). Series C No. 146, para. 178.

<sup>147</sup> Inter-American Court. [Case of the "Pueblo Bello Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006](#). Series C No. 140, para. 120. Inter-American Court. [Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005](#). Series C No. 134, paras. 108, 110. Inter-American Court. [Case of the Gómez-Paquiyaupi Brothers v. Peru. Merits, Reparations, and Costs. Judgment of July 8, 2004](#). Series C No. 110, para. 71, such as extreme poverty or marginalization and childhood. Inter-American Court. [Case of the Sawhoyamaya Indigenous Community v. Paraguay. Judgment of March 29, 2006](#). Series C No. 146, para. 154.

<sup>148</sup> Inter-American Court. [Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparation and Costs. Judgment of August 24, 2010](#). Series C No. 214, para. 194-217.

<sup>149</sup> Inter-American Court. [Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparation and Costs. Judgment of August 24, 2010](#). Series C No. 214, para. 187.

<sup>150</sup> Inter-American Court. [Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Judgment, Merits, Reparations, and Costs. Judgment of September 2, 2004](#). para. 158(c).

<sup>151</sup> Inter-American Court. [Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005](#). Series C, No. 125, para. 163.



situation, the State had failed to take the positive measures necessary to ensure that these people could live in conditions that allow them their dignity.<sup>152</sup>

139. The analysis found in this case law demonstrates the interdependence of civil and political rights with economic, social, and cultural rights. Within this logic of interdependence, it should also be noted that the Inter-American Court has clearly established a link between the right to health and the right to education, finding them to be fundamental for guaranteeing the enjoyment of a life with dignity.<sup>153</sup>

140. The Court has also ruled on the context of minors deprived of liberty in the Case of the Juvenile Reeducation Institute v. Paraguay. In that case, several minors had died under different circumstances in the detention center. The Inter-American Court found that “to protect a child’s life, the State must be particularly attentive to that child’s living conditions while deprived of his or her liberty.” Consequently, “regarding children deprived of their liberty and thus in the custody of the State, the latter’s obligations include that of providing them with health care and education, so as to ensure to them that their detention will not destroy their life plans.”<sup>154</sup>

141. Additionally, in the Case of the “Street Children” (Villagrán Morales et. al.) the Inter-American Court said that “in the light of Article 19 of the American Convention, the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or tolerated a systematic practice of violence against at-risk children in its territory.” It also held that when States violate the rights of children at risk, such as “street children”, they make them victims of a double aggression. The Court said “First, such States do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the “full and harmonious development of their personality”, even though every child has the right to harbor a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs. Second, they violate their physical, mental and moral integrity and even their lives.”<sup>155</sup>

142. It can be concluded from this that States have positive obligations to establish the conditions necessary to prevent the violations of the right to a life with dignity that may take place in situations of poverty and extreme poverty that prevent access to the minimum conditions that have been established under Inter-American standards as necessary to guarantee a life with dignity

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

143. The application and consideration of economic, social, and cultural rights is essential for the Commission and the CESCR as regards the standards of the inter-American system on the situation of people living in poverty and extreme poverty. Both the inter-American system and the universal system have ruled on the obligations of Member States to progressively work toward full realization of economic, social and cultural rights.

---

<sup>152</sup> Inter-American Court, [Case of the Yakve Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005](#), Series C, No. 125, para. 163.

<sup>153</sup> Inter-American Court, [Advisory Opinion OC-17/02 of August 28, 2002](#), Series A, No. 17, para. 86. Specifically, the Court stated: In brief, education and care for the health of children require various measures of protection and are the key pillars to ensure enjoyment of a decent life by the children, who in view of their immaturity and vulnerability often lack adequate means to effectively defend their rights.

<sup>154</sup> Inter-American Court, [Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Judgment, Merits, Reparations, and Costs. Judgment of September 2, 2004](#), paras. 160, 161.

<sup>155</sup> Inter-American Court, [Case of the “Street Children” \(Villagrán Morales et. al.\) V. Guatemala. Preliminary Objections. Judgment of September 11, 1997](#). Series C No. 32. paras. 190 y 191.

144. As indicated above, the OAS Charter enshrines special binding targets for States on economic, social, and cultural rights, particularly after adoption of the Protocol of Buenos Aires reform. Along the same lines, the American Declaration recognizes a variety of economic, social, and cultural rights, the same as civil and political rights. Among other rights, it establishes the rights to the preservation of health and to well-being (Article XI); education (Article VII); the benefits of culture (Article XIII); to work and to fair remuneration (Article XIV); leisure time and to the use thereof (Article XV); and social security (Article XVI).

145. For its part, Article 26 of the American Convention is the article that explicitly addresses economic, social, and cultural rights, establishing that:

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

146. It is important to note that the rights defined in Article 26 of the American Convention are the rights deriving from the economic, social, and especially educational, scientific, and cultural provisions of the OAS Charter. The case law of the Inter-American Court and the IACHR have also found that the right to social security, right to health, and labor rights as economic, social, and cultural rights are derived from the OAS Charter.<sup>156</sup> Nevertheless, it should be noted that according to inter-American system doctrine, other rights can be derived from the OAS Charter, including the right to education, the right to food, the right to housing, and cultural rights.<sup>157</sup>

147. Regarding this, the Court has confirmed that Article 26 is subject to the general obligations contained in articles 1(1) and 2 (“General Obligations”) of the American Convention.<sup>158</sup> In its case law, the IACHR has indicated that the nature of the obligations derived from Article 26 of the American Convention means that the full effectiveness of the rights enshrined therein must be achieved progressively and according to the resources available. This implies a correlating duty to not reverse any of the progress made on these issues. This is the obligation of “non-regression” developed by other international bodies and understood by the IACHR as a State duty that can be enforced through the individual petitions mechanism enshrined in the Convention.<sup>159</sup>

148. Regarding the aforementioned obligation to make progress on economic, social, and cultural rights, in its decision on the case of Acevedo Buendía, the Inter-American Court analyzes the content of the obligations established in Article 26 of the American Convention and recalls the interdependence between civil and political rights and economic, social, and cultural rights. It finds that they must be understood comprehensively as human rights, with no hierarchy between them and may at all times be required of the

<sup>156</sup> Inter-American Court. [Case of Acevedo Buendía et al. \(“Discharged and Retired Employees of the Comptroller”\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 106; [IACHR Report No. 38/09. Case 12,670. Admissibility and Merits. National Association of Ex-employees of the Peruvian Social Security Institute et al. \(Peru\)](#), March 27, 2009, para. 130; [IACHR Report No. 25/04 Application 12,361. Admissibility Ana Victoria Sánchez Villalobos et al. \(Costa Rica\), March 11, 2004](#), paras. 52-70; [IACHR Report No. 27/09. Merits. Case 12,249. Jorge Odir Miranda Cortez et al. \(El Salvador\), March 20, 2009](#), paras. 77 and 79; [IACHR, Report No. 100/01. Case 11,381. Milton García Fajardo et al. \(Nicaragua\), October 11, 2001](#), para. 95; [IACHR, Report No. 121/09. Petition 1186-04. Admissibility. Opario Lemoth Morris et al. \(Miskito divers\) \(Honduras\), November 12, 2009](#), para. 50.

<sup>157</sup> Cfr. Christian Courtis, “La protección de los derechos económicos, sociales y culturales a través del artículo 26 de la Convención Americana sobre Derechos Humanos,” in Christian Courtis, Denise Hauser and Gabriela Rodríguez Huerta (eds.), *Protección internacional de los derechos humanos: nuevos desafíos*, Ed. Porrúa-ITAM, Mexico, 2005, pgs. 8-29. Along the same lines, see American Institute of Human Rights, *Protección internacional de los derechos económicos, sociales y culturales: Sistema Universal y Sistema Interamericano*, IIDH, San José, 2008.

<sup>158</sup> Inter-American Court. [Case of Acevedo Buendía et al. \(“Discharged and Retired Employees of the Comptroller”\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 100.

<sup>159</sup> IACHR, [Admissibility and Merits Report No. 38/09. National Association of Ex-employees of the Peruvian Social Security Institute et al. \(Peru\), March 27, 2009](#). Paragraph 139.

authorities responsible for them.<sup>160</sup> The IACHR reiterates that the Inter-American system has been making progress in establishing the principles and standards applicable to the scope of the rights of judicial due process and effective judicial protection in cases involving the violation of economic, social, and cultural rights.<sup>161</sup>

149. This means that the State's progressive implementation of measures to make economic, social, and cultural rights effective must be subject to accountability.<sup>162</sup> In this sense, compliance with the State's corresponding commitment may be required by the bodies called on to examine potential human rights violations.<sup>163</sup> In that case, the Court must also address the correlating duty of non-regression and its enforceable nature.<sup>164</sup>

150. The IACHR has recognized the importance of economic development for the prosperity of the peoples of the hemisphere, in the sense that, as stated in the Inter-American Democratic Charter, "The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere."<sup>165</sup> Nevertheless, at the same time, the Commission has indicated that development activities must be accompanied by adequate and effective measures for guaranteeing that they are not carried out at the expense of the fundamental rights of those specifically and negatively affected, including indigenous communities and the environment on which they depend for their physical, cultural, and spiritual well-being.<sup>166</sup>

151. Indeed, the IACHR has emphatically found that there is no real development without full respect for human rights. This places limits on State authorities and imposes duties they are required to fulfill. Specifically, development must be managed sustainably, requiring States to ensure protection of the environment. As the IACHR has stated, "the norms of the Inter-American human rights system neither prevent nor discourage development; rather, they require that development take place under conditions that respect and ensure the human rights of the individuals affected."<sup>167</sup>

152. For its part, Article 1 of the Protocol of San Salvador establishes that States have an obligation to adopt "the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol." Article 2 requires States to adopt whatever legislative or other measures that may be necessary to make the rights and freedoms recognized in the Protocol effective. Article 3 establishes that States Parties to the Protocol commit to guaranteeing the exercise of these rights without discrimination "for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

---

<sup>160</sup> Inter-American Court. Inter-American Court. [Case of Acevedo Buendía et al. \("Discharged and Retired Employees of the Comptroller"\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 101.

<sup>161</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights](#), para. 68.

<sup>162</sup> Inter-American Court. Inter-American Court. [Case of Acevedo Buendía et al. \("Discharged and Retired Employees of the Comptroller"\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 101.

<sup>163</sup> Inter-American Court. Inter-American Court. [Case of Acevedo Buendía et al. \("Discharged and Retired Employees of the Comptroller"\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 103.

<sup>164</sup> Inter-American Court. Inter-American Court. [Case of Acevedo Buendía et al. \("Discharged and Retired Employees of the Comptroller"\) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2009](#), Series C No. 198, para. 101.

<sup>165</sup> IACHR, [Report on the Merits No. 40/04. Maya Indigenous Communities of the Toledo District](#), Belize (Case 12,053), October 12, 2004, para. 150.

<sup>166</sup> IACHR, [Report on the Merits No. 40/04. Maya Indigenous Communities of the Toledo District](#), Belize (Case 12,053), October 12, 2004, para. 150.

<sup>167</sup> IACHR, [Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System](#). OEA/SER.L/V/II. Doc.56/09. December 30, 2009, para. 204.

153. Regarding the obligations contained in the Protocol of San Salvador, the Commission has held that, based on the obligation of progress, the State is in principle prohibited from adopting policies or measures and issuing legal standards that, without adequate justification, worsen the economic, social, and cultural rights standard enjoyed by the population at the time the Protocol of San Salvador was adopted or subsequent to each “progressive” step taken.<sup>168</sup> Thus, the State is required to improve the situation these rights and simultaneously prohibited from reducing the level of protection of the rights in force or, where applicable, from revoking existing rights without sufficient justification.

154. Along these lines, the first stage of evaluating the progress of the implementation of social rights involves comparing the extent to which the rights are enjoyed and their content and guarantees as provided for under new legal measures with the prior situation of the rights’ recognition, extent, and scope. Any weakening or worsening of these factors without proper justification from the State would be an unauthorized regression under the Protocol. The obligation of non-regression is thus one of the parameters used to judge measures adopted by the State.<sup>169</sup>

155. For its part, the CESCR has clarified that the International Covenant on Economic, Social and Cultural Rights establishes a series of obligations for States, in terms of both conduct and results.<sup>170</sup> In this sense, it recognizes that the full realization the rights defined in the Covenant is subject to the principle of progressive development, and a State’s degree of compliance depends on the resources available to it.<sup>171</sup> However, the Covenant recognizes two types of obligations that take effect immediately for States: a) the obligation to “adopt measures” enshrined in Article 2(1); and b) the obligation to guarantee the exercise of rights free from discrimination, established in Article 2(2) of the Covenant.<sup>172</sup>

156. On the immediate obligation “to adopt measures,” the CESCR has established that although full realization of the rights in question must be progressive, measures toward achieving that goal must be adopted within a short period of time of the entry into force of the Covenant for States Party. The measures must be purposeful, specific, and aimed at fully satisfying the obligations established in the Covenant.<sup>173</sup>

157. Among the measures to be adopted, the Committee identifies the following: amending and adopting legislation; guaranteeing effective legal remedies; and administrative, financial, educational, and social measures, among others.<sup>174</sup> Also very important to this analysis is the fact that the CESCR specifies the minimum content of the economic, social, and cultural rights without prejudice to the requirement that they be satisfied progressively. Specifically, the CESCR has indicated in this regard that:

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

<sup>168</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights](#), para. 6. See also IACHR, [Report on Jorge Odir Miranda Cortez et al. El Salvador](#), March 20, 2009. Paragraphs 105 and 106.

<sup>169</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights](#), para. 6. Regarding the obligation to progressively implement economic, social, and cultural rights, it should be noted that the CESCR has also derived a prima facie prohibition on adopting deliberately regressive measures, called the principle of non-regression or retrocession prohibition. See Christian Courtis, “La prohibición de regresividad en materia de derechos sociales; apuntes introductorios” and “[Ni un paso atrás. La prohibición de regresividad en materia de derechos sociales](#)”, Ed. del Puerto, Buenos Aires, 2006.

<sup>170</sup> United Nations, [Committee on Economic, Social, and Cultural Rights. General Comment 3: The nature of States parties obligations](#), 1990, para. 1.

<sup>171</sup> United Nations, [Committee on Economic, Social, and Cultural Rights. General Comment 3: The nature of States parties obligations](#), 1990, para. 1.

<sup>172</sup> United Nations, [Committee on Economic, Social, and Cultural Rights. General Comment 3: The nature of States parties obligations](#), 1990, para. 1.

<sup>173</sup> United Nations, [Committee on Economic, Social, and Cultural Rights. General Comment 3: The nature of States parties obligations](#), 1990, para. 2.

<sup>174</sup> United Nations, [Committee on Economic, Social, and Cultural Rights. General Comment 3: The nature of States parties obligations](#), 1990, paras. 3-5.

housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources.” In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>175</sup>

158. Meanwhile, the Guiding Principles on Extreme Poverty and Human Rights states that:

States have an immediate obligation to take steps towards the full realization of economic, social and cultural rights, and human rights law demands that at least minimum essential levels of all rights should always be ensured. International human rights law does allow, if resource constraints dictate, for the progressive realization of some aspects of economic, social and cultural rights over a period of time and with well-defined indicators, although deliberate retrogressive measures may be taken only exceptionally and on a temporary basis. At all times, States need to demonstrate the specific measures taken to tackle poverty and prove that they have done so to the maximum of their available resources, including through international assistance and cooperation.”<sup>176</sup>

159. In this context, in keeping with international standards, States have an obligation to make concrete progress in the form of public policies aimed at overcoming poverty that are aimed at progressively guaranteeing that individuals, groups and communities living in poverty and extreme poverty can enjoy their economic and social rights.

160. As an example of this, in the IACHR’s Third Report on the Human Rights Situation in Colombia, in the section on the State of Colombia’s compliance with its obligations under Article 26 of the American Convention and the provisions contained in the Organization of American States Charter and the American Declaration, the IACHR states that it is essential for the rights recognized in these provisions to “have real effect in the daily lives of each of the inhabitants of Colombia, thereby guaranteeing minimal conditions for leading a dignified life.”<sup>177</sup>

161. Essentially, the IACHR holds that although the rights enshrined in these provisions must be made fully effective progressively, States have certain immediate obligations regarding economic, social, and cultural rights, including the obligation to adopt measures, the prohibition on discrimination, and minimum economic, social, and cultural rights guarantees.

162. Pursuant to the Inter-American case law cited above, according to which the provisions of articles 1(1) and 2 of the American Convention are fully applicable to Article 26, States are required to respect those rights without any discrimination and adopt domestic legal provisions to make them effective. In this regard, following on the considerations of the CESCR, it should also be noted that based on an evolutionary and systemic approach to the American Convention, States have an obligation to guarantee the minimum and essential content of each social right as a baseline against which to measure progress and enforce its non-regression obligations.

---

<sup>175</sup> United Nations, [Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of States parties obligations](#), 1990, para. 10.

<sup>176</sup> United Nations, [Guiding Principles on Extreme Poverty and Human Rights](#). Approved by the Human Rights Council by consensus on September 27, 2012 in Resolution 21/11. Para. 48.

<sup>177</sup> IACHR, [Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V.II.102 Doc. 9 rev. 1, February 26, 1999, para. 5.

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

163. The system's bodies have repeatedly recognized that in certain circumstances, the State may be internationally responsible for human rights violations committed by private parties, which clearly includes private enterprises. Thus, since the very first adversarial cases they resolved, the Inter-American Court and the Commission have extended the application of the effects of Inter-American instruments to include third parties. For example, the Inter-American Court has specifically found that:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.<sup>178</sup>

164. In later judgments, the Inter-American Court has found that "The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons."<sup>179</sup> In the words of the Court, "The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals."<sup>180</sup>

165. Regarding this, the bodies of the inter-American system have found that it is clear that a State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. Effectively, "the nature of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds between individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or a group of individuals and by the reasonable possibilities of preventing or avoiding that danger."<sup>181</sup>

166. In other words, "even though an act, omission or deed by an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered."<sup>182</sup>

167. This approach has been used by the IACHR and the Inter-American Court in interpreting and applying the standards of the Inter-American system when addressing situations involving the violation of human rights by third parties. Thus for example, in its 1997 Report on the Situation of Human Rights in Ecuador, after warning of the serious effects that petroleum extraction has on the health and lives of a sector

<sup>178</sup> Inter-American Court. [Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988](#). Series C No. 4, para. 172; and [Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989](#). Series C No. 5, paras. 181, 182, and 187.

<sup>179</sup> Inter-American Court. [Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005](#). Series C No. 134, paras. 111 and 112.

<sup>180</sup> Inter-American Court. [Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005](#). Series C No. 134, paras. 111 and 112.

<sup>181</sup> Inter-American Court. [Case of the "Pueblo Bello Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006](#). Series C No. 140, para. 123.

<sup>182</sup> Inter-American Court. [Case of the "Pueblo Bello Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006](#). Series C No. 140, para. 123.

of the population, the Commission “urge[d] the State to take measures to prevent damage to individuals affected by the behavior of concessionaires and private actors.”<sup>183</sup> A number of situations like this that the Inter-American system has addressed have involved the violation of the human rights of indigenous and tribal peoples by extractive, exploitative, and development activities carried out by third parties.<sup>184</sup>

168. In early 2016, the Commission published its report entitled “Indigenous Peoples, Afro-Descendent Communities and Natural Resources,” which analyzes the State’s obligations regarding State extractive activities as well as the activities of mixed and private enterprises.

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

States are responsible for regulating and supervising at all times the rendering of services and the implementation of the national programs regarding the performance of public quality health care services so that they may deter any threat to the right to life and the physical integrity of the individuals undergoing medical treatment.<sup>185</sup>

170. Regarding the contents of the obligations to supervise and regulate, the Court has been clear in finding that the State obligation to regulate covers both services provided by the State, directly or indirectly, and services offered by private parties.<sup>186</sup> In the case of *Suárez Peralta v. Ecuador*, the Inter-American Court links these obligations to principles of availability, accessibility, acceptability, and quality of the medical services rendered, indicating that these obligations must be “oriented” toward satisfying these principles,<sup>187</sup> which were conceptualized by the CESCR in its General Comment No. 14 as “essential and interrelated.”<sup>188</sup>

171. As it relates to the human right to health, the provision of medical care is at its core a public good and therefore by its nature not a service that can be completely private. The State therefore has an obligation to oversee, regulate, and monitor that extends further than for any other relationship between private parties.

172. This approach has also been adopted in the universal system: for example by the CESCR in the framework of the International Covenant on Economic, Social and Cultural Rights. Other regional human rights bodies and experts established under regional human rights instruments have systematically found that the State is responsible for regulating the conduct of private parties in certain circumstances.

173. The United Nations has a framework to “protect, respect, and remedy,” drafted in 2008 by the General Secretary’s Special Representative on human rights and transnational and other commercial

<sup>183</sup> IACHR. [Report on the Situation of Human Rights in Ecuador](#). Chapter VIII. OEA/Series L/V/II.96, doc. 10 rev. 1, April 24, 1997.

<sup>184</sup> The matters heard by the IACHR include, for example, the case of the Yanomami people in Brazil, decided in 1985, in which it was alleged that the private activities of miners affected the rights of the Yanomami. (IACHR. Case No. 7615 – [Yanomami People \(Brazil\). Resolution No. 12/85. March 5, 1985](#)); the case of sisters Mary and Carrie Dann, members of the Western Shoshone indigenous tribe in the state of Nevada, United States of America, regarding authorization of private gold prospecting activities on the tribe’s ancestral lands (IACHR. [Merits Report No. 75/02. Case 11,140 – Mary and Carrie Dann \(United States\). December 27, 2002](#)); the case of Mercedes Julia Huenteao Beroiza and Mapuche families *et al.*, filed over a hydroelectric project being carried out by a public company (IACHR. [Friendly Settlement Report No. 30/04. Petition 4617/02 – Mercedes Julia Huenteao Beroiza et al. \(Chile\). March 11, 2004](#)); among others.

<sup>185</sup> Inter-American Court. [Case of Ximenes Lopes. Brazil. Preliminary Objection. Judgment of November 30, 2005](#). Series C No. 139, para. 99.

<sup>186</sup> Inter-American Court. [Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261](#), para. 149.

<sup>187</sup> Inter-American Court. [Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013](#). Series C No. 261.

<sup>188</sup> United Nations Committee on Economic, Social, and Cultural Rights. [General Comment No. 14](#).

enterprises, John Ruggie. The framework was taken up by the Human Rights Council<sup>189</sup> and supplemented in 2011 with the “UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework “ (hereinafter, the “Guiding Principles”).<sup>190</sup> Specifically, the Commission notes that States’ duty to “protect” consists according to the Guiding Principles in “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>191</sup> Along these lines, with regard to the States under the Inter-American system, the Commission emphasizes that as regards the Convention, this duty to protect is grounded in inter-American instruments and coincides with the aforementioned general obligation to guarantee human rights, pursuant to the terms indicated.<sup>192</sup>

174. Similarly, the European Court of Human Rights has addressed the impact of different kinds of business activities, especially through the right to private and family life enshrined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>193</sup> For example, in the case of *López Ostra v. Spain*, on pollution caused by a waste treatment plant, the European Court found that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”<sup>194</sup> It also found that in these contexts, States must strike a “fair balance (...) between the competing interests of the individual and of the community as a whole (...).”<sup>195</sup>

175. For its part, the African Commission on Human and Peoples’ Rights has stated that: “The Charter specifies in Article 1 that the States Parties shall not only recognize the rights duties and freedoms adopted by the Charter, but they should also undertake [...] measures to give effect to them. In other words, if a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not the immediate cause of the violation.”<sup>196</sup> It has similarly found that: “[T]he State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an

<sup>189</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. [Protect, Respect and Remedy: A Framework for business and human rights](#). A/HRC/8/5. April 7, 2008.

<sup>190</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework](#). A/HRC/17/31. March 21, 2011.

<sup>191</sup> UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. [Protect, Respect and Remedy: A Framework for business and human rights](#). A/HRC/8/5. April 7, 2008. Founding Principle 1.

<sup>192</sup> In this regard, the Commission notes that, as explicitly established in the Guiding Principles, “Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.” UN. Report of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. [Protect, Respect and Remedy: A Framework for business and human rights](#). A/HRC/8/5. April 7, 2008. General principles.

<sup>193</sup> ECHR. [López Ostra v. Spain, Judgment of 9 December 1994](#), § 51.

<sup>194</sup> ECHR. [López Ostra v. Spain, Judgment of 9 December 1994](#), § 51.

<sup>195</sup> “Naturally, severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. [...] regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoys a certain margin of appreciation.” ECHR. [López Ostra v. Spain, Judgment of 9 December 1994](#), § 51.

<sup>196</sup> “The Charter specifies in Article 1 that the States Parties shall not only recognize the rights duties and freedoms adopted by the Charter, but they should also undertake...measures to give effect to them. In other words, if a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not the immediate cause of the violation.” African Commission on Human and Peoples’ Rights (ACHR). [Commission Nationale des Droits de l’Homme et des Libertés v Chad, Communication No. 74/92 \(1995\)](#). Para. 20.



atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.”<sup>197</sup>

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

176. The Office of the Special Rapporteur has stated that “The poverty and social marginalization endured by large sectors of society in the Americas affect the freedom of expression of the hemisphere’s citizens, in that their voices are ignored and consequently left out of any debate.”<sup>198</sup> In more recent decisions, the IACHR and its Office of the Special Rapporteur have deepened analysis on the potential of freedom of expression—understood as the right to seek, receive, and disseminate information—and the realization of other human rights such as the right to participate in cultural life and enjoy the benefits of scientific progress and its applications (Article 14 of the Protocol of San Salvador), the right to education (Article 13 of the Protocol of San Salvador), the right to assembly and association (articles 15 and 16 of the American Convention), political rights (Article 23 of the Convention), and the right to health (Article 10 of the Protocol of San Salvador), among other rights.<sup>199</sup>

177. States’ concrete obligations to ensure the effective and universal enjoyment of the right to freedom of expression include taking positive measures to reduce the existing gap in access to the platforms, infrastructure, and technologies based on which information circulates. States also must guarantee all people access to public information, thereby reducing the information asymmetry faced by some people living in poverty and extreme poverty, as well as guarantee universal access to the media in general in a way that is both equitable and efficient, especially for people in poverty, women, and people with disabilities.<sup>200</sup>

### *Access to the media*

178. The inter-American human rights system has recognized that the media must be open to everyone without discrimination. Freedom of expression requires that the media be open to virtually everyone without discrimination, or more precisely, it requires that no individuals or groups are a priori excluded or lack access. It also requires that the media meet certain conditions so that in practice, they are true instruments of this particular freedom, rather than vehicles to restrict it.<sup>201</sup> In some cases, the media has been used to help raise public awareness and exert pressure for the adoption of measures to improve the quality of life of the marginal or most vulnerable sectors of the population.<sup>202</sup>

179. As the Office of the Special Rapporteur has reiterated on a number of occasions, “If the above is true, then there is a component of freedom of expression to which we are indebted. The individual members of the social groups that have been traditionally marginalized, discriminated against, or that are in a situation of helplessness, are for various reasons systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to

<sup>197</sup> “[T]he State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.” ACHR. Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria. [Communication No. 155/96 \(2002\)](#), para. 46.

<sup>198</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Annual Report 2002. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of expression and poverty.](#)

<sup>199</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression and the Internet. [Annual Report 2013. Paragraph 36, December 31, 2013.](#)

<sup>200</sup> United Nations. [General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/66/290.](#)

<sup>201</sup> Inter-American Court. [The compulsory licensing of journalists. Advisory Opinion OC-85 of November 13, 1985.](#) Series A No. 5. Para. 34.

<sup>202</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Annual Report 2002. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of expression and poverty.](#)

express publicly their ideas and opinions or to be informed of the issues that affect them. This process of exclusion has also deprived society of knowledge of their interests, of the needs and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence and ignorance.”<sup>203</sup>

#### *Access to the Internet*

180. The Office of the Special Rapporteur has consistently indicated that the Internet has unprecedented potential for the exercise of freedom of expression and the fulfillment of other human rights that are central to reducing poverty and inequality on economic and social issues. It is therefore critical for the right to freedom of expression and access to the Internet to be effectively and universally enjoyed.

181. The States of the region have broadly recognized that access to technology is distributed unequally, based on wealth, gender, geography or social group, both between States and within them. The “digital divide” is not only related to the availability of Internet access, but also to the quality, information, and technical knowledge necessary for access to the Internet to be useful and beneficial for users.<sup>204</sup>

182. The principle of universal access refers to the need to guarantee connectivity and access to the network infrastructure and other IT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory, as the heads of State recognized at the Summit of the Americas.<sup>205</sup>

#### *Access to public information*

183. The right of access to public information is a fundamental right protected by the American Convention. Access to information is linked directly to people’s ability to exercise their human rights and demand their protection. Through proper implementation of this right, people can learn exactly what rights they have and what mechanisms are available for protecting them. Thus, adequate implementation of the right to access information in all its dimensions is an essential condition for the fulfillment of the social rights of individuals, groups, and communities living in poverty and extreme poverty, as they tend to not have alternative, systemic, and secure ways of learning about the scope of rights that the State has recognized and mechanisms for demanding them and making them effective.<sup>206</sup>

184. The Sustainable Development Goals (SDGs) approved by the United Nations General Assembly in 2015 and the Montevideo Consensus adopted during the first meeting of the Regional Conference on Population and Development in Latin America and the Caribbean in 2013, to be discussed later, establish that there is an essential link between the right to access to information and the development, fulfillment, protection, and monitoring of human rights.<sup>207</sup>

185. In this regard, the Inter-American Commission has on several occasions expanded on the nature of the right to access to information as a tool, for example in: (a) Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights (2007); (b) Report Access to Information on Reproductive Health from a Human Rights Perspective (2011); and (c) Access to Information, Violence against Women, and the Administration of Justice in the Americas (2015).

<sup>203</sup> IACHR. [Annual Report 2008. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV.](#)

<sup>204</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet.](#) Annual Report 2013. Paragraph 39, December 31, 2013. According to the latest figures available, 45.5 percent of people living in Latin America and the Caribbean are still not connected to the Internet.

<sup>205</sup> OAS. Sixth Summit of the Americas. April 14 and 15, 2012. Cartagena de Indias, Colombia. [Mandates from the Sixth Summit of the Americas. May 23, 2012.](#) OEA/Ser. E CA-VI/doc./12 Rev.2. Access to and use of information and communication technology. Para. 1-4.

<sup>206</sup> IACHR – RELE, [The Inter-American Legal Framework with regard to the Right to Access to Information.](#) OEA Sr./ V/ II CIDH/RELE/INF. 1/09, para. 5.

<sup>207</sup> UN, [Transforming our World: The 2030 Agenda for Sustainable Development, 2015.](#)

*Obligation to provide information on poverty as a human rights issue*

186. Provision of information on human rights is indispensable for designing public policies and measures aimed at eradicating poverty and inequality. It is also a necessary tool for monitoring the progress made by States as they move toward realization of these rights.

187. On several occasions, the Office of the Special Rapporteur for Freedom of Expression has described the State's various obligations derived from the right to access to public information, including the obligation to produce statistical information that is properly disaggregated so as to make it useful for studying and monitoring the situation of individuals, groups and communities that have historically been discriminated against.<sup>208</sup>

188. Along these lines, a number of international human rights law instruments stipulate obligations to produce information on human rights where they establish a duty to periodically report to oversight bodies: for example, in the Inter-American system, to the Protocol of San Salvador Working Group. Subsequent sections will provide information on this.

189. Along these same lines, a number of UN committees have linked production and access to information on human rights with the effective ability to demand and protect these rights. For example, in its General Comment number 1, "Reporting by States parties," the Committee on Economic, Social and Cultural Rights underscored the particular importance of the concept of "progressive realization" and urged States Parties to include data demonstrating the progress achieved, indicating that for adequate evaluation of the situation, this objective requires production of both qualitative and quantitative data.<sup>209</sup> In the General Comment 4, the Committee emphasized it was important for the information produced to be detailed enough and disaggregated, in particular with regard to the situation of groups that historically face disadvantages, making the information truly suitable for monitoring and strengthening the realization of human rights.

190. The new global agenda comprising 17 Sustainable Development Goals and 169 targets shares this perspective, including obligations to produce information and make it available for each of the objectives. For the purposes of the issue addressed in this section, Objective 17 is particularly relevant. This objective stipulates a series of goals for "data monitoring and accountability," including "increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts" (SDG, 17.18).<sup>210</sup>

191. In this regard, the Montevideo Consensus calls for "improve[d] data sources" as a priority and crosscutting measure for achieving the regional targets on population and development, poverty eradication, breaking cycles of exclusion and inequality, and guaranteeing sustainable and human rights-focused development.<sup>211</sup>

192. Based on this, the IACHR underscores that States have a positive obligation to guarantee the availability of data on human rights that in turn has two dimensions: i) the duty to collect and guarantee availability of adequate information on the precise situation of vulnerable sectors; ii) the duty to guarantee that individuals have access to information and knowledge on accessing human rights, which is a precondition for exercising and demanding them.

<sup>208</sup> IACHR. [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights \(2008\)](#), para. 58.

<sup>209</sup> CESCR, General Comment 1. Reporting by States parties, 1989, para. 7. Available at: [https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos\\_hum\\_Base/CESCR/00\\_1\\_obs\\_grales\\_Cte%20Dchos%20Ec%20Soc%20Cult.html](https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CESCR/00_1_obs_grales_Cte%20Dchos%20Ec%20Soc%20Cult.html).

<sup>210</sup> UN, Transforming our World: The 2030 Agenda for Sustainable Development, 2015, para. 48. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/70/L.1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E).

<sup>211</sup> The issue is addressed in "priority actions" 102, 103, and 104. For more information, see: ECLAC, Operational guide for implementation and follow-up of the Montevideo Consensus on Population and Development. [http://repositorio.cepal.org/bitstream/handle/11362/38937/1/S1500859\\_en.pdf](http://repositorio.cepal.org/bitstream/handle/11362/38937/1/S1500859_en.pdf).

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

193. In the framework of the inter-American system, it is important to mention the progress achieved by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, of which the IACHR is a part, about progress indicators for measuring economic, social, and cultural rights.<sup>212</sup>

194. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, known as the Protocol of San Salvador, was adopted in 1988 and has been in force since 1999, with 19 signing states and 16 ratifications to date. The Protocol set obligations with respect to the rights to health, adequate food, enjoying a healthy environment, education, work and trade unions, social security, cultural rights, recognition of the rights of children and adolescents, the elderly, and persons with disabilities, the rights of first-nation peoples and Afro-descendants, and women's rights, among others.

195. The above-mentioned inter-American instrument incorporates two mechanisms to monitor compliance: i) a system of individual petitions for alleged violations of the rights to trade union freedom and education (Article 19, 6); and ii) a system of periodic reports to be drafted by the states parties so that they can transmit information about the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol (Article 19).

196. In 2005, the OAS General Assembly adopted the "Standards for the Preparation of Periodic Reports pursuant to the Protocol of San Salvador," which provided that, to ensure follow-up on the Protocol, the submittal of the reports must be governed by the principle of progressiveness and by a system of progress indicators. To move forward with providing a first definition of the contents of the indicators, the OAS General Assembly pointed out that it was necessary to define the progress indicators selected so that the states would report about fulfillment of their obligations in the area of economic, social, and cultural rights. Likewise, it requested the Inter-American Convention to propose indicators that would measure the progress—or possibly backtracking—by the states, which were included in its Report on Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights."

197. On that occasion, the system proposed by the IACHR presented quantitative indicators with qualitative signs of progress and these, in turn, with categories cross-cutting all rights, at the same time that it adopted a methodology with a human rights-based approach. On the basis of this background, the Working Group started a broad process of determining the indicators chosen to measure the advances made in complying with the Protocol of San Salvador and decided to bring together the rights contained in the Protocol into two groups. Thus, the first group of rights incorporates the right to health, social security, and education; and the second group includes the right to work and trade union rights, the right to adequate nutrition, the right to a healthy environment, and the right to the benefits of culture.

198. These indicators benefit from the principle of equality and non-discrimination, as a cross-cutting principle whereby it is possible to identify whether or not the conditions are in place to effectively have access to social rights in each one of the states, taking into account the patterns of discrimination that have historically affected certain groups and persons, among whom persons living in poverty and extreme poverty. Regarding this, the IACHR has highlighted the importance of the need to incorporate indicators on inclusion-exclusion, which highlight situations of structural poverty or patterns of intolerance and

---

<sup>212</sup> The Working Group has been functioning since May 2010 with the designation of the lead experts. Pursuant to what was decided by the General Assembly in its Resolution AG/RES. 2262 (XXXVII-O/07), the above-mentioned Working Group shall be composed of:

1. Three government experts, taking into account equitable geographic distribution and rotation, and an alternate government expert.
2. One independent expert, who shall be a highly qualified professional with recognized experience in the field, and one alternate independent expert.
3. One member of the IACHR designated for that purpose.

stigmatization of social sectors, among other components to evaluate contexts of inequity.<sup>213</sup> Thus, at present, for the work of the Protocol of San Salvador Working Group, the figures for poverty and extreme poverty constitute key elements to build and monitor the rights indicators developed to follow up on the Protocol of San Salvador.<sup>214</sup>

199. It should be indicated that the IACHR commends the progress and efforts made by the Working Group to implement the monitoring mechanism provided by the Protocol of San Salvador in the area of economic, social, and cultural rights. At the same time, it points out that, at present, the above-mentioned Working Group has concluded the process of assessing the first group of national reports referring to the first group of rights (rights to health, education, and social security).

## **B. Conceptualizing Poverty and Extreme Poverty in the Americas**

### **1. Conceptualizing International and National Poverty**

200. Regarding the definition of poverty, it is important to underscore that, at the international level, there is an in-depth and broad debate on its conceptualization, about the definition of what poverty is, how to measure it, and how to tackle it. Regarding this, first of all, the IACHR observes that two main approaches have been developed in the attempts to define and conceptualize poverty and extreme poverty. These efforts first emerged as a result of the need to calculate the number of persons living in poverty and extreme poverty in a given state.<sup>215</sup>

201. Among the difficulties of achieving a universal conceptualization, it is important to highlight the additional difficulties that arise, in addition to determining what is meant by the concepts involved in understanding the problems of poverty and extreme poverty, such as the “cost of living,” “indigence,” “unmet basic needs,” “quality of life,” among others, because interpretations might fluctuate in the various states; there are also cultural differences about what is understood by “well-being” and about what is meant by “development.”<sup>216</sup>

202. In that regard, it is possible to indicate that a first group of definitions focuses on trying to accurately measure the conditions that would define poverty on the basis of criteria that can be universally and generally applied. For example, among these conceptions, there are attempts based on the measurement of the insufficiency of income needed to purchase a basic basket of minimum goods and services for subsistence. On the basis of these assumptions, we found an approach that has been viewed as the “monetary” approach to poverty (definitions based on income earned or consumption), where poverty would be conceived as the absence of income or minimum purchasing power to guarantee the basic subsistence

<sup>213</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#). OEA/Ser.L/V/II.132 Doc. 14, 2008, para. 63.

<sup>214</sup> Likewise, it has to be pointed out as an example, that the WGPSS has indicated that, to measure the right to adequate food, the following has been taken as a results indicator: “Percentage of households below the total indigence or extreme poverty line, urban and rural.” And that for cultural rights the following has been taken as a process indicator: “Merit-based competitive funding available for civil society aimed at providing targeted protection of cultural rights, especially for women, children and adolescents, the elderly, LGTBI persons, persons with disabilities, immigrants, indigenous peoples, persons living in poverty and all minorities.” OAS, [Indicadores de progreso para la medición de derechos contemplados en el Protocolo Adicional a la Convención Americana sobre Derechos Humanos en materia de derechos económicos, sociales y culturales “Protocolo de San Salvador”](#) / Prepared by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador. OAS, Official documents; OEA/Ser.D.

<sup>215</sup> [Óscar Parra Vera, Revista IIDH \[Vol. 56\], Derechos humanos y pobreza en el Sistema Interamericano](#). Human rights and poverty in the inter-American system: The role of the structural review on the basis of reports and seven strategic scenarios based on international responsibility, p. 274.

<sup>216</sup> [Óscar Parra Vera, Revista IIDH \[Vol. 56\], Derechos humanos y pobreza en el Sistema Interamericano](#). Human rights and poverty in the inter-American system. The role of the structural review on the basis of reports and seven strategic scenarios based on international responsibility.

needs of persons.<sup>217</sup> This has commonly been referred to as “monetary poverty.” On the basis of that assumption, a person would be living in poverty if he or she is lacking “something he or she needs” or is lacking the financial resources to have access to the material goods he or she needs.<sup>218</sup>

203. From the standpoint of this approach, two main modes of measurement have been established: absolute poverty (income compared with the baselines set for poverty)<sup>219</sup> and relative poverty (income compared to the rest of the population).<sup>220</sup> Relative poverty can be defined as the average or standard of a society in particular and compared to the rest of the inhabitants. For example, persons living on less than 40 percent of the mean income of the total population would be viewed as living in poverty.<sup>221</sup> This concept of poverty is usually used in high-income countries to describe those persons who have no access to cultural assets, entertainment, recreation, and high-quality healthcare, education, among others.<sup>222</sup>

204. It is relevant to mention the notions about this introduced by the independent expert in charge of human rights and extreme poverty, Mr. Arjun Sengupta, who indicates that, although “usually it has been considered that poverty is the lack of income of purchasing power to meet basic needs,” “income scarcity can be viewed in absolute<sup>223</sup> or relative<sup>224</sup> terms, depending on how the notion of basic needs is understood.” From the standpoint of this monetary approach, the above-mentioned independent expert indicates that the difference between poverty and extreme poverty in the framework of income scarcity should essentially be a matter of degree or breadth of the phenomenon. To the extent that poverty is defined on the basis of the access to goods and services and their availability, extreme poverty assumes that a much more reduced set of goods and services is available and/or that the situation of poverty has existed for a longer period of time.<sup>225</sup>

205. On the basis of this framework, the definitions of poverty and extreme poverty adopted for these reviews and lines of action in said thematic area by the World Bank can also be adopted, without detriment to considering, in some of these latter publications, the possibility and need to apply other dimensions of poverty.<sup>226</sup> In that regard, it can be mentioned, for example, that the World Bank<sup>227</sup> concretely points out, with respect to the world overview of poverty, that:

<sup>217</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 3.

<sup>218</sup> Paul Spicker, [Definitions of poverty: twelve clusters of meanings](#). Paul Spicker systematizes clusters of definitions for poverty into large segments: a) poverty as economic circumstances (measured on the basis of income); b) poverty as a material concept (where poverty is viewed as a deprivation of physical and mental well-being because of the absence of economic resources); c) as social circumstances (referring to notions of “social classes” and “exclusion,” among others); and d) as a moral judgment. See Paul Spicker, Sonia Álvarez Leguizamón, and David Gordon, [Pobreza. Un glosario internacional](#) [Poverty: An International Glossary], Latin American Social Sciences Council (Consejo Latinoamericano de Ciencias Sociales —CLACSO), Buenos Aires, 2009, pp. 291-306.

<sup>219</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 4.

<sup>220</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 5.

<sup>221</sup> The World Bank, [Handbook on Poverty + Inequality](#), page 43.

<sup>222</sup> Fernanda Doz Costa, [Pobreza y derechos humanos: desde la retórica a las obligaciones legales-una descripción crítica a los marcos conceptuales](#), p. 89. In addition, see SACHS, J. D. *The end of poverty, economic possibilities for our time*. New York: The Penguin Press, 2005, p. 20.

<sup>223</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. s. 3-6.

<sup>224</sup> United Nations, Commission on Human Rights, [Derechos Humanos y Pobreza Extrema, Informe del experto independiente encargado de la cuestión de los derechos humanos y la extrema pobreza, Sr Arjun Sengupta](#). UN DOC: E/CN.4/2005, 11 February 2005, paras. 3-6.

<sup>225</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 7.

<sup>226</sup> World Bank, [Handbook on Poverty + Inequality](#), Chapter 1: *What is Poverty and Why Measure It?* pp. 1-3. In the Handbook mentioned herein, there is a reference to the general definition for poverty, adopted by the World Bank in 2001, as a “pronounced deprivation in well-being.” It is indicated regarding this that the convention view associates well-being with possessing sufficient income to meet basic needs.

According to the most recent estimates, in 2011, 12.7% of the world's population lived on less than US\$1.90 a day, down from 37% in 1990 and 44% in 1981. This means that, in 2012, 896 million people lived on less than US\$1.90 a day, down from 1.95 billion in 1990 and 1.99 billion in 1981.<sup>228</sup>

206. It must be indicated that, while considering a monetary approach to poverty and as a measuring tool for the Millennium Development Goals (MDGs) (2000-2015),<sup>229</sup> the World Bank has developed a "Global Extreme Poverty Line," in other words, an income level to determine or measure the population that, worldwide, would be considered to be living in poverty. For this purpose, it was established that persons who subsisted on less than US\$1.25 (national currency of the United States of America) a day were in said condition. At present, this line has been updated to US\$1.90 (U.S. currency) a day<sup>230</sup> and this also constitutes a framework of reference for the Sustainable Development Goals (SDG) (2016-2030).<sup>231</sup>

207. The World Bank, for its work on the countries of Latin America and the Caribbean, has specified that these countries have different levels of economic development, which has led analysts to use poverty lines that are higher, in line with the official poverty lines of the countries. That is why it has indicated that the extreme poverty line has been set at US\$2.50 (U.S. currency) a day and the moderate poverty line at US\$4 (U.S. currency) a day. The latest data published by the World Bank at the time of drafting the present report indicate that about one fourth of the region's population lives on less than US\$4 a day.<sup>232</sup>

208. It must be pointed out that the Inter-American Development Bank (IDB) has also adopted a monetary approach to considering poverty.<sup>233</sup> Regarding this, in a publication dated May 2015, the IDB, using the amount of daily per capita income (in U.S. dollars), divided the population into five groups: (i) "the extreme poor," with income below US\$2.5; (ii) "the moderate poor," with income between US\$2.5 and US\$4 a day; (iii) the "vulnerable," earning between US\$4 and US\$10; (iv) the "middle-class," with income between US\$10 and US\$50, and (v) the "high-income class," with income above US\$50.<sup>234</sup>

209. The Economic Commission for Latin America and the Caribbean (ECLAC), for its approach to calculating its estimates, has used the so-called "poverty line," among other approaches that are also moving forward toward multidimensional considerations of poverty. Thus, for this institution, estimating poverty

<sup>227</sup> The World Bank has the goal of reducing extreme poverty, that is, reducing the percentage of persons who survive on less than US\$1.90 a day, to 3 percent or less for 2030. See [Lac Equity Lab: Pobreza](#).

<sup>228</sup> World Bank, [Poverty Overview](#), October 7, 2015.

<sup>229</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Millennium Development Goals in Latin America and the Caribbean: [Indicadores de pobreza y pobreza extrema utilizadas para el monitoreo de los ODM en América Latina](#). The poverty line of "1 dollar a day" in connection with ECLAC estimates of poverty.

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

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

(...)

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

<sup>230</sup> World Bank, Frequently Asked Questions: [Actualización de la Línea de Pobreza](#), September 30, 2015.

<sup>231</sup> World Bank, [LAC Equity Lab](#). See World Bank, Poverty and Inequality and Monitoring Latin America and the Caribbean: [A Slowdown in Social Gains](#), April 2016, p. 4.

<sup>232</sup> World Bank, [LAC Equity Lab](#), April 2016. See World Bank, [Poverty and Inequality and Monitoring Latin America and the Caribbean: A slowdown in Social Gains](#), April 2016, p. 1. See also World Bank paper: [Trabajar por el Fin de la Pobreza en América Latina y el Caribe – Trabajadores, Empleos y Salarios](#), June 2015, p. 7.

<sup>233</sup> Inter-American Development Bank (IDB), IDB Working Paper No. 591: [Pobreza, Vulnerabilidad y la Clase Media en América Latina](#), May 2015.

<sup>234</sup> Inter-American Development Bank (IDB), IDB Working Paper No. 591: [Pobreza, Vulnerabilidad y la Clase Media en América Latina](#), May 2015.

consists of considering whether or not the income per inhabitant is lower than the amount of the poverty line or the minimum amount needed to make it possible to meet their basic needs.<sup>235</sup>

210. The poverty lines, in the currency of each country, are calculated on the basis of the value of a basket of goods and services, using the method for the cost of basic needs.<sup>236</sup> ECLAC estimated the cost of the basic food basket pertaining to each country and geographic area, indicating that this basket encompasses the goods needed to meet the nutritional needs of the population, taking into consideration consumer habits, effective availability of food and its relative prices, as well as the price differences between metropolitan, urban, and rural areas. To this value, called the indigence line, the organization added the amount required by the households to meet non-food basic needs, in order to calculate the total value of this poverty line.<sup>237</sup>

211. At the same time, it is also relevant to specify that ECLAC has conducted many analyses involving the multidimensional examination of poverty<sup>238</sup> and its linkage to social protection,<sup>239</sup> gender gaps,<sup>240</sup> the life cycle, and the use of time, among other approaches.

212. Furthermore, the Food and Agriculture Organization of the United Nations (FAO) has understood poverty to be “a manifestation of a series of economic, political, social, and cultural ties experienced by societies that do not manage to integrate the entire population in their social production and reproduction processes.<sup>241</sup>” This organization has underscored the tie between poverty and hunger, especially stunting and undernourishment in children,<sup>242</sup> emphasizing food and nutrition security,<sup>243</sup> indicating that “a large part of the aspects of food insecurity and especially stunting and undernourishment are a consequence (and at the same time a cause) of poverty in the population.”<sup>244</sup> For the FAO, the poverty line can be defined as the monetary value of a basic food basket that meets the minimum “kilocalorie” needs required to develop a healthy and active life.<sup>245</sup>

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

214. As a rule, this indigence line is drawn up on the basis of the following parameters: (1) a minimum basic food consumption basket, depending on the composition of the households and the nutrition requirements of these households on the basis of various parameters; (2) the purchasing value of these foods considering average prices; and (3) the income of households, measured on the basis of the household survey. Thus, in order to overcome the indigence, or extreme poverty, line, the capacity to meet daily kilocalorie and nutrition needs is taken into consideration. Afterwards, to this line are added other basic goods and services, which vary in each country and may include access to the right to housing, education, health, clothing, among others, which are considered to be minimum needs in order to have access to what is called quality of life. In

<sup>235</sup> Economic Commission for Latin America and the Caribbean (ECLAC). [Panorama social de América Latina 2009](#). 2010, p. 53.

<sup>236</sup> Economic Commission for Latin America and the Caribbean (ECLAC). [Panorama social de América Latina 2009](#). 2010, p. 53.

<sup>237</sup> Economic Commission for Latin America and the Caribbean (ECLAC). [Panorama social de América Latina 2009](#), 2010, p. 53.

<sup>238</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2013, [La Medición Multidimensional de la Pobreza](#).

<sup>239</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2015, [Instrumentos de protección social](#) Caminos latinoamericanos hacia la universalización. This publication points out the link between social protection and poverty. According to this publication, social protection is aimed at responding not only to risks being encountered by the entire population (for example, unemployment, disability, or old age), but also structural problems such as poverty and inequality, p. 28.

<sup>240</sup> Economic Commission for Latin America and the Caribbean (ECLAC), 2004, [Entender la pobreza desde la perspectiva de género](#)

<sup>241</sup> United Nations, FAO, [Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe](#), 2012, p. 14

<sup>242</sup> United Nations, FAO, *2015 Regional Overview of Food Insecurity in Latin America and the Caribbean: The region has reached the international hunger targets*, 2015. This report points out that the correlation between extreme poverty and stunting in children under five years is 65 percent. While the correlation between extreme poverty and undernourishment is 83 percent, p. 20.

<sup>243</sup> United Nations, FAO. [Seguridad Alimentaria y Nutricional](#). Basic concepts. Food and nutrition security is defined by the FAO as the right of all persons to have access to healthy nutritional food, in line with the right to appropriate food and the basic right of all persons to not go hungry.

<sup>244</sup> United Nations, FAO, [Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe](#), 2012, p. 32.

<sup>245</sup> United Nations, FAO, [Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe](#), 2012, p. 46.



other words, the “poverty lines” are thresholds or minimum standards that build a parameter making it possible for states to identify persons who are living in poverty in their territory.<sup>246</sup>

215. On the basis of available information and information that was received as a response from member states to the questionnaire published by the IACHR “Poverty and Human Rights in the Americas,” the states of Paraguay,<sup>247</sup> Uruguay,<sup>248</sup> Honduras,<sup>249</sup> Guatemala,<sup>250</sup> Jamaica,<sup>251</sup> Panama,<sup>252</sup> El Salvador,<sup>253</sup> Brazil,<sup>254</sup> Argentina,<sup>255</sup> and Colombia,<sup>256</sup> among others, use the above-mentioned poverty lines, as a way to measure poverty.

216. The state of Argentina indicates that it conceives of poverty as a complex and multidimensional phenomenon that encompasses a series of aspects that go beyond the measurement of income and are associated with access to basic services, education, health, work, the environment, the empowerment of women, etc. Nonetheless, it indicates that, in the country, income-based poverty measurement is used, which comes under the jurisdiction of the National Statistics and Census Institute (Instituto Nacional de Estadística y Censos—INDEC) by virtue of the data gathered by the Permanent Household Survey (Encuesta Permanente de Hogares—EPH)). It specifies that the estimation method is of an indirect kind and consists of calculating the percentage of households or population with income below the minimum threshold.<sup>257</sup> In the case of extreme poverty (which is considered to be indigence), it indicates that that threshold has been defined by the value of a basic food basket (canasta básica alimentaria—CBA) for each household on the basis of the number of members and the nutritional requirements that they require as a result of their demographic composition in terms of age and gender. In the case of poverty, it points out that the basic threshold is defined by one total basic basket (canasta básica total—CBT) for each household, which also includes the food, the value of other goods and services considered to be essential for the benchmark population.<sup>258</sup> Furthermore, it specifies that the measurement of poverty using the poverty line (línea de pobreza—LP) method consists of establishing, on the basis of household income, whether or not they have the capability to meet a series of food and non-food needs deemed basic.<sup>259</sup> It adds that the Permanent Household Survey (EPH) is a survey that periodically provides demographic information, as well as information on the incomes of the households and population of the country’s main urban centers as of the

---

<sup>246</sup> Jeffrey Sachs, [The end of poverty, economic possibilities for our time](#), 2005, p. 20.

<sup>247</sup> Response of the State of Paraguay to the IACHR questionnaire: Poverty and Human Rights in the Americas, Note No. 573/16/MPP/OEA, May 20, 2016.

<sup>248</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE.

<sup>249</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016. April 4, 2016.

<sup>250</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau. March 31, 2016.

<sup>251</sup> Response of the State of Jamaica to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note 6/80/1. Received May 3, 2016.

<sup>252</sup> Response of the State of Panama to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note A J.D.H.-MIRE-2016-21792. March 30, 2016.

<sup>253</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas. April 4, 2016.

<sup>254</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OEA Note No. 311/2016, April 25, 2016.

<sup>255</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016.

<sup>256</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OAS Note No. 311/2016, April 25, 2016.

<sup>257</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016. When it presented its report, the state of Argentina indicated that INDEC was working on measuring the condition of poverty and indigence in order to draw up and disseminate its results.

<sup>258</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016.

<sup>259</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171, July 7, 2016.

year 1974, and that the consumer price index for Gran Buenos Aires (IPC-GBA) provides information on the prices of food goods comprising the Basic Food Basket (Canasta Básica Alimentaria—CBA).<sup>260</sup>

217. The state of Brazil has pointed out that the method to measure poverty as an insufficiency of income is the most widely used to scope the population living in conditions of poverty, but that, in addition, multidimensional approaches to poverty should also be taken into account.<sup>261</sup> The state believes that families living in extreme poverty are those whose monthly incomes are equal to or less than R \$ 77.00 per person (reales, the national currency) and that families living in poverty are those whose monthly income amounts to between R \$ 77.01 and R \$ 154.00 per person (reales, the national currency).<sup>262</sup> Likewise, the state has also indicated that it uses a multidimensional approach to poverty, such as the set of basic unmet needs, which “represents a complementary concept to poverty such as insufficiency of income, to the extent that it identifies families subject to the absolute deprivation of the minimum levels of goods and services (public and private) needed for survival. Some of the dimensions that can be assessed with this approach are: clean water, sanitation, the type of housing, adequate food in terms of quantity and diversity, and school attendance.”<sup>263</sup>

218. The state of Colombia has indicated that, officially, poverty is calculated in two ways: the first on the basis of the monetary income of households, which is known as monetary poverty, and the second on the basis of the Multidimensional Poverty Index (Índice de Pobreza Multidimensional—IPM), which evaluates five dimensions where Colombian households could be deprived on the basis of five dimensions: the household’s schooling conditions; conditions for children and young people; work; health; access to public services; and housing conditions. Both measurements complement each other and are non-exclusive. The IPM measures poverty.<sup>264</sup> Furthermore, from the monetary standpoint, it indicates that a person is considered to be living in poverty if his or her monthly income is below the value of the Poverty Line (LP). Likewise, it indicates that a person is identified as living in extreme poverty if his or her monthly income is below the value for the Indigence Line (LI). It specifies that the value of the indigence line pertains to the cost of a basic food basket, whose composition makes it possible to meet the minimum nutrition requirement recommended by the FAO and that the poverty line pertains to the value of one basket, which in addition to meeting minimum nutrition requirements makes it possible to meet other basic needs such as transportation, housing, education, and health, among others. Both lines were estimated for urban and rural geographical areas on the basis of information about household consumption habits.”<sup>265</sup>

219. The state of El Salvador has indicated that, historically, poverty in the country has been measured using the income-based method, or monetary poverty, and that the instrument for officially measuring it is the Multi-Purpose Household Survey (Encuesta de Hogares y Propósitos Múltiples—EHPM). It points out that monetary poverty is categorized as extreme or relative and that the parameter used is the value of the Basic Food Basket (Canasta Básica Alimentaria—CBA). It specifies that extreme poverty refers to those households that, on the basis of their per capita income, do not manage to meet the cost of the Basic Food Basket (CBA) and that relative poverty refers to those households that, on the basis of their income, do not manage to meet the cost of the enlarged CBA (which is twice the amount of the CBA).<sup>266</sup> Likewise, the

<sup>260</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas. OAS Note No. 171 of July 7, 2016.

<sup>261</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas.

<sup>262</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas. The state of Brazil has indicated that the percentage of extreme monetary poverty in the country amounted to 2.4 percent in 2014, while poverty amounted to 7 percent.

<sup>263</sup> Response of the State of Brazil to the IACHR Questionnaire: Poverty and Human Rights in the Americas.

<sup>264</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OAS Note No. 311/2016, April 25, 2016. The State has indicated that, in 2015, national monetary poverty was at 27.8 percent and multidimensional poverty at 20.25 percent.

<sup>265</sup> Response of the State of Colombia to the IACHR Questionnaire: Poverty and Human Rights in the Americas. MPC/OAS Note No. 311/2016, April 25, 2016.

<sup>266</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas, April 4, 2016. The state has indicated that the per capita cost of the urban CBA in 2014 amounted to \$49.53 (in national currency) and the rural CBA to \$30.73.

state has indicated that it has made progress in the multidimensional measurement of poverty.<sup>267</sup> Concretely, the state informed that, in April 2014, the Law on Development and Social Protection was enacted and that this law defines poverty as “the deprivation of resources, capabilities, and effective access of persons to enjoy their rights and have a continuous improvement in the standard of living.” It indicated that, for the multidimensional measurement of poverty, 20 indicators were established, grouped on the basis of the dimensions of education, housing conditions, work and social security, health, basic services and food security, and the quality of the habitat.<sup>268</sup>

220. The state of Guatemala has indicated that, in order to conceptualize and measure poverty, an approach based on consumption instead of income was adopted, because it leads to a lower margin of error.<sup>269</sup> It specifies that “general (total) poverty refers to the population that manages to meet the cost of minimum food consumption but not the additional minimum cost for other basic goods and services,” and that extreme poverty refers to “the population that manages to meet the minimum cost needed to pay for a basket that would make it possible to meet both food and non-food needs. That proportion of the population that does not manage to reach this threshold is deemed to be poor.”<sup>270</sup> It was indicated that the country systematically measures poverty and extreme poverty on the basis of the National Living Conditions Survey (Encuesta Nacional de Condiciones de Vida—ENCOVI), which is a responsibility that pertains to the National Statistics Institute (Instituto Nacional de Estadísticas—INE), with the latest measurement taking place in 2014/2015.<sup>271</sup>

221. The state of Honduras has reported that poverty is defined “as the social and economic situation characterized by a marked absence of meeting basic needs which have an impact on the standard and quality of living of persons.”<sup>272</sup> Likewise, it was reported that there is a national data-gathering system operated by the National Statistics Institute (Instituto Nacional de Estadísticas—INE).<sup>273</sup> It specifies that, to measure poverty, the poverty line method is used “which consists of establishing, on the basis of household income, the capability that households have to meet, on the basis of the purchase of goods and services, a series of food and non-food needs deemed to be basic.”<sup>274</sup>

222. The state of Jamaica has pointed out that a person is living in poverty if his or her consumption level drops below a given threshold or poverty line. The state indicated that the national poverty line was set at US\$1.90. It indicates that the poverty line measures minimum food and non-food expenses that every person must have. It specifies that, to define extreme poverty (set at below US\$1.25), a line has been set below the poverty line. This line represents the minimum food expenses that every person must make. This line is called the food poverty line. A person is living in extreme poverty when his or her level of consumption drops below this line.<sup>275</sup>

---

<sup>267</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas, April 4, 2016.

<sup>268</sup> Response of the State of El Salvador to the IACHR Questionnaire: Poverty and Human Rights in the Americas, April 4, 2016. The state provided information about figures for poverty. It referred to a total value of 31.8 percent for monetary poverty and 35.2 percent for multidimensional poverty.

<sup>269</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau, March 31, 2016.

<sup>270</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau, March 31, 2016.

<sup>271</sup> Response of the State of Guatemala to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Ref. Note P-229-2016/VHGM/CRA/aau, March 31, 2016. The state reports a national extreme poverty figure of 59.3 percent for 2014.

<sup>272</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016, April 4, 2016.

<sup>273</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016, April 4, 2016. The state of Honduras reports that, according to the INE and in accordance with the Permanent Multipurpose Household Survey, in June 2015, the percentage of poverty was calculated at 63.8 percent of the population, with percentage of 23.8 percent for relative poverty and 40 percent for extreme poverty.

<sup>274</sup> Response of the State of Honduras to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Official Letter SSGD-0029-2016, April 4, 2016.

<sup>275</sup> Response of the State of Jamaica to the IACHR Questionnaire: Poverty and Human Rights in the Americas Ref 6/80/1, received May 3, 2016. The state of Jamaica reports a national poverty percentage of 19.9 percent for 2012.

223. The state of Panama has indicated to the IACHR that “poverty is the socioeconomic situation or condition of the population who cannot have access to or lacks the resources to meet the basic physical and psychological needs that would make it possible to achieve an adequate standard and quality of living, such as food, housing, education, healthcare, or access to clean water.”<sup>276</sup> It has indicated that one way to measure poverty is setting the cost of the basic basket and considering that all those whose income is below this set cost are living in poverty, whereas those who are living on less than one balboa a day (Panama’s national currency) are living in indigence.”<sup>277</sup>

224. The state of Paraguay indicated to the IACHR that the General Department of Statistics, Surveys, and Census (Dirección General de Estadísticas, Encuestas y Censos—DGEEC) defines “a poor population group as consisting of those persons living in households whose level of well-being (measured in terms of income) is below the cost of the basic consumption basket comprised of the series of goods and services that meets certain minimum requirements, both food and non-food, for human survival.”<sup>278</sup> It indicated, in addition, that the poverty line is drawn up by first estimating the cost of the basic food baskets whose calorie and protein content meets the population’s nutrition requirements, and then the cost of the basic non-food basket, comprised of other basic goods and services in connection with housing, clothing, education, among others, is added to that.<sup>279</sup> It specifies, furthermore, that the poverty line is a monetary indicator that brings together both the cost of a basic food basket (extreme poverty) and the cost of a basic food basket plus other products essential for life (moderate poverty). In that respect, the monthly cost per person of the food basket is called the Extreme Poverty Line and that of the total basket has been called the Total Poverty Line.<sup>280</sup>

225. As for the State of Uruguay, it has pointed out that official estimates for poverty and indigence in Uruguay are carried out by the National Statistics Institute (Instituto Nacional de Estadística—INE). It specifies that the methodology used by INE to measure indigence and poverty is based on the income method, with the building of a basic food basket (canasta básica alimentaria—CBA), which takes into account minimum food requirements, and a basic non-food basket (canasta básica no alimentaria—CBNA), which takes into account the consumption of other goods, such as housing, health, and transportation.<sup>281</sup> Regarding this, the state concretely indicates that:

The Poverty Line (LP) therefore combines both the CBA and the CBNA, and a household is deemed poor when per capita income adjusted by a scale of equivalencies is no higher than the value of LP. Likewise, when per capita household income is no greater than the CBA, the household is considered to be indigent.” All persons living in a household in poverty are deemed to be poor, and the same holds true for indigent households.<sup>282</sup>

<sup>276</sup> Response of the State of Panama to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note A J.D.H.-MIRE-2016-21792, March 30, 2016.

<sup>277</sup> Response of the State of Panama to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note A J.D.H.-MIRE-2016-21792, March 30, 2016. The state of Panama reports a national percentage of 10.3 percent for indigence, or extreme poverty, in 2015.

<sup>278</sup> Response of the State of Paraguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 573/16/MPP/OEA, May 20, 2016. The state of Paraguay has informed that, according to the General Department for Statistics, Surveys, and Census, 22.6 percent of the population is living in poverty and 10.5 percent in extreme poverty.

<sup>279</sup> Response of the State of Paraguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 573/16/MPP/OEA, May 20, 2016.

<sup>280</sup> Response of the State of Paraguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 573/16/MPP/OEA, May 20, 2016.

<sup>281</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE. The state of Uruguay informs that, in 2015, the percentage of poor households dropped to 6.4 percent for the entire country, whereas the percentage for individuals was 9.7 percent. It also indicates that, as of 2005, a decline has been recorded for the levels of indigence and that it leveled off from as of 2011. For 2014, the levels of indigence for the entire country amounted to 0.2 percent for households and 0.3 percent for individuals.

<sup>282</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE.

226. As a consequence, on the basis of the examples presented above, in view of the information of the states provided in response to the questionnaire issued by the IACHR, as well as information in the public domain, it is observed that the most widely used method is that of poverty lines, in other words, measuring and conceptualizing poverty using a monetary approach. Nevertheless, it can also be observed that there is progress in taking into consideration additional factors, such as access to a series of economic, social, and cultural rights in order to have a multidimensional approach to poverty. Indeed, it is possible to indicate that there is a growing consensus about the need for countries to benefit from multidimensional measurements of poverty, so as to have information additional to that which was obtained on the basis of conventional methods, based on monetary income.<sup>283</sup>

227. It must be stressed that there is another approach to conceptualizing poverty, one that does not depend primarily on monetary aspects, but rather uses broader terms. Among other definitions, one can quote the one that views multidimensional poverty as the lack of basic capabilities to live in dignity.<sup>284</sup> The latter definition assumes a multidimensional conceptualization of poverty, which recognizes certain broader features of poverty, such as hunger, poor education, discrimination, vulnerability, and social exclusion,<sup>285</sup> among others.

228. It can be considered that the principal perspectives of the concept and measurement of poverty focus on those that view poverty from the monetary standpoint and others that take into consideration the multidimensional aspect of poverty, which views poverty as the deprivation of basic capabilities and liberties, recognizing that they are associated not only with income deficiencies, but also with systematic deprivations in terms of access to rights and basic services.<sup>286</sup> It is important to indicate that the multidimensional calculation or measurement of poverty is related to a human rights-based approach and the perspectives of capabilities.<sup>287</sup>

229. On the basis of the multidimensional standpoint with a human rights-based approach, persons are holders of rights who define access to the resources and liberties needed for an adequate standard of living, and thus poverty is not considered to be a state of absence or needs, but rather a situation of absence of access to basic rights.<sup>288</sup> Furthermore, the definition of poverty presented by the independent expert on human rights and extreme poverty, Mr. Arjun Sengupta, must also be mentioned, because it indicates that income is viewed as one of the elements comprising well-being and would play a key role,<sup>289</sup> as a result of which, following Mr. Amartya Sen—who coined the expression of capabilities to define the freedom or the means that make it possible to lead a full life on the basis of what every person chooses to be or do—it

<sup>283</sup> United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), [La Medición Multidimensional de la Pobreza](#). LC/L.3615(CE.12/5), April 17, 2013.

<sup>284</sup> United Nations, Statement adopted by the Committee on Economic, Social and Cultural Rights, [Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights](#). Twenty-fifth session, Geneva, 23 April-11 May, 2001, para. 7.

<sup>285</sup> United Nations, Statement adopted by the Committee on Economic, Social and Cultural Rights, [Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights](#). Twenty-fifth session, Geneva, 23 April-11 May, 2001, para. 7.

<sup>286</sup> Óscar Parra Vera, Revista IIDH [Vol. 56], [Derechos humanos y pobreza en el Sistema Interamericano. El rol del análisis estructural a partir de informes y siete escenarios estratégicos basados en la responsabilidad internacional](#) [Human rights and poverty in the inter-American system: the role of structural analysis on the basis of reports and seven strategic scenarios based on international responsibility], p. 274.

<sup>287</sup> United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), [La Medición Multidimensional de la Pobreza](#). LC/L.3615(CE.12/5), April 17, 2013.

<sup>288</sup> United Nations, Economic Commission for Latin America and the Caribbean (ECLAC), [La Medición Multidimensional de la Pobreza](#). LC/L.3615(CE.12/5), April 17, 2013.

<sup>289</sup> United Nations, Commission on Human Rights, [“Derechos Humanos y Pobreza Extrema: Informe del experto independiente Arjun Sengupta Human sobre cuestiones de derechos humanos y extrema pobreza”](#). UN DOC: E/CN.4/2005/49, February 11, 2005, para. 8.

considers that it is possible to define poverty as a “deprivation of capabilities”<sup>290</sup> and extreme poverty as the extreme form of this deprivation.<sup>291</sup>

230. From the standpoint of a human rights-based approach and a multidimensional dimension, mention must be made of the definition adopted by the Committee on Economic, Social and Cultural Rights, which considers that “poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”<sup>292</sup> The Committee on Economic, Social and Cultural Rights has indicated that it endorses the definition adopted by the International Bill of Human Rights, because it believes that it reflects the indivisible and interdependent nature of all human rights.<sup>293</sup>

231. Furthermore, this multidimensional approach has been adopted by the United Nations Development Programme (UNDP) in its Human Development Reports (HDR),<sup>294</sup> in which, for the purpose of drawing up a human development index, certain indicators on health, education, food, nutrition, and other basic needs to live a decent life, in addition to per capita income, are established.<sup>295</sup> Likewise, it must be indicated that, in the Human Development Report for 2000, human rights are conceived as an intrinsic part of development and that development is viewed as a means to enforce human rights. Furthermore, in this same report, it is indicated that, as a rule, in the human development reports, it is considered that poverty is broader than the absence of income, and “that it is a deprivation in many dimensions. If income does not constitute the sum total of human life, the absence of income cannot be the sum total of human deprivation.”<sup>296</sup> In the above-mentioned report, it is indicated that, since 1997, the expression human poverty was coined to differentiate that broader deprivation from the narrower poverty as measured by income, which is a more conventional definition, confined to the deprivation of income or consumption.<sup>297</sup> Moreover,

<sup>290</sup> United Nations, Commission on Human Rights, Human rights and extreme poverty, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 10.

<sup>291</sup> United Nations, Commission on Human Rights, [Derechos Humanos y Pobreza Extrema. Informe del experto independiente encargado de la cuestión de los derechos humanos y la extrema pobreza, Sr Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, February 11, 2005, para. 10.

<sup>292</sup> United Nations, [Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights](#) (E/C.12/2001/10), para. 8. The definition of the ESCR Committee was adopted in line with the International Declaration of Human Rights.

<sup>293</sup> United Nations, [Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights](#) (E/C.12/2001/10), para. 8. The definition of the ESCR Committee was adopted in line with the International Declaration of Human Rights.

<sup>294</sup> United Nations Development Programme, [Human Development Report 2015: Work for Human Development](#), p. 1. This report indicates that, with the notion of development focusing on human lives, for 25 years now, two dozen reports on global human development have been drawn up and more than 700 reports on human development at the national level. This report also precisely indicates (p. 3) that:

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

To which it adds that: “To measure human development more comprehensively, the Human Development Report also presents four other composite indices. The Inequality-adjusted HDI discounts the HDI according to the extent of inequality. The Gender Development Index compares female and male HDI values. The Gender Inequality Index highlights women’s empowerment. And the Multidimensional Poverty Index measures nonincome dimensions of poverty.”

<sup>295</sup> United Nations, Commission on Human Rights, [Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta](#). UN DOC: E/CN.4/2005/49, 11 February 2005, para. 8.

<sup>296</sup> United Nations Development Programme, [Human Development Report 2000](#). Box 4.1: Poverty, human rights and human development, p. 73.

<sup>297</sup> United Nations Development Programme, [Human Development Report 2000](#). Box 4.1: Poverty, human rights and human development, p. 73..

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

The Human Poverty Index (HPI) measures deprivation in terms of human development. Thus, while the HDI measures a country’s general progress in terms of achieving human development, the HPI reflects the distribution of the progress and measures the deprivation lag that persists. Regarding this, UNDP indicates that the Human Poverty Index is a multidimensional measurement of poverty. The Human Poverty Index for developing countries (HPI-1) measures deprivation in three dimensions

it must be indicated that, in the last Human Development Report for 2015, human poverty and income poverty are defined as set forth below:

Human poverty is defined by many dimensions of impoverishment: deprivation of a long and healthy life, of knowledge, of a decent standard of living, and of participation. On the contrary, income-based poverty is defined as the deprivation of one single dimension, income, either because it is considered to be the only impoverishment that is of interest or because all deprivations can be reduced to a common denominator. The concept of human poverty considers that the absence of sufficient income is an important factor of human deprivation, but not the only one. According to this concept, nor can all impoverishment be reduced to income.<sup>298</sup>

232. In this framework, it is relevant to specify the definition for the Multidimensional Poverty Index (MPI) drawn by the UNDP, which indicates that it is aimed at identifying multiple deprivations at the household and individual level in health, education, and standard of living.<sup>299</sup> The UNDP specifies that the MPI “reflects both the prevalence of multidimensional deprivation, and its intensity,” that is, how many deprivations people experience at the same time, and makes it possible to calculate the number of people living in poverty and to make comparisons both across countries, regions and the world and within countries by ethnic group, urban or rural location, as well as other key household and community characteristics. In that respect, the MPI is viewed as a complement to income-based poverty measurement tools.<sup>300</sup>

233. With respect to the modalities for measuring poverty adopted by OAS member states, the IACHR observes that some of the countries of the Americas have also taken steps to adopt the multidimensional approach to poverty, as indicated above, in addition to the concepts based solely on the monetary approach. Regarding this, it is important to indicate that, in addition to the information provided by the state of Mexico in its response to the IACHR questionnaire issued to gather inputs for the present Report, it appears that, in 2010, the National Council for Assessment of Social Development Policy (Consejo Nacional de Evaluación de la Política de Desarrollo Social—CONEVAL) adopted a multidimensional approach to measuring poverty. It indicates that this approach identifies poverty by intersecting two perspectives: economic well-being and social rights. Concretely speaking, it indicates that the methodology establishes that a person lives in multidimensional poverty when he or she is not guaranteed his or her exercise of at least one of his or her rights to social development and if his or her income is insufficient to purchase the goods and services he or she requires to meet his or her needs; and that a person is living in extreme poverty when he or she presents three or more social deprivations and his or her income is below the value of the food basket.<sup>301</sup>

234. Along that same line, as indicated previously, on the basis of the information submitted to the IACHR by the state of Uruguay, it is specified that, in addition to measuring monetary poverty, the multidimensional measurement methodology developed by CONEVAL of Mexico had been applied in the country. It specifies that the dimensions that are observed for this analysis included: housing and services inside the housing, education, social security, and health, as well as other social elements. Thus the persons living in poverty are classified into four categories: a) “non-poor”: those who do not suffer from any deprivation of rights or deprivation of income; b) “vulnerable in terms of rights”: those who do not suffer any deprivation in terms of income but are deprived of their rights; c) “vulnerable in terms of income”: those who

---

of human life: longevity, knowledge, and a decent standard of living. The HPI of industrialized countries (HPI-2) includes social exclusion, in addition to the three other dimensions.

<sup>298</sup> United Nations Development Programme, [Human Development Report 2015](#). Glossary on Human Rights and Human Development, p. 17.

<sup>299</sup> United Nations Development Programme, [Frequently Asked Questions - Multidimensional Poverty Index \(MPI\)](#)

<sup>300</sup> United Nations Development Programme, [Frequently Asked Questions - Multidimensional Poverty Index \(MPI\)](#)

<sup>301</sup> Response from the state of Mexico to the IACHR questionnaire: Poverty and Human Rights in the Americas, Note OAS-00784, April 15, 2016. According to its measurement methods, the state of Mexico has reported that, in 2014, 46.2 percent of the population is living in poverty and 13 percent living in extreme poverty.

are not deprived of their rights but suffer from deprivation in terms of income; and d) “multidimensional poor”: those who suffer from deprivation in terms of both rights and income.<sup>302</sup>

235. As for the state of Ecuador, it indicated to IACHR that poverty is understood as a “situation of inequality that arises as a result of unfair actions taken by political and economic power, leading to a denial of the human rights of persons, whose multidimensional conception is examined on the basis of the following perspectives: gender, inter-generational, self-identification of ethnic belonging, and the area of residence.”<sup>303</sup> In that respect, the state indicates that the definition includes a complex set of unmet needs, such as inequality of opportunities, exclusion, violence, freedom, identity, participation, use of time, among others aspects that not only depend on access to economic resources.<sup>304</sup> Furthermore, although extreme poverty should also be understood from a multidimensional perspective, it is specified that a person would be living in extreme poverty in Ecuador when he or she does not have the resources enabling him or her to meet at least basic food needs.<sup>305</sup> It is important to indicate that the state of Ecuador specifies that the Commission to validate the calculation of the impact of poverty in Ecuador has agreed to validate calculation of the total income variable, extreme poverty, and income inequality, without detriment to considering, as indicators, the measurement of poverty on the basis of unmet basic needs and the multidimensional poverty index.<sup>306</sup>

236. Likewise, the state of Argentina, in addition to measuring monetary poverty, pointed out to the IACHR that it conceives of “poverty as a complex and multidimensional phenomenon that encompasses a series of aspects that go beyond the measurement of income and that are connected with access to basic services, education, health, work, the environment, the empowerment of women, etc.”<sup>307</sup>

237. Furthermore, the state of Bolivia views poverty in its social, material, and spiritual dimensions. Thus, “material poverty is evident when there is no access to basic services and decent living conditions. Social poverty is evident when individualism prevails over community values; and spiritual poverty is evident when consumerism, individualism, discrimination, and racism are promoted.”<sup>308</sup>

## 2. Poverty and Extreme Poverty from a human rights perspective

238. Although monetary indicators are used to measure poverty, there is a global trend to recognize that poverty is more than just a problem related to economic resources. While income-based concepts and measures of poverty are still broadly used, like in the international sphere for the Sustainable Development Goals (SDGs), the conceptualizations of poverty have been evolving towards viewing it as a multidimensional and structural phenomenon. This moves beyond consideration of a single measurement factor, which entails projections based on a process of inequality and social, economic, and political exclusion, which affects human development and, thus, realization of human rights.<sup>309</sup>

<sup>302</sup> Response of the State of Uruguay to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No. 072-2016 MREE. As a result of this multidimensional methodology, the state indicated that it was recorded that, for 2013, multidimensional poverty amounted to 10 percent.

<sup>303</sup> Response of the State of Ecuador to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No 4-2-125-2016, May 31, 2016.

<sup>304</sup> Response of the State of Ecuador to the IACHR Questionnaire: Poverty and Human Rights in the Americas. Note No 4-2-125-2016, May 31, 2016. The state provided information about the figures for poverty, indicating that, by December 2015, the national percentage for income-based poverty would be 23.3 percent.

<sup>305</sup> Response of the State of Ecuador to the IACHR Questionnaire to gather inputs to prepare the present report on “Poverty and Human Rights in the Americas.”

<sup>306</sup> Response of the State of Ecuador to the IACHR Questionnaire to gather inputs to prepare the present report on “Poverty and Human Rights in the Americas.”

<sup>307</sup> Response of the State of Argentina to the IACHR Questionnaire: Poverty and Human Rights in the Americas.”

<sup>308</sup> Agenda Patriótica 2025. [13 Pilares de la Bolivia Digna y Soberana](#). Ministry of Communication. Plurinational State of Bolivia.

<sup>309</sup> Elizabeth Salmon, The Long Road in the Fight against Poverty and Its Promising Encounter with Human Rights, Sur Journal No. 7. See also Ariel E. Dulitzky, [Pobreza y Derechos Humanos en el Sistema Interamericano, algunas aproximaciones preliminares](#) [Poverty and Human Rights in the Inter-American System, Preliminary Observations], p. 1.



239. The IACHR has been working on the concept of poverty from a human rights perspective, as part of its mandate to promote observance of human rights in the region and to act as the advisory body of the Organization of American States (OAS) on the matter, and as the main independent human rights organ of the OAS.

240. To this end, the Inter-American Commission has indicated that poverty is one of the more worrisome general human rights situations in the hemisphere,<sup>310</sup> and that certain conditions constitute a “generalized violation of all human rights, civil and political, as well as social, economic, and cultural.”<sup>311</sup>

241. 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 diminished their citizen participation, access to justice, and the effective enjoyment of rights.<sup>312</sup> Bearing in mind the indivisibility of rights, the IACHR has pointed out that the violation of economic, social, and cultural rights is generally accompanied by the violation of civil and political rights. In this context, in a situation where there is maximum violation of economic, social, and cultural rights, civil and political rights will be violated to the hilt.<sup>313</sup>

242. Although a universally accepted definition of the concept of poverty in the inter-American system has not yet been determined, the IACHR finds that – for the purposes of this report – poverty is a human rights problem that creates barriers for the persons, groups, and communities living in this situation to equal enjoyment and exercise of their human rights. In certain conditions, poverty could even entail human rights violations imputable to the State, based on its international responsibility.

243. This report also presents the conceptualization and measurement of “extreme poverty.” In an effort to define its scope, several expressions are used, such as “absolute poverty,” “critical poverty,” “acute poverty,” “indigence,” “destitution,” among others. All these terms distinguish an extreme category in the poverty sphere. Thus, for the IACHR, extreme poverty is a serious human rights problem due to the intensity with which it impacts the enjoyment and exercise of the human rights of persons, groups, and communities living in this situation, as well as the severity of the human rights violations that it engenders.

244. Experience shows that extreme poverty can seriously impair the democratic institutional framework, as it constitutes a breakdown of the essence of democracy and diminishes citizen participation, access to justice, and the effective enjoyment, in general, of human rights. As such, in addition to allocating sufficient public resources to implement public policies for eradicating poverty and progressively achieving the full enjoyment of economic, social, and cultural rights, States must ensure the proper use of these resources and be accountable therefor.

245. From a human rights standpoint, although poverty can vary in terms of its intensity (becoming extreme) and in terms of duration (becoming chronic), the Commission finds that it is the State’s duty to remove obstacles to enjoying and exercising the human rights of persons, groups, and communities living in situations of poverty and extreme poverty. The State should also create the necessary conditions to guarantee a dignified life for those living in situations of poverty until poverty is eradicated.

246. The inter-American human rights system has observed that, in many cases, poverty has been a contributing factor to the violation of human rights, manifested as a discriminating factor. Through its various working instruments in the petition and individual case system, thematic reports, monitoring and observation activities, such as the seven visits conducted in countries throughout the region to gather information for this report, and information received as part of the public hearings held during its sessions,

<sup>310</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 5.

<sup>311</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 17; IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#); OEA/Ser.L/V/II.143. Doc. 59, November 3, 2011, para. 1.

<sup>312</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

<sup>313</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

the Commission has shown that poverty and extreme poverty typically translate into situations of discrimination, violence, social exclusion, material deprivation, and lack of access to basic public services, among others. These, in turn, result in the denial of civil, political, economic, social, and cultural rights.

247. The Commission has also observed how, on occasion, human rights violations become compounded in contexts of poverty and extreme poverty. Each violation negatively impacts the others, thereby creating a vicious cycle of interconnected impairments and violations of human rights based on multisector discrimination. This has grave consequences for the dignity of those living in our hemisphere and, more generally, for the exercise of human rights.

248. Addressing poverty using a human rights-based approach reveals the need to work towards effective strategies to eradicate poverty and extreme poverty. These efforts must avoid using a welfare-based perspective and, instead, focus on a human rights perspective that includes the resulting international State obligations. To this end, basing the conceptualization and measuring of poverty on fulfilling human rights would enable the design of public policies centered on the needs specific to the people, groups, and communities that have been historically discriminated against, to guarantee truly equal conditions.

249. Against this backdrop, it bears noting that the UN “Guiding Principles on Extreme Poverty and Human Rights” indicate that poverty is itself an urgent human rights problem affecting human dignity. It is both a cause and consequence of human rights violations and an enabling condition for other violations. It is characterized by multiple reinforcing violations of civil, political, economic, social, and cultural rights.<sup>314</sup>

250. In that same vein, the United Nations Children’s Fund (UNICEF) has indicated that “children living in poverty experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them unable to enjoy their rights, achieve their full potential or participate as full and equal members of society.”<sup>315</sup>

251. UNICEF also maintains that the concept of child poverty, in conjunction with estimates of its scope, can be based on the principle of access to a specific number of economic and social rights.<sup>316</sup> It asserts that failure to fulfill these rights would result, for example, in premature death, hunger, malnutrition, and lack of access to drinking water, sanitation services, medical services, and information and education, with all the consequences that these entail. According to this, child poverty can be understood from a perspective that addresses the denial of the rights of children. Therefore, implementation of a human rights-based approach would reduce poverty.<sup>317</sup>

252. In sum, the Inter-American Commission on Human Rights views poverty as a human rights problem that translates into impairment of enjoying and exercising human rights and that, on occasion, results in human rights violations, either as a cause of the violations or a consequence of other human rights violations imputable to the State, based on its international responsibility.

---

<sup>314</sup> United Nations, [The Guiding Principles on Extreme Poverty and Human Rights, approved by the Human Rights Council on September 27, 2012, General Assembly, A/HRC/21/39](#), July 18, 2012, para. 3.

<sup>315</sup> United Nations, UNICEF-ECLAC, [Child Poverty in Latin America and the Caribbean](#), p. 25.

<sup>316</sup> United Nations, UNICEF-ECLAC, [Child Poverty in Latin America and the Caribbean](#), p. 26.

<sup>317</sup> United Nations, UNICEF-ECLAC, [Child Poverty in Latin America and the Caribbean](#), p. 26.

## II. IMPACT OF POVERTY ON THE EXERCISE OF ESC RIGHTS OF PERSONS, GROUPS, AND COMMUNITIES HISTORICALLY SUBJECTED TO DISCRIMINATION

### A. *Brief Overview of General Poverty and Extreme Poverty Figures for the Americas*

253. Poverty and extreme poverty are more than just the lack of income or economic resources. They are also significant obstacles to the enjoyment and exercise of human rights.

254. The United Nations deems the eradication of poverty and extreme poverty in all its forms to be one of the greatest challenges facing humanity.<sup>318</sup>

255. According to Millennium Development Goal parameters, Latin America has stagnated in its poverty-reduction efforts.<sup>319</sup> The Economic Commission for Latin America and the Caribbean (ECLAC) reports that poverty and indigence rates – relating to the lack of resources to meet basic food needs – indicate that the number of people living in poverty grew in 2014, reaching 168 million, of which 70 million were living in extreme poverty. ECLAC observed that both the poverty and the indigence rates rose in 2015, such that 175 million people are considered to be income poor, 75 million of whom are living in extreme poverty.<sup>320</sup> Regarding the specific case of Central America, the IACHR has received information that indicates that six out of every ten households are living in poverty.<sup>321</sup>

256. According to official figures for the United States, 14.8 percent of the population (46.7 million) in 2014 lived in poverty, with no significant changes since 2006. In fact, poverty hit 14.5 percent in 2013.<sup>322</sup> Similarly, 13.5 percent of Canada's population (4.6 million) was living on low income in 2013, i.e. total household income was less than half of the median family income.<sup>323</sup>

257. In terms of inequality, it is concerning that Latin America and the Caribbean remain the most unequal region in the world, with an economic inequality gap that reinforces social and gender inequalities, despite the economic growth over the last decade.<sup>324</sup> According to the United National Development Program (UNDP), 10 out of the 15 most unequal countries in the world are in Latin America.<sup>325</sup> Furthermore, the IACHR has received information that in 2014, in Latin America and the Caribbean 10 percent of the

<sup>318</sup> United Nations, [2030 Agenda for Sustainable Development](#), Goal 1: No Poverty. Eradicating poverty in all its forms and dimensions, including extreme poverty, is one of the greatest challenges facing the world and is an essential requirement for sustainable development. United Nations, [Transforming our world: the 2030 Agenda for Sustainable Development](#), Resolution approved by the General Assembly September 25, 2015, para. 14.

<sup>319</sup> United Nations, [Millennium Development Goals Report 2015](#).

<sup>320</sup> ECLAC, [Social Panorama of Latin America 2015](#), p. 7.

<sup>321</sup> Obryan Poyser Calderón, [Quinto Informe Estado de la Región](#), Pobreza en Centroamérica [Fifth Regional Status Report, Poverty in Central America], p. 33.

<sup>322</sup> United States Census Bureau, [Poverty 2014 Highlights](#). According to a 2013 report issued by the Organization for Economic Cooperation and Development (OECD), income inequality and relative poverty rates in the United States are among the highest in OECD member countries and have substantially increased over the past decades. [Inequality and Poverty in the United States](#), p. 2.

<sup>323</sup> See Statistics Canada, Income of Canadians, published December 17, 2015: <http://www.statcan.gc.ca/daily-quotidien/151217/dq151217c-eng.htm>.

<sup>324</sup> World Bank, [Working to End Poverty in Latin America and the Caribbean Workers, Jobs, and Wages](#), June 2015. See also: Thematic hearing on fiscal policy and human rights. 156<sup>th</sup> Period of Sessions of the Inter-American Commission on Human Rights (IACHR), Washington D.C., October 2015.

<sup>325</sup> UNDP, [About Latin American and the Caribbean](#). According to United Nations Development Program (UNDP) projections, nearly 1.5 million more men and women in Latin America and the Caribbean fell into poverty at the end of 2015. See: [Human Development Report on Latin America and the Caribbean 2016, press release](#).

population owned 71 percent of the wealth, while the poorest half of the population was living in poverty and owned only 3.2 percent. Against this backdrop, and more specifically, 1 percent held 40 percent of the region's wealth.<sup>326</sup> These figures broadly demonstrate the real dimension of inequality in the region.

258. As pertains to the Caribbean, available information shows that the countries with the highest percentage of their population living below the poverty line are: Haiti (77%), Belize (41.3%), Granada (37.7%), Guyana (36.1%), and Saint Lucia (28.8%). Statistics on children and youth reveal that they suffer from the highest poverty rates; ECLAC attributes this to constantly growing inequality rates. Belize and Granada stand out as nearly half of their population aged 0-24 years lives in poverty.<sup>327</sup>

## ***B. Impacts of Poverty and Extreme Poverty on Persons, Groups, and Communities Historically Subjected to Discrimination***

259. The IACHR has observed, through its various mechanisms, that the elevated levels of discrimination and social exclusion that certain groups living in poverty endure have impeded their citizen participation, access to justice, and the effective enjoyment of rights.<sup>328</sup>

260. The Commission has also indicated that economic growth does not automatically translate into better living standards for excluded and marginalized persons and groups, unless special, appropriate measures and public policies that include a human rights approach are adopted to create truly equal conditions. This is why the strides made in strengthening democracy and rule of law in the Americas are not yet reflected in the full enjoyment of human rights for those living in poverty, extreme poverty, or other situations of marginalization and discrimination.

261. Based on the foregoing, the inter-American system does not recognize the right to live free of poverty. However, its instruments establish a series of human rights that, when fulfilled, closely link overcoming poverty and extreme poverty as a necessary condition for enjoying the minimum content of these instruments without discrimination. The IACHR underscores that this duty obligates the States to pay special attention to the social sectors and individuals who have suffered from the various manifestations of historic exclusion or are victims of persistent prejudice, and must immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that create and perpetuate discrimination in practice. These principles have been enshrined in the instruments that govern the actions of the inter-American human rights system.

262. This section aims to offer an introduction to the forms of discrimination and social exclusion that diverse people, groups, and communities living in poverty in the Americas must face. In this section, the IACHR addresses the situation of the people and groups for which it has state and non-state actor information. This information verifies their frequent situation of poverty, the ongoing discrimination and historic exclusion in their countries, and their rooted conditions of vulnerability. The concerns associated with these groups and communities is reflected not only in the work of the inter-American system, but also the international system. These concerns apply to all their economic, social, cultural, civil, and political rights. The IACHR clarifies that the persons, groups, and communities referred to in this section are not the only ones affected by poverty. To this end, the IACHR calls on state and non-state actors to exhaustively and carefully document and research the problem of poverty and its impact on groups, through a broad, comprehensive, and participatory process.

<sup>326</sup> OXFAM, [Privileges That Deny Rights: Extreme inequality and the hijacking of democracy in Latin America and the Caribbean](#), p. 6, September 2015.

<sup>327</sup> ECLAC Subregional Headquarters for the Caribbean, [Implementation of the Cairo Programme of Action in the Caribbean \(1994-2013\)](#), 2014, p. 13.

<sup>328</sup> IACHR, [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 4.

263. This section will not only submit the concerning situations from an individual and group perspective, but also using an intersectional approach, bearing in mind factors such as sex, gender, age, race, ethnicity, disability, deprivation of liberty, and mobility that can exacerbate not only the poverty level, but also vulnerability to ongoing human rights violations. When developing social policies to address and redress the state of poverty, it is crucial for States to consider the risk factors that these people face and the multiple forms of historical discrimination to which they have been subjected. This is an essential component for human rights approaches used in state measures and to create future conditions of true equality.

## 1. Women

264. The Inter-American Commission has identified women as a social sector particularly affected by poverty and at a particular disadvantage in exercising their civil, political, economic, social, and cultural rights. In its study on the Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights,<sup>329</sup> the Commission recognized the obligation “with immediate effect” to ensure the exercise of economic, social, and cultural rights without discrimination and in conditions of equality. It identified women as a sector that has traditionally been discriminated against and excluded from exercising these rights.

265. The IACHR has received information describing the diverse forms of discrimination that women suffer both in law and in practice, as related to the access and control of economic resources; the division, control, and disposition of these resources within the family and outside the home; and obstacles to procuring means to obtain these resources, a problem that is particularly severe in the area of work. The Commission observes that these forms of discrimination vary and contribute to women’s poverty, violations of their productive and reproductive autonomy, and to a general lack of protection for their human rights.<sup>330</sup>

266. The Commission has expressed its concern about the inequalities between sexes, groups, and sectors in terms of access to economic resources, as a cause and contributing factor to this cycle of poverty.<sup>331</sup> In this framework, Afro-descendent and indigenous women are especially at risk and have long been the victims of discrimination on three fronts: gender, poverty, and race. That discrimination has prevented them from fully exercising their civil, political, economic, social, and cultural rights.<sup>332</sup>

267. Although poverty is a struggle for anyone, it affects women differently given the social discrimination they endure and the added burdens they carry, such as their family responsibilities. This limits their chances of getting the economic resources needed to support themselves and their families. Although women continue to join the labor market and the education sector, the strides they have made in these areas are still in their early stages.<sup>333</sup> The ILO has indicated that women living in poverty and extreme poverty are typically characterized by their high rates of unpaid work and economic dependence on their partner, as well as their concentration in low-wage – mainly informal – occupations.<sup>334</sup>

268. For example, in its 2012 Report on the Situation of Human Rights in Jamaica, the IACHR examined Jamaica’s legal framework to address discrimination against women and the obstacles they face. The Commission noted that poverty disproportionately impacts women, in addition to low salaries, high

---

<sup>329</sup> IACHR, [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights](#), OEA/Ser.L/V/II.132, July 19, 2008, para. 48.

<sup>330</sup> IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#), OEA/Ser.L/V/II.143, November 3, 2011, para. 252.

<sup>331</sup> IACHR, [Annual Report 2006](#), Introduction, para. 5.

<sup>332</sup> IACHR, [Annual Report 2011](#), Introduction, para. 5.

<sup>333</sup> IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#), OEA/Ser.L/V/II.143, November 3, 2011, para. 247.

<sup>334</sup> Maria Elena Valenzuela, [Desigualdad de género y pobreza en América Latina: separata](#), *Mujeres, pobreza y mercado de trabajo: Argentina y Paraguay* [Gender inequality and poverty in Latin America: offprint. Women, poverty, and the labor market], International Labor Organization, 2003. Ch. 1, p. 26.

unemployment rates, and underrepresentation in the political process. Women must face these barriers to overcome the discriminatory attitudes and stereotypes that persist in Jamaica.<sup>335</sup>

269. Both the inter-American and international human rights systems have singled out a number of obligations incumbent upon states by virtue of women's right to nondiscrimination and to equal protection in their access to and control over economic resources. They have underscored a series of components of women's rights in the economic realm, not only in treaties and declarations, but also in consensus documents that have the support of the international community.<sup>336</sup> Taken together, these pronouncements establish the following:

- a) a close link between the eradication of poverty and the protection and exercise of all women's rights;
- b) the States' obligations to ensure that spouses in marriage and partners in *de facto* unions are treated as equals in the administration of assets and property, and that the rights of women in *de facto* unions receive equal protection when the union is dissolved;
- c) the State's obligations to ensure that women have access to property, land, housing, credit and other banking assets both within and outside marriage; and
- d) the State's obligation to ensure that women have access to work, as a vital source of revenue and a means to preserve economic independence, and an obligation to protect women's economic rights in other areas such as social security.<sup>337</sup>

270. In this same vein, the Inter-American Commission notes with alarm that the sexual division of labor continues to directly impact women's economic independence, as it limits their earning options and access to and control over needed resources. It is a factor in the feminization of poverty and is exacerbated in the case of widows, broken marriages, or family breakups. The sexual division of labor also severely constrains women's use of time, as they are overburdened with responsibilities. This limits their capacity to enter the labor market and rise to management and executive positions in the economic, social, and political arenas. The IACHR believes that adequate policies and measures are needed to address this social problem and that they must be geared towards improving the distribution of wealth, assets, women's job opportunities, and their time. In summary, the sexual division of labor is a severe constraint on women's exercise of human rights in all economic, social, civil, and political areas.<sup>338</sup>

271. One of the problems most concerning to the Commission surrounding poverty among the region's women is its link to gender-based violence. The main forms of violence that women still endure in the Americas are domestic and sexual violence perpetrated by known or unknown persons, workplace bullying and sexual harassment, homicide, human trafficking, and institutional violence. Poverty, a lack of opportunity, and a lack of access to education place women and girls in vulnerable situations and make them easy targets to be recruited into criminal activity. Indeed, women with low socioeconomic and education levels are among the most vulnerable members of society in terms of being taken to participate in criminal operations, whether as victimizers or traffickers.<sup>339</sup>

---

<sup>335</sup> IACHR, [Report on the Situation of Human Rights in Jamaica](#), OEA/Ser.L/V/II.144, August 10, 2012, para. 214.

<sup>336</sup> IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#), Executive Summary, OEA/Ser.L/V/II.143, November 3, 2011, para. 26.

<sup>337</sup> IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#), Executive Summary, OEA/Ser.L/V/II.143, November 3, 2011, para. 27.

<sup>338</sup> IACHR, [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights](#), Executive Summary, OEA/Ser.L/V/II.143, November 3, 2011, para. 16.

<sup>339</sup> OAS, [Inequality and Social Inclusion in the Americas – 14 Essays](#), OEA/Ser.D/XV.11, s/f, p. 131.

272. The Study of the Secretary-General of the United Nations<sup>340</sup> underscored that poor women are at increased risk of intimate partner violence and sexual violence, including rape. According to the study, the correlation between poverty and violence against women points to the need for changes in policies and practices in order to respect, protect, and fulfill women's economic and social rights. In this context of violence, the IACHR is particularly concerned by how limited access to justice is for women living in poverty or extreme poverty. In its report on Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American Human Rights System, the IACHR observed that women of means have far greater access to the justice system than do economically disadvantaged women, reiterating the need to offset situations of economic disadvantage.<sup>341</sup> Indeed, the Commission has pointed out that women cannot possibly claim their rights unless they know what those rights are. The Commission recalls that the lack of information about the judicial recourses available and the fact that violence and discrimination against women are still accepted in the societies of the hemisphere, have kept down the number of complaints about acts of violence against women.<sup>342</sup>

273. The Maternal mortality continues to be a serious human rights problem with dramatic effects on women throughout the world and in the region, with repercussions on women's families and communities. Specifically, it is the women who have historically been marginalized based on reasons of race ethnicity, economic status, and age who have the least access to the maternal health services they require.<sup>343</sup> This Commission has received information indicating that approximately 536,000 women die each year throughout the world due to complications from pregnancy and childbirth, despite the fact that these deaths are generally preventable at relatively low cost.<sup>344</sup> The World Bank estimates that if women had access to interventions for pregnancy and birth-related complications, particularly emergency obstetric care, 74 percent of maternal deaths could be prevented.<sup>345</sup>

274. The United Nations Human Rights Council assessed that an average of 1,500 women and girls die every day as a result of preventable complications related to pregnancy and childbirth.<sup>346</sup> For every woman who dies, another 30 are injured or become permanently ill, potentially resulting in life-long pain, disability, and socio-economic exclusion.<sup>347</sup> Although maternal mortality and morbidity affect women of all social and economic classes, the IACHR warns that the disproportionately high number of poor, indigenous, and/or Afro-descendant women – most of whom live in rural areas – are more often unable to fully enjoy their maternal health-related human rights.

275. The Inter-American Commission also observes that sexual and reproductive health in the Americas is heavily influenced by social inequalities impacting the population. In particular, women who are poor, indigenous, and/or of African descent, women who live in rural areas, and migrant women are more affected by restrictions on sexual and reproductive health. They also face more obstacles in accessing information to make health-related decisions. In some cases, the barriers are of such a magnitude that they may constitute violations of women's rights to personal integrity, privacy, and family life, and the right to be free from violence and discrimination, in contravention of the obligations the States of the Americas have assumed in the area of human rights.<sup>348</sup>

---

<sup>340</sup> United Nations, [Ending violence against women: From words to action. Study of the Secretary-General](#), 2006, p. 39.

<sup>341</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American Human Rights System](#), OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 65.

<sup>342</sup> IACHR, [Access to Information, Violence against Women, and the Administration of Justice in the Americas](#), OAS/Ser.L/V/II.154, March 27, 2015, para. 55.

<sup>343</sup> IACHR, [Access to Maternal Health Services from a Human Rights Perspective](#), OEA/Ser.L/V/II, June 7, 2010, para. 1.

<sup>344</sup> IACHR, [Access to Maternal Health Services from a Human Rights Perspective](#), OEA/Ser.L/V/II, June 7, 2010, para. 7.

<sup>345</sup> World Bank, [The Millennium Development Goals for Health: Rising to the Challenges](#), 2004, p. 54.

<sup>346</sup> United Nation, Human Rights Council, [Preventable mortality and morbidity and human rights](#), A/HRC/ 11/L.16/Rev.1, June 12, 2009, para. 1.

<sup>347</sup> United Nations, [Millennium Development Goal 5: Improve Maternal Health](#).

<sup>348</sup> IACHR, [Access to Information on Reproductive Health from a Human Rights Perspective](#), OEA/Ser.L/V/II, November 22, 2011, para. 7.

276. The Commission has received information in the context of its public hearings on the alarming impact that the criminalization of abortion in all circumstances is having on women throughout the region. As regards El Salvador, for example, information indicates that between 2000 and 2011 at least 129 women have been processed for the crimes of abortion or for aggravated homicide.<sup>349</sup> Individual cases were presented in which women who had miscarriages were arrested and deprived of their liberty. Information was provided of convictions of women after being denounced by their doctors to the authorities without sufficient elements of proof.

277. Information received by the IACHR indicates that most of the women who have been prosecuted are young women living in poverty, have low levels of education, and face enormous challenges in accessing basic health services.<sup>350</sup> During the hearing on Sexual and Reproductive Rights of Women in South America held as part of the 158th Special Session, the participating organizations highlighted the gender-based discrimination and prejudices in all spheres of women's lives, particularly poor women. This situation is exacerbated in the area of sexual and reproductive rights through laws, policies, and practices based on discriminatory stereotypes that further perpetuate violence against women.<sup>351</sup>

278. The Pan American Health Organization/World Health Organization (PAHO/WHO) has indicated that high poverty rates in Latin America and the Caribbean increase the burden of some infectious diseases. In particular, it has observed that “neglected diseases,”<sup>352</sup> known as infectious diseases, which are often parasitic, are directly and overwhelmingly related to the populations most at risk and excluded, such as women living in poverty and extreme poverty, residents of urban informal settlements, migrant workers, and indigenous populations.<sup>353</sup> The WHO characterizes these types of diseases as “both a cause and a consequence of poverty,” as they can cause chronic conditions that can reduce learning capabilities, productivity, and, thus, income earning capacity. They could be preventable given that they are the result of insufficient access to clean drinking water, sanitation, adequate housing, education, and health services.<sup>354</sup>

## 2. Children and adolescents

279. The Inter-American Commission underscores the need to more thoroughly assess the situation of children and adolescents living in poverty and the impact it has on the exercise of their human rights. The Commission also notes that measuring child poverty requires a multidimensional approach based on a perspective that includes children and adolescents' access to adequate services enabling their full physical, social, mental, spiritual, and moral development. It should also provide for the ability to enjoy all their rights, reach their full potential, and participate as full and equal members of society.

280. The particular concern for children and adolescents comes in response not only to their overrepresentation among the poor but also to their greater dependency on adults to meet their basic material needs and enjoy their rights, as well as their particular vulnerability to the consequences of poverty and inequality due to their stage of development.<sup>355</sup>

<sup>349</sup> IACHR, [Situation of Human Rights of Women and Girls in El Salvador](#), hearing held March 16, 2013. [Annex to the Press Release Issued at the Close of the 147<sup>th</sup> Session](#).

<sup>350</sup> IACHR, [Updated Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application, 2011-2014](#), OEA/Ser.L/V/II.143, November 3, 2011, para. 54.

<sup>351</sup> IACHR, [Sexual and Reproductive Rights of Women in South America](#), hearing held June 7, 2016. [Report on the 158<sup>th</sup> Special Session of the IACHR](#).

<sup>352</sup> PAHO/WHO, [General Information on Neglected Infectious Disease Integrated Approach](#).

<sup>353</sup> PAHO/WHO, [Elimination of Neglected Diseases and Other Poverty-Related Infections, Concept Document CD49/9](#), para. 2.

<sup>354</sup> PAHO/WHO, [Elimination of Neglected Diseases and Other Poverty-Related Infections, Concept Document CD49/9](#), para. 2, (Resolution CD49.R19, Elimination of Neglected Diseases and Other Poverty-Related Infections. See also: PAHO/WHO [Plan of Action for the Elimination of Neglected Infection Diseases and Post-Elimination Actions 2016-2012](#), June 2016.

<sup>355</sup> ECLAC, [Social Panorama of Latin America 2013](#), (LC/G.2580), Santiago, p.96.



281. There are currently more than 80 million children and adolescents in Latin America and the Caribbean living in poverty or extreme poverty, or more than 45 percent of the population under the age of 18. According to ECLAC and UNICEF figures, one out of every five children lives in extreme poverty – the equivalent of 32 million children in Latin America and the Caribbean. Indigenous and Afro-descendent children are much more affected by poverty in the region: one out of every three indigenous and Afro-descendent children lives in extreme poverty and two out of every three live in poverty.<sup>356</sup>

282. All regions of the world, regardless of their level of development and economic growth, are dealing with the consequences of child poverty. In Canada, one of the most developed nations, nearly 14 percent of children and adolescents live in relative poverty, which measures how much a household's consumption pattern differs from a typical household in the society to which it belongs. The poverty rate for indigenous children reaches 40 percent.<sup>357</sup> In the United States, more than 16 million children and adolescents (22%) live in families with income below the federal poverty threshold;<sup>358</sup> the Afro-descendent population is especially affected. The countries of the region have the most unequal distribution of income when compared to other regions of the world. This means that the analysis of macro-economic numbers in these countries does not reflect the disparities among different groups in terms of their access to services and enjoyment of rights.

283. Poverty affects children differently from adults; it has more profound and lasting impacts on children. The most significant effect on children and adolescents is associated with the rights that are more frequently violated in poor households, like the right to health, nutrition, drinking water, sanitation, access to quality education, decent housing, and adequate care provided by families and social institutions, among others. These rights are fundamental for children and adolescents who are undergoing physical, cognitive, and intellectual growth and who deserve special protection from the State, precisely because these rights are essential as a foundation for enjoying all other rights.

284. Child poverty, in addition to preventing children from accessing the basic standards of wellbeing and meeting their current basic needs, affects their future by restricting their ability to develop skills to access future opportunities. It conditions them to perpetuate the cycle of inter-generational poverty. To this end, the United Nations High Commissioner – in its Guiding Principles on Extreme Poverty and Human Rights – has called attention to the fact that even short periods of deprivation and exclusion can dramatically and irreversibly harm a child's right to survival and development, thereby causing poverty in adulthood.<sup>359</sup>

285. The Federal Public Defender's Office of Argentina reported that, according to 2010 census data, there were 163,587 people in the city of Buenos Aires living in informal settlements, a 52 percent increase over the 2001 census. It reports that, in response to this situation, a federal Subprogram for Slum and Neighborhood Urbanization and an Urbanization Plan for Environmentally At-Risk Slums and Informal Settlements in the Matanza Riachuelo river basin were proposed. These communities have seen severe delays in the implementation processes and report that the little that has resulted from these urbanization programs has led to legal complaints to gain access to basic services, given the recurring exclusion and discrimination that the residents of these informal settlements endure, both at the hands of the State itself and the concessionary companies providing these services.<sup>360</sup>

---

<sup>356</sup> UNICEF and ECLAC, [Pobreza infantil en América Latina y el Caribe](#), [Child Poverty in Latin America and the Caribbean] 2010, pp. 37, 38, and 47.

<sup>357</sup> UNICEF, [Measuring child poverty. New league tables of child poverty in the world's rich countries. Report Card 10, 2012](#); Canada, Statistics Canada. Table 111-0015 - Family characteristics, Low Income Measures (LIM), by family type and family type composition, annual, CANSIM.

<sup>358</sup> Columbia University, National Center for Children in Poverty, [Basic Facts about Low-Income Children. Children under 18 years, 2014](#).

<sup>359</sup> Office of the United Nations High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, pp.8-10.

<sup>360</sup> Response of the Argentine Federal Public Defender's Office to the IACHR questionnaire: Poverty and Human Rights in the Americas.

286. There are also reports that the social policies in Venezuela of the so-called missions (misiones) had a very positive impact reducing poverty for some years, but that they have been immersed in crisis for at least four years. These welfare-oriented measures need to be transformed into structural policies that strike at the root of poverty.<sup>361</sup>

287. The Commission has underscored that, given that children are constantly developing and are dependent on adults to ensure their more fundamental rights and wellbeing, the role of families is essential to protecting children. The Court and the Commission have indicated that “in principle, the family should provide the best protection to children (...). And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus.”<sup>362</sup> The IACHR has stressed that social protection policies for families are crucial to overcome child poverty and should be a priority for States to fulfill their international obligations to protect the rights of the child.

288. The Commission has observed with concern that poverty in the region is one of primary reasons parents decide to give up guardianship of their children, give them up for adoption, abandon them, or allow authorities to separate children from their parents and place them in institutions. In this regard, the Inter-American Court has established that poverty cannot be the sole grounds for separating children from their parents and the resulting denial of other rights enshrined in the American Convention, rather a determination must be made based on the need to take measures to support the family. However, the IACHR has noted the large number of children in protective institutions because of their family’s socio-economic standing, as well as abandoned children or those given up for adoption because of their family’s material circumstances. It urges States to redouble their social policies to protect families.<sup>363</sup>

289. The Commission has also asserted that poverty increases the vulnerability of children and adolescents to violence, exploitation, abuse, and mistreatment.<sup>364</sup> In this regard, the Commission recalls that the children and adolescents living and growing up in neighborhoods and contexts with limited access to basic services and the presence of criminal groups are exposed to being captured, utilized, and exploited by criminal groups to carry out their criminal activities. In the words of the IACHR: “The limitations adolescents face in exercising and enjoying their rights, in conjunction with the lack of education and work opportunities that would enable them to develop an independent life project with dignity, further expose them to criminal organizations and their activities. The Commission believes that children and adolescents linked to criminal groups is an outgrowth of the lack of State measures to guarantee the rights of children and protect them from the rights violations, exclusion, and violence that they face at each turn.”<sup>365</sup> The Commission has noted that in these contexts, girls and female adolescents – due to trickery, pressure, and a lack of other options – are more exposed to being captured and sexually exploited, given the high levels of trafficking for sexual exploitation in the region.<sup>366</sup>

290. The IACHR has also brought attention to the persistent stereotypes that identify adolescents, particularly males in poor and peripheral neighborhoods, as the main agents responsible for violence and criminal activities. There is a widespread social perception that views these adolescents as potential “social dangers” that must be controlled. These perceptions have led to frequent abuses and arbitrary practices

<sup>361</sup> Response from the Venezuelan Program of Education and Action on Human Rights (PROVEA) to the IACHR questionnaire: Poverty and Human Rights in the Americas.

<sup>362</sup> IACHR, [Report on the Rights of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OEA/Ser.L/V/II.Doc.54/13, 2013, para. 42. I/A Court of H.R. [Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002](#). Series A No. 17, para. 66. IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, paras. 49 and following.

<sup>363</sup> IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 76 and 96 and following.

<sup>364</sup> Office of the United Nations High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, pp.8-10.

<sup>365</sup> IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 578.

<sup>366</sup> IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 8 and 239 and following.

carried out by law enforcement against adolescents, as well as excessive penalization and criminalization against them and extremely precarious prison conditions.<sup>367</sup>

291. The IACHR notes the great advances made in the region in the fight to eradicate childhood malnutrition. Nonetheless, moderate to serious malnutrition affects 2.3 million children from the ages of 0 to 4 in Latin America and the Caribbean, which represents 4.5 percent of the children in this age group in the region. In addition, 8.8 million children are affected by chronic malnutrition, which is equal to nearly 16 percent of children. It should be noted that this statistic does not reflect the heterogeneous nature of the situation in the various countries of the region, where this percentage fluctuates significantly. Thus, in countries like Argentina, Chile, Brazil, Jamaica, Mexico, Paraguay, and the Dominican Republic, the percentage of children suffering from moderate or serious malnutrition is 3.5 percent, while this percentage is above 10 percent in countries like Guatemala, Haiti, Honduras, Guyana, and Suriname. Malnutrition is particularly dangerous for children because they are in a crucial period of their development and growth. It is a factor that increases their risk of death, inhibits their full cognitive development, and may have irreversible consequences for their health status throughout their entire adult life.<sup>368</sup>

292. Although child labor in Latin America and the Caribbean has been substantially reduced in recent years, 5.7 million children work before reaching the minimum employment age or perform jobs that should be prohibited, according to ILO Convention 182 on the worst forms of child labor. The large majority of these children work in agriculture, while others are employed in other high-risk sectors such as mining, garbage collection, domestic work, rocketry, and fishing.<sup>369</sup> Children living in poverty are exposed to informal child labor and to situations that may represent abuse and exploitation, including modern forms of slavery. Children's involvement in productive activities for economic reasons is customary in the region and families see it as a contribution to the household economy. The IACHR has expressed its concern regarding situations of abuse, mistreatment, and exploitation to which children engaged in some type of productive activity may be subjected; their vulnerability when reporting such situations; their frequent victimization by stigmatization and criminalization, even at the hands of government security forces; and how difficult it is for them to complete their education, as evidenced by high absenteeism and dropout rates.<sup>370</sup>

293. Domestic work performed by children and adolescents is a troublesome phenomenon in the region that is still well-established and socially accepted. According to information received by the IACHR, there are high numbers of girls in particular who are working as domestic employees to contribute to the household economy. This makes it difficult for them to exercise a series of rights, including the right to education, although many families in precarious socio-economic circumstances send their daughters to the cities to work as maids in the belief that they will have better access to education. This situation also exposes them to mistreatment, abuse, violence, negligence, and exploitation, all of which is facilitated by their vulnerability due to distance from and lack of customary contact with their families and limited contact with people they trust. A high percentage of trafficking victims have a history of working as domestics since they were young.<sup>371</sup>

294. Even recognizing the great advances recorded in the region in the area of education, 1.4 million children have never attended school, and in some Central American countries such as El Salvador, Guatemala, Honduras, and Nicaragua between 2 percent and 4 percent of school aged children have never been able to exercise this right. In addition, 5.6 percent of the region's children have dropped out of school (10 million). This situation is particularly widespread in some Central American countries (Guatemala, Nicaragua, and Honduras) and in Peru, where more than 10 percent of children aged 6 to 17 do not attend school.<sup>372</sup>

<sup>367</sup> IACHR, [Report on Violence, Children and Organized Crime](#), OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 2.

<sup>368</sup> Figures can be consulted at UNICEF and ECLAC, [Child poverty in Latin America and the Caribbean](#), 2010, p. 56ff.

<sup>369</sup> Figures from the [International Labour Organization](#) (ILO).

<sup>370</sup> IACHR, [IACHR calls attention to the continuing challenges facing pre-teen and teenage girls in the region](#), October 12, 2016.

<sup>371</sup> IACHR, [IACHR calls attention to the continuing challenges facing pre-teen and teenage girls in the region](#), October 12, 2016.

<sup>372</sup> UNICEF and ECLAC, [Child poverty in Latin America and the Caribbean](#), 2010, p. 69.

295. Children living in poverty are more likely to leave school, or may not even attend school, in order to perform income-generating activities or to help with household tasks. The economic consequences of dropping out of primary and secondary school are devastating and perpetuate the cycle of poverty. Girls are more frequently denied the right to education than boys; this in turn reduces their options and increases women's impoverishment.<sup>373</sup> In neighborhoods and areas most affected by poverty, educational quality often tends to be deficient and indicates that in practice education is not fulfilling its important mission.

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

297. The Commission notes that indigenous peoples in the Americas continue to be disproportionately affected by poverty and extreme poverty, compared to the general population. Poverty affects 43 percent of the indigenous households in the hemisphere, twice the poverty rate for non-indigenous households.<sup>374</sup> In addition, 24 percent of all indigenous households live in conditions of extreme poverty, i.e., extreme poverty affects these communities 2.7 times more than it does non-indigenous households.<sup>375</sup>

298. Contributing factors to these rates include the persistence of a situation of structural and historical exclusion of the indigenous population, which generates and facilitates inter-generational repetition of inequality and poverty. This is reflected in the fact that indigenous peoples continue to be affected by higher levels of illiteracy, malnutrition, difficulties in accessing medical services and medications, and obstacles to accessing basic services such as drinking water, sanitation, electricity, and adequate housing. Similarly, challenges still persist that hamper their access to justice and undermine the effective participation and political representation of these communities.<sup>376</sup>

299. While Latin America experienced rapid economic growth and reduced rates of poverty and extreme poverty in the 2000s, this poverty reduction has not been distributed equitably.<sup>377</sup> In this regard, it is important to emphasize that while the regional trend in the area of poverty reduction has also significantly benefitted indigenous peoples, indigenous and non-indigenous households have not seen the same reduction in poverty.<sup>378</sup> On the contrary, the difference between poverty rates among indigenous and non-indigenous populations remains unchanged or continues to expand to the detriment of indigenous peoples, thus exacerbating inequality.<sup>379</sup>

300. For example, chronic poverty declined significantly in Bolivia during the 2000s but the poverty gap between indigenous and non-indigenous households increased by 32 percent.<sup>380</sup> This was also the case in Ecuador, with an increase of 13 percent, and in Brazil, with an increase of 99 percent.<sup>381</sup> In Chile, the available data indicate that the income-based poverty rate among indigenous populations is twice that of the non-indigenous population (23.4 percent versus 13.5 percent), and the income-based rate of extreme

<sup>373</sup> United Nations, Office of the High Commissioner for Human Rights, [The Guiding Principles on Extreme Poverty and Human Rights](#), 2012, p. 34.

<sup>374</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>375</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>376</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>377</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>378</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, pp. 58-59.

<sup>379</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 58; ECLAC, [Guaranteeing indigenous people's rights in Latin America. Progress in the past decade and remaining challenges](#), 2014.

<sup>380</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

<sup>381</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 59.

poverty is exactly twice that of the non-indigenous population (8.2 percent versus 4.1 percent).<sup>382</sup> In Paraguay, poverty rates for the indigenous population are 7.9 times higher than for the rest of the population.<sup>383</sup> In Guatemala, between 2006 and 2014, indigenous persons affected by extreme poverty increased from 30 percent to 40 percent of the members of indigenous peoples.<sup>384</sup> The gap between indigenous and non-indigenous populations is particularly notable in the area of extreme poverty. While 12.8 percent of the non-indigenous population is living in extreme poverty, 39.8 percent of the indigenous population is in that situation.<sup>385</sup>

301. While poverty affecting indigenous populations might be thought to be associated with their level of education or rural residence, data compiled by the World Bank provide some clear evidence that even under similar conditions of education, employment, geographic location, and civil status, indigenous households have higher poverty rates than their non-indigenous peers.<sup>386</sup> A comparison of similar households — where the head of family has completed primary school, is married, and has two children — has demonstrated that the household’s probability of being poor increases by 13 percent and its probability of being extremely poor increases by 15.5 percent if the head of household belongs to an indigenous group.<sup>387</sup> In this regard, it has been pointed out that the mere fact of being born to indigenous parents “substantively increases the probability of being raised in a poor household, regardless of other conditions such as level of education of the parents and size or location of the household, contributing to a poverty trap that hampers the full development of indigenous children’s potential.”<sup>388</sup>

302. The Commission also notes that indigenous peoples in high- and middle-income countries live in situations of serious social and economic marginalization,<sup>389</sup> although the disparities “[tend] to be masked at the international level owing to the lack of disaggregated data and the high level of enjoyment of such rights by the non-indigenous population compared with indigenous peoples.”<sup>390</sup> In effect, the statistics in Canada and the United States are alarming. In its report on the situation in the United States, the former United Nations Special Rapporteur on this subject emphasized that: “Native Americans, especially on reservations, have disproportionately high poverty rates, rising to nearly double the national average. Along with poverty, Native Americans suffer poor health conditions, with low life expectancy and high rates of disease, illness, alcoholism and suicide.”<sup>391</sup> The statistics also show that Native Americans in the United States have fewer years of schooling than the non-indigenous population, have criminalization and incarceration rates higher than those in the general population, and that reservations are affected by rates of violent crime that are double the national average.<sup>392</sup>

303. Consequently, the Commission emphasizes that this pattern of poverty and extreme poverty among the region’s indigenous communities exists regardless of their urban or rural context, in both developed and developing countries, and in countries where they represent the majority of the population or

<sup>382</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to Chile](#), A/HRC/32/31/Add.1, April 8, 2016, para. 53.

<sup>383</sup> United Nations, Department of Economic and Social Affairs, [State of the World’s Indigenous Peoples](#), ST/ESA/328, 2009, p. 27.

<sup>384</sup> Response from the State of Guatemala to the questionnaire, Human Rights Ombudsman of Guatemala.

<sup>385</sup> Response from the State of Guatemala to the questionnaire, Human Rights Ombudsman of Guatemala.

<sup>386</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 61.

<sup>387</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 61.

<sup>388</sup> World Bank, [Indigenous Latin America in the Twenty-First Century, the First Decade](#), 2015, p. 61.

<sup>389</sup> IACHR, [Missing and Murdered Indigenous Women in British Colombia, Canada](#), OEA/Ser.L/V/II. Doc. 30/14, 2014; United Nations, Human Rights Council, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America](#), A/HRC/21/47/Add.1, August 30, 2012; United Nations, Human Rights Council, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in Canada](#), A/HRC/27/52/Add. 2, July 4, 2014.

<sup>390</sup> United Nations, [Permanent Forum on Indigenous Issues, Discussions on the Millennium Development Objectives](#), E/2006/43-E/C.19/2006/11, May 14-25, 2007, para. 6.

<sup>391</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America](#), A/HRC/21/47/Add.1, August 30, 2012, para. 34.

<sup>392</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America](#), A/HRC/21/47/Add.1, August 30, 2012, para. 34.

a minority.<sup>393</sup> In other words, being indigenous seems of itself to be a cause of poverty and extreme poverty; the origin of this phenomenon is the existence of a pattern of structural discrimination against and historical social exclusion of indigenous peoples, which ends up reproducing a cycle of poverty among indigenous peoples and affecting their ability to exercise their fundamental rights.

304. Moreover, taking the principle of intersectionality into consideration, the Commission also notes that indigenous women may be particularly affected by poverty. In this sense, indigenous women suffer additional discrimination based on gender, leading to additional disadvantages, marginalization, poverty, and in the most extreme cases, violence, trafficking, prostitution, and restricted access to justice. This exclusion is documented in all the available figures or statistics. This is particularly true in terms of high levels of illiteracy, high school dropout rates, high rates of unemployment or presence in the informal economy, and troubling levels of maternal mortality among indigenous women, as well as their vulnerability to violence.

305. The Commission reiterates the fact that there is an intimate and documented relationship between the current precarious situation of indigenous peoples and structural violations of their rights to self-determination, land, and the resources within their territories.<sup>394</sup> In particular, indigenous communities frequently live under extremely miserable conditions due to the lack of access to land and the natural resources needed for their subsistence. In several countries of the hemisphere, many indigenous peoples have been driven from their lands and forced to live in poverty along the roadsides or in cities where they lack the minimum conditions for a decent life.<sup>395</sup> As a result of the serious deforestation that occurs due to extractive or development activities, the expansion of agricultural fields for soy or oil palm, for example, the invasion of settlers, or extraction or illegal logging activities, various indigenous peoples are facing a gradual loss of control over their territories and deteriorating living conditions.<sup>396</sup>

306. The Commission also emphasizes that the continuing marginalization of the indigenous peoples is the result of a one-dimensional view of development that has discriminatory results, focuses primarily on their assimilation, and is based on the stigmatization of their cultures, their systems of production, and their conceptions of development. This one-dimensional view of development has excluded the indigenous peoples, has been developed at their expense and without their free, prior and informed consent, depriving them of their lands, territories, and resources as well as the economic and social benefits of contemporary development.<sup>397</sup>

307. This structural discrimination, the loss of their ancestral territories, and their exclusion from economic development are causes of poverty and extreme poverty that currently affect the indigenous peoples, and in turn have serious repercussions on their ability to enjoy fundamental rights, such as their rights to education, health, and work.

308. The Commission emphasizes that access to education and the ability to conduct long-term studies are factors that to some extent make it possible to address the situation of inequality and exclusion endured by indigenous peoples. Although legislative reforms in Latin America have achieved a marked

<sup>393</sup> United Nations, Department of Economic and Social Affairs, [State of the World's Indigenous Peoples](#), ST/ESA/328, 2009, p. 1.

<sup>394</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz](#), A/HRC/27/52, August 11, 2014, para. 44.

<sup>395</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, Mission to Paraguay](#) (December 1-16, 2011), 2012; I/A Court HR, Case of the Sawhoyamaya Indigenous Community v. Paraguay, Judgment of March 29, 2006 (Merits, Reparations, and Costs), Series C No. 146; I/A Court HR, [Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005](#) (Merits, Reparations, and Costs); I/A Court HR, Case of the Xákmok Kásek Indigenous Community v. Paraguay, Judgment of August 24, 2010 (Merits, Reparations, and Costs).

<sup>396</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, Mission to Paraguay](#) (December 11-16, 2011), 2012, p. 13; Response of the State of Guatemala to the questionnaire, Human Rights Ombudsman of Guatemala, p. 26; IACHR, 156th POS, Human Rights Situation of Indigenous Peoples in the Context of the Activities of the Palm Oil Industry in Guatemala, October 22, 2015.

<sup>397</sup> United Nations, Human Rights Council, [Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, Rights of indigenous peoples, including their economic, social, and cultural rights in the post-2015 development framework](#), A/69/267, August 6, 2014, para.12.

increase in school attendance among indigenous children of all age groups, there are still significant gaps in school attendance among indigenous and non-indigenous children.<sup>398</sup> The chance that indigenous children will complete primary and secondary school is less than that of non-indigenous children, reducing their ability to escape poverty, and this gap increases at the level of tertiary education in particular.<sup>399</sup> The Commission underscores that another example of differentiated access to rights faced by indigenous communities is persistent obstacles to the exercise of the right to decent work, based on significant barriers to full professional training, opportunities for decent work, and sufficient social security.

309. The Commission also considers it relevant to point out that indigenous people in the Americas continue to suffer persistent inequalities in terms of their access to health services and health care. The fertility rates of indigenous women continue to be higher than the national averages; nonetheless, indigenous women generally have fewer prenatal checkups, less professional care for childbirth, more births at home, and higher rates of maternal mortality, infant mortality, and chronic malnutrition.<sup>400</sup> Infant mortality in indigenous communities in Latin America is 70 percent higher than for the rest of the population.<sup>401</sup> Malnutrition among indigenous children is double the rate for non-indigenous children.<sup>402</sup> Access to medications is usually expensive, and access to traditional indigenous medicines and health practices is frequently complicated by the occupation of their lands.

310. Although this section does not pretend to provide an exhaustive analysis of all the implications that the phenomena of poverty and extreme poverty have for the hemisphere's indigenous peoples, the information presented can be used to illustrate some of the repercussions of poverty on the effective exercise of human rights in the indigenous communities of the Americas.

311. The Afro-descendant population in the Americas consists of more than 150 million people – a figure equal to approximately 30 percent of the total population – and is among the continent's poorest groups.<sup>403</sup> The consensus in the academic literature is that there is a strong correlation between race-ethnicity and quality of life indicators.<sup>404</sup> In this respect, those who belong to racial ethnic groups such as Afro-descendants and indigenous peoples are over-represented among the poorest people in the Americas. In addition, although the region has achieved sustained economic growth, an increase in income levels, and substantial progress in reducing poverty in the last 20 years, there are still enormous gaps between Afro-descendants and the rest of the population in the Americas.<sup>405</sup>

312. Despite the difficulty of finding statistical data depicting the situation of poverty among Afro-descendant people and groups at the regional level, the World Bank has maintained that the Afro-descendant population in Latin America represents, on average, half of the region's poorest people.<sup>406</sup> Based on income-based poverty, in Colombia, according to data from the 2005 national census, 60 percent of Afro-Colombians

---

<sup>398</sup> United Nations, ECLAC, [Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#), 2015, pp. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century, the First Decade*, 2015, pp. 80-82.

<sup>399</sup> United Nations, ECLAC, [Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#), 2015, pp. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century, the First Decade*, 2015, pp. 80-82.

<sup>400</sup> United Nations, ECLAC, [Inclusive social development: the next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean](#), 2015, pp. 29-30.

<sup>401</sup> United Nations, Department of Economic and Social Affairs, [State of the World's Indigenous Peoples](#), ST/ESA/328, 2009, p. 33; United Nations, Economic Commission for Latin America and the Caribbean (ECLAC). *The Millennium Development Goals: A Latin American and Caribbean Perspective*, 2007, p. 191.

<sup>402</sup> United Nations, Department of Economic and Social Affairs, [State of the World's Indigenous Peoples](#), ST/ESA/328, 2009, p. 33.

<sup>403</sup> IACHR, [The situation of people of African descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 17.

<sup>404</sup> See Telles, Edward et al. (2014) [Pigmentocracies: Ethnicity, Race, and Color in Latin America](#). The University of North Carolina Press.

<sup>405</sup> Morrison Judith, Race and Poverty in Latin America, [Addressing the development needs of African descendants](#).

<sup>406</sup> Fernando Frazão/Abr (2014), [Beyond the soccer fields, racism is the enemy of millions of Latin Americans](#).

were in a situation of poverty while this figure was 54.1 percent for the rest of the population.<sup>407</sup> In Ecuador, the income-based poverty rate is 30.8 percent for Afro-Ecuadorans, while this percentage is 23.3 percent at the national level and 17.1 percent for the white population.<sup>408</sup> In the United States, 2014 Census Bureau statistics<sup>409</sup> show significant disparities in income-based poverty among racial groups: in 2014, 22.3 percent of Afro-American households reported incomes of less than US\$15,000 while the national average is 12.6 percent.

313. Poverty among Afro-descendant people may be addressed based on the notion of racialized geographies,<sup>410</sup> which assumes that areas with a high concentration of Afro-descendants in the region are found in generally separated geographic areas that coincide with areas of marginalization and poverty – areas with a larger housing shortage, that are less accessible, and more exposed to crime and violence<sup>411</sup> – which indicates a pattern of geographic separation among ethnic-racial groups. In Brazil an important factor in this inequality is that the racial composition of the Brazilian population varies by region, with whites predominating in the south and mestizos in the north. Thus, there is a concentration of whites in the more developed regions and a concentration of mestizos-mulatos in areas with lower per capita income levels.<sup>412</sup> In Colombia, there is a correlation between the percentage of the black population in a region and poverty rates and other indicators of well-being, as evidenced by the serious situation of poverty in the Pacific region<sup>413</sup> where Afro-descendants are the majority.<sup>414</sup>

314. Based on the Durban Declaration and Programme of Action,<sup>415</sup> the United Nations Office of the High Commissioner for Human Rights has recognized that people of African descent are among the most marginalized groups as a consequence of the historical legacy of the transatlantic slave trade and persistent forms of current discrimination.<sup>416</sup> Basically, the current situation of poverty among people of African descent is due in part to an inter-generational legacy of disadvantages<sup>417</sup> that began with slavery and continued with legal or de facto racial segregation, whitening policies,<sup>418</sup> and geographic racial segregation.

315. Varied forms of race-based discrimination currently impede Afro-descendants' equal access to quality education and employment,<sup>419</sup> adequate housing, decent health services, the full enjoyment of their territorial rights,<sup>420</sup> as well as other rights. The United Nations Special Rapporteur on contemporary forms of

<sup>407</sup> Rodríguez, César et al. (2009), [Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians](#). Bogotá: Universidad de los Andes, Facultad de Derecho, Centro de Investigaciones Sociojurídicas CIJUS. Ediciones Uniandes. p. 59.

<sup>408</sup> Response of the State of Ecuador to the questionnaire. p. 5

<sup>409</sup> United States Census Bureau. Income and poverty in the U.S. (2014) Table A-1. [House hold by total money income, Race, and Hispanic Origin of Householder 1967-2014](#).

<sup>410</sup> IACHR, [The situation of people of African descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 44. See: [Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians](#), pp. 50-51

<sup>411</sup> IACHR, [The situation of people of African descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 45

<sup>412</sup> Telles, Edward (2006) [Race in Another America: The Significance of Skin Color in Brazil](#). Princeton University Press.

<sup>413</sup> The 2014-2015 incidence of poverty indicates that the Pacific region is the poorest in Colombia. National Administrative Department of Statistics, DANE, [Pobreza monetaria y multidimensional en Colombia 2015](#). p. 23.

<sup>414</sup> Rodríguez, César et al. (2009), [Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians](#). Bogotá: Universidad de los Andes, Facultad de Derecho, Centro de Investigaciones Sociojurídicas CIJUS. Ediciones Uniandes. p. 51.

<sup>415</sup> See: United Nations, [Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance](#). Durban, September 8, 2001.

<sup>416</sup> United Nations, [Programme of activities for the International Decade for People of African Descent](#). para. 4.

<sup>417</sup> United Nations, [Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance](#). A/68/333. August 19, 2013. para. 21

<sup>418</sup> Telles, Edward et al. (2014) [Pigmentocracies Ethnicity, Race, and Color in Latin America](#). The University of North Carolina Press. p. 15

<sup>419</sup> See: Cárdenas Juan Camilo et al. (2013) [Discriminación Racial en el Trabajo: Un Estudio Experimental en Bogotá](#). Observatorio de Discriminación Racial, Centro de Estudios de Derecho, Justicia y Sociedad –Dejusticia-. Bertrand, Marianne and Sendhil Mullainathan. 2004. [Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination](#). American Economic Review 94 (4): 991- 2013.

<sup>420</sup> See: IACHR, Indigenous Peoples, [Afro-descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities](#). OEA/Ser.L/V/II. Doc. 47/15, December 31, 2015.



racism has stressed that poverty is inextricably linked to discrimination and racism.<sup>421</sup> The intersection between poverty and racism is due to the historic legacy of de facto or de jure discriminatory regimes that “have left a large number of racial and ethnic groups...trapped in conditions of ‘chronic deprivation of resources’ with limited choices and vulnerable to multiple violations of their rights.”<sup>422</sup> Along the same lines, the IACHR, in its 2011 report on *The Situation of People of African Descent in the Americas* reiterated that the Afro-descendant population is marked by a history of invisibility, exclusion, and social and economic disadvantages that impair the enjoyment of their fundamental rights.<sup>423</sup>

316. The IACHR has maintained that one of the principal obstacles to determining the social and economic conditions of the Afro-descendant population and to designing appropriate policies is the lack of reliable statistical information.<sup>424</sup> Although the States of the Americas have made progress in incorporating the ethnic-racial variable in the compilation of statistical data, the IACHR emphasizes that the lack of regional statistics persists and reiterates the importance of including the variable of ethnic-racial identification in all the States’ statistical data collection systems. The IACHR also believes the States should implement appropriate mechanisms to promote the self-identification of the region’s Afro-descendant population.<sup>425</sup> Despite the absence or insufficiency of the information available, in its report the IACHR analyzed the exercise of some rights as indicators for evaluating the dimensions and characteristics of the situation of poverty of people of African descent.

317. With respect to the right to education, the available information provides evidence that racial discrimination against Afro-descendant people is a determinant in the limited enjoyment of the right to education and in the precarious avenues for social mobility among this group.<sup>426</sup> For example, with regard to educational achievement, recent studies based on a methodology of collecting data on skin color such as the method used in PERLA<sup>427</sup> confirm a correlation between skin color and educational achievement in 23 Latin American countries. The conclusion is that light skinned people have more years of study than dark skinned people. In countries like Brazil, Colombia, Ecuador, Honduras, and the Dominican Republic, the difference is between 1.5 and 2 points.<sup>428</sup> With regard to the components of acceptability and availability of the right to education, the available information provides evidence that the infrastructure and quality of education in majority Afro-descendant areas is deficient as a consequence of geographic and residential segregation.

318. Multiples obstacles persist in the Americas for the effective enjoyment of various components of the right to health among Afro-descendant people. With respect to the coverage and availability of health service, there are disparities in the health insurance coverage rate at the regional level. In the United States, while 7.6 percent of whites are without health coverage, 11.8 percent of African Americans are without such coverage.<sup>429</sup> In Brazil, Colombia, Ecuador and Nicaragua, infant mortality among Afro-descendants exceeds the rate for the rest of the population by several points.<sup>430</sup> Moreover, there is no intercultural approach to medical treatments and policies in the region that specifically addresses the

<sup>421</sup> United Nations, [Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance](#). A/68/333. August 19, 2013.

<sup>422</sup> United Nations, [Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance](#). A/68/333. August 19, 2013. para. 20

<sup>423</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 21.

<sup>424</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, paras. 23 and 38.

<sup>425</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 38.

<sup>426</sup> Cárdenas, Juan Camilo et al. (2012) [Equidad en la Diferencia: Políticas de Movilidad Social de Grupos de Identidad. Misión de Movilidad Social y Equidad](#).

<sup>427</sup> See: [Project on Race and Ethnicity in Latin America](#).

<sup>428</sup> Telles, E. & Steele, L. 2012. [Pigmentocracy in the Americas: How is educational attainment related to skin color](#). In *Americas Barometer Insights*: Nashville: Vanderbilt University. p. 4

<sup>429</sup> United States Census Bureau. [Health Insurance Coverage in the United States: 2014](#).

<sup>430</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2009) [Afrodescendientes en América Latina : del reconocimiento estadístico a la realización de derechos](#). Santiago, Chile.

diseases that affect Afro-descendant people the most or that provides them with specific medication.<sup>431</sup> Direct racial discrimination is also a constant in the delivery of health services to Afro-descendants.<sup>432</sup>

319. With regard to the right to work, at the regional level, the Afro-descendant population's unemployment rate in 2013 (6.5 percent) was higher than that of the mestizo population (5 percent).<sup>433</sup> The available information indicates that the Afro-descendant population occupies the lowest rungs on the job ladder and mostly performs informal and low-skilled tasks.<sup>434</sup> The differences in occupational levels have effects on access to social security and health and informal employment bars Afro-descendant people from minimum health coverage and pension system membership,<sup>435</sup> leading to asymmetries in income, access to food, and housing.

320. The situation of Afro-descendant children and adolescents is of deep concern to the IACHR. Afro-descendant children and adolescents have higher rates of hunger starting in early childhood. In Colombia, at the national level 5.9 percent of children under the age of five fasted for at least one day in the week before the 2005 Census was conducted. This percentage is doubled in the Afro-Colombian population at the national level.<sup>436</sup> The figures indicate that four out of every ten children do not have guaranteed access to safe drinking water and that two out of every ten are severely deprived in this area.

321. By country, the highest percentages are seen in Ecuador (67.1%), Honduras (58.9%), El Salvador (58.8%), and Belize (53.3%).<sup>437</sup> The figures are lower but equally significant in Brazil and Colombia where nearly 40 percent of these children endure moderate or severe deprivation. The childhood mortality rate for every 1,000 live births is also higher for Afro-descendants than for the white-mestizo population. In Ecuador, the rate is 46.7 percent but 36.2 percent for the rest of the population; in Nicaragua, the rate is 46.6 percent but 35.1 percent for the rest of the population.<sup>438</sup> During the IACHR's visit to the state of Florida in September 2015, the Commission found multiple violations to which Afro-descendant children are exposed in the schools. For example, a young girl in Miami Garden reported having been harassed at school and later suspended for no apparent reason. A young boy also reported having been arrested inside the Central School of Miami.<sup>439</sup>

322. The situation of Afro-descendant women also reflects the intersection of race and gender inequities, as these women are lowest on the scale in terms of educational, occupational, and income level.<sup>440</sup> For example, according to statistical information available in Brazil, among salaried domestic workers the percentage of Afro-descendant women (18.6%) exceeds the number of women who are not Afro-descendant by eight percentage points.<sup>441</sup> In addition, the prevalence of various diseases is higher among Afro-Brazilian

<sup>431</sup> IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, paras. 21 and 52.

<sup>432</sup> See: Krieger, Nancy and Sidney, Stephen. [Racial discrimination and blood pressure: the CARDIA study of young black and white adults](#). American Journal of Public Health. October 1996. Vol 86; No. 10.

<sup>433</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2015) [Social Panorama of Latin America](#). p. 32

<sup>434</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2015) [Social Panorama of Latin America](#). p. 34

<sup>435</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2015) [Social Panorama of Latin America](#). p. 36

<sup>436</sup> National Administrative Department of Statistics DANE. 2005 National Census.

<sup>437</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC and UNICEF (2012) [Pobreza infantil en pueblos indígenas y afrodescendientes](#). Santiago de Chile.

<sup>438</sup> Pan American Health Organization and others (2013). [La salud de los pueblos indígenas y afrodescendientes en América Latina](#). p. 30.

<sup>439</sup> Information submitted by civil society representatives during the IACHR's visit to Miami, Florida, United States, September 21, 2015.

<sup>440</sup> Information submitted by civil society representatives during the thematic hearing on the Human Rights Situation of Afro-descendant Women in Brazil, held during the IACHR's 156th regular session, April 7, 2016.

<sup>441</sup> United Nations. Economic Commission for Latin America and the Caribbean ECLAC (2015) [Social Panorama of Latin America](#). p. 37.

women.<sup>442</sup> In various countries of the region, such as Brazil and Ecuador, the percentage of Afro-descendant women who have prenatal checkups is substantially lower.<sup>443</sup>

323. Difficulties faced by Afro-descendant people in securing title to, using, and managing land in various countries of the Americas such as Brazil and Colombia have had a significant impact on the enjoyment of basic rights, including access to basic water, electric light, and sanitation services.<sup>444</sup> In Colombia, the situation of forced displacement that has a disproportionate effect on the Afro-descendent population is an obstacle to guaranteeing the right to territory.<sup>445</sup> As a result, the situation of poverty of this segment of the population has been exacerbated.<sup>446</sup> Insecurity in terms of land ownership has also generated food insecurity and poverty among the Brazilian *Quilombola* population.<sup>447</sup>

324. In line with the concept of multidimensional poverty that recognizes that deprivations of basic freedoms are associated not only with the lack of economic income but also with the systematic deprivation of access to other goods, the IACHR considers it a matter of concern that, generally speaking, the social and demographic indicators in various countries of the region reveal a profound gap between ethnic-racial groups, placing the Afro-descendant population at the bottom of the scale in terms of the effective enjoyment of their rights. The situation of poverty endured by Afro-descendants in the region can be perceived in terms of the standards of the inter-American human rights system as a situation of structural racial discrimination, understood as the set of both de jure and de facto standards, rules, routines, patterns, attitudes, and behavioral guidelines that make way for a generalized situation of inferiority and exclusion against a group of persons, which are perpetuated over time and even from one generation to the next, meaning that this is not a situation of isolated, sporadic, or episodic cases but rather discrimination that arises as the consequence of a historic, socioeconomic, and cultural context.<sup>448</sup>

### 3. Migrants

325. Human mobility, whether it be international or internal migration, is a multidimensional phenomenon that can happen voluntarily or be forced. The former occurs when a person migrates voluntarily, absent any type of coercion. Meanwhile, forced migration refers to those situations in which an individual is compelled to migrate because his or her life, safety, or liberty has been threatened due to different forms of persecution based on race, religion, nationality, membership in a specific social group, or because of their political opinions. Other causes of forced migration include armed conflict, widespread violence, human rights violations, other circumstances that may have seriously disturbed public order, or natural or manmade disasters, as a consequence of human rights violations resulting from omissions by weak States that cannot or are not willing to guarantee such rights.

---

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

<sup>443</sup> Pan American Health Organization and others (2013). [La salud de los pueblos indígenas y afrodescendientes en América Latina](#). p. 47

<sup>444</sup> IACHR, Indigenous Peoples, [Afro-descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities](#). OEA/Ser.L/V/II. Doc. 47/15, December 31, 2015. para. 278.

<sup>445</sup> See: Asociación de Afrocolombianos Desplazados -AFRODES- and Global Rights (2011) [Bicentenario: Nada que celebrar! Informe sobre los DDHH de las comunidades afrocolombianas en el marco de la "celebración" de los doscientos años de vida republicana en Colombia](#).

<sup>446</sup> Rodríguez, César et al. (2009), [Racial Discrimination and Human Rights in Colombia: A Report on the Situation of the Rights of Afro-Colombians](#). Bogotá: Universidad de los Andes, Facultad de Derecho, Centro de Investigaciones Sociojurídicas CIJUS. Ediciones Uniandes. P. 85

<sup>447</sup> See, The Rappaport Center for Human Rights. University of Texas (2008) [Between the Law and Their Land: AfroBrazilian Quilombo Communities' struggle for Land Rights](#).

<sup>448</sup> See, Committee on the Elimination of Racial Discrimination, [General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent](#). 79th session sesiones, CERD/C/GC/34. October 3, 2011; IACHR, [The situation of people of African descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011; Stavenhagen Rodolfo, [El derecho de sobrevivencia: la lucha de los pueblos indígenas en América Latina contra el racismo y la discriminación](#), IDB/IHR, 2001; Pelletier, Paola, [La "discriminación estructural" en la evolución jurisprudencial de la Corte Interamericana de Derechos Humanos](#), Revista del Instituto de Derechos Humanos No.60, July-December 2014.

326. Over the years, the Inter-American Commission has identified poverty as well as economic disparities and lack of equal opportunities, obstacles to accessing conditions for a decent life, and deprivation of economic, social, and cultural rights as factors that drive people to migrate, both inside their countries<sup>449</sup> and internationally.<sup>450</sup> Poverty has two contradictory effects on the migration of individuals: On the one hand, poverty creates incentives for people to migrate as a strategy for survival; on the other hand, poverty also limits or impedes a person's ability to migrate because the costs associated therewith are too high, above all when it comes to attempts to migrate via ordinary channels.<sup>451</sup> Specifically, the Commission observes that migration may not be an option available to people living in extreme poverty.<sup>452</sup> In the case of forced migration, individuals are starting from a position of loss, including the loss of property, family, and community, as well as in terms of physical and emotional health.<sup>453</sup>

327. In recent years, the Commission has noticed that many of the primary movements of migrants in irregular situations in the region are comprised of poor people. Along these lines, individuals who live in extreme poverty and in highly vulnerable situations tend to be those most affected by violence and forced displacement, both internally and internationally, in the countries of the Northern Triangle (El Salvador, Guatemala, and Honduras) and in Mexico. According to the Internal Displacement Monitoring Centre (IDMC), the proportion of people forced to leave violent cities in those countries is four to five times greater than the number who abandon non-violent cities in similar socioeconomic situations.<sup>454</sup>

328. The existing correlation between poverty, inequality, violence, and migration explains why most migrants who pass through Mexico are originally from the Northern Triangle of Central America. The high levels of inequality and poverty that prevail in a number of these countries are key factors that drive many individuals to migrate even when they are aware of the dangers that migration might pose to their lives and safety. A large number of the people who have been forced to migrate from those countries are individuals who were living in poverty and were no longer able to withstand the demands they faced from the gangs, drug cartels, and criminal organizations such as payment of a war tax, rent or apartment, or human trafficking via forced recruitment for purposes of sexual exploitation, prostitution, exploitive work, or criminal ends.<sup>455</sup>

329. Another of the key migratory dynamics in the region has to do with the migration of Haitians. Historically, poverty has been one of the main drivers behind Haitian migration. In addition, the January 2010 earthquake made poverty in Haiti much worse, prompting Haitians to flee to other countries in the region such as the United States, the Dominican Republic, Brazil, and the Bahamas.<sup>456</sup> More than 20,000

<sup>449</sup> See, IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, paragraph 553.

<sup>450</sup> See, inter alia, IACHR, [Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System](#). OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, paragraphs 4, 9, 17, and 19; IACHR, [Report on the Situation of Human Rights in the Dominican Republic](#). OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, paras. 96 and 529; IACHR, [Refugees and Migrants in the United States: Families and Unaccompanied Children](#). OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, paras. 2, 111, and 112; IACHR, [Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico](#). December 31, 2013, paragraph 53.

<sup>451</sup> WADDINGTON, Hugh and SABATES-WHEELER, Rachel, [How Does Poverty Affect Migration Choice?: A Review of Literature](#). Development Research Centre on Migration, Globalisation and Poverty. Sussex: 2003, p. 4.

<sup>452</sup> Ibid, p. 18.

<sup>453</sup> JACOBSEN, Karen, "Livelihoods and forced migration," and FIDDIAN-QASMIYEH, Elena; LOESCHER, Gil; LONG, Katy; and SIGONA, Nando (Eds.), [The Oxford Handbook of Refugee and Forced Migration Studies](#). Oxford: Oxford University Press, 2014, p. 99.

<sup>454</sup> Internal Displacement Monitoring Centre, [New humanitarian frontiers: Addressing criminal violence in Mexico and Central America](#). Geneva, 2015, p. 8.

<sup>455</sup> CANTOR, David James, [The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico](#). Refugee Survey Quarterly, Oxford: Oxford University Press, 2014, p. 46.

<sup>456</sup> See, IACHR, [Press release 55/14: IACHR Expresses Deep Concern over Deaths and Disappearances of Migrants in Shipwrecks in the Caribbean Sea](#). Washington, May 14, 2014;

Haitian migrants were estimated to have entered Brazil by late 2013, with more than half of them having entered irregularly.<sup>457</sup>

330. The serious humanitarian crisis facing Venezuela due to the scarcity of food and medication has compelled many Venezuelans to migrate to other countries in the region. In an interview with a Colombian newspaper, one member of a Venezuelan family of 19 that moved to the municipality of Ponedera, in Colombia's Atlántico Department stated: "We do what we can, but at least here my children aren't crying from hunger."<sup>458</sup>

331. In visits made in recent years to Mexico,<sup>459</sup> Colombia,<sup>460</sup> Honduras,<sup>461</sup> the United States,<sup>462</sup> and the Dominican Republic,<sup>463</sup> the Commission has received multiple accounts from migrants who stated that living in poverty, a lack of opportunities, as well as their desire for a better life for themselves and their families were the main reasons they migrated from their countries. Different people mistakenly refer to many of these individuals as economic migrants. In the Commission's view, the severity of the poverty many of these people lived in is what forced them to migrate irregularly as a survival strategy to enable them and their families to preserve their lives and integrity in better conditions.

332. The Commission has also noted that in recent decades, different States in the region have been progressively implementing policies aimed at limiting the right to free circulation. Added to other policies designed to curtail migration that were already being put in place by the United States, Mexico, Honduras, and Guatemala, the Commission has witnessed how other States in the region have implemented measures like requesting visas from nationals of countries previously not required to have them,<sup>464</sup> as well as closing and more strongly securing borders.<sup>465</sup>

333. The lack of or inadequacy of regular channels to enable many people to migrate—mainly individuals living in vulnerable situations and poverty—is what leads to irregular migration and the illegal smuggling of migrants. Illegal migrant smuggling is an industry that has arisen as a result of the barriers and impediments many people face when deciding to migrate. Accordingly, the Commission believes that States should activate channels to enable individuals to migrate legally and safely, especially those who have limited financial resources or are living in poverty. To this end, States can make use of programs such as those focused on humanitarian admittance, family reunification visas, student scholarships, work mobility programs, private sponsorship, among others. These types of measures would likewise prevent migrants from having to take hazardous routes or rely on migrant traffickers or end up becoming victims of human trafficking.

---

<sup>457</sup> See, IACHR, Hearing on the Human Rights Situation of Haitian Migrants in the Americas. 149<sup>th</sup> Regular Session, October 31, 2013. Video available at: [www.youtube.com/watch?v=4leVpUHDvRQ](http://www.youtube.com/watch?v=4leVpUHDvRQ)

<sup>458</sup> GUERRERO, Alison (El Heraldo), El impacto del éxodo venezolano en la Costa colombiana [The impact of the Venezuelan exodus on the Colombian coast]. Barranquilla, August 21, 2016.

<sup>459</sup> See, IACHR, [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II.Doc. 44/15, December 31, 2015; and IACHR, [Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico](#). December 31, 2013.

<sup>460</sup> See, IACHR, [Preliminary Observations from the IACHR's Visit to Colombia's Border with Venezuela](#). September 28, 2015.

<sup>461</sup> See, IACHR, [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc.42/15, paragraphs 357-367.

<sup>462</sup> IACHR, [Refugees and Migrants in the United States: Families and Unaccompanied Children](#). OAS/Ser.L/V/II.155 Doc. 16, July 24, 2015, paragraphs 2, 111, and 112.

<sup>463</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#). OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, paragraphs 96 and 529.

<sup>464</sup> See, Ecuador, Ministry of Foreign Relations and Human Mobility, [Comunicado oficial: Requerimiento de visa de turismo para ciudadanos cubanos](#) [Official statement: Requirement of tourist visa for Cuban citizens]. Quito, November 26, 2015.

<sup>465</sup> See, IACHR, Press release 112/16: [IACHR Deeply Concerned about the Situation of Migrants in Colombia Close to the Panama Border](#). Washington, August 8, 2016; IACHR, Press release 102: [IACHR Expresses Concern regarding Detentions and Deportations of Cuban Migrants in Ecuador](#). Washington, July 26, 2016; IACHR, Press release 146/15: [IACHR Expresses Deep Concern regarding Situation of Cuban Migrants on the Costa Rica-Nicaragua Border](#). Washington, December 8, 2015; IACHR, Press release 100/15: [IACHR Expresses Concern over Arbitrary Deportation of Colombians from Venezuela](#). Washington, August 28, 2015. See also, IACHR, [Preliminary Observations from the IACHR's Visit to Colombia's Border with Venezuela](#). September 28, 2015.

334. The Commission has also received ample information about different situations in countries in the region that reveals that people living in poverty tend to be far more susceptible to becoming victims of human trafficking for purposes of labor and/or sexual exploitation.<sup>466</sup> The IACHR has learned about indigenous peoples and afro-descendent communities that suffer racial, ethnic, social, or other types of discrimination and that also live in poverty, making them more likely to become targets for different forms of human trafficking, forced labor, and exploitation.

335. In normative terms, Article 22 of the American Convention on Human Rights recognizes a series of rights that are particularly relevant to human mobility, and the effective enjoyment of such rights can help people living in poverty change those conditions or counter the existential threats associated therewith. Article 22(7) of the American Convention also recognizes every person's right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes. In addition, Article 22(8) of the American Convention stipulates that: "In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

#### 4. Persons Deprived Of Liberty

336. The Commission notes that the impact of poverty and extreme poverty on the situation of persons deprived of liberty goes two ways. According to the findings of a several studies, on the one hand social exclusion fosters a propensity to commit crimes which then leads to jail sentences, while on the other hand, time served in prison worsens living conditions for poor individuals who see the exclusion they suffer become even more acute, and they also are more vulnerable while deprived of liberty.<sup>467</sup>

337. According to the IACHR, the statistics that delineate the map of violence in the territory show that the highest rates of violent crimes are usually found in large cities. The areas particularly hit by a lack of security and violence are poor outlying neighborhoods that have limited access to basic services and little State presence. These are places with populations living in vulnerable situations, whose rights are not guaranteed, and who are members of social groups that have traditionally suffered exclusion and discrimination. Low levels of development, a lack of opportunities, and scarce institutional presence in these areas pave the way for the rise and expansion of groups dedicated to committing crimes and of criminal organizations.<sup>468</sup>

338. For its part, the United Nations Development Programme (UNDP) has indicated that the explanation for the increase in violence and insecurity in the region is multidimensional and includes job insecurity, persistent inequity, and inadequate social mobility.<sup>469</sup> Accordingly, different combinations of these socioeconomic factors in specific contexts produce environments of vulnerability that curtail legitimate possibilities for social advancement. In such environments and in the context of consumption-based

<sup>466</sup> See, IACHR, [Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco](#), OEA/Ser.L/V/II. Doc. 58, December 24, 2009, paragraphs 15, 29, 33, 36, 86, 103, 104, 139, and 185.

<sup>467</sup> Fundación Paz Ciudadana and Fundación San Carlos de Maipo, *Estudio sobre los niveles de exclusión en personas privadas de libertad* [Study on the levels of exclusion faced by persons deprived of liberty], 2016, p. 20. Available at: <http://www.pazciudadana.cl/wp-content/uploads/2016/02/exclusion-social-final-3.pdf>.

<sup>468</sup> IACHR, Report, Violence, Children and Organized Crime, November 11, 2015, paragraph 4. Available at: <http://www.oas.org/es/cidh/informes/pdfs/ViolenciaNinez2016.pdf>.

<sup>469</sup> United Nations Development Programme, *Regional Human Development Report 2013-2014; Citizen Security with a Human Face: evidence and proposals for Latin America*, November 2013, p. 15. Available at: <http://www.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf>.

economic growth, we see the emergence of individuals or groups willing to challenge the legitimate order by opting for crime as a way of life.<sup>470</sup>

339. Along these same lines, a study conducted by Fundación Paz Ciudadana found that before being incarcerated, most inmates surveyed in Chilean jails had faced major disadvantages in connection with family, education, and health, in tandem with poor job prospects. The study specifically confirmed that inmates experienced higher rates of poverty, of having been in the care of third parties (and of their parents), and of having relatives who had also been convicted of crimes, than the population as a whole.<sup>471</sup> For example, when comparing the findings of this study with parameters of the general population, those surveyed showed higher rates of illiteracy (7.3% versus 4.8%) and unfinished schooling (86% versus 45.7%). Family issues and the need to work<sup>472</sup> were the two main causes cited by those surveyed as to why they had quit school

340. With respect to the more severe exclusion faced by poor persons deprived of liberty, the IACHR observes that detention conditions for inmates who are poor or extremely poor in the region's prisons are worse than those for the rest of the prison population. This because poor prisoners face greater difficulties in accessing services or benefits that are normally available, but that are subject to the payment of fees demanded by other inmates or even by the prison authorities themselves.

341. In its Report on the Human Rights of Persons Deprived of Liberty in the Americas, this Commission expressed concern about the information it has received about prison authorities who demand that inmates pay fees or perform other acts so they can receive visits or so they can have access to public phones or mail.<sup>473</sup> In its report on the Situation of Human Rights in Mexico, the IACHR indicated the persons deprived of their liberty are subject to improper payments by prison staff so that they are provided with services and basic goods, such as food, water, and health. They are also required to pay a regular fee in order to avoid being beaten and abused in detention centers,<sup>474</sup> leading to even greater marginalization for poor detainees who are unable to enjoy these rights and who are subjected to greater insecurity. Likewise, in his visit to Paraguay, the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment was informed about the payment of bribes for goods and normally accessible daily activities like sitting under a tree, as well as the payment of substantial sums for the use of a private room for conjugal visits.<sup>475</sup>

342. According to the Office of the Ombudsman of the Plurinational State of Bolivia, the shortage of beds in Bolivian prisons and the gap between supply and demand for such beds set market forces in motion such that a living space of approximately two square meters takes on a nearly equal, or higher, value than its equivalent in any Bolivian city, up to US\$800. The Ombudsman's Report indicates that inmates who

---

<sup>470</sup> United Nations Development Programme, Regional Human Development Report 2013-2014; Citizen Security with a Human Face: evidence and proposals for Latin America, November 2013, p. 15. Available at: <http://www.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf>.

<sup>471</sup> Fundación Paz Ciudadana and Fundación San Carlos de Maipo, Study on the levels of exclusion faced by persons deprived of liberty, 2016, p. 20. Available at: <http://www.pazciudadana.cl/wp-content/uploads/2016/02/exclusion-social-final-3.pdf>.

<sup>472</sup> Fundación Paz Ciudadana and Fundación San Carlos de Maipo, Study on the levels of exclusion faced by persons deprived of liberty, 2016, p. 10. Available at: <http://www.pazciudadana.cl/wp-content/uploads/2016/02/exclusion-social-final-3.pdf>

<sup>473</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, paragraph 584. Available at: <http://www.oas.org/es/cidh/ppi/docs/pdf/PPL2011esp.pdf>.

<sup>474</sup> IACHR, Report on the Situation of Human Rights in Mexico, December 30, 2015, paragraph 334. Available at: <http://www.oas.org/es/cidh/informes/pdfs/Mexico2016-es.pdf>

<sup>475</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission of Paraguay, A/HRC/7/3/Add.31, October 2007, paragraphs 68 and 72. Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/7/3/Add.3&referer=http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Visits.aspx&Lang=S](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/7/3/Add.3&referer=http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Visits.aspx&Lang=S).

lack the means to make such payments have to perform services—from cleaning latrines to security tasks—in a sort of forced labor system.<sup>476</sup>

343. The IACHR further observes that poverty or extreme poverty in the case of persons deprived of liberty can also adversely affect their right to enjoy family visits when they are transferred to detention centers that are far away from their families. Specifically, the Commission has noted that this practice is particularly hard on poor families, as travel to distant locations is excessively onerous.<sup>477</sup> During the course of his recent visit to Argentina, the IACHR's Rapporteur on the Rights of Persons Deprived of Liberty verified the Buenos Aires Penitentiary Service's practice of repeatedly transferring inmates, compelling them to move from one prison to another in the vast territory of the province of Buenos Aires, which in the majority of cases subjects them to excessive isolation from their families for prolonged periods. According to information available to the Commission, while most of the prison population surveyed in Chile did receive visits, 68.6 percent stated that a close relationship had ended as a result of them being deprived of their liberty. Among those inmates who do not receive visits, the main reason was that their families lack the means for transportation (48.8%) and that their families do not want to visit them in prison (25%).<sup>478</sup>

344. In its Report on the Use of Pretrial Detention in the Americas, the Commission concluded that the non-exceptional use of pretrial detention is one of the most serious and widespread problems facing OAS member states in terms of respecting and guaranteeing the rights of persons deprived of liberty.<sup>479</sup> Accordingly, the Commission recommended that States ensure that their domestic laws consider other types of less restrictive precautionary measures.<sup>480</sup> In this regard, the IACHR observes that a lack of financial means can undercut the access persons in pretrial detention have to such measures inasmuch as access to certain procedures for decisions on probation or parole require payment of bail, legal fees or running costs, potentially leading to discrimination in the case of poor or low-income individuals.

345. Specifically, the IACHR notes that in Peru, Supreme Decree 002-2015-JUS of May 13, 2015 stipulates that beneficiaries of personal electronic monitoring are responsible for covering the costs of the electronic devices<sup>481</sup> unless a judge exempts an individual from paying because it is not financially feasible for him or her to do so.<sup>482</sup> This Commission nevertheless notes that the State may only grant this exemption to a maximum of 3 percent of the total number of electronic monitoring devices.<sup>483</sup> This same criterion has been introduced into the Dominican Republic's electronic monitoring system in which, according to information published by the service provider, each device would cost US\$450/month, with six months needing to be paid in advance.<sup>484</sup>

<sup>476</sup> Office of the Ombudsman of the Plurinational State of Bolivia, *Inmates without a sentence: current situation of persons in pretrial detention in Bolivian penitentiaries*, 2016, p. 7. Available at: <http://www.defensoria.gob.bo/archivos/PRESOSSINSENTENCIA.pdf>.

<sup>477</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, paragraph 598. Available at: <http://www.oas.org/es/cidh/ppl/docs/pdf/PPL2011esp.pdf>.

<sup>478</sup> Fundación Paz Ciudadana and Fundación San Carlos de Maipo, *Study on the levels of exclusion faced by persons deprived of liberty*, 2016, p. 11. Available at: <http://www.pazciudadana.cl/wp-content/uploads/2016/02/exclusion-social-final-3.pdf>.

<sup>479</sup> Report available at: <http://www.oas.org/es/cidh/ppl/informes/pdfs/Informe-PP-2013-es.pdf>.

<sup>480</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, December 30, 2013, recommendation B(6). Available at: <http://www.oas.org/es/cidh/ppl/informes/pdfs/Informe-PP-2013-es.pdf>.

<sup>481</sup> Supreme Decree 002-2015-JUS, which amends and incorporates articles into the Regulations for the implementation of Personal Electronic Monitoring set forth in Law 29499, of May 13, 2015, Article 3. Available at: <http://www.elperuano.com.pe/NormasElperuano/2015/05/13/1236463-2.html>.

<sup>482</sup> Supreme Decree 002-2015-JUS, which amends and incorporates articles into the Regulations for the implementation of Personal Electronic Monitoring set forth in Law 29499, of May 13, 2015, Article 4. Available at: <http://www.elperuano.com.pe/NormasElperuano/2015/05/13/1236463-2.html>.

<sup>483</sup> Supreme Decree 002-2015-JUS, which amends and incorporates articles into the Regulations for the implementation of Personal Electronic Monitoring set forth in Law 29499, of May 13, 2015, Article 4. Available at: <http://www.elperuano.com.pe/NormasElperuano/2015/05/13/1236463-2.html>.

<sup>484</sup> Briefing note from service provider Fennix Global Technologies, March 3, 2006. Available at: <http://monitoreos.net/2016/03/03/grilletes-electronicos-listos-para-monitorear-a-imputados/>.



346. The IACHR observes that the law requiring users to pay a fee to access the electronic monitoring system harms individuals who are not in an advantageous economic situation and also fails to take into account what the State is saving financially by not having to cover the daily costs of incarceration in detention centers.<sup>485</sup> Specifically, the Commission believes that this measure is discriminatory inasmuch as it falls outside the reach of individuals because they are poor or low-income and therefore calls on the States to adopt the measures necessary to ensure that this measure is brought into line with the criteria for material equality. The Commission has further noted that the use of bail has a widespread and disproportionate affect on persons belonging to more economically vulnerable groups, who, in general terms come up against obstacles when attempting to access other precautionary measures and are unable to afford a private attorney, relying solely on a public defense and the limitations thereof.<sup>486</sup>

347. The Commission also observes that in other cases, legal fees have a stronger impact on communities that do not use, or only partially use, money such as certain indigenous communities. In Mexico, for example, civil society has indicated that both circumstantial and material factors like poverty persist and have serious consequences when it comes to the deprivation of liberty of indigenous persons because they lack the money to pay bail, the amounts of which generally do not exceed 2,000 Mexican pesos (approximately US\$100). In the case of these communities, other factors such as high illiteracy rates, the inability to understand Spanish, and a lack of interpretation during trials have also led to high incarceration rates.<sup>487</sup> In addition, according to the Office of the Ombudsman of the Plurinational State of Bolivia, a sample of nearly 2,000 survey respondents indicated that 55 percent of them have not requested a hearing to review their pretrial detention because they have been detained less than one year and because they lack the funds to cover such proceedings, namely, to pay attorney fees, notifications, etc.<sup>488</sup>

348. This situation is even worse when it comes to indigenous women. According to an earlier study by the Office of the Ombudsman in Bolivia, all the indigenous women surveyed were in pretrial detention and in most cases this was because of a lack of information, whether because of the language they spoke or because they were poor, having been abandoned by their attorneys, meaning that they remained in pretrial detention longer due to a lack of technical guidance.<sup>489</sup> The study also found that because of their limited financial means and because it is not possible for these women to keep their children with them in prison, the children are frequently referred to Children's Homes, which fall under the departmental governments.<sup>490</sup>

349. The IACHR observes that, additionally to the risk faced by women deprived of liberty, their time in prison generates severe consequences for their children and for persons under their care, such as persons with disabilities and older persons. In this regard, the Commission has pointed out that the deprivation of liberty of women brings serious consequences for children, since generally their care is assigned to the closest relative, which sometimes results in the separation of brothers and sisters, and requires in the majority of cases the intervention of social services to aid in the children's welfare or even their institutionalization<sup>491</sup>. In this regard, the IACHR observes that civil society reports indicate that some

<sup>485</sup> Institute for Legal Defense, letter addressed to IACHR Executive Secretary, Emilio Álvarez Icaza, April 7, 2016, paragraph 11. Available at: [http://www.justiciaviva.org.pe/webpanel/doc\\_int/doc14042016-182531.pdf](http://www.justiciaviva.org.pe/webpanel/doc_int/doc14042016-182531.pdf)

<sup>486</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, December 30, 2013, paragraph 10. Available at: <http://www.oas.org/es/cidh/ppl/informes/pdfs/Informe-PP-2013-es.pdf>

<sup>487</sup> Coalition for the rights of persons deprived of liberty in the Mexican Penitentiary System, EPU report on the prison system in Mexico, 2013, paragraph 32. Available at: <https://cencos.files.wordpress.com/2013/10/coalicion-derechos-personas-privadas-de-libertad-mexico-2013.pdf>

<sup>488</sup> Office of the Ombudsman of the Plurinational State of Bolivia, Inmates without a sentence: current situation of persons in pretrial detention in Bolivian penitentiaries, 2016, p. 33. Available at: <http://www.defensoria.gob.bo/archivos/PRESOSSINSENTENCIA.pdf>

<sup>489</sup> Office of the Ombudsman of the Plurinational State of Bolivia, Ombudsman's Report: "Bolivia: Rights Situation of Women Deprived of Liberty," 2013, p. 134. Available at: <http://www.defensoria.gob.bo/archivos/MUJERES%20PRIVADA%20DE%20LIBERTAD.pdf>

<sup>490</sup> Office of the Ombudsman of the Plurinational State of Bolivia, Ombudsman's Report: "Bolivia: Rights Situation of Women Deprived of Liberty," 2013, p. 143. Available at: <http://www.defensoria.gob.bo/archivos/MUJERES%20PRIVADA%20DE%20LIBERTAD.pdf>

<sup>491</sup> IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, 11 November 2015, para. 479.

10% of the children of mothers deprived of liberty remain under the care of their parents, while in the cases where it is the father that is deprived of liberty, most of the children continue under the care of their mothers<sup>492</sup>. In the regard, the severing of the ties of protection caused by the imprisonment of women causes that the persons under their care are left exposed to situations of inter-generational transfer of poverty, marginalization and abandonment, all of which may at the same time result in long term consequences such as involvement with criminal organizations or institutionalization.

350. In this regard, the IACHR notes that in December 2016 the Government Ministry of Panama, with the technical advice of the United Nations Children Education Fund (UNICEF), presented the “Diagnose and Model for the Care of Children of Women Deprived of Liberty in Panama” which aims to contribute to the development of social policies for the integral care of these children, by means of a road map in accordance with directives by the United Nations regarding alternative means of care for girls and boys<sup>493</sup>. The IACHR welcomes the efforts by the Panamanian States in this area, given that this diagnose constitutes a pioneering study in the Americas, which will contribute to clearly identifying the effects of imprisonment on children, as well as the most adequate measures to keep them from getting involved in criminal activities.

351. On the other hand, the IACHR observes that one of the most serious and widespread problems in the region is precisely the lack of public policies aimed at promoting rehabilitation and social readaptation of persons convicted to prison sentences. Specifically, considering the limited financial resources available to persons deprived of liberty, and the fact that their imprisonment places them at a high risk of losing their involvement with their community, it is essential that States adopt public policies of an integral nature, oriented to their social readaptation and personal rehabilitation. Otherwise, there is a risk of perpetuating a cycle of social exclusion and criminal recidivism<sup>494</sup>. In this context, and following the standards set by the United Nations Mandela Rules, the IACHR calls on States to put in place within government or private organs the services necessary for persons formerly deprived of liberty to receive effective post penitentiary assistance, with a view to decreasing prejudice against them, and to contributing to their social reinsertion<sup>495</sup>.

## 5. Persons with Disabilities

352. According to the World Health Organization and the World Bank, more than one billion people—or approximately 15 percent of the global population—are currently living with some type of disability.<sup>496</sup> Specifically, according to the Economic Commission for Latin America and the Caribbean (ECLAC), around 12 percent of the population in Latin America and the Caribbean has a disability, in other words, approximately 66 million people.<sup>497</sup> Despite the fact that these figures represent a high number of people with disabilities, estimates put this number even higher in light of how difficult it is to obtain this type of information, primarily because of the differences that exist in census and data collection methods.<sup>498</sup>

<sup>492</sup> Church World Service and Gurises Unidos, [Invisibles. ¿hasta cuándo?: una primera aproximación a la vida y derechos de niños, niñas y adolescentes con referentes adultos encarcelados en América Latina y el Caribe](#), July 2014, p. 34 (available in Spanish only); WOLA, IDPC, Dejusticia, CIM and OAS, [Women, Drug Policies and Incarceration. A Guide for Policy Reform in Latin America and the Caribbean](#), 2016 pp. 3 and 35. See also: Stella, C., [“Aprisionamento materno e escolarização dos filhos”](#). Revista Semestral da Associação Brasileira de Psicologia Escolar e Educacional (abrapee) V. 13, n.º 1. Brasil, January-June 2009.

<sup>493</sup> Government Ministry, Press release [“Panamá presenta estudio pionero para mejorar situación de los Hijos de las Mujeres Privadas de Libertad”](#), December 7, 2016.

<sup>494</sup> IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, paras. 609 and 610.

<sup>495</sup> See, in this regard, UN, [The United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Nelson Mandela Rules), E/CN.15/2015/L.6/Rev.1, May 21 2015.

<sup>496</sup> World Health Organization and World Bank Group, [World Report on Disability](#), 2011, p. 7. Available at: [http://apps.who.int/iris/bitstream/10665/70670/1/WHO\\_NMH\\_VIP\\_11.01\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/70670/1/WHO_NMH_VIP_11.01_eng.pdf).

<sup>497</sup> ECLAC, Notes, [Disability in Latin America and the Caribbean – Public Policy Challenges](#). Available at: <http://www.cepal.org/notas/74/Titulares2.html>.

<sup>498</sup> United Nations, [Enable, Factsheet on Persons with Disabilities](#). Available at: <http://www.un.org/disabilities/documents/toolaction/pwdfs.pdf>.

353. Historically, persons with disabilities have faced serious physical and social obstacles to the full exercise of their rights.<sup>499</sup> The IACHR does observe, however, that recent decades have seen significant progress in the protection of the rights of this population, thanks mainly to the adoption in 2006 of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”),<sup>500</sup> which calls for a paradigm shift with respect to the treatment of persons with disabilities. Based on this paradigm shift, persons with disabilities are no longer seen as “mere objects of protection,” but rather as “subjects of rights and obligations.” The IACHR nevertheless notes that, despite the significant progress made internationally, there continues to be a major gap in terms of the effective enforcement of such rights domestically, and that individuals living with disabilities continue to face serious hurdles to the full enjoyment of their rights.

354. With respect to disabilities and poverty, persons living with disabilities are more likely to experience adverse socioeconomic situations like lower education levels, worse health conditions, and high rates of unemployment. In this regard, according to the World Bank, the relationship between poverty or extreme poverty and disabilities goes two ways: On the one hand, poverty may increase the risk of developing a disability, while on the other hand a disability may increase the risk of falling into poverty due to factors like unemployment or lower salaries and increases in the cost of living.<sup>501</sup>

355. The Commission, for its part, notes that under either of the above scenarios poverty among people with disabilities is widespread. In this vein, during a meeting of the States Party to the CRPD held in New York in June 2015, the UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, indicated that more than 80 percent of people with disabilities in the world are poor and that such situation is not limited to developing countries.<sup>502</sup> According to the UN Special Rapporteur, poverty disproportionately affects persons with disabilities and the additional costs of living with a disability constitute an “insurmountable obstacle” to the exercise of their rights. Along these lines she indicated that the “gap between persons with and without disabilities who live below the poverty line or are at risk of falling into poverty is alarming and should be urgently addressed.”<sup>503</sup>

356. This Commission notes that poverty and extreme poverty are environmental and social risk factors that increase the likelihood of developing a disability to the extent that they can create health conditions that are conducive thereto or prevent access to preventive medications. In this regard, according to the World Report on Disability by the World Bank and WHO, certain environmental factors such as low birth weight and a lack of essential nutrients like iodine and folic acid have an impact on the incidence and prevalence of health conditions associated with disabilities.<sup>504</sup>

357. Furthermore, a lack of financial resources can determine access to health centers and, hence, whether a person receives preventive services and treatment.<sup>505</sup> Along these lines, a joint study conducted by

---

<sup>499</sup> IACHR, Press release 145/14, [IACHR Urges States to Ensure Full Exercise of Human Rights of Persons with Disabilities](#), Washington, DC, December 2, 2014.

<sup>500</sup> United Nations, [Convention on the Rights of Persons with Disabilities](#), adopted by the United Nations General Assembly on December 13, 2006. Available at: <http://www.un.org/esa/socdev/enable/documents/tccconvs.pdf>.

<sup>501</sup> World Bank, Disability: Overview, latest update, October 30, 2015. Available at: <http://www.bancomundial.org/es/topic/disability/overview>.

<sup>502</sup> United Nations Children’s Centre, More than 80 percent of persons with disabilities are poor, according to the UN rapporteur, note from June 9, 2015. Available at: <http://www.un.org/spanish/News/story.asp?NewsID=32551>.

<sup>503</sup> Presentation by the Special Rapporteur on her first report to the General Assembly, 70<sup>th</sup> Session, New York, October 27, 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16664&LangID=E#sthash.OzvKCKDY.FXAdjprR.dpF>.

<sup>504</sup> World Bank and World Health Organization, World Report on Disability, 2011, p. 41. Available at: [http://www.who.int/iris/bitstream/10665/75356/1/9789240688230\\_spa.pdf](http://www.who.int/iris/bitstream/10665/75356/1/9789240688230_spa.pdf).

<sup>505</sup> United Nations Children’s Fund (UNICEF), University of Wisconsin, Monitoring child disability in developing countries: results from the multiple indicator cluster surveys (English only), 2008, p. 40. Available at: [http://www.unicef.org/protection/Monitoring\\_Child\\_Disability\\_in\\_Developing\\_Countries.pdf](http://www.unicef.org/protection/Monitoring_Child_Disability_in_Developing_Countries.pdf).

UNICEF and the University of Wisconsin found that children in homes that fall into the three poorest quintiles in most countries are at higher risk of developing disabilities than other children.<sup>506</sup>

358. This Commission observes that having a disability increases the likelihood of living in poverty because the discrimination that comes with living with a disability may lead to social exclusion, marginalization, a lack of schooling, and unemployment, in addition to the fact that all of these factors increase the risk of poverty. A joint study done by ECLAC and the United Nations Population Fund (UNFPA) found that the educational and labor landscape for persons with disabilities in Latin America confirms the inequality that affects this group of people.<sup>507</sup>

359. With respect to education, a report by the International Disability Rights Monitor (IDRM) indicates that in Colombia, only 0.32 percent of students have a disability. The figures are similar in Argentina (0.69%) and in Mexico (0.52%), while Uruguay and Nicaragua report slightly higher percentages (2.76% and 3.5%, respectively). When comparing the estimated population of children with disabilities to the number of children matriculated in the education system, we see that only between 20 percent and 30 percent of children with disabilities attend school.<sup>508</sup> In the case of Mexico, the outcomes of the 2014 National Survey on the Demographic Dynamic (ENADID) show that 46.5 percent of the population with disabilities, ages 3 to 29, attend school, which is lower than that of the population without disabilities (60.5%).<sup>509</sup> In the particular case of education levels, 23.1 percent of the population with disabilities has had no schooling, which is a considerably higher figure than that seen among persons without disabilities (4.8%). The predominant level of education for those with disabilities is elementary school (44.7%), followed by secondary school (15.3%); in the case of higher education, the percentage of the population without disabilities is triple that of the population with disabilities (5.7%).<sup>510</sup>

360. The IACHR likewise notes that one of the main problems faced by persons with disabilities in the region is unemployment and marginalization from the labor market. According to a study undertaken by IDRM, approximately 70 percent of persons with disabilities in the region are unemployed or excluded from the work force.<sup>511</sup> Among the factors listed by the study are a lack of training, lack of accessibility in the work place, lack of accessible transportation, and the continued economic problems that afflict the region as well as companies' resistance to hiring people with disabilities despite the fact that the laws in several of the region's countries provide for incentives for those that do as well as minimum quotas in the case of public employees.<sup>512</sup>

361. In this regard, the Commission notes that the United Nations Committee on the Rights of Persons with Disabilities has expressed concern over the high rates of unemployment and underemployment

---

<sup>506</sup> United Nations Children's Fund (UNICEF), University of Wisconsin, Monitoring child disability in developing countries: results from the multiple indicator cluster surveys (English only), 2008, p. 40. Available at: [http://www.unicef.org/protection/Monitoring\\_Child\\_Disability\\_in\\_Developing\\_Countries.pdf](http://www.unicef.org/protection/Monitoring_Child_Disability_in_Developing_Countries.pdf).

<sup>507</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Latin American and Caribbean Demographic Centre (CELADE) and United Nations Population Fund (UNFPA), Las personas con discapacidad en América Latina: del reconocimiento jurídico a la desigualdad real [Persons with Disabilities in Latin America: From legal recognition to real inequality]. April 2011, p. 16. Available at: [http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074\\_es.pdf](http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074_es.pdf).

<sup>508</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 15. Available at: [http://www.iin.oea.org/2006/Lecturas\\_Sugeridas\\_2006/Monitoreo\\_Derechos\\_Personas\\_Disc.pdf](http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/Monitoreo_Derechos_Personas_Disc.pdf).

<sup>509</sup> National Institute for Statistics and Geography (INEGI), Estadísticas a propósito del Día Internacional de las Personas con Discapacidad [Statistics on the occasion of the International Day of People with a Disability], December 1, 2015, p. 9. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/discapacidad0.pdf>.

<sup>510</sup> National Institute for Statistics and Geography (INEGI), Estadísticas a propósito del Día Internacional de las Personas con Discapacidad [Statistics on the occasion of the International Day of People with a Disability], December 1, 2015, p. 9. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/discapacidad0.pdf>.

<sup>511</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 16. Available at: [http://www.iin.oea.org/2006/Lecturas\\_Sugeridas\\_2006/Monitoreo\\_Derechos\\_Personas\\_Disc.pdf](http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/Monitoreo_Derechos_Personas_Disc.pdf).

<sup>512</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 16. Available at: [http://www.iin.oea.org/2006/Lecturas\\_Sugeridas\\_2006/Monitoreo\\_Derechos\\_Personas\\_Disc.pdf](http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/Monitoreo_Derechos_Personas_Disc.pdf).

of persons with disabilities in Peru, which were nearly 60 percent and 35.3 percent, respectively.<sup>513</sup> The Commission also notes that according to the first national study on disability in Chile, conducted in 2004, 48.1 percent of the total population above the age of 15 was gainfully employed, while only 29.2 percent of the population with disabilities in that same age range had paid employment.<sup>514</sup> A second national study done in 2015 indicated that participation in the labor force by persons without disabilities was 69 percent, while it was 56 percent for persons with disabilities, and 24.3 percent for persons with severe disabilities.<sup>515</sup> In Mexico the economic participation of people with disabilities in 2014 was 39.1 percent; this was equivalent to more than 25 percentage points less than the population without disabilities.<sup>516</sup> Most of the employment rates in the region for persons with disabilities are similar: In Uruguay, according to a specialized survey conducted in 2003 and 2004, the employment rate for persons with disabilities over the age of 14 was 19.6 percent compared to 62.4 percent general employment.<sup>517</sup> In 2003, the population with disabilities in Nicaragua had an employment rate of 36 percent compared to a general rate of 54 percent.<sup>518</sup>

362. The Inter-American Commission notes that access to healthcare for persons with disabilities is also of concern given that in much of the region, access to health insurance is dependent upon an individual's employment status and hence, high unemployment rates can deprive this group of coverage.<sup>519</sup> According to the International Disability Rights Monitor, for example, 84 percent of persons with disabilities in Ecuador lack healthcare coverage while in Chile only 7 percent have private health insurance.

## 6. LGBTI Persons, Groups and Communities

363. The Inter-American Commission notes that there is a strong link between poverty, exclusion and violence based on prejudice. Thus, in its 2015 report on Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas, the Commission examined the intersection between, on the one hand, violence based on prejudice against non-normative sexual orientation and gender identity, and poverty on the other. In that report, the IACHR noted that structural discrimination against LGBTI persons<sup>520</sup> in the

<sup>513</sup> Committee on the Rights of Persons with Disabilities, Study of the reports submitted by the States party in accordance with Article 35 of the Convention "Final Observations," Peru, CRPD/C/PER/CO/1, May 16, 2012, paragraph 40. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssjCEiYpMEPRoNhdsZPK7VI6RG1n562Mfvp5l7K6ZlieCygEedsP4VVIybf5SQ6Lvb%2bv%2buR%2bIRbF4%2fkgI8%2bMK95vDFIII%2fGlg%2b61y%2bpgEoR>.

<sup>514</sup> National Disability Fund (FONADIS), Primer estudio nacional de la discapacidad e informes regionales - ENDISC 2004 [First National Disability Study and Regional Reports - ENDISC 2004], April 2005, p. 50. Available at: [http://www.ine.cl/canales/chile\\_estadistico/encuestas\\_discapacidad/discapacidad.php](http://www.ine.cl/canales/chile_estadistico/encuestas_discapacidad/discapacidad.php).

<sup>515</sup> Government of Chile - Ministry of Social Development, Segundo Estudio Nacional de la Discapacidad 2015: Un nuevo enfoque para la inclusión [2015 National Disability Study: A new approach to inclusion], January 26, 2016, section on "General Results for the Adult Population," p. 34. Available at: <http://www.senadis.gob.cl/pag/671/1263/publicaciones>.

<sup>516</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 12. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/discapacidad0.pdf>.

<sup>517</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Latin American and Caribbean Demographic Centre (CELADE) and United Nations Population Fund (UNFPA), Las personas con discapacidad en América Latina: del reconocimiento jurídico a la desigualdad real [Persons with Disabilities in Latin America: From legal recognition to real inequality]. April 2011, p. 18. Available at: [http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074\\_es.pdf](http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074_es.pdf).

<sup>518</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Latin American and Caribbean Demographic Centre (CELADE) and United Nations Population Fund (UNFPA), Las personas con discapacidad en América Latina: del reconocimiento jurídico a la desigualdad real [Persons with Disabilities in Latin America: From legal recognition to real inequality]. April 2011, p. 18. Available at: [http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074\\_es.pdf](http://repositorio.cepal.org/bitstream/handle/11362/7135/1/S1100074_es.pdf).

<sup>519</sup> International Disability Rights Monitor (IDRM), Regional Report of the Americas, International Disability Rights Monitor 2004, p. 17. Available at: [http://www.iin.oea.org/2006/Lecturas\\_Sugeridas\\_2006/Monitoreo\\_Derechos\\_Personas\\_Disc.pdf](http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/Monitoreo_Derechos_Personas_Disc.pdf).

<sup>520</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42, citing Lucas Paoli Itaborahy, [LGBT people living in poverty in Rio de Janeiro](#), (London, Micro Rainbow, 2014); and Gary J. Gates, [Food Insecurity and SNAP \(Food Stamps\) Participation in LGBT Communities](#), Williams Institute, February 2014.

region might also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination.<sup>521</sup>

364. Along the same lines, the United Nations Special Rapporteur on extreme poverty and human rights has indicated that patterns of discrimination keep people in poverty, which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination.<sup>522</sup> The United Nations High Commissioner for Human Rights<sup>523</sup> has stated that discrimination against lesbian, gay, bisexual and trans persons (LGBT)<sup>524</sup> is often exacerbated by other factors such as poverty.<sup>525</sup> Further, the OHCHR also cites studies conducted in the Americas region that suggest that the rates of poverty, lack of housing and food insecurity are higher among LGBT individuals. In addition, the World Bank has documented the negative impact of violence and discrimination based on prejudice (referred to as “homophobia”) on the economic growth and development of countries.<sup>526</sup>

365. The Commission has learned from civil society organizations that LGBT persons, especially trans persons and trans persons from racial minority groups,<sup>527</sup> are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence. The IACHR notes that the factors of discrimination and exclusion that affect LGBT persons are many, and are also closely linked to their high rates of poverty.

366. The Commission notes that the discrimination that affects LGBT persons in the societies of the region places them in a cycle of exclusion that tends to culminate in poverty because of their lack of access to services, opportunities and social benefits, and that in some cases, begins at an early age. In light of this, the IACHR has held that discrimination and violence against children and young people with non-normative sexual orientation and gender identities begins at home and in school, where the family, members of the community, teachers and school authorities disapprove of their sexual orientation and/or gender identity.<sup>528</sup> LGBT persons are expelled from their families and schools<sup>529</sup> and in some instances cannot obtain even minimum wage jobs.<sup>530</sup> As a result, LGBT persons often face poverty, social exclusion, and high rates of homelessness.<sup>531</sup> This pushes them into the informal economy or into criminal activity.<sup>532</sup> Some LGBT

<sup>521</sup> IACHR, [Report on Violence against LGBTI persons in the Americas](#), OAS/Ser.L/V/II.rev.1 doc. 36. Rev 2, November 12, 2015, Chapter 5, paras. 369 et seq. In that report, the IACHR recommended to OAS member states that, inter alia, they: (1) adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and continue to devote efforts and resources to eradicating poverty; (2) take measures to address discrimination based on sexual orientation, gender identity, and sex characteristics when designing and implementing actions and program to tackle poverty, and (3) ensure that state programs for low-income, homeless or unemployed people are accessible by LGBTI persons.

<sup>522</sup> United Nations, [Report of the Special Rapporteur on Extreme Poverty and Human Rights](#), A/63/274, August 2008, para. 29.

<sup>523</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42.

<sup>524</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42, citing Lucas Paoli Itaborahy, [LGBT people living in poverty in Rio de Janeiro](#), (London, Micro Rainbow, 2014); and Gary J. Gates, [Food Insecurity and SNAP \(Food Stamps\) Participation in LGBT Communities](#), Williams Institute, February 2014.

<sup>525</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42, citing various reports by the Human Rights Committee, the Committee on the Rights of the Child, and the CEDAW Committee.

<sup>526</sup> OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 42, citing M.V. Lee Badgett, [The economic cost of stigma and the exclusion of LGBT People: a case study of India](#), World Bank Group, 2014.

<sup>527</sup> Open Society Foundation, [Transforming Health: International Rights-Based Advocacy for Trans Health](#), 2013, p. 11.

<sup>528</sup> IACHR, Press Release No. 049/15, [Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#), May 13, 2015.

<sup>529</sup> IACHR, Press Release No. 049/15, [Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#), May 13, 2015.

<sup>530</sup> Spade, Dean. The Laura Flanders Show GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJiglBllbU>.

<sup>531</sup> IACHR, Press Release No. 049/15, [Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights](#), May 13, 2015.

<sup>532</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJiglBllbU>.

persons in such situations engage in sex work or in survival sex,<sup>533</sup> which is the exchange of sex for money, food, shelter or other material goods needed for survival.<sup>534</sup> As a result, LGBT persons living in poverty are vulnerable to police harassment and profiling, and consequently to higher rates of criminalization<sup>535</sup> and imprisonment.<sup>536</sup>

367. On this matter, the UN Special Rapporteur on extreme poverty and human rights has stated that in order to address the rates of poverty affecting LGBTI persons, States must include the dimension of sexual orientation and gender identity in social programs, gather precise statistical data on the number of LGBTI persons in the country as a pre-requisite for developing an effective policy; offer an alternative to the male/female option in surveys and census forms; guarantee gender identity change processes that do not require a court authorization, and establish a specialized institution to examine, together with the groups involved, all social or other policies that need to be amended to take account of the specific needs of LGBTI persons and ensure equal treatment.<sup>537</sup>

368. According to information brought to the Commission by civil society organizations, trans persons in the region face high rates of exclusion from income producing opportunities and social welfare programs, which often relegate them to unemployment and make them have recourse to sex work,<sup>538</sup> and face “a chronic lack of access to educational and health services, job opportunities and decent housing,”<sup>539</sup> which means that they suffer severe poverty for most of their lives.<sup>540</sup>

369. According to information received by the Inter-American Commission, 90 percent of trans women in Latin America and the Caribbean engage in sex work as a means of survival, and as a result, face direct or indirect criminalization.<sup>541</sup> Equally, exclusion makes it difficult for them to have access to the health care system and to medically supervised, quality body transformations--necessary for some trans individuals who are in the process of constructing their identity—which results in health complications and may cause death. Thus, the cycle of poverty and exclusion in which trans women live makes them more vulnerable to preventable premature death and to violence by agents of the state and non-state agents. This cycle in which they are immersed is also related to the low life expectancy of trans women in the region, which, as indicated by civil society organizations and corroborated by the IACHR by means of the Registry of Violence<sup>542</sup> is, in general terms, thirty-five years of age. Accordingly, the Inter-American Commission emphasizes that the situation affecting some trans persons, relegating them to cycles of poverty, exclusion and criminalization, is exacerbated by the absence of regulations that would allow for recognition of their gender identity in a simple, rapid and non-pathologizing way, and also by the failure to mainstream a gender identity approach into the public policies of the countries of the region, and the failure to tailor those policies to meet the needs of trans individuals.

<sup>533</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>. See also, Conner, Brendan; Banuelos, *Isela*; Dank, Meredith; Madden, Kuniko; *Mitchyll Mora*; Ritchie, *Andrea*; *Yahner*, Jennifer; Yu, *Lilly*. Urban Institute, *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex*, 2015.

<sup>534</sup> Urban Institute, “*Surviving the Streets of New York*”, February 2015.

<sup>535</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>536</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJigIBllbU>.

<sup>537</sup> United Nations Human Rights Council, [Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile](#), A/HRC/32/31/Add.1, April 8, 2016.

<sup>538</sup> Baral, SD., Beyrer, C., and Poteat, [T. Human Rights, the Law, and HIV among Transgender People. Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law](#), July 7-9, 2011, p. 6.

<sup>539</sup> Cabral, Mauro and Hoffman, Johanna. IGLHRC, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

<sup>540</sup> Cabral, Mauro and Hoffman, Johanna. IGLHRC, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

<sup>541</sup> Redlactrans, Report on the Economic, Social and Cultural Rights of the Transgender Population of Latin America and the Caribbean (Informe sobre los Derechos Económicos, Sociales y Culturales de la Población Transgénero de Latinoamérica y el Caribe), presented at a public hearing during the 154 period of sessions of the IACHR, March 16, 2015.

<sup>542</sup> IACHR, [Registry of Violence against LGBT Persons](#), January 2013, March 31, 2014.

370. The Commission notes the positive impact on the lives of trans persons of laws that recognize their gender identity. It notes, nonetheless, that despite the positive effects of these laws and the efforts made by a number of states of the region to implement them, the mere fact that they exist does not provide a solution or guarantee trans individuals the full exercise of their rights or access to the various social services. For that reason, in order to fully include trans persons into different spheres of life and reduce the levels of poverty that afflict them, the IACHR considers it necessary to redouble efforts and move beyond the formal adoption of laws that recognize gender identity, and to engage in the design and implementation of public policies that complement the laws, take into account the needs and different realities encountered by trans persons, and are designed to narrow the gaps of inequalities they face, which in some cases, go beyond the scope of a gender identity law.

371. The IACHR notes that significant initiatives have been taken in the region by some OAS member states to secure greater inclusion of trans persons in the job market and in education. It should be noted that in September 2015, Argentina adopted Law no. 14.783, which establishes a minimum quota of at least one percent of public sector jobs in the Province of Buenos Aires for trans persons.<sup>543</sup> Subsequently, in May 2016, a law was passed on job quotas for trans persons in the Province of Rosario.<sup>544</sup> In April 2016, the Legislative Assembly of Mexico City approved an agreement that the Chief Executive to instruct his City departments to ensure that at least one percent of the staff hired are trans persons.

372. The Commission has received information that indicates that part of the cycle of poverty affecting LGBT persons is the difficulty they have in obtaining housing, which makes them more vulnerable to discrimination and to becoming victims of violence. In its report on Violence against LGBTI persons, the IACHR noted that studies in the region have indicated that LGBT persons are more at risk of homelessness. In the United States, civil society organizations estimate that 20-40 percent of homeless youth are part of the LGBT community. They are at particularly high risk of being forced into prostitution.<sup>545</sup> Similarly, the IACHR received information that approximately 40-50 percent of homeless youth living on the streets of New York City identify as LGBT. Most were thrown out of their homes because of their sexual orientation or gender identity, or ran away to escape violence within their families.<sup>546</sup> The IACHR also notes that the same study shows that 48 percent of trans persons who are engaged in sex work reported that they were homeless.<sup>547</sup>

373. According to a civil society report, young people who identified as LGBT in Jamaica make up nearly 40 percent of the country's youth population that is homeless.<sup>548</sup> In addition, the IACHR notes with concern that LGBT persons experience discrimination and violence in shelters and community care homes for street people. It considers that the high rates of homelessness among LGBT persons are due in large part to the fact that generally speaking, housing and shelter system are not appropriate or safe for LGBT persons.<sup>549</sup> The IACHR also notes with concern that these institutions are usually segregated by gender into males and females, which increases the violence and discrimination against trans persons and others who are non-

<sup>543</sup> IACHR, Press Release No. 122/15, [IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons](#), October 30, 2015.

<sup>544</sup> La Izquierda Diario (Left Voice), Trans Job Quota Law passed for Rosario ("[Se aprobó la ley de cupo laboral trans para Rosario](#)"), May 20, 2016 (Spanish only).

<sup>545</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014: [The Vulnerability of LGBT individuals to Human Trafficking](#), 2014.

<sup>546</sup> Funders for Lesbian and Gay Issues, [Out for Change: Racial and Economic Justice Issues in Lesbian, Gay, Bisexual and Transgender Communities](#), 2005, p. 10.

<sup>547</sup> Conner, Brendan; Banuelos, [Isela](#); Dank, Meredith; Madden, Kuniko; [Mitchyll Mora](#); Ritchie, [Andrea](#); [Yahner](#), Jennifer; Yu, [Lilly](#). Urban Institute, [Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex](#), 2015, p. 7, citing Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#), Washington, D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>548</sup> Human Rights Watch, [Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica](#), 2014, p. 45, citing statistics provided by Caribbean Vulnerable Communities.

<sup>549</sup> Spade, Dean. Interview on the Laura Flanders Show, GRITTV, 2015. Available at: <https://www.youtube.com/watch?v=eQJig1BllbU>. See also Conner, Brendan; Banuelos, [Isela](#); Dank, Meredith; Madden, Kuniko; [Mitchyll Mora](#); Ritchie, [Andrea](#); [Yahner](#), Jennifer; Yu, [Lilly](#). Urban Institute, [Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex](#), 2015.



gender-conforming. It should be noted here that in its Report on Violence against LGBTI Persons in the Americas mentioned above, the IACHR recommended to States that they ensure that shelters be accessible for trans persons and non-gender-conforming people, and that people be allowed to choose their shelter as a function of their gender identity, and that homes or shelters be designated as gender-neutral.

374. The IACHR notes with concern the complex situation faced by LGBT persons in the region in obtaining housing. It calls on States to implement public policies that would ensure that LGBT persons have access to appropriate housing, and to review and revise regulations pertaining to state-financed housing programs to ensure that their requirements are flexible enough to take into account the realities and needs of LGBT persons in the countries of the region.

375. The Inter-American Commission takes note of the structural inequalities facing LGBTI persons when they obtain or try to obtain health care services. The Commission has received troubling information as to how the socioeconomic situation of the parents of intersex children in Mexico may determine whether or not doctors tell the family that their child is intersex. According to one study in Mexico,<sup>550</sup> when doctors perceive a more “equal” relationship between themselves and their patients and families, the doctors strive to translate medical terminology into layperson’s terms and fully explain the child’s intersex or possible intersex status. However, in other hospitals or with respect to other patients where this perception of an equal relationship is not present, doctors tend not to communicate an intersex diagnosis to parents because the parents lack an “advanced education”. According to this study, there is a pervasive belief amongst medical staff that lower socioeconomic status or the limited education of parents or relatives are insurmountable barriers to understanding an intersex diagnosis. This hinders an effective and open dialogue with families about children who were born intersex, which in turn affects informed consent regarding genital surgery and medical interventions.<sup>551</sup>

376. Along the same lines, the socioeconomic status of trans persons determines the quality of the medical services they receive, including gender affirmation surgery and other related bodily modifications. The prevalence in Latin America of informal and risky body transformation procedures that are necessary for construction of the gender identity and expression of some trans persons causes, for example, a greater number of (preventable) deaths of trans women.<sup>552</sup>

377. The poverty, discrimination and exclusion that adversely affect LGBTI persons in the region are related to obstacles to having safe, high quality education systems available to them. The Commission has been informed that discrimination in schools would appear to be the cause of school dropout. For example, in a study done in 2014 by a civil society organization, half of those surveyed said that they stopped going to school because they had been discriminated against on the basis of their trans identity.<sup>553</sup> Civil society organizations in Argentina have told the Commission that in schools, discrimination by peers or bullying is experienced in seven out of ten cases, and that four out of ten trans persons said they had been discriminated against by teachers and school authorities.<sup>554</sup>

378. Similarly, a civil society organization in Paraguay reported that 90 percent of trans individuals in that country had not completed their basic education--a situation due, among other things, to the fact that the education system does not enable trans students to attend without becoming victims of

---

<sup>550</sup> Alcántara Z., Eva. [Pobreza y condición intersexual en México: Reflexiones y preguntas en torno al dispositivo médico](#) (Poverty and Intersex Status in Mexico: Reflections and Questions about Medical Solutions), Córdoba, Mexico: Anarres Editorial, 2009, pp. 16-30 (Spanish only).

<sup>551</sup> Alcántara Z., Eva. [Pobreza y Condición Intersexual en México: Reflexiones y preguntas en torno al dispositivo médico](#), (Poverty and Intersex Status in Mexico: Reflections and Questions about Medical Solutions), Córdoba, Mexico: Anarres Editorial, 2009, pp. 16-30 (Spanish only).

<sup>552</sup> Cabral, Mauro and Hoffman, Johanna. International Gay and Lesbian Human Rights Commission, *They Asked Me How I Was Living/Surviving, I said, surviving: Latin America Trans Women Living in Extreme Poverty*, 2009, p. 5.

<sup>553</sup> Redlactrans and Fundación Huésped, [Ley de identidad de género y acceso al cuidado de la salud de las personas trans en Argentina](#) (Gender identity law and access to health care by trans persons in Argentina), April 2014, p. 15 (Spanish only).

<sup>554</sup> Redlactrans and Fundación Huésped, [Ley de identidad de género y acceso al cuidado de la salud de las personas trans en Argentina](#) (Gender identity law and access to health care by trans persons in Argentina) April 2014, p. 15, fig. 11 (Spanish only).

discrimination, stigma and harassment, not only by their classmates but also at times by teachers.<sup>555</sup> They also note that the lack of recognition of the gender identity and expression of trans people is another reason behind the high school dropout rates, particularly cases of expulsion when the people begin to construct their identity.<sup>556</sup>

379. States have an obligation to ensure that their education policies are specially designed to modify social and cultural patterns of conduct, to counteract prejudices and customs, and to eradicate practices based on stereotypes of LGBTI persons that may legitimize or exacerbate violence on account of prejudice.<sup>557</sup> The Commission urges the states of the region to adopt measures to ensure that LGBT persons remain in the formal education system and receive technical training that will enable them to enter the job market, which may ensure their economic stability, reduce levels of poverty, improve their quality of life and raise their life expectancy.

380. The Commission recognizes that the challenges facing the countries of the region to counter the poverty and exclusion that affect LGBTI persons are many. The IACHR thus calls on OAS member states to take short, medium and long-term measures to counteract these situations that adversely affect LGBTI people.

### **III. ACCESS TO JUSTICE: CHALLENGES AND PRIORITY ISSUES FACING PERSONS LIVING IN POVERTY IN GAINING ACCESS TO THE COURTS AND OBTAINING AN EFFECTIVE RESPONSE TO THEIR CLAIMS**

381. People living in poverty and extreme poverty generally face greater obstacles to gaining access to the courts, and also lack the means to effectively file complaints and demand that their rights be observed. Policies designed to provide legal services for persons without means act as mechanisms to compensate for situations of material inequality that impair the effective protection of their own interests.

382. This is, therefore, an issue where it is important to clarify the scope of the duties of the State, and the principles that should characterize the organization and provision of this type of service, inasmuch as they are essential instruments for ensuring the exercise of human rights by excluded or impoverished sectors.

383. The Inter-American System of Human Rights has recognized the essential role of the right of access to the courts in assuring fundamental rights in general and social rights in particular, and has set a number of standards that have an impact on the workings of the region's judicial systems.

384. The right of access to justice is a fundamental guarantee that plays an essential role in the recognition of all other rights, whether civil and political, or economic, social and cultural.<sup>558</sup> It is recognized as such by the Inter-American System of Human Rights (IASHR), and specifically in Articles 8 and 25 of the American Convention on Human Rights and Article XVIII of the American Declaration of the Rights and Duties

---

<sup>555</sup> Panambi, "Informe Institucional sobre acceso a los Derechos Económicos, sociales y culturales de la población trans en Paraguay" (Institutional report on access to economic, social and cultural rights by trans people in Paraguay), 2015 (Spanish only).

<sup>556</sup> Panambi, "Informe Institucional sobre acceso a los Derechos Económicos, sociales y culturales de la población trans en Paraguay" (Institutional report on access to economic, social and cultural rights by trans people in Paraguay), 2015 (Spanish only), 2015.

<sup>557</sup> IACHR, Press Release No. 92/13, [The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings](#), November 22, 2013.

<sup>558</sup> IACHR, [Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights](#), para. 49.

of Man. It is evidenced in the organs of the Inter-American System through the system of individual petitions, annual reports, thematic and country reports and, in particular, the Advisory Opinions issued by the Inter-American Court, which have referred to the State's obligations concerning the effectiveness of the right of access to the courts as the guarantee of other human rights.<sup>559</sup>

385. International human rights law has developed standards on the right to have judicial and other remedies that serve as suitable and effective grievance mechanisms against the violation of fundamental rights. Thus, the obligation of the States is fundamentally a positive one— that of organizing the apparatus of their institutions in such a way that all people can avail themselves of those resources. To that end, States should remove any regulatory, social, or economic obstacles that prevent or limit the possibility of access to the courts,<sup>560</sup> and also ensure access to information and, under certain circumstances, the legal counsel they require.

386. The IACHR has noted that individuals of African descent, indigenous peoples and in particular women living in poverty often encounter additional barriers to gaining access to the courts, and that this, combined with their lack of economic resources, is discrimination twice over, which prevents them from gaining access to effective judicial remedies against the discrimination or human rights violations to which they have been subjected.<sup>561</sup> The Commission shares what was said by the former UN Rapporteur on Extreme Poverty and Human Rights, when she said that access to justice is crucial to tackling the root causes of poverty, exclusion and vulnerability. It is necessary to provide a simple, prompt, effective and economical remedy, both administratively and judicially, such that will guarantee the effectiveness of programs and provision of the social rights of people living in poverty.<sup>562</sup>

387. It is common for the unequal economic or social situation of litigants to be reflected in an unequal possibility of defense at trial. One aspect that affects the extent of the right of access to justice has to do with economic or financial obstacles to access to the courts, and with the scope of the positive obligation of the State to remove those obstacles in order to ensure an effective right to a hearing by a court.<sup>563</sup> The obligation to provide free legal counsel is thus fundamental in assuring people living in poverty of due procedural guarantees and equality before the courts.

388. Advisory Opinion No. 11/90 of the Inter-American Court of Human Rights (OC-11/90)<sup>564</sup> was the first occasion on which the Inter-American System discussed the need to remove barriers to access to the courts that might stem from an individual's economic status.<sup>565</sup> At that time, the Court reaffirmed the prohibition on discriminating on the basis of economic status, and found that:

<sup>559</sup> Similarly, Article 7, paragraphs c, d, e, f, and g of the Convention of Belém do Pará states that the States Party are obliged to include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women; to adopt legal measures to require restriction of the perpetrator, to repeal existing laws and regulations and modify customary practices which “sustain the persistence and tolerance of violence against women”; to establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to those procedures, and to “establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies...”.

<sup>560</sup> I/A Court H.R., [Advisory Opinion N° 11/90](#), August 10, 1990. Exceptions to the exhaustion of domestic remedies; Inter-American Court of Human Rights: [Case of Fairén Garbí and Solís Corrales](#), of March 15, 1989, Series C, No. 6, para. 93.

<sup>561</sup> IACHR, [Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights](#), para. 86. See also, [Access to justice for women victims of violence in the Americas](#), op. cit., paras. 211, 212. Also, UN, Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, 9 August, 2012, para. 18.

<sup>562</sup> UN, [Report of the Special Rapporteur on extreme poverty and human rights](#), A/67/278, August 9, 2012, para. 5.

<sup>563</sup> [Access to justice as a guarantee of economic, social, and cultural rights. A review of the standards adopted by the Inter-American System of Human Rights](#), para.48.

<sup>564</sup> I/A Court H.R., [Exceptions to the exhaustion of domestic remedies \(Arts. 46\(1\), 46\(2\)\(a\) and 46\(2\)\(b\) of the American Convention on Human Rights](#). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11.

<sup>565</sup> The IACHR submitted a request to the I/A Court H.R. for an advisory opinion enquiring, among other issues, whether the requirement of the exhaustion of internal legal remedies applies to an indigent who, because of economic circumstances, is unable to avail himself of the legal remedies within a country. [I/A Court H.R., Advisory Opinion OC-11/90](#), op. cit., para. 2.

...If a person who is seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigence), prevents him from so doing because he cannot afford either the necessary legal counsel..., that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law.<sup>566</sup>

389. Subsequently, in another advisory opinion, the Court again expressly discussed the State's duty to provide free legal counsel. In this case, Advisory Opinion 18/03 on the Juridical Condition and Rights of the Undocumented Migrants,<sup>567</sup> the Court found that the failure to provide a free public legal aid service for people without means, when it is needed to effectively access remedies, is a violation of due process and of the right to effective judicial protection. In that opinion, the Court set the standard as follows:

The right to judicial protection and judicial guarantees is violated for several reasons: owing to the risk a person runs when he resorts to the administrative or judicial instances, of being deported, expelled or deprived of his freedom, and by the negative to provide him with a free public legal aid service, which prevents him from asserting the rights in question.<sup>568</sup>

390. It should be noted here that for at least the past two decades, the IACHR has referred to the importance of providing free legal services in order to comply with the American Convention.<sup>569</sup> The IACHR has noted that a litigant who do not have the means to hire the services of an attorney of his choice must wait a long time for a public defender to become available—which runs clearly counter to the provisions of the American Convention, specifically Articles 1.1, 8 and 24. The IACHR considers that when necessary for effective access, petitioners should be represented by legal counsel in order to be able to present their claims, and therefore the number of public defenders available to advise them should be increased, so that this service may be within the reach of all who need it in order to have access to judicial protection and to defend a protected right.<sup>570</sup>

391. The IACHR has established the obligation to provide free legal services to people without means,<sup>571</sup> and has specified a number of criteria for determining their applicability to concrete cases. Thus, the Commission has indicated the following factors as pertinent to this determination: a) the resources

---

<sup>566</sup> [I/A Court H.R. Advisory Opinion OC-11/90](#), op. cit., para. 22. On this point, it may be said that this jurisprudence extends also to violation of fundamental rights recognized by the Constitution or the law as stipulated in Article 25(1) of the Convention. Further, despite recognizing the positive obligation of the State to guarantee access to justice, the Court only went so far as to say that "the circumstances of a particular case or proceeding--its significance, its legal character, and its context in a particular legal system are factors that bear on the determination of whether legal representation is or is not necessary for a fair hearing." (Advisory Opinion OC-11/90, para. 28).

<sup>567</sup> I/A Court H.R., [Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03](#) of September 17, 2003. Series A No. 18. On May 10, 2002, Mexico submitted to the I/A Court H.R. a request for an advisory opinion on the "[...] deprivation of the enjoyment and exercise of certain labor rights [of migrant workers,] and its compatibility with the obligation of the American States to ensure the principles of legal equality, non-discrimination and the equal and effective protection of the law embodied in international instruments for the protection of human rights; and also with the subordination or conditioning of the observance of the obligations imposed by international human rights law, including those of an *erga omnes* nature, with a view to attaining certain domestic policy objectives of an American State."

<sup>568</sup> I/A Court H.R., [Advisory Opinion OC-18/03](#), op. cit., para.126.

<sup>569</sup> IACHR, [Report on the Situation of Human Rights in Ecuador](#), 24 April 1997, (OEA/Ser.L/V/II.96).

<sup>570</sup> See [Report on the Situation of Human Rights in Ecuador](#), Cit., Chapter III. It is also useful to cite here the recent report on violence and discrimination against women in the armed conflict in Colombia. Among the conclusions and recommendations on the question of administration of justice, that report stated the need to "increase access to free legal aid counsel for women victims of violence and discrimination". Cf. IACHR, [Violence and discrimination against women in the armed conflict in Colombia](#), October 18, 2006 (OEA/SER.L/V/II., doc. 67), Chapter VI, para. 51.

<sup>571</sup> See IACHR, [Report on Terrorism and Human Rights](#), October 22, 2002 (OEA/Ser.L/V/II.116), para. 236, in which the Commission reaffirmed the need to ensure free legal counsel services in all proceedings to determine rights, specifically establishing that: "...both the Commission and the Inter-American Court have observed in this respect that in criminal proceedings and those relating to rights of obligations of a civil, labor, fiscal or any other nature, an indigent has the right to legal counsel free of charge where such assistance is necessary for a fair hearing..."

available to the person concerned, b) the complexity of the issues involved, and c) the significance of the rights involved.<sup>572</sup>

392. At the same time, the IACHR has moved forward to identify certain judicial proceedings for which it has considered the provision of legal counsel free of charge to be indispensable for filing and engaging in proceedings, in order to comply with the American Convention and other binding instruments. Thus, in its merits report in the case of Whitley Myrie, the IACHR found that, under the American Convention, the State is obliged to provide effective access to Constitutional Motions, which includes providing free legal counsel when people lack the funds to bring action using their own means.<sup>573</sup>

393. Women in particular may face serious difficulties in obtaining free legal assistance in criminal or civil matters. This particularly affects women living in poverty who are victims of crimes such as domestic violence. Thus, in its report Access to justice for women victims of violence in the Americas, the IACHR again highlighted the need to alleviate situations where there is economic disadvantage and the consequent obligation to increase the provision of free legal counsel.<sup>574</sup>

394. In addition to the lack of free legal services, the Commission noted in its report Access to justice as a guarantee of economic, social, and cultural rights, that the lack of free legal counsel may not be the only economic obstacle to gaining access to the courts. The costs of the proceedings themselves are also a point to be considered here.<sup>575</sup> In its judgment in the Cantos case,<sup>576</sup> the Inter-American Court held that:

This provision of the Convention [8.1] upholds the right of access to the courts. It follows that States shall not obstruct persons who turn to judges or the courts to have their rights determined or protected. Any domestic law or measure that imposes costs or in any other way obstructs individuals' access to the courts and that is not warranted by what is reasonably needed for the administration of justice must be regarded as contrary to Article 8(1) of the Convention (...).<sup>577</sup>

395. In that case, the Court addressed, among other points, whether the amount that the Argentine courts required the petitioner to deposit as a filing fee,<sup>578</sup> since he had been denied the possibility of filing a case without cost, was compatible with the rights set out in Articles 8 and 25 of the CADH. In its judgment, the Court noted that:

...the amount set in the form of filing fees and the corresponding fine are, in the view of this Court, an obstruction to access to the courts. They are unreasonable, even though in mathematical terms they do represent three percent of the amount of relief being claimed. This Court considers that while the right of access to a court is not an absolute and therefore may be subject to certain discretionary limitations set by the State, the fact remains that the means used must be proportional to the aim sought. The right of access to a court of law cannot be denied because of filing fees....<sup>579</sup>

396. With a view to removing this type of economic obstacle, the IACHR has begun to set out the scope of a State's obligations, both in terms of judicial proceedings and in relation to procedures of an

<sup>572</sup> IACHR, [Report on Terrorism and Human Rights](#), October 22, 2002 (OEA/Ser.L/V/II.116), para. 341.

<sup>573</sup> IACHR, [Report Nº 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica](#), October 12, 2004, paras.67-70.

<sup>574</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), 2007, para. 182.

<sup>575</sup> I/A Court H.R., [Advisory Opinion, OC-11/90](#), cit., paras. 29 and 30.

<sup>576</sup> I/A Court H.R., [Case of Cantos, Judgment of November 28, 2002](#). Series C No. 97.

<sup>577</sup> I/A Court H.R., [Case of Cantos, Judgment of November 28, 2002](#). Series C No. 97, para. 50.

<sup>578</sup> I/A Court H.R., [Case of Cantos, Judgment of November 28, 2002](#). Series C No. 97, para. 53.

<sup>579</sup> I/A Court H.R., [Case of Cantos, Judgment of November 28, 2002](#). Series C No. 97, paras. 54 and 55.

administrative nature. It so stated in the case of *Yean and Bosico*, in which the IACHR expressly discussed the need to set limits on the cost of proceedings, in order to prevent violation of fundamental human rights.<sup>580</sup>

397. Similarly, in its report *Access to justice for women victims of violence in the Americas*, the IACHR gave particular emphasis to the failure of court proceedings on the grounds of violence against women because of the costs involved. The IACHR's research for the writing of the report led to the conclusion that the lack of economic resources in order to produce evidence does, in many cases, hamper judicial proceedings on the question of violence against women.<sup>581</sup>

398. Moreover, since most people living in poverty are usually living outside urban areas, and many others live in marginal areas or remote places that are difficult to reach, the lack of accessible judicial systems constitutes a very significant obstacle to access to justice. Thus, for example, the IACHR has indicated that the paucity of courts and state support means that victims must draw on significant economic and logistical resources of their own in order to file complaints and participate in court proceedings.<sup>582</sup>

399. In light of this situation, the Inter-American Commission noted the importance of community resources—such as justices of the peace and community ombudspersons—and the need for them to have available the mechanisms and resources needed to ensure that they are effective, in order to offer basic services to women victims of violence in rural areas, marginal and poor areas, as well as information on legal procedures, support in administrative processes and support for victims in court proceedings.<sup>583</sup>

400. In its report *Access to justice for women victims of violence in the Americas*, the IACHR referred in particular to the difficulties that women of African descent and indigenous peoples face in gaining access to the courts. With regard to the former, the IACHR noted:

Afro-descendant women who live in marginalized, rural areas in small, tightly clustered social groups that still preserve their languages, traditions and customs and sometimes even their own systems of justice, will have to contend with problems of geographic accessibility, an inability to communicate with judicial authorities in their own languages, a knowledge of the process, and a lack of economic means. These are the very same problems that indigenous women face. And like indigenous women, Afro-descendant women will have to contend with discrimination on two levels: one based on their gender and the other based on their race. (...) Theirs is not unlike the situation of Afro-descendant women in urban areas, where the difficulties they will face in availing themselves of effective judicial remedies, have to do with their economic disadvantage and skin color. In those areas where the economic factor and social exclusion have been conquered, the difficulties are generally related to skin color.<sup>584</sup>

401. The Inter-American System has also spoken to the vulnerabilities that restrict access to the courts by persons with disabilities, and by children and adolescents. In the case of *Furlán vs. Argentina*, a fourteen year-old boy was hit on the head by a crossbeam while he was playing on a military training circuit that had been abandoned by the Army. The boy's father file a court case to obtain relief for the harm that his son had suffered, but the excessive delay in the handling of the civil suit for damages against the State disproportionately affected the boy, who depended because of his disability on a timely response from the

<sup>580</sup> I/A Court H.R., I/A Court H.R., [Case of the Girls Yean and Bosico v. the Dominican Republic](#). Judgment of September 8, 2005 Series C No. 130.

<sup>581</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 156 et seq.

<sup>582</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 182.

<sup>583</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), para. 182. Also see [Report on the Situation of Human Rights in Ecuador](#), op. cit., Chapter III.

<sup>584</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), paras. 213 and 214. See also IACHR, *Violence and discrimination against women in the armed conflict in Colombia*, October 18, 2006 (OEA/Ser. L/V/II, doc. 67), Chapters IV and V. F.

judicial authorities to obtain medical treatment. In its analysis, the Court recalled that “the link between the disability on the one hand, and poverty and social exclusion on the other, is direct and significant”.<sup>585</sup>

402. Bearing in mind the importance of recognizing the particular needs of certain segments of society, such as children and adolescents and people with disabilities, the Court found that “if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly...”.<sup>586</sup>

403. Since most of the social benefits and awards geared to people who live in a situation of poverty are handled administratively, it is essential that access to the courts and an effective judicial protection of rights, particularly economic, social and cultural rights, be guaranteed.

404. The Commission has noted that the majority of these social policies or programs does not have a rights-based approach, and instead, are organized and delivered according to a “handout” approach.<sup>587</sup> In this context, the acts of public administrations have traditionally been the preserve of the political discretion of the authorities, institutional controls notwithstanding.<sup>588</sup> The lack of effective judicial remedies against the negative consequences of social policies in, for example, health care, housing, education, social security and work/jobs or else against administrative decisions concerning social welfare or migratory procedures, thus means that individuals cannot obtain relief if their human rights, such as the right to equality and non-discrimination and the right to information, are violated. That would represent an obstacle to access to justice for people living in poverty and who are disproportionately affected by these policies.<sup>589</sup>

405. As stated earlier, social benefits assumed by the States have often not necessarily translated into the creation of concrete rights. In a number of cases, the State assumed these functions as the result of discretionary interventions or because of the way it organized its activities, such as the provision of public services or the drawing up of targeted social programs or plans. The Inter-American System has established its position on the observance of due process guarantees, and has moved forward in identifying certain due process standards that should apply to administrative procedures, such as, inter alia, reasonable time periods, the right to judicial review and to legal counsel, the right to a reasoned decision and to publication of administrative acts, with the goal of avoiding inappropriate levels of discretionality that might encourage arbitrary or discriminatory practices.<sup>590</sup>

406. The IACHR and the Court have also specified, as elements that are part of due process of law, the right to a reasoned decision on the merits and the need to ensure that the administrative actions are published. They have also said that there is a right to a reasonable time period for administrative processes. Another component of the guarantee of administrative due process that has evolved is the right to judicial review of administrative decisions. Here, the IACHR has determined that any rule or measure that hinders access to the courts and that is not properly justified by the reasonable needs of the administration of justice must be understood as contrary to Article 8(1) of the Convention.

407. Another aspect examined in the case law of the IASHR is the existence of clear criteria on due process of law in judicial proceedings, in cases concerning the determination of economic, social and cultural rights. There is a direct connection between the suitability of available judicial remedies and the real possibility of observance of economic, social and cultural rights. On this matter, both the Court and the IACHR

---

<sup>585</sup> I/A Court H.R., [Case of Furlán and Family v. Argentina](#), paras. 72, 201 and 194.

<sup>586</sup> I/A Court H.R., [Case of Furlán and Family v. Argentina](#), paras. 72, 201 and 194.

<sup>587</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), op. cit., para. 95.

<sup>588</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), op. cit., para. 95.

<sup>589</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), September 7, 2007, para.31.

<sup>590</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), para. 96.

have identified those elements that comprise the right to due process set out in Article 8(1) of the American Convention as regards social rights proceedings, which bear certain characteristics that distinguish them from other criminal or civil proceedings, in addition to having a number of features in common.

408. The Inter-American System has identified the principle of equality of arms as an integral part of due process, and has developed standards for its observance and assurance. This principle is highly significant given that the types of relationships governed by social rights usually give rise to and presuppose conditions of inequality between the parties to a dispute (workers and employers) or between the beneficiary of a social service and the State providing the service. This inequality generally translates into disadvantages in the framework of judicial proceedings.

409. The Inter-American Commission has noted that the particular circumstances of a case may determine that guarantees additional to those explicitly set out in human rights instruments are necessary to ensure a fair trial. For the IACHR, this includes recognizing and correcting any real disadvantages that the parties to a proceeding might have, thereby observing the principle of equality before the law and the prohibition of discrimination.<sup>591</sup>

410. The right to effective judicial protection of social rights requires States to provide suitable and effective judicial mechanisms for the protection of social rights, in both their individual and their collective dimension. Traditionally, judicial remedies on the law books were conceived for the protection of convention civil and political rights. Most countries of the hemisphere have created and enacted regulations on simple, prompt judicial remedies to protect rights in serious and urgent situations. However, often these judicial remedies do not work well to protect social rights. Sometimes, this is due to limitations on the ability of groups or collectives of victims of violations to bring suit, or to bureaucratic delays in judicial proceedings that render them ineffective. In some cases also, problems have been noted in accessing these remedies because protection is not extended to some social rights that are not considered to be fundamental rights or because procedural requirements for admission are excessive.

411. The Inter-American System has sought to establish some basic principles to be met by these remedies for urgent protection in order to comply with the American Convention. The right to effective judicial protection also requires that judicial procedures intended to protect social rights should not impose conditions or obstacles that would render them ineffective in accomplishing the purposes for which they were designed. Thus, the IASHR has found that in certain cases, there are major obstacles and restrictions on the enforcement of final judgments against States, particularly with respect to judgments that recognize social security rights. The tendency to invoke emergency laws in this area limits the States' possibility of discharging financial obligations and tends to grant exorbitant privileges to the Administration vis-à-vis those whose rights have already been recognized by the courts.

412. Article 25 of the Convention establishes the duty of States to provide a simple, prompt and effective recourse for the protection and assurance of human rights. Thus, the organs of the System have drawn up standards on the scope of that obligation in the area of economic, social and cultural rights. Both the IACHR and the Inter-American Court have identified the need to provide procedural measures to ensure the immediate—and even precautionary or preventive—protection of social rights, even though the merits of the question may require a more prolonged analysis.

413. At the same time, the IACHR has found that the right to effective judicial protection requires that court-ordered provisional decisions be implemented. Accordingly, failure to implement such measures may also constitute violation of this right. The Inter-American Commission has also forged an important standard regarding the lengths to which victims should be required to do to seek compliance with judicial rulings in their favor. It has therefore stated that States should ensure immediate compliance with such judicial decisions, without its being necessary for those affected to bring additional actions of a criminal, administrative or any other nature in order to secure enforcement. The IACHR has also been emphatic about

---

<sup>591</sup> IACHR, [Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights](#), paras.15-20.



the need to ensure enforcement of administrative decisions. Thus, it considers it necessary for the Administration to have in place effective mechanisms for ensuring compliance with orders issued by the administrative authorities.

## IV. CONCLUSIONS AND RECOMMENDATIONS

414. The IACHR regards this report only as a first step in the efforts of the inter-American system to confront poverty and extreme poverty in the Americas through enhancement and strengthening of the laws, policies, and practices of States for tackling the problem and ensuring that the human rights of people living in poverty and extreme poverty are properly respected and protected.

415. Based on the information it has received through its various working mechanisms and, in particular, that compiled from the responses to the questionnaire distributed for this report, dialogue and consultations with states, civil society, and experts on the subject, and observation visits carried out for that purpose, the IACHR observes with disquiet that the persisting situation of poverty and extreme poverty translates into serious obstacles to the effective enjoyment of human rights, whether economic, social, and cultural rights, or civil and political rights.

416. Notably, in the observation visits that it conducted for this report, the IACHR found that people who live in poverty frequently run into different obstacles—geographic, financial, cultural, and social—when seeking to exercise their rights. In terms of geographic obstacles, for example, people in poverty sometimes live far from their places of work, communal spaces, and markets, and have difficulty accessing basic services, such as clean drinking water, quality health care, schools and colleges, and government entities that provide social services. In addition, they sometimes have to travel great distances and use dilapidated roads and infrastructure, endangering their lives. Due to the fact that people in poverty often live in remote, far-flung areas, they face obstacles associated with a lack of access to basic services such as electricity, water and sewerage, and a telephone in the event of an emergency.<sup>592</sup>

417. The obstacles faced daily by individuals, groups, and communities living in poverty and extreme poverty compound one another—inadequate or even dangerous working conditions, lack of housing and squalid living conditions, undernourishment or malnutrition, a risk of preventable diseases, unequal access to justice, and a lack of participation in decisions on matters that concern them—with repercussions on the effective enjoyment of their human rights.

418. The IACHR concludes this report with a number of general recommendations for progress and underscores the obligation of States to take deliberate, concrete steps to implement them in order to move forward with eradicating poverty and extreme poverty in the Americas. The IACHR draws attention to the principle of non-regression in carrying out all these obligations and recommendations and highlights that access to justice is critical when human rights violations occur in this area.

419. In keeping with its mandate, the Inter-American Commission reiterates its commitment to working with American States in devising and implementing public policies with a human rights-based approach for progressively eradicating poverty and extreme poverty completely in the Hemisphere. Likewise, it reiterates its commitment to protecting the human rights of people who live in poverty and extreme poverty and places itself at their disposal to examine and assess, in accordance with inter-American and statutory norms, possible human rights violations that have been generated by poverty in and of itself, or that have arisen in a context of poverty as a cause or consequence.

420. The IACHR considers it important to reiterate in that connection that "poverty inhibits the ability of the individual to enjoy his or her human rights." Therefore, States Parties to the American

---

<sup>592</sup> IACHR, Visits to Bolivia, Guatemala, Paraguay, and Guyana. During those visits, the delegation noted that geographic distances represent an obstacle that disproportionately affects people who live in poverty.

Convention are required in the first instance to respect all the rights and freedoms established therein, pursuant to the terms of Article 1 and the related Inter-American standards referred to above.<sup>593</sup>

421. In that connection, it puts forward the following recommendations for addressing poverty and extreme poverty as a problem of human rights.

### **Eradicating poverty and extreme poverty with a human rights-based approach**

1. The IACHR recommends that States design and implement comprehensive policies that simultaneously pursue specific measures and strategic plans on the operational, regulatory and preventive planes with the aim of eradicating poverty and extreme poverty in the Americas

2. The IACHR urges States to adopt a human rights-based approach in their design, implementation, and evaluation of social, fiscal, economic, commercial, tax, and environmental policies and, in general, for all programs all measures pursued as part of their strategies, in order to eradicate poverty and extreme poverty.

3. The IACHR recommends continuing and broadening the coverage of policies and programs that States in the hemisphere are currently implementing to ensure the enjoyment and exercise of human rights on an equal footing for individuals, groups, and communities that live in poverty and extreme poverty.

4. The IACHR calls upon all states to ensure that their global poverty eradication strategies incorporate special programs that give priority to addressing and dealing with extreme poverty, in order to expedite the removal of obstacles that impede historically discriminated-against groups, persons, and communities living in extreme poverty from exercising their human rights.

5. The IACHR urges States expressly to recognize and address areas of interdependence between economic, financial, and commercial policies on one hand, and social policies, on the other; as well as the impact of those policies on the rights of people living in poverty and extreme poverty.

6. The IACHR recommends that States progressively implement measures to bring about the full realization of economic, social, and cultural rights of persons, groups, and communities living in extreme poverty.

7. The IACHR also calls upon States to set concrete goals with specific time frames for the policies and plans that they adopt to eradicate poverty, and that in times of economic crisis and recession they refrain from imposing cuts on policies and programs that benefit historically discriminated-against persons, groups, and communities, such as women, children, persons with disabilities, people of African descent, indigenous peoples, and others.

8. States should adopt labor, education, and economic legislation and policies that take into account how economic, social, and cultural rights intersect with civil and political rights. Consideration must be given to the specificities of the target population, taking into account the particular characteristics of girls, indigenous women, women of African descent, migrant women, and persons with disabilities, among other groups particularly at risk of violations of their human rights.

### **Equality and nondiscrimination**

9. Legislative, executive, and judicial branch organs should analyze all laws, rules, practices, and policies that provide for differences in treatment based on social status or that could have a

---

<sup>593</sup> IACHR, [Report on the Situation of Human Rights in Ecuador](#) (1997), Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador.

discriminatory impact as defined in this report. They should also take the necessary steps and measures to ensure genuine equality for historically discriminated-against persons, groups, and communities.

10. The IACHR recommends that public policies be instituted to do away with discriminatory and exclusionary stereotypes associated with poverty in society.

### **Progressive realization and non-regression of ESCR**

11. The IACHR reiterates that under the principle of progressive realization, States are forbidden to adopt policies, measures, and laws that, without proper justification, worsen the situation of economic, social, and cultural rights enjoyed by the population.

12. The IACHR urges states to report on what steps they have taken to mobilize the maximum available resources in order progressively to achieve the full realization of economic, social and cultural rights without discrimination of any kind.

### **Access to justice**

13. The IACHR recommends that a comprehensive, coordinated state policy be designed and backed up with the necessary public resources to ensure that persons living in poverty and extreme poverty have access to adequate judicial protection.

14. The IACHR recommends establishing suitable and effective judicial bodies and remedies in rural, marginalized, and economically disadvantaged areas in order to ensure full access to effective judicial protection. The number of available public defenders should also be increased.

15. The IACHR recommends promoting the eradication of discriminatory sociocultural patterns that impede full access to justice. This should include training programs and comprehensive policies on prevention.

### **Empowerment and participation**

16. The IACHR reiterates that States should develop coordinated intersectoral policies on access to resources and the rights to decent work, health care, food, housing, and education of people living in poverty and extreme poverty, so as to enable them effectively to exercise their rights and thus ensure their economic and social empowerment.

17. The IACHR recommends establishing mechanisms for consultation with persons enrolled in government programs set up to satisfy their rights, so as to have institutional channels by which to take into account their experiences and opinions.

### **Accountability**

18. Government policies for eradicating poverty and extreme poverty in the Americas should be sustainable and subject to constant evaluation and accountability mechanisms in a framework that allows broad public participation.

19. The IACHR recommends establishing effective accountability procedures, based on internal and external control mechanisms, for all officials with responsibilities in relation to poverty eradication policies, which will help to strengthen democratic institutions and transparency in public office. There should also be mechanisms in place to combat impunity and corruption.

## **Production of, and access to, information**

20. The IACHR recommends that States adopt programs for compiling statistics disaggregated by gender, race, ethnicity, and poverty/extreme poverty status, along with systems of indicators with an intersectional focus, that serve to perform diagnostic assessments with a view to instituting pertinent policies and measuring progressive compliance with states' obligations.

## **Freedom of expression**

21. Adopt a legal and regulatory framework that promotes the right of different persons and groups to access and use digital media and technologies to disseminate their own content and receive relevant content produced by others.

22. Make efforts to gradually close the digital divide that exists—particularly in terms of access to the Internet, mobile telephony, and adequate devices—between those with access to digital technologies and sectors still without that access. Internet access involves at least three types of measures that should be progressively adopted: (i) positive measures to reduce the digital divide; (ii) efforts to implement plans to ensure that infrastructure and services tend progressively to guarantee universal access; (iii) measures to prohibit blocking or restriction of access to the Internet or any part thereof.

## **Specific recommendations for persons, groups, and communities living in poverty and extreme poverty**

### **Women**

23. The IACHR recommends that all poverty eradication programs and policies incorporate a mainstreamed gender perspective and explicitly address the structural nature and different dimensions of poverty that women face, particularly indigenous women, women of African descent, and those who live in rural areas. It also underscores the priority to adopt measures to make sure that women have full access to maternal health care services and that there are policies in place to prevent all forms of violence against women. States should create the necessary conditions for women—particularly those who live in poverty and suffer multiple forms of discrimination—to have a basic knowledge of their rights and the law, of social programs designed to help them move out of poverty, and of available judicial remedies in the event of violations of their human rights.

### **Children and adolescents**

24. The IACHR recommends that States, bearing in mind the best interests of children, give primary consideration to the impact of poverty on children and adolescents. In particular, the IACHR urges States to strengthen and expand the coverage of social protection policies for families, and that they strengthen national child protection systems and their services at the local level. The IACHR especially underscores the importance of strengthening the incorporation of poverty alleviation strategies in education and health care systems

### **Indigenous peoples**

25. The IACHR recommends moving forward with assisting indigenous communities to move out of poverty and extreme poverty by adopting multidimensional measures to close inequality gaps between indigenous and non-indigenous communities in terms of the impact of poverty and extreme poverty.

## **People of African descent**

26. The IACHR recommends that States adopt affirmative action measures to prioritize the inclusion of people of African descent in all areas of the labor market, as well as in education at all levels, in both public and private spheres. The IACHR also urges States to adopt an ethnic-racial awareness approach in social policies to combat poverty, so as to address the particular situation of people of African descent, especially women and children.

## **Migrants**

27. The Commission believes that the rules and standards of international human rights law should take account of the special protection needs of certain migrants who have been forced to leave their countries of origin because of existential threats against which they have no recourse to a remedy or solution at the domestic level. As regards development of standards, the organs of the inter-American system have also been progressively developing concepts such as the right to a life with dignity, in addition to identifying various forms of cruel, inhuman and degrading treatment. Jurisprudential advances of this nature should be taken into account when making a determination as to whether or not people living in poverty have migrated as a consequence of violations of such rights. In turn, the Commission believes that the use of concepts such as the right to a life with dignity and the prohibition of cruel, inhuman and degrading treatment could be grounds to prevent the return or deportation of migrants when there is a risk that their rights to life and humane treatment could be violated.

## **Persons deprived of liberty**

28. The IACHR recommends that States adopt the necessary measures to provide public legal assistance to persons in pretrial detention or who are serving a sentence and are eligible to seek a review of their incarceration or prison benefits, so that they are not denied access to legally available review mechanisms or benefits for lack of financial means. The IACHR also urges States to identify which neglected infectious diseases are a priority in prison contexts. The IACHR also suggests that States adopt laws governing all aspects of visit regimes so as to promote the family ties of persons deprived of liberty and ensure that they are maintained, regardless of inmates' socioeconomic status. Finally, the Commission recommends that States take the necessary steps to ensure that noncustodial measures are applied in accordance with material equality criteria.

29. Taking into account the different consequences faces by women deprived of liberty, as well as the affectation to their children, the IACHR calls on States to apply gender perspective in the creation, implementation and follow-up of reforms of laws and practice aimed at reducing the use of preventive detention; specifically, to adopt the actions necessary to apply alternative measures.

30. To put in place public or private services with a view to providing persons formerly deprived of liberty with effective post penitentiary assistance that allows for social reinsertion.

## **Persons with disabilities**

31. The IACHR recommends that States ensure that all strategies in relation to persons with disabilities are based on the paradigm shift recognized in the Convention on the Rights of Persons with Disabilities. In that regard States should ensure that persons with disabilities and the organizations that represent them are consulted for the purposes of conducting a systematic review of laws, policies, and programs that takes into account the human rights of persons with disabilities. The IACHR also notes that States should review laws, policies, or programs that entail a distinction, restriction, or denial of rights of persons with disabilities by reason of their poverty or extreme poverty, or that make certain services or benefits for persons with disability inaccessible because of their economic status.

## **LGBTI groups**

32. The IACHR underscores the need to incorporate the dimension of sexual orientation and gender identity in national information-gathering systems, policies, and social programs; adopt guarantee measures, including legislative and policy measures, that ensure social protection to trans, lesbian, gay, bisexual, and intersex persons, with particular emphasis on access to education, housing, work, and health care; adopt fiscal measures to provide such policies with budget funding commensurate with the problems that they seek to address, so as to ensure their effectiveness and suitability; and adopt, in consultation with civil society organizations and the persons concerned, effective measures to improve health care services and their accessibility for LGBTI persons, in order comprehensively to ensure their right to health.