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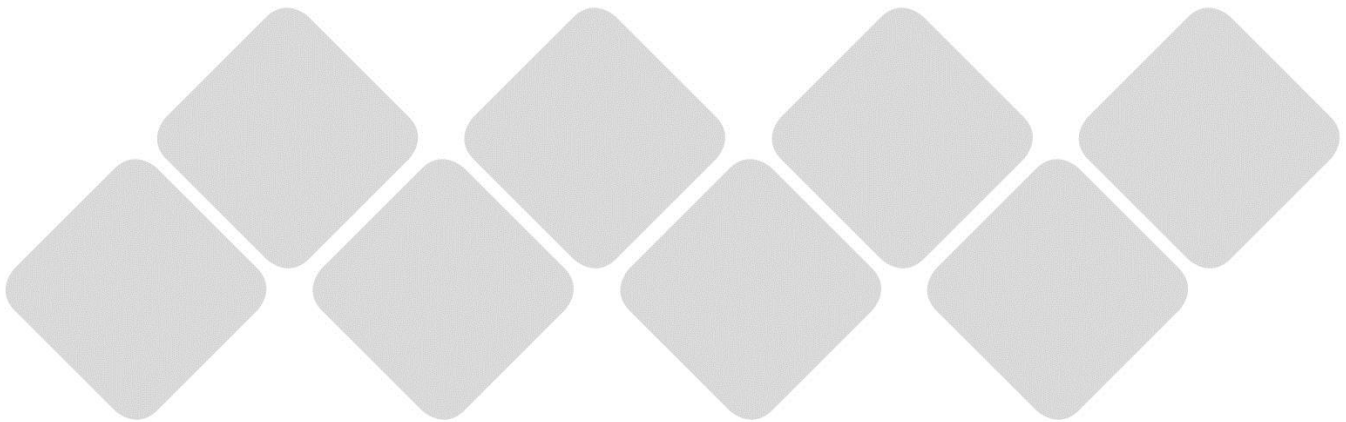
PROGRESS INDICATORS FOR MEASURING RIGHTS UNDER THE PROTOCOL OF SAN SALVADOR



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American States



PROGRESS INDICATORS FOR MEASURING RIGHTS UNDER THE PROTOCOL OF SAN SALVADOR



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FOREWORD

The founding pillars of the Organization of American States (OAS), as well as the development of the rich Inter-American juridical framework and regional consensus initiatives, establish the indivisibility of rights, and the interdependence of democracy, social justice and the development of its people.

Today, more than ever before, we take for granted that full citizenship requires the fulfillment of rights in the political, civil and social realms. While it is true that our region has come a long way in terms of progress by states in ensuring and fulfilling civil and political rights, it is also true that significant challenges still remain in the area of economic, social, and cultural rights. We still have work to do on this matter.

Thus, at the OAS General Secretariat we are convinced of the need to pursue “more rights for more people”; and the OAS has all the necessary tools for us to advance towards this end.

The Inter-American human rights system provides a unique, binding juridical instrument for the observance of social rights for the citizens of the region: the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (SSP). The Protocol enshrines the obligations for the observance of economic, social and cultural rights representing a mandate to States to respect and concretely implement these rights and provide guarantees for the exercise of these rights to the citizens in the region.

Since the Protocol entered into force in 1999 considerable advances can be seen. We are currently facing a historic moment for the Inter-American system in terms of the implementation and follow-up mechanism of the Protocol with a set of progress indicators recently approved by member states, a functional Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador, and an ongoing process for the analysis of national reports submitted by States Parties.

By encompassing both groups of “Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador” developed by the Working Group and approved by OAS member states, this publication provides valuable input to foster the economic, social and cultural rights agenda, and provides a concrete tool for the follow-up and improvement of public policies in this field of action.

These progress indicators -on the rights to social security, health, education, work and trade union rights, adequate food, a healthy environment and the benefits of culture- are pioneers in the design of a methodology prioritizing regional indicators and providing information with regards to the progress of social policy in each country, recognizing the principle of progressiveness of economic, social and cultural rights.

Today the Inter-American system can rely on this tool for measuring and monitoring the fulfillment of the Protocol that contributes to the progressive compliance of social rights, as



well as towards the identification of the conditions that promote or hinder the possibility of effective access to these rights. Moreover, and beyond the ratification process currently underway, the indicators can contribute towards the design and permanent evaluation of Member States' public policies aimed at ensuring compliance with social rights.

I would like to acknowledge the valuable efforts undertaken by the Working Group responsible for analyzing the National Reports of the States Parties of the Protocol of San Salvador, given their constant dedication to this process and for the development of these progress indicators. In addition, I applaud the political will of OAS Member States in approving these indicators, and their commitment to advancing economic, social and cultural rights in the region.

To ensure full citizenship for the people of the Americas, we must continue to work tirelessly in promoting progress in the fulfillment of social rights. The General Secretariat of the OAS is fully committed to continue encouraging this agenda and achieving the goal of “more rights for more people”.

Luis Almagro
Secretary General
Organization of American States



INTRODUCTION

With great pleasure we present this volume that encompasses the long and necessary process of implementation of the Additional Protocol to the American Convention of Human Rights on Economic, Social and Cultural Rights (ESCR), known as the “Protocol of San Salvador” (“The Protocol”) approved in 1988. It has been effective since 1999, with 19 signatory states and 16 ratifications to date, thus beginning a process of incorporating ESCR in the regional human rights structure.

The Protocol establishes obligations related to the fulfillment of the right to health, the right to adequate food, the right to enjoy a healthy environment, to education, rights to work and unionization, the right to social security, cultural rights, the recognition of the rights of children and adolescents, elders, people with disabilities, gender inequalities, the rights of the indigenous and African descendants that, along with other specific rights, have entered in the regional public agenda as a mandate of respect but particularly of concrete implementation for States and guarantees for citizens of the region, proprietors of the rights referred to in the Protocol.

This commitment is complemented with the addition of two mechanisms for monitoring compliance under the Protocol: i) a system of individual petitions for alleged violations of freedom of association and education rights (Article 19, 6); and ii) a system of periodic reports by states parties on progressive measures adopted to ensure due respect for the rights (Art. 19).

However, the process of state obligations was not automatic, and it was in 2005 that the General Assembly of the OAS approved the “Guidelines for the preparation of the periodic reports provided in the Protocol of San Salvador” (AG/RES. 2074-XXXV-O/05). This resolution establishes that in order to follow the Protocol, the reporting should be governed by the principle of progressiveness and by a system of progress indicators, thus generating for the first time an important signal boost to the compliance process.

To advance towards a first definition of the content of the indicators, the General Assembly noted that it was necessary to discuss and agree on the composition of the Working Group to analyze the periodic reports of states parties of the Protocol (from here on WG). It was also necessary to define the selected progress indicators so that States could report on the fulfillment of their obligations on ESCR. The Inter-American Commission on Human Rights (IACHR) was asked to propose indicators that measure progress -or regression if it were the case- of States, included in the first indicators incorporated in the “Guidelines for the preparation of Progress Indicators on Economic, Social and Cultural Rights” (CP/doc. 4250 corr.1). This mechanism of verification proposed by the IACHR established important new features, which differentiates it from similar instances. Although in recent years there have been notable advances in the use of indicators to measure compliance of human rights



standards, the reporting system proposed for the Inter-American level combines quantitative indicators with qualitative progress signs and these in turn with crosscutting categories for all rights, while adopting a methodology from a human rights approach. It also establishes linkages between the commitments adopted by the States and domestic public policies. It was thus received with great expectation and satisfaction by different specialized human rights sectors in general and social rights in particular, and it was debated over a period of public consultation, where comments and observations were received from government and civil society and specialized ESCR agencies.

The decision on the selected indicators to measure progress in the implementation of the Protocol was then handed to WG. The WG became operative in May 2010 with the designation of its regular experts, and from then on began with the task of developing indicators of fulfillment, using the above mentioned necessary sources as background. The WG took a first decision to establish two sets of rights under the Protocol. The first group of rights includes the right to health, social security and education; and a second cluster, including the right to work and trade union rights; right to adequate food, healthy environment and the right to the benefits of culture. This division reflects a decision by the monitoring body to start the process of defining and legitimizing indicators in a phased manner, and at the same time guaranteeing time and technical assistance to the States in the process of producing and gathering the information necessary for calculating the indicators. Another decision was made, to incorporate crosscutting elements to each group of rights and particular rights: a gender equality approach, specificities of the rights of children and adolescents, the elderly, people with disabilities, ethnic and cultural diversity, and the incidence of civil society in the formulation of legislative proposals and public policies that correspond to the other rights established in the Protocol (Articles 15 to 18).

Given the aforementioned background the WG began immediately -without a budget to operate regularly- the development of a new document of indicators. The latter was open once more to a consultation period for States and civil society organizations, hence promoting a key participation process of discussion on indicators. The WG received valuable States' contributions and from civil society organizations and specialized agencies which, not only provided specific comments on the indicators, but also started off an active process of demand for the approval of the Protocol monitoring mechanism. The contributions, exchanges and debates contributed towards the new version of the indicators document, which was in turn approved by the OAS General Assembly "*on the understanding that these are guidelines and criteria for the states parties, who will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Protocol*". The date set for the presentation of the reports corresponding to the first group was June 2014.



Next, the WG produced a document with the indicators for the second group of rights, which followed a similar path to the previous set of indicators, resulting in two successive versions with contributions made by States and civil society organizations. This document was approved by the OAS General Assembly and the timeframe for the reports submission was set for June 2016. The reports from countries that follow these two first sets will be presented in a single report, containing the two groups, and will be due by June 2019.

Both documents are incorporated into this publication, hence providing, from this point forward, a Guide States can resort to for the preparation of their reports. However, the implementation of a verification system for the progress of state commitments on ESCR implies an enormous challenge for those involved in the enforcement of rights, whether be it public actors, politicians, civil society and individuals themselves whom these rights protect. Consequently, these documents have been prepared under the conviction that they represent a step beyond the report, and that they constitute a necessary tool for state action respecting human rights, and are at the same time useful to citizens.

The Working Group welcomes these developments and reiterates its willingness to collaborate throughout the ESCR verification process by the States, as well to receive concerns and contributions from social civil organizations. At the same time, the WG reiterates the need to further advance in strengthening the support to the WG within the OAS, the need for continuous support from Member States and guarantees regarding its financing.

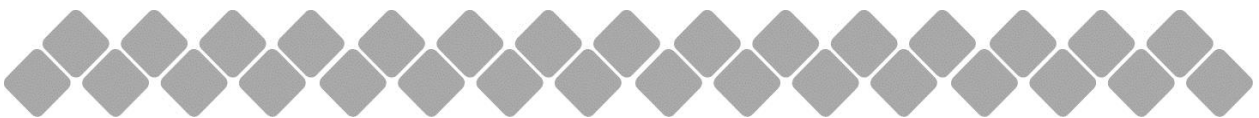
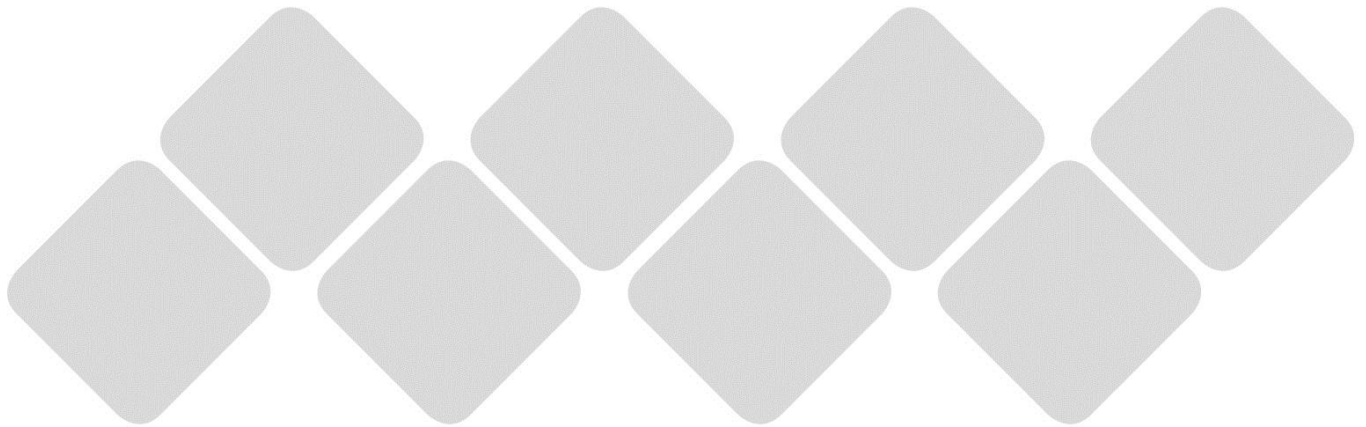
The evolution of these developments has involved a major learning process for all parties involved. It is expected that a system of this nature enhances –for governments, civil society, specialized technical entities and citizenship- the opportunity for the main instrument of the Inter-American human rights system on economic, social and cultural rights becoming effective.

As members of this mechanism, we hope that these first steps spread numerous and decisive actions, and that the measurement of progress for these indicators constitutes a first evaluation of state action within a broader, more comprehensive and crosscutting process. To the extent that the indicators highlight the need to advance towards solutions that are universal, comprehensive and respectful of identities, we will be giving a key step towards the fulfillment of social rights.

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



Progress Indicators: First Group of Rights





AG/RES. 2713 (XLII-O/12)

ADOPTION OF PROGRESS INDICATORS FOR MEASURING RIGHTS
UNDER THE PROTOCOL OF SAN SALVADOR

(Adopted at the second plenary session, held on June 4, 2012)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4992/09 and addenda), as well as resolutions AG/RES. 2074 (XXXV-O/05), AG/RES. 2178 (XXXVI-O/06), AG/RES. 2262 (XXXVII-O/07), AG/RES. 2430 (XXXVIII-O/08), AG/RES. 2506 (XXXIX-O/09), AG/RES. 2582 (XL-O/10), and AG/RES. 2666 (XLI-O/11);

CONSIDERING the provisions of the American Convention on Human Rights, Chapter III of which refers to economic, social, and cultural rights;

UNDERSCORING the entry into force, in November 1999, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," and its ratification by 16 member states of the Organization of American States (OAS);

RECALLING that, in Article 19 of the Protocol of San Salvador, the states parties undertake to submit, pursuant to the provisions of that article and the corresponding rules to be formulated for that purpose by the General Assembly, periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in said Protocol;

RECOGNIZING that the Plan of Action of the Fourth Summit of the Americas, held in Mar del Plata, Argentina, on November 5, 2005, urged the member states to consider signing and ratifying, or acceding to, as the case may be, the Protocol of San Salvador, and to collaborate in the development of progress indicators in the area of economic, social, and cultural rights; (this paragraph was moved)

TAKING INTO ACCOUNT that resolution AG/RES. 2074 (XXXV-O/05) adopted the Standards for the Preparation of Periodic Reports Pursuant to Article 19 of the Protocol of San Salvador, that resolution AG/RES. 2178 (XXXVI-O/06) instructed the Permanent Council to make proposals as soon as possible, through the Committee on Juridical and Political Affairs, on the composition and functioning of the working group established to examine the national reports in accordance with the Standards; and that resolution AG/RES. 2262 (XXXVII-O/07) approved the composition and functioning of the working group to examine the national reports;



TAKING NOTE of the preliminary document “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights” (CP/doc.4250/07 corr. 1), presented to the Permanent Council by the Inter-American Commission on Human Rights in November 2007, in accordance with the mandate issued in resolution AG/RES. 2262 (XXXVII-O/07);

BEARING IN MIND that, by resolution AG/RES. 2582 (XL-O/10), the General Assembly entrusted the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador with the task of preparing progress indicators to be used for each group of protected rights on which national reports are to be provided; and

TAKING INTO ACCOUNT:

That the Working Group is with its full complement of regular members and has been operative, therefore, since June 2010, and that it has prepared draft progress indicators for the group of protected social rights, based on the document “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights” (CP/doc.4250/07 corr. 1) and in accordance with the Standards for the Preparation of Periodic Reports Pursuant to the Protocol of San Salvador; and (this paragraph was moved)

That said draft was presented to the Permanent Council’s Committee on Juridical and Political Affairs on April 5, 2011, and the countries set November 20, 2011, as the deadline for submitting comments on the draft; and

That, furthermore, in keeping with resolution AG/RES. 2666 (XLI-O/11) a technical meeting was held with the Working Group on October 27 to analyze the periodic reports of the states parties to the Protocol of San Salvador and conduct a comprehensive examination of the evaluation process, taking particular note of the Progress Indicators for Measuring Rights under the Protocol of San Salvador. In addition, in the framework of that meeting, a revised version of the aforementioned document was presented, incorporating the comments of four countries received as of September 30, 2011; and

BEARING IN MIND that none of the provisions of this resolution shall pertain to those member states that are not parties to the Protocol of San Salvador,

RESOLVES:

1. To adopt the document “Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador,” prepared by the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador, corresponding to the first group of rights (rights to social security, health, and education), on the understanding that these are guidelines and criteria for the states parties, who will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Protocol.



2. To request the Working Group to continue to move forward with the definition of progress indicators for measuring the economic and cultural rights corresponding to the second group: right to work and trade union rights (Articles 6, 7, and 8 PSS), right to food (Article 12 PSS), right to the benefits of culture (Article 14 PSS), and right to a healthy environment (Article 11 PSS).

3. To again entrust the Permanent Council with the election of the alternate government expert; and also to authorize the Secretary General to appoint the alternate independent expert on that same occasion.

4. To request the states parties to the Protocol of San Salvador to submit national progress reports corresponding to the first group of rights included in the document “Progress Indicators for Measuring Rights under the Protocol of San Salvador” within two years counted from the adoption of this resolution.

5. To update the Standards for the Preparation of Periodic Reports pursuant to Article 19 of the Protocol of San Salvador, adopted through resolution AG/RES. 2074 (XXXV-O/05), in order to adjust the time period approved in the preceding operative paragraph.

6. To urge member states to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador.”

7. To renew the invitation to contribute to the Specific Fund for the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador [CP/RES. 972 (1761/10)] to all the states parties to the Protocol of San Salvador, the member states and permanent observers to the OAS, as well as national or international, public or private persons or entities, as defined in Article 74 of the General Standards to Govern the Operations of the General Secretariat and other provisions and regulations of the Organization.

8. To request the Permanent Council to report to the General Assembly at its forty-third regular session on the implementation of this resolution. Execution of the activities envisaged in this resolution will be subject to the availability of financial resources in the program-budget of the Organization and other resources.



OEA/Ser.L/XXV.2.1
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16 December 2011
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**PROGRESS INDICATORS FOR MEASURING RIGHTS
UNDER THE PROTOCOL OF SAN SALVADOR**

Final document prepared by the Working Group to Examine the National Reports
Envisioned in the Protocol of San Salvador pursuant to the mandates contained in
resolutions AG/RES. 2582 (XL-O/10) and AG/RES. 2666 (XLI-O/11)

Washington, D.C., December 12, 2011



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* Please note that the numbering corresponds to the document approved by AG/RES.

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INTRODUCTION

1. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) entered into force on November 16, 1999. Article 19 provides that the States Parties undertake to submit, pursuant to the provisions of that article and the corresponding rules to be formulated for that purpose by the General Assembly of the Organization of American States (OAS), periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in said Protocol.

2. The OAS General Assembly adopted the Standards for the Preparation of Periodic Reports pursuant to Article 19 of the Protocol of San Salvador (hereinafter, “the Standards,”¹ instructed the Permanent Council to make proposals on the composition and functioning of the Working Group (WG) established to examine the national reports, and requested the IACHR to propose to the Permanent Council the progress indicators to be used for each group of protected rights on which information was to be provided.

3. The WG is composed of: (i) three government experts, taking into account equitable geographic distribution and rotation, as well as one alternate government expert; (ii) one independent expert, who shall be a highly qualified professional with recognized experience in the field, and one alternate independent expert; and (iii) one member of the IACHR designated for that purpose.² On June 8, 2010,³ the General Assembly stated that the WG had begun functioning, given that it had all its regular members.

4. In July 2008, the IACHR presented the “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights”⁴ (hereinafter the “Guidelines”) for the purpose of evaluating and monitoring economic, social, and cultural rights (hereinafter ESCR or social rights) recognized in the Protocol of San Salvador.

5. Subsequently, the General Assembly assigned the WG the mandate of preparing progress indicators to be used for each group of protected rights on which information is to be provided, based on the Standards and taking the Guidelines into account. In keeping with that mandate, the WG’s experts prepared an initial document entitled “Progress Indicators For Measuring Rights Under the Protocol of San Salvador” (OEA/Ser.L/XXV.2.1) (hereinafter, the

1. Resolution AG/RES. 2074 (XXXV-O/05)

2. OAS, General Assembly resolution AG/RES. 2262 (XXXVII-O/07).

3. Resolution AG/RES. 2582 (XL-O/10). In its first incarnation, the Working Group was composed of government experts from Brazil (Flavia Piovesan), Colombia (Paola Buendía García) and Ecuador (Ramiro Avila Santamaría), an independent expert from Argentina (Laura Pautassi), and two representatives of the IACHR: one as principal (Luz Patricia Mejía), the other her alternate (María Silvia Guillen).

4. The Guidelines, whose preparation was entrusted to Commissioner Víctor Abramovich, were submitted to the states and civil society for a period of consultation and adopted by the IACHR at its 132nd regular session in July 2008. Inter-American Commission on Human Rights (2008), *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, Organization of American States, OEA/Ser.L/V/II.132, Doc. 14, July 19, 2008, Washington DC.



“Indicators”), based on the Standards and Guidelines, which was submitted to states and civil society organizations for consideration via an open consultation mechanism from March 15 to September 30, 2011. In that period, comments and observations were forthcoming from five states parties as well as specialized technical organizations of the United Nations, scholars, human rights agencies, and civil society organizations.⁵

6. States and civil society organizations concurred in their comments that both the document and the theoretical framework underpinning it are conceptually sound. They also consider the manner in which the rights contained in the Protocol would be realized as well as their linkage to domestic public policies to be correct. At the same time, they say that the document is consistent with the global trend to recognize the value of indicators in the field of human rights in general, and ESCR in particular. The specific inputs, proposals, and observations focus mainly on the indicators selected for each right, and consider that they can mostly be measured using available information sources in each country.

7. On October 27, 2011, the WG presented the Indicators Document at a technical meeting convened by the Committee on Juridical and Political Affairs (CAJP) in keeping with the mandate from the OAS General Assembly. By resolution AG/RES. 2666 (XLI-O/11) “Protocol of San Salvador: Presentation of Progress Indicators for Measuring Rights under the Protocol of San Salvador,” the General Assembly resolved that a technical meeting be held with the Group in the CAJP framework, in the fourth quarter of 2011, in order to conduct a comprehensive examination of the evaluation process, taking particular note of the document “Progress Indicators for Measuring Rights under the Protocol of San Salvador.” At the meeting, the OAS Secretary General underscored the importance of the indicators for measuring the economic, social, and cultural rights recognized in the protocol as an essential tool for advancing these rights in the Hemisphere, and added that they were a most valuable resource for quantifying fulfillment of rights and their level of implementation in each country in the region. The Secretary General said that the Indicators Document and the prospective Social Charter of the Americas was the advancement of integral development of states and that they amounted to a substantive reinforcement of the OAS Democratic Charter from the point of view of the indivisibility of all human rights. WG members offered comments on the contents of the Indicators Document. They were followed by representatives of the Inter-American Institute of Human Rights, specialized technical agencies of the United Nations (ECLAC and PAHO), the UN Special Rapporteur on the right to health, and civil society representatives (Dejusticia, Colombia), who said that the Indicators Document was a step forward in the treatment of indicators, that it pioneered a methodology that gave priority to regional indicators, and that it strengthened previous efforts in other forums by developing a mechanism that would enhance the evaluation of states. They concluded that the Indicators Document should be promptly approved.

5. The document was sent to the missions of the states for analysis and is also available on the OAS website on the page of the WG’s technical secretariat: Department of Social Development and Employment, Executive Secretariat for Integral Development (SEDI-OAS). Five countries submitted comments: Argentina, Bolivia, Colombia, Ecuador, and Peru. Comments were also received from experts with the Office of the United Nations High Commissioner for Human Rights (OHCHR), scholars and universities, United Nations technical agencies, human rights organizations, civil society organizations, networks for protection of economic, social, and cultural rights, and other sources. Available at: <http://www.oas.org/en/sedi/ddse/default.asp>



Finally, in the open dialogue with the member states, the latter noted the importance of indicators for reporting on progress in the area of social policy and evaluating the situation in each country. A number of delegations described concrete experiences with human rights indicators already underway in their countries, while several others urged the prompt approval of the Indicators Document. A number of delegations called for a review of the time frames set for the evaluation and reporting by the WG, as well as for delivering progress reports on the second group of indicators. Two delegations inquired about the possibility of submitting additional comments on the document, since it was important that it be a “live” document. In order to accommodate the requests from the two states, the Chair of the CAJP extended the deadline for presenting additional comments on the Indicators Document until November 20, 2011. No further comments were received from states.

8. The WG would like to thank the states for their efforts. It has examined and included in this document most of the observations presented as well as the exchanges at the meeting of the CAJP, and it hereby submits the final version of the document for the states' approval, in keeping with resolutions AG/RES. 2582 and AG/RES. 2666.

I. GENERAL CONSIDERATIONS ON REPORTS

9. The main objectives of the following indicators are to help states parties by providing them with useful tools to review the status of the rights contained in the Protocol, identify outstanding issues and agendas based on a participatory dialogue with civil society, and devise strategies for the progressive realization of the rights contained in the Protocol. The aim is to encourage states to undertake a process of evaluating and measuring fulfillment of social rights that goes beyond mere reporting to become a useful instrument for the design and continuous evaluation of public policies within states, with a view to ensuring comprehensive fulfillment of economic, social, and cultural rights. As the standards say, they “[a]re not intended to record complaints but progress.”

10. In keeping with the Standards, a strategic decision was taken to divide the rights recognized in the Protocol of San Salvador into two groups: the first group of rights includes the rights to social security (Art. 9), to health (Art. 10), and education (Art. 13), which are to be reported on in the first stage of the reporting system; the second group encompasses the rights to work and trade union rights (Arts. 6, 7, and 8) as well as the rights to a healthy environment (Art. 11), food (Art. 12), and the benefits of culture (Art. 14).⁶

11. According to the Standards, “information with respect to each of the protected rights should take the following into consideration: gender equity; special needs groups (children, the elderly, and persons with disabilities); ethnic and cultural diversity, in particular with respect to

6. Paragraph 5.3 of the Standards states that “Reports shall cover the different rights protected in the Protocol of San Salvador under: a. Articles 6 (Right to Work) and 7 (Right to Just, Equitable and Satisfactory Conditions of Work; and Article 9 (Right to Social Security); b. Article 8 (Trade Union Rights); c. Article 10 (Right to Health); d. Article 11 (Right to a Healthy Environment); e. Article 12 (Right to Food); f. Articles 13 (Right to Education) and 14 (Right to the Benefits of Culture).”



indigenous peoples and persons of African descent; and involvement of civil society organizations in any progress in legislative and public policy reform.”⁷ To that end, cross-cutting categories common to all rights have been envisaged that highlight the efforts of states to protect the persons referred to in Articles 15 to 18 of the Protocol (right to the formation and the protection of families, rights of children and adolescents, protection of the elderly, and protection of persons with disabilities).

12. One essential component envisaged for initiating the process is for each state to set priority goals and objectives, which should be defined on the basis of a strategy or action plan with a specific time frame and a process of discussion, debate, and consensus-building by the various political and social stakeholders in each state, with a detailed schedule for monitoring fulfillment of proposed objectives. States Parties are requested to encourage open discussion processes and in order to ensure the participation of an array of actors, specialized technical agencies of the United Nations, universities, human rights organizations, and civil society in the development and implementation of national strategies for the progressive realization of the rights contained in the Protocol, as well as in the processes for preparing reports under the Protocol and, as appropriate, in follow-up on the recommendations of the implementing body. These goals will help to improve the examination of reports through the use of progress indicators, making it possible to measure advances, not only with regard to a particular situation, but also, looking forward, in relation to a state's proximity to the objectives and goals that it has set, depending on the obligations it has adopted.⁸ The social and political dialogue that the reporting process and its supervision may trigger will be appreciable in its own right and be regarded as a strategy for ensuring social rights in states parties. It should be noted that this is a gradual process that will improve over time depending on the direction in which it is taken. However, particularly high value will be attached to the commitment displayed by states to put it into effect.

13. A gradual process is proposed precisely because of the conviction that it is necessary to simplify measurement, without sacrificing methodological rigor, accuracy, validity, reliability, and participation, so as to include the supervision envisaged in the framework of the protocol in the states' implementation of public policies, while drawing a distinction between indicators that measure socioeconomic development from those that measure rights, in order to avoid duplicating efforts already made by states, specialized agencies, and observatories that produce indicators in the region.⁹

7. Resolution AG/RES. 2074 (XXXVI-O/05) of June 7, 2005. Appendix, Context of the Proposal.

8. All evaluations must be based on empirical evidence and distinguish between: goals, which are the desired ends and expressed in qualitative terms (“reduce mortality in under fives”); targets, which are the quantitative levels we seek to attain over a specific time (“reduce mortality in under fives by two thirds between 1990 and 2015”), and, lastly, indicators, which are variables used in targets to measure progress toward goals (“mortality rate in under-fives”). Simone Cecchini (2007) *Indicadores ODM y derechos humanos en América Latina: ¿Tan lejos, tan cerca?* [MDG indicators and human rights: So near and yet so far?], ECLAC, Santiago, Chile.

9. As indicated in the Standards, the aim is avoiding the repetition of the system already envisaged in the International Covenant on Economic, Social and Cultural Rights (ICESCR) by establishing a methodology common to all treaties that provide for reports, through the grouping of rights. June 7, 2005. Appendix, Standards, 7.



14. The Standards say that “particular attention has been given to the principle of progressiveness of economic, social, and cultural rights (ESCR), understood as the adoption of public policy that recognizes economic, social and cultural rights as human rights, whose full realization, generally speaking, cannot be rapidly achieved and which, therefore, require a process in which each country moves at a different pace toward achieving the goal. Except as warranted in extreme cases, this principle regards regressive measures as invalid and excludes inaction.”¹⁰

15. Accordingly, progress indicators have been defined to monitor the evaluation process, which have to be reliable, pertinent, empirically verifiable, sensitive, relevant, independent, precise, accessible, and readily available or obtainable. The information requested from the State on each right will be organized under a model composed of quantitative indicators and qualitative signs of progress. There will be three types of indicators (structural, process, and outcome), which will be arranged into three conceptual categories: (i) incorporation of the right; (ii) financial context and budgetary commitment; (iii) and state capabilities; and three cross-cutting principles: a) equality and nondiscrimination, b) access to justice, and c) access to information and participation).

16. The efforts underway within the inter-American system seek to contribute to the development of ways to measure and monitor implementation of the Protocol that highlight the progressive realization of social rights as well as conditions that favor or hinder effective access to rights. The objective and scope of these rights indicators distinguish them from traditional indicators that measure variations in levels of development in a particular country or region.¹¹ However, it is important to draw attention to the fact that some of the provisions set out in the Protocol and other international instruments on social rights contain public policy goals that in some cases even guide the activities of states by indicating measures to adopt in order to accomplish those goals. In such cases it will be necessary to adopt indicators that are consistent with and, therefore, complement development indicators. As it will be observed below, many development indicators can sometimes provide the underpinnings for constructing mutually complementary rights indicators.¹²

17. According to the Standards, “the Protocol of San Salvador [is] a yardstick against which to compare, on the one hand, its embodiment in a country's Constitution, laws, and institutions, and in its government's practices; and, on the other, the degree of satisfaction of the

10. Resolution AG/RES. 2074 (XXXVI-O/05) of June 7, 2005. Appendix, Context of the Proposal. It adds that “the principle of progressiveness shall be understood as the criterion of gradual advances toward the establishment of the necessary conditions for exercising an economic, social, or cultural right.”

11. Paul Hunt, Special Rapporteur of the Commission on Human Rights on the right of everyone to enjoy the highest attainable standard of physical and mental health, has suggested a definition, according to which “human rights indicators are specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.” Interim Report of the Special Rapporteur on the *right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Prof. Paul Hunt, submitted in accordance with resolution 2003/45 A/58/427, 2006:4.

12. It is suggested that states submit three to five pages of relevant indicators on socioeconomic development before turning to the implementation indicators for each right.



aspirations of the various social sectors expressed, *inter alia*, through political parties and civil society organizations.”¹³ However, the situation of human rights in a particular state cannot be adequately measured by indicators alone. Hence, indicators cannot be the only tool for verifying compliance with the Protocol.¹⁴

18. In turn, the principle of participation requires that all procedures corresponding to the reporting system be governed by the principle of broad disclosure. While some information might be confidential, the type of information requested for the system of indicators and for the reporting on the situation of the social rights enshrined in the Protocol in general, is of a public nature or of public interest, and states should furnish and publicize it widely. Accordingly, reporting to the WG should proceed in a framework that is as open to participation and as public as possible.

19. The WG will evaluate the reports and monitoring mechanisms according to the principle of reciprocity, since, as the Standards state, “the work entailed in preparing the report benefits the state in return by helping it to draw up a list of its needs and a more precise definition of its wants.”¹⁵

20. It is recommended that states make efforts to ensure that the process is relevant, incremental, and transparent, allowing in-depth examination. They should also avoid overly general recommendations and strive to distinguish economic and social progress from implementation of the economic, social, and cultural rights contained in the Protocol of San Salvador. To that end, country reports should be a maximum of 35 pages long and include appendixes if necessary.

21. The procedure envisaged in the Protocol of San Salvador is intended to monitor compliance or noncompliance with the legal obligations set by the Protocol. The Protocol contains an extensive range of obligations, both positive and negative, as well as immediate and progressive. In order to oversee compliance with these obligations it will frequently be necessary to observe which strategies, measures, and public policies states have implemented in an attempt to ensure the exercise of rights. The international monitoring system seeks to verify progressive and incremental implementation of the human rights contained in the Protocol in the framework of public policies. The WG will also receive alternative or shadow reports from civil society along with supplementary information from specialized United Nations agencies, such as the Pan American Health Organization (PAHO), UNESCO, the Economic Commission for Latin America and the Caribbean (ECLAC), UNICEF, the ILO, UNHCR, and UNIFEM, among others.

13. Resolution AG/RES. 2074 (XXXV-O/05) of June 7, 2005, Standard 5.2.

14. States may implement a policy that efficiently accomplishes its objectives but is discriminatory and, therefore, incompatible with the Protocol. This is precisely what makes the monitoring that the Working Group does valuable, since it will not only use indicators to assess the process, but also other monitoring methods, such as qualitative assessments, supplementary reports by civil society organizations, on-site visits, and interviews with experts, among others, in order to have a wider source of elements by which to identify gaps between recognized rights and their actual implementation in each state.

15. Resolution AG/RES. 2074 (XXXVI-O/05) of June 7, 2005. Appendix, Context of the Proposal.



22. Public-policy progress indicators will show if the state party has adopted the measures required by the Protocol. However, indicators are not a definitive measure of the status of implementation of the Protocol, but merely afford an approximation of the situation in the state party. According to the Standards: *It is worth recalling that it is not a matter of constructing indices in the sense of algebraic formulae for comparing progress made by different countries. On the contrary, the progress indicators system examines processes and affords insight into progress made in the various different fields of rights, helping, inter alia, to spot trends, propitious conditions, and recurrent obstacles, and thus be in a position to recommend concrete measures. Initially, a simple matrix is used, applicable to all the protected rights, as a basic platform for more in-depth and detailed analysis.*¹⁶

23. States can meet their obligations by choosing from a broad range of courses of action and policies. It is not for the international monitoring system to judge those options that each State, with a degree of discretion and according to participatory mechanisms, has adopted for realizing the rights contained in the Protocol. It will be necessary, however, to determine if those public policies ensure fulfillment of their positive obligations -whether immediate or progressive- under the Protocol.

24. The progress indicators mentioned in the Standards and in the Guidelines are not merely intended for reaching general conclusions on progress or setbacks in the implementation of the Protocol by states, but are also designed, in keeping with the principle of progressiveness in ESCR, to be used to examine both general and specific situations in which there may have been reverses in the exercise of certain rights. To the extent that the State undertakes to improve the situation of these rights, it simultaneously accepts the prohibition to reduce the levels of protection for rights in force or, as applicable, abolish existing rights. The undermining or worsening of those factors, or an omission on the part of the State to act, without due cause would constitute an unauthorized regression under the Protocol. The principle of non-regression is, therefore, one of the parameters by which the measures adopted by states are judged. Accordingly, the system of indicators and signs of progress should help not only to reveal developments in the overall situation of a country over a given period, but also, where possible, to identify specific violations of rights recognized in the Protocol, in particular problems of a collective compass, or that stem from reiterated practices or patterns, or from factors of a structural nature that may affect certain sectors of the population.

25. Indicators can take different forms -statistical data collected in a census or household surveys; questions put in a questionnaire or an open interview, budgets, public social spending (all disaggregated by sex, race, ethnicity, socioeconomic background, income quintiles, area of residence [urban/rural], migrants, people displaced by armed conflict, and incorporating gender-, ethnic- and race-specific indicators)- depending on the information-gathering technique that each state selects, with rigorous methodological transparency and in accordance with international agreements and standards. Social indicators are quantitative since, although they may derive from qualitative research methods, they are expressed in numeric values. Indicators used to monitor human rights fulfillment, on the other hand, may also encompass “any information

16. Standards, resolution AG/RES. 2030 (XXXIV-O/04).



relevant to the observance or enjoyment of a specific right,”¹⁷ without that information necessarily being expressed in quantitative terms, on the basis that, where human rights are concerned, both quantitative and qualitative indicators may be used, given the peculiar nature of the task of evaluating fulfillment of human rights standards, and, therefore, all pertinent information is potentially useful and may also be expressed in narrative terms.

26. The system of measurement adopted to monitor compliance with the obligations contained in the Protocol of San Salvador relies on both indicators and qualitative signs of progress. The latter are distinct because they do not originate from a predetermined category or from a given (statistical) measurement scale, but encapsulate the social actor’s definition of the situation and the meaning that they ascribe to the phenomenon under evaluation, which is crucial for interpreting the facts.¹⁸ Signs of progress represent qualitative dimensions that reflect the progression in changes toward the ideal desired outcome (goal). If the goal has been set taking into account real possibilities, signs of progress could be better interpreted in terms of sequential deadlines or periods of time: short-, medium-, and long-term, although this is not an exclusive requirement. Indeed, it is precisely the purpose of signs of progress to monitor accomplishments that help to achieve the desired goal, in this instance the enjoyment and exercise of the economic, social and cultural rights contained in the PSS.

27. The possibility of access to reliable and secure information sources will be critical for ensuring the effectiveness of quantitative indicators and qualitative signs of progress. The indicators and measurement units to be used in each case must realistically take into account the type and quality of information available in each state. For the purposes of the first group of rights, states are requested to base their reports on information sources for 2010 (national population and housing censuses, permanent household surveys; employment, spending and income surveys; family budgets; living standards; vital statistics; demographic and health surveys; educational statistics; national child labor surveys; time use surveys; social security records; national surveys on rights of displaced people; national disability surveys; administrative records: vital statistics (births and deaths); malnutrition; education, health, and labor statistics; migration; multiple indicator cluster surveys (MICS); public spending data at the central and local level, by sectors; and democratic governance databases, among others), subject to availability. The above list is far from exhaustive, it is merely indicative of the main sources in existence. As regards the issues of perception, opinion surveys, participatory evaluations, and signs of progress, the last available measurement may be used as the baseline. The foregoing does not rule out the use of other sources of information by states, provided that they meet the standards of reliability and methodological rigor. Where such information is not available, it is advised that states begin the process of identifying, adapting, and collecting information, as well

17. United Nations (2006:4) Report on Indicators for Monitoring Compliance with International Human Rights Instruments, UN Doc. HRI/MC/2006/7. The United Nations system has also defined social indicators as analytical tools for enhancing knowledge of different aspects of society that interest us, or about changes taking place in it. United Nations (1975), Towards a system of social and demographic statistics, Series F, No. 18, New York, 30.

18. Adaptation of the definition of signs of progress developed by Sarah Earl, Fred Carden, and Terry Smutylo (2002) Outcome mapping. Building learning and reflection into development programs, CIID-IDRC, Ottawa, Canada. The concept was adopted by the IACHR (2008).



as gradually seeking to adapt their statistics systems to a human rights approach. It is also recommended that a crosscutting process be adopted within the different areas of the State—ministerial, administrative, judicial, and legislative— for preparing the report, so that through such interaction an integration dynamic can be consolidated in the evaluation of the different public policy areas, including across different jurisdictions, which would help to institutionalize a rights-based approach in the government administration.

28. The reporting system in the Inter-American framework should complement the procedure for submitting reports to the United Nations Committee on Economic, Social and Cultural Rights and other international and inter-American monitoring bodies. The purpose of monitoring the Protocol of San Salvador is not to duplicate other review mechanisms in the universal protection system. That will only be possible through a judicious selection of problems specific to each region and state, with a view to making the reporting process as precise as possible. The quality of the evaluation process is more important than the length of the report, which is why, as mentioned, reports should be restricted to 35 pages. If absolutely necessary, appendixes may be used.

29. States will have one year to submit their first report on the first group of rights following the adoption of this document by the OAS General Assembly. After 90 days,¹⁹ the Working Group will convey its observations and recommendations to the State Party under review (preliminary conclusions). Each State Party may make additional comments on the preliminary conclusions within 90 days of their receipt, for review by the WG.²⁰

30. One year after the presentation of the first report, each state party will submit a second report covering the second group of rights (right to work and trade union rights, right to a healthy environment, right to food, and right to the benefits of culture). In both reports, the information presented by states should, where available, refer to 2010 and gradually complete the tables with the indicators requested.

31. Within the following 90 days, the WG will present its preliminary observations to the State and a date will be set for a public meeting to review the document, attended by representative of the State and the WG experts. Thereafter, the WG will present its final conclusions to the State Party within 90 days. The WG will adopt its final conclusions on the reports under review by an absolute majority. The State Party concerned will be notified of the conclusions both in writing and at a meeting with its permanent representative to the OAS. The conclusions will then be made public. The next report will be submitted three years after this first process concludes (reports and conclusions on the first and second groups of rights). On that occasion, the states will submit a single report with information on both groups of rights, taking the previous report (based on 2010 data) as the baseline for charting progress.

19. This document details the requirements for the first group of rights. The second report containing the requirements for the second group of rights will be addressed by the Working Group in accordance with the mandate contained in resolution AG/RES. 2666 (XLI-O/11).

20. The period provided in the Standards is 60 days. However, in view of the repeated observations made by the countries to this document, it is suggested that the period set in the standards be extended, bearing in mind that it is extremely short. The WG agrees with the observation and has included it in this document.



II. HUMAN RIGHTS INDICATORS

32. The model adopted for assessing implementation of the rights contained in the Protocol is based on three types of indicators: (i) *structural*, (ii) *process*, and (iii) *outcome*.

33. *Structural indicators* reflect the ratification/adoption of international legal instruments essential for facilitating the realization of a fundamental human right. They provide information for evaluating *how* the State organizes its institutional machinery and legal system to meet its obligations under the Protocol; that is, if measures, legal rules, strategies, plans, programs, or policies are in place or have been adopted, or whether government agencies have been created to implement those rights. Structural indicators have to focus foremost on the domestic laws relevant to the concerned right and the institutional mechanisms that promote and protect the standards. Although structural indicators look at whether or not measures are in place, they must also include relevant information for understanding some of their chief characteristics, for example, if standards are operational or not, or the rank or functional jurisdiction of a particular government agency or institution; in other words, they examine the regulatory framework and strategies that the State indicates as appropriate and effective for a particular right.²¹

34. *Process indicators* seek to measure the quality and extent of the state's efforts to implement rights by tracking the scope,²² coverage, and content of strategies, plans, programs, or policies, or other specific activities and interventions designed to accomplish the goals necessary for the realization of a given right. These indicators help to monitor directly the application of public policies in terms of progressive realization of rights. Process indicators can also offer information about fluctuations in the quality or coverage of social services or programs over a given time. Whereas structural indicators do not normally need a baseline (they usually elicit a yes/no answer), process indicators depend on baselines or goals that are usually figures or percentages, and, therefore, will be more dynamic and changeable than structural indicators. Process indicators must reflect the efforts of different State structures or entities to achieve or progress toward the desired outcome.

35. *Outcome indicators* capture attainments, individual and collective, that reflect the status of realization of human rights in a given context. They seek to measure the actual impact of government strategies, programs, and interventions. To some extent they are an indication of how those government measures impact on the aspects that determine how effective a right recognized in the Protocol is. Thus, they offer a quantitatively verifiable and comparable measurement of the *performance* of the State in terms of the progressive realization of rights. An improvement in outcome indicators may be a sign of the adequacy of the measures adopted and of progressive improvements towards full realization of rights.

21. UN Doc. HRI/MC/2006/7, 11 May 2006, para. 17; Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Doc. E/CN.4/2006/48, 3 March 2006, para. 54.

22. UN Doc. HRI/MC/2006/7, 11 May 2006.



36. In order to improve the possibility of analysis and better organize information collected in the monitoring process, it is suggested that it be divided into three categories: (i) incorporation of the right; (ii) financial context and budgetary commitment; and (iii) state or institutional capabilities. These categories enable the arrangement of rights and will be monitored by means of the indicators (structural, process, outcome) and qualitative signs of progress.

37. The first category is the *incorporation of the right* in the legal system, the institutional apparatus, and public policies. The idea is to collect relevant information on how the right recognized in the Protocol is incorporated in the domestic law books and in public policy and practice. On one hand, the aim is identify the level of the provisions that recognize it, as well as their effectiveness and statutory rank. Thus, the right may be recognized in the Constitution, in laws, in jurisprudence concerning ESCR or in government programs or practices. The idea, too, is to collect information on the scope of that recognition; that is, the degree of precision with which the basic obligations of the State or minimum enforceable standards are defined. An indication is also sought as to the persons who are individually or collectively possessed of that right and the conditions for its exercise. Finally, what guarantees or appeal procedures (both administrative and judicial) are available in the event of a violation of different obligations and of ESCR case law.

38. Another important aspect is to explore what social services or policies the State has established for implementation or realization of the rights contained in Protocol. At times programs or services create benefits of the hand-out variety without recognizing the existence of rights. Therefore, it is important that states explicitly say to what extent a right is part of the underlying logic and sense of their policies. Examples of structural indicators of the incorporation of a right are whether or not the rights contained in the PSS have been included in the Constitution and whether or not they are effective. Process indicators on the incorporation of a right are if relevant jurisprudence exists on its enforceability, and the coverage of social policies, bearing in mind the particular ways that each State has of implementing rights.

39. Another category to include in the evaluation process is the *basic financial context and budgetary commitment*. This category refers to the effective availability of state funds for public social spending and how it is distributed, whether it be measured in the usual manner (as a percentage of gross domestic product for each social sector) or by other indicators. Budgetary commitment, for its part, allows an assessment of the importance that the State ascribes to the right in question. The importance of measuring this category stems from the fact that if a state institutes a public-spending policy that entails a cutback in the area of social infrastructure (for instance, health care or privatization of strategic areas or services), apart from acting as a regressive measure, it will have the effect of transferring the costs of care directly to families and, within the family, to women. Hence the importance of identifying the financial responsibilities of the state as precisely as possible.

40. A third category has to do with *state or institutional capabilities*. This category describes a technical-instrumental and distributive aspect of government resources within the state apparatus. That is, it entails a review of how and according to what parameters government (and its various branches and departments) deals with different socially problematized issues; in



particular, how it establishes its development strategies and goals; and under what parameters the implementation of the rights contained in the Protocol is inscribed therein. It entails analyzing what possibility government bodies have of problematizing, prioritizing, deciding, and managing the public issues that, in this instance, have to do with achieving the realization of the rights envisaged in the PSS. Consequently, it is necessary to identify interagency relations, task and resource allocation, and what capabilities human resources have to carry out the assigned tasks. Surveys identify four types of state capabilities: (i) administrative capacity, understood as the ability of States to deliver goods and services; (ii) technical capacity, which interprets the ability of States to analyze and implement economic and social policies to satisfy ESCR; (iii) political capacity, which refers to the ability of States to meet to social demands and allow the channeling of social interests by enabling citizen participation in decision making and conflict resolution; and (iv) institutional capacity, which identifies the ability of States to introduce and strengthen rules on political and economic interaction.²³

41. The purpose of including state capabilities is to recover core data that account for the materialization of the political and technical will of states in implementing the Protocol. Its aim is also to verify if the conditions are right for effectively implementing a rights-based perspective in the context of the current state structure through public policies or other appropriate mechanisms. The introduction of this category is also intended to evaluate in greater detail obstacles faced by the State in meeting its obligations, facilitating identification of problems or shortcomings with respect to political decision making or of technical-administrative difficulties, and distinguishing them from problems to do with governance. For example, a structural indicator of a state's capability is the existence of specific agencies within the state for the protection or implementation of a social right. A structural indicator can also be used to inquire about their responsibilities and functions. A process indicator of state capacity determines the scope and coverage of the programs and services deployed by those agencies, or changes in the quality and scope of such interventions over a period of time.

42. A relevant aspect in measuring state capabilities is the existence of agencies within the State structure to monitor and evaluate social programs and services. Another is the State's capacity to implement policies to prevent corruption and clientelistic social spending. An additional aim is to collect information on the accessibility of social services and programs organized by the State, including, for example, physical access, public awareness of services, and their cultural relevance, the latter tending to be an obstacle in the population's access to services. Likewise, *fragmentation* among different levels of government and among different organized social services, often due to poor interagency coordination and communication or the absence of comprehensive policies and adequate record-keeping, is an indicator of weakness in state capabilities. Thus, the purpose of this category is to identify such shortcomings and help overcome them. Goods and services related to social rights are generally delivered by different levels of government, depending on the way in which each state organizes itself internally. Decentralizing social programs and services can inject greater flexibility and the ability to adapt to regional realities and local needs. However, it may also bring numerous coordination problems. Problems present themselves when clarity is lacking in the definition and distribution of powers

23. Grindle, M. (1996) *Challenging the State*, Cambridge University Press, United Kingdom.



and responsibilities among different government bodies and, on occasion, levels of government (national, regional, provincial, local).

43. Complementing the above categories are crosscutting principles: (i) equality and non-discrimination; (ii) access to justice, and (iii) access to information and political participation. These crosscutting principles are very useful not only for collecting information about the situation of social sectors contending with serious structural inequality problems, but also for gaging the effectiveness of policies implemented by the State to ensure that those sectors can enjoy their social rights. Their importance lies not only in that they detect situations of inequality or lack of participation in vulnerable sectors, but also in their crosscutting nature, which allows identification of the social and institutional resources available in each State for an individual to remedy specific discrimination problems in the exercise of social rights. They should be invariably applied to each right recognized in the Protocol.²⁴

44. The first obligation, with “immediate effect,” that arises from economic, social and cultural rights is to ensure their exercise in conditions of equality and without discrimination; that is, to prevent differences in treatment based on factors specifically forbidden by the Protocol that limit, restrict or annul the exercise of a right. This requires that States recognize and equally guarantee all the rights contained in the PSS, using objective and reasonable distinction criteria, and avoiding arbitrary differences of treatment, especially differences of treatment based on expressly proscribed factors, such as race, ethnicity, gender, religion or social origin. In other cases, unequal distribution of resources and capabilities in our societies means that large numbers of people are at a disadvantage when it comes to upholding their rights precisely because they lack those capabilities or resources. Alternatively, situations may arise in which individuals who do not belong to a sector that could be classed as vulnerable temporarily find themselves in circumstances that make it difficult for them to exercise their right (unemployed without social security coverage, severed family or social ties, stateless persons, refugees, and asylum-seekers, among others).

45. Having identified the persons who face discrimination in accessing certain rights, it will be necessary for the state party, before formulating social policies, to determine which require priority assistance (for instance, people living in a particular area of the country; individuals from a given ethnic group; people in specific age groups, such as older persons or minors; or differently abled persons) and adopt special steps in implementing its social programs and services that include active policies of protection, not merely compensatory measures, as a means of reaffirming and ensuring their rights.

24. These principles are part of the standards envisaged in the human rights approach, namely: (1) basic content of rights and universality; (2) greatest possible use of available resources; (3) progressiveness, not regressiveness; (4) equality, not discrimination; (5) access to justice and complaint mechanisms; (6) production of information and access; and (7) participation by interested sectors in the design of public policies. Pautassi, L. (2010) “Indicadores en materia de derechos económicos, sociales y culturales. Más allá de la medición,” in Abramovich, V. and Pautassi, L. (comp.) *La medición de Derechos en las Políticas Sociales*. Buenos Aires, Editores del Puerto.



46. The indicators on equality and nondiscrimination, which are regarded as crosscutting categories common to all the rights contained in the Protocol, are meant to identify if the conditions for effective access to social rights are in place in each state through the free interplay of democratic and decision-making institutions and processes. For example, the historical discrimination of indigenous peoples in the Americas is based on ideological constructs of domination that regard inequalities among groups as “natural,” rather than a consequence of a particular social structure.²⁵ A similar situation exists with people of African descent, who because of their characteristics have historically suffered discrimination, set apart by a supposed inferiority that has helped to deepen inequality and discrimination over time. Gender discrimination is another example.²⁶ Particularly striking is the need to incorporate indicators on inclusion/exclusion to shed light on situations of structural poverty or patterns of intolerance and stigmatization of social sectors, among other components for evaluating inequality. These indicators should be viewed alongside information on access to productive resources, the labor market, and social security/protection, as well as indicators on distribution of budgetary and extra-budgetary public resources.

47. The notion of material equality can be a highly useful tool for examining not only rules that recognize rights, but also the orientation of public policies that may serve to ensure or, on occasion, potentially impair them. The principle of equality and nondiscrimination may also have an impact in terms of the criteria by which budgets and social spending should be distributed in a state's territory. Discrimination in access to rights may originate, for example, from severe disparities in neglected geographic zones. Indicators should also serve to identify not only discriminated-against social sectors and groups, but also disadvantaged geographic zones, or indeed any other kind of possible and/or overlapping discrimination. The causes of such regional asymmetries may stem from a variety of factors, such as distribution of services infrastructure, job shortages, social and environmental problems, weather conditions, distance from the more developed areas, and public transportation problems.

48. The second crosscutting principle for measuring fulfillment of the ESCR set forth in the PSS is access to justice, understood for the purposes of monitoring in a broad sense, including a review of the legal and actual possibilities of access to appeal and protection mechanisms in administrative and judicial proceedings.²⁷ Strictly speaking, this is not restricted purely to judicial spheres but is broader and includes administrative complaints as well as the

25. As initially conceived, racism was based on biological inferiority and difference; nowadays, that interiorization is based for the most part on cultural traits. This means that today, racists propose that there are some ethnic groups that are “backward” and, therefore, constitute an obstacle for development, in contrast to other groups, whose characteristic values and accomplishments represent the modernity to be attained. UNDP (2005), National Human Development Report. Ethnic and Cultural Diversity: Citizenship in a Plural State, Guatemala.

26. The Gender Affairs Division of the Economic Commission for Latin America and the Caribbean (ECLAC) has a Gender Equality Observatory of Latin America and the Caribbean, which organizes indicators based on the exercise of economic, physical, and decision-making autonomy by women (www.eclac.org/oig/).

27. The IACHR has already adopted the concept of broad access to justice in its thematic reports. See, for example, IACHR, Access to Justice for Women Victims of Violence in the Americas, par. 5 and 6; and IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L/V/II.129.



presence of offices or other places to file complaints, ombudspersons, and an array of other entities.

49. As the United Nations Committee on Economic, Social and Cultural Rights has noted, there are important dimensions of social rights that are immediately enforceable before the domestic courts. Therefore, the Committee considers that the adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that [all] human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.²⁸

50. In the area of human rights standards have been developed on the right to suitable and effective remedies, whether of a judicial or other nature, to repair violations of fundamental rights. In that regard, states have not only a negative obligation -not to prevent access to those remedies- but also, fundamentally, a positive obligation to organize their institutional apparatus so that everyone can access those remedies. To that end, states are required to remove any regulatory, social, or economic obstacles that might prevent or limit the possibility of access to justice. In recent years, the inter-American system of human rights has recognized the need to begin to outline principles and standards on the scope of rights to judicial guarantees and effective judicial protection in cases concerning violation of economic, social, and cultural rights

51. For the purpose of introducing a system to monitor guarantees of access to justice in relation to the rights envisaged in the PSS, four issues are considered: (i) The obligation to remove (economic, material or cultural) obstacles to ensure access to the courts and available remedies to protect rights; (ii) the components of due process of law in administrative proceedings concerning social rights, including information on appeal or remedy mechanisms against the denial of rights by administrations, or the denial of benefits considered discretionary,²⁹ with the aim of limiting the scope for arbitrary decisions on the part of the authorities; (iii) the components of due process of law in judicial proceedings concerning social rights, which would include general fair-trial indicators for all rights, notwithstanding that a number of rights contained in the PSS may be covered by certain specific judicial guarantees, and (iv) the components of the right to effective judicial protection for individual and collective social rights, with the aim not only of collecting information on measures that may be used in urgent situations and serve as prompt and simple remedies for violations in those special circumstances, but also of identifying precautionary or preventive remedies, such as for instance, measures to provide access to urgent medical treatment or to avert the dismissal of a trade union delegate. Each one is included as an indicator or sign of progress in the tables on the various rights in the first group of rights.

28. Committee on Economic, Social and Cultural Rights, General Comment 9, The domestic application of the Covenant, UN Doc. E/C.12/1998/24, 3 December 1998.

29. "Access to social rights in Europe," Ch. 3.2.2. concerning case law on Article 13 of the European Social Charter and the non-existence of appeal against denial of discretionary benefits, Guidelines for improving access to social protection and explanatory memorandum," prepared by the Group of Specialists on Access to Social Protection.



52. The purpose of including them in this monitoring process stems from the fact that these standards can help to improve the institutional framework of social services and policies in the Americas by strengthening oversight systems, transparency, and accountability, as well as participation mechanisms and societal surveillance of public policy in this area. Hence their inclusion as cross-cutting principles.

53. The third crosscutting principle for the rights recognized in the Protocol concerns access to information and civil society participation in public social policy. Dissemination of information in a democratic society enables the citizenry to monitor the activities of authorities whom they have entrusted with the protection of their interests. It follows from the above that the State has a positive obligation to provide that information to the citizenry, particularly when it is in its possession and there is no other way to access it. The foregoing is without prejudice to special limits previously established by law and subject to the principles of proportionality and need.

54. Adequate access to public information is a key tool for citizen participation and democratic protection, as well as for horizontal and vertical accountability and reporting entities, in public policies that implement rights enshrined in the Protocol. Hence the need to have a flow of available information to provide the elements necessary for appraisal and oversight of policies and decisions that directly affect them. Paradoxically, despite the fact that most countries in the region have ratified the main international instruments recognizing civil rights, very few have in place laws on access to public information or domestic rules that surpass the minimum legal standards in this area, which leaves statistical systems and information systems in general vulnerable to transitory measures or actions that could disrupt or undermine their reliability and legitimacy.

55. The severe difficulties that the available statistics sources have in capturing in their records the enormous ethnic and cultural diversity that exists in the region are also a concern. The problem of absence of data affects victims of racism and discrimination, since the way these figures have been managed has very often had to do with denial of racism, discrimination, and xenophobia.³⁰ In spite of that, in recent years the majority of countries in the region have included in their censuses and household surveys questions about identity, origin, or language, which represents a giant stride compared with previous decades.

56. Both the United Nations—through the Committee of the International Covenant on Economic, Social and Cultural Rights—and the inter-American system—through the Office of the Special Rapporteur for Freedom of Expression of the IACHR—have drawn attention to the state obligation (enshrined in international human rights law) to produce information bases with which to validate indicators and, in general, access to many of the guarantees covered by each social right.³¹

30. Martín Hopenhayn, Álvaro Bello y Francisca Miranda (2006) *Los pueblos indígenas y afrodescendientes ante el nuevo milenio*, Serie Políticas Sociales N° 118, ECLAC, Santiago, Chile, pp. 18-20.

31. In some cases, circumstances are recognized as generating the obligation to produce information on the exercise of rights by persons who are discriminated against, as in the case of the Convention of Belem do Pará, which creates the obligation for the State to “ensure research and the gathering of statistics and other relevant



57. The obligation of states to enact laws to ensure the exercise of this right, must also meet certain basic requirements: the principle of maximum disclosure of information, the presumption of openness of meetings and key documents, broad definitions of the type of information that is accessible, short time limits and reasonable costs, independent review of denials of information requests, penalties for failure to provide requested information, and an appropriate procedure for establishing exceptions to access.³²

58. One successful strategy to improve the adequacy and pertinence of social policies and services and, therefore, the progressive realization of ESCR, is to guarantee a say in the design and implementation of government strategies to civil society organizations and groups that represent the sectors targeted by the policies and services. Participatory rulemaking mechanisms, public hearings, consultative councils, participatory social budgets, and participatory evaluations are ways that have been used in several countries in the Americas to channel that participation. At the same time, states are required to establish permanent, stable mechanisms for social participation that include sectors that historically have had difficulty accessing means of citizen participation and involvement or which, for reasons of residence, are barred from participation.

III. FIRST GROUP OF RIGHTS

59. In the first stage, the States Parties' reports will focus on the first group of rights; namely, the rights to social security, health, and education (Articles 9, 10, and 13 of the Protocol). Accordingly, the information requested from the State on each right will be organized under a model composed of quantitative indicators and qualitative signs of progress.³³ There will be three types of progress indicators, which will be arranged into three conceptual categories (incorporation of the right; financial context and budgetary commitment; and state capabilities) and address three cross-cutting principles (equality and nondiscrimination, access to justice, and access to information and participation).

60. Tables are included for each right as references to the information that States Parties should include in their reports. In all cases States are requested to prepare the tables with data for 2010, where possible, and insofar as signs of progress are concerned, the latest available source.

information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes." [Article 8 (h)].

32. Office of the Special Rapporteur for Freedom of Expression, "Access to Public Information in the Americas. Contributions of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," p. 12.

33. The signs of progress will not necessarily match the structural, process, and outcome indicator categories, given that, by definition, they do not provide quantitatively comparable measurements. However, they have been included in the same table as a way of encouraging states to make an effort to use different measurements, based on the principle that human rights are interdependent, in order to consider the performance of the State in accomplishing its goals and the gradual progress that it has made toward full realization of the rights contained in the Protocol.



If States only have information for some of the indicators requested and not all, they will still be able to submit reports, with each state adopting the commitment to progressively incorporate the necessary data production and collection sources in future reports. Furthermore, where States use indicators other than those suggested, they may validly include them in their national reports to the WG, provided that they are essentially human rights indicators. In addition, any cells that are not completed will remain open to the inclusion of new indicators and signs of progress defined as the process moves forward.

III.1. Right to Social Security

61. In matters of social security, Article 9 of the Protocol states: “All persons shall have the right to social security to protect them against the consequences of old age and of disability which prevents them, physically or mentally, from securing the means to carry a dignified and decent existence. In the event of the death of a beneficiary, the social security benefits will be applied to the dependents. In the case of persons who are currently employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.”

62. The ruling concept in matters of social security is one of contingency, which refers to a future event that, if it occurs, will spell consequences for the individual. The protection afforded by social security is engaged when the contingency comes about, causing an individual, members of their family, or both, to be adversely affected.

63. As the right to social security evolved, mechanisms were designed to enable effective delivery of the benefit, including to dependent workers and in some cases their families. For unsalaried individuals the coverage was reduced to certain specific contingencies. In other words, the principle of universality has not developed sufficiently, and it remains an essential requirement to show that certain circumstances have been met in order to have access to them, with benefits distinguished according to individuals' contributing capacity.

64. These peculiarities are considered in the Protocol, which recognizes a difference in coverage for salaried workers and those without jobs. It should also be noted that the reforms seen in the region over the past decade have brought significant changes to the way in which social security is organized in each country, especially where access, coverage and related rights are concerned. It is important to determine if the State is the chief guarantor—and/or provider—or if the main responsibility has passed to the individual, through private insurance schemes. The State retains only a regulatory role in the latter, and indeed under some countries' domestic laws its responsibilities are less clear or even more arm's-length than that.



RIGHT TO SOCIAL SECURITY		STRUCTURAL	PROCESS	OUTCOME
INCORPORATION OF THE RIGHT	Indicator	<ul style="list-style-type: none"> - Ratification by the State, <i>inter alia</i>, of the following international treaties that recognize the right to social security: <ul style="list-style-type: none"> a. ICESCR b. CEDAW c. ILO Convention No. 102 d. 1951 Convention relating to the Status of Refugees and its 1967 Protocol e. 1954 Convention relating to the Status of Stateless Persons f. Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities g. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families h. United Nations Declaration on the Rights of Indigenous Peoples - Incorporation of the right to social security in the Political 	<ul style="list-style-type: none"> - Average time for recognition of the right to a pensions or retirement benefits, by activity status or sex - Proportion (%) of population insured by contributory systems, by sex, ethnicity/race, and education level - Proportion (%) of population covered by non-contributory systems, by sex, ethnicity/race, and education level - Proportion (%) of population enrolled in special schemes, by sex, ethnicity/race, and education level - Proportion (%) of adults over 65 years old-age assistance programs, by sex, ethnicity/race, and education level 	<ul style="list-style-type: none"> - Labor force disaggregated by sex, age group, education level, and income quintile - Population covered by a pension or retirement benefits, by age group, sex and income quintile - Proportion (%) of population insured under a contributory scheme, by sex, age group, and income quintile - Number of members contributing to the pension system, by sex, age group, and income quintile - Total unemployment subsidies to persons not enrolled in contributory systems.



		<p>Constitution (and/or state or provincial constitutions).</p> <ul style="list-style-type: none"> - Specific laws envisaging the right to social security: <ul style="list-style-type: none"> a. Social Security Code b. Special chapters or titles in the Labor Code c. Set of laws or assorted rules and regulations d. Collective bargaining standards e. Other provisions. Specify. 		
	Signs of progress		<ul style="list-style-type: none"> - Proportion (%) of members who regard the level of social security coverage as satisfactory 	
UNDERLYING FINANCIAL CONTEXT AND BUDGETARY COMMITMENT	Indicator	<ul style="list-style-type: none"> - Forms of financing the social security system: (i) percentage of contributions charged to employers and (ii) percentage charged to formal workers; (iii) percentage paid for with state funds - Nature and percentage of the system under private management - Sources of extra-budgetary funds (international agency loans, borrowing, reserves, other) 	<ul style="list-style-type: none"> - Percentage of national budget allocated to social security - Maternity and paternity leave in weeks and by sources of financing (social security system in full, employer in full, mixed sources) - Basis and frequency of update of social security benefits - Mechanisms for calculating male-female wage disparity and the effects on entitlements 	



			<ul style="list-style-type: none"> - Existence of litigation cost exemption mechanisms Requirements to qualify for this benefit - Availability and/or use of extra-budgetary funds to finance the social security system, or deficit thereof. 	
	Signs of progress	<ul style="list-style-type: none"> - Existence of estimates of the fiscal cost of social security reforms - Existence of studies and proposed reforms of the social security system with a gender-, ethnicity-, and race-aware approach 		
STATE CAPABILITIES	Indicator	<ul style="list-style-type: none"> - Rank and authority of the agencies that manage the social security system 	<ul style="list-style-type: none"> - Number of disability pensions granted in the last year, by sex, age, nationality, legal status (refugee or stateless person), income quintile, and place of residence - Total members of contributory systems, by age, sex, nationality, legal status, occupation, and branch of activity 	<ul style="list-style-type: none"> - Percentage of population without social security coverage, by age, sex, nationality, legal status (refugee or stateless person), employment status, ethnicity, and race - Percentage of population with social security coverage, disaggregated by sex, age, and ethnicity. - Public-private social security



			<ul style="list-style-type: none"> - Work accident coverage rate, by sex, age, legal status, occupation, and branch of activity - Average annual unemployment rate - Informal employment rate 	<ul style="list-style-type: none"> - coverage gap - Occupational injury (work accident) rate, by branch of activity
	Signs of progress	<ul style="list-style-type: none"> - Coverage and scope of public policies on inclusion of nonmembers in the social security system 	<ul style="list-style-type: none"> - Unregistered employment formalization campaigns carried out by the State. - Official workplace risk prevention campaigns 	



EQUALITY AND NON-DISCRIMINATION	Indicator	<ul style="list-style-type: none"> - Social security system access requirements - System access requirements for indigenous peoples, Afro-descendants, refugees, asylum seekers, and stateless persons - System access requirements for domestic workers - System access requirements for domestic workers 	<ul style="list-style-type: none"> - Basis for calculating social security benefits for men and women - Extent and forms of use of actuarial tables to calculate the social security benefit (pension amount) - Extent, coverage and jurisdiction of inclusion mechanisms for those who do reproductive or domestic care work 	<ul style="list-style-type: none"> - Pensioned (retired) population, by sex, age, education level, and jurisdiction - Percentage of entitled persons who receive a pension or allowance, by sex, age, ethnicity, race, and jurisdiction - Percentage of migrants, refugees, asylum seekers, and stateless persons with social security coverage - Percentage of rural workers with social security coverage
	Signs of progress			
ACCESS TO INFORMATION AND PARTICIPATION	Indicator	<ul style="list-style-type: none"> - Characteristics and regularity in the production of social security statistics, by sex, ethnicity, race, age, nationality, legal status (refugee or stateless person), public/private coverage, and territorial distribution. 	<ul style="list-style-type: none"> - Existence of regulations and type of oversight on the application of prevention measures against professional and occupational health risks - Frequency of reports sent to social security contributors, both by individually capitalized accounts and by public pay-as-you-go systems. - Total reported work accidents, by jurisdiction and branch of activity 	



	Signs of progress	<ul style="list-style-type: none"> - Characteristics, frequency, and coverage of official awareness campaigns on the right to social security - Characteristics, frequency, and coverage of trade-union awareness raising activities on social security guarantees for workers 	<ul style="list-style-type: none"> - Characteristics of websites, television coverage, and one-stop shops providing information about rights to beneficiaries of ex-gratia or non-contributory coverage programs 	
ACCESS TO JUSTICE	Indicator	<ul style="list-style-type: none"> - Administrative recourse to submit complaints concerning violation of obligations connected with the right to social security - Number of constitutionality suits (amparo, protection, relief) concerning social security - Existence of comprehensive, free legal services for protection of the right to social security - Existence of public mediation or conciliation offices for settling issues connected with social security - Enforcement of procedural guarantees in judicial 	<ul style="list-style-type: none"> - Number of complaints concerning the right to social security received - Average length of cases processed by the official ombudsperson on pensions (contributory and noncontributory). - Existence of state agencies for oversight and inspection of private entities in charge of funds that comprise individually capitalized accounts - Existence of state agencies for oversight and inspection of private entities in charge of health and/or work accident/risk funds 	



		<p>proceedings dealing with social security:</p> <p>(i) independence and impartiality of courts; (ii) reasonable time; (iii) “equality of arms” (fair balance between the opportunities afforded parties in litigation); (iv) res judicata; and (v) appeals to higher courts</p>	<ul style="list-style-type: none"> - Number of judicial decisions that award coverage of social security contingencies - Number of lawsuits resulting in the denial of a noncontributory pension - Training policies for judges and lawyers on the right to social security. Topics covered and scope 	
	Signs of progress		<ul style="list-style-type: none"> - Satisfaction surveys or perception of beneficiaries and users with respect to the social security system and social protection programs - Characteristics and coverage of awareness-raising mechanisms on rights in relation to social security. Coverage of indigenous-language translation services 	



III.2. Right to Health

65. Article 10 of the Protocol of San Salvador provides with respect to this right that: “Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a) Primary health care, that is, essential health care made available to all individuals and families in the community; b) Extent of the benefits of health services to all individuals subject to the State's jurisdiction; c) Universal immunization against the principal infectious diseases; d) Prevention and treatment of endemic, occupational and other diseases; e) Education of the population on the prevention and treatment of health problems, and f) Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”

66. The Protocol refers to observance of the right in the framework of a health system that, however basic it may be, should ensure access to primary health care and the progressive development of a system that provides coverage to the country's entire population.

67. The CESCR, in its General Comment No. 14, said that “The right to health in all its forms and at all levels contains the following interrelated and essential elements ...: (a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party ...; (b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS ...; Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households; Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues ...; *Acceptability*: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements ...; *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation”



68. The indicators and signs of progress requested of the States Parties should follow the above criteria and the guidelines and recommendations on health adopted by the OAS member states, particularly the proposals of the Pan American Health Organization (PAHO), which has already offered specific suggestions on the following indicators.³⁴

34. See, in this regard, Resolution CD50.R8 (“Health and Human Rights”) adopted by all the PAHO member states at the 50th Directing Council. Available at: <http://www2.paho.org/hq/dmdocuments/2010/CD50.R8-e.pdf>



RIGHT TO HEALTH		STRUCTURAL	PROCESS	OUTCOME
INCORPORATION OF THE RIGHT	Indicator	<ul style="list-style-type: none"> - Ratification by the State of the following international treaties that recognize the right to health: <ul style="list-style-type: none"> (i) ICESCR and its Optional Protocol (ii) CEDAW and its Optional Protocol (iii) CRC (iv) ICERD (v) ILO Conventions (vi) Convention relating to the Status of Refugees (1951) and its Protocol (1967) (vii) Convention relating to the Status of Stateless Persons (1954) (viii) Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (ix) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (x) United Nations Declaration on the Rights of Indigenous Peoples (xi) Guidelines of the Pan American Health 	<ul style="list-style-type: none"> - Coverage and jurisdiction of programs that target vulnerable sectors as priorities for health services - Availability of records on numbers of births, marriages, and deaths - Percentage of older persons (over 65 years old) covered by social protection programs - Health coverage of the population by sex, age, race/ethnicity, and income quintiles Disaggregate by type of coverage (subsidized, contributory, or mixed scheme) 	<ul style="list-style-type: none"> - Life expectancy at birth, by area of residence (urban/rural) and race/ethnicity) - Maternal mortality rate by age group, geographical area, education level and income quintile - Child mortality rate (neonatal and post-natal) by gender, geographical area, mother's education level, income quintile, ethnicity/race - Mortality rate from accidents, homicides, or suicides, by gender - Mortality rate from communicable diseases - Percentage of population with access to clean water, by area of residence (urban/rural) - Percentage of people with access to basic sanitation services, by area of residence



		<p>Organization</p> <ul style="list-style-type: none"> - Incorporation of the right to health in the Political Constitution (and/or state or provincial constitutions) - Specific laws envisaging the right to health 		<p>(urban/rural)</p> <ul style="list-style-type: none"> - Percentage of women of reproductive age with anemia
	Signs of progress	<ul style="list-style-type: none"> - Number and characteristics of civil society organizations involved in the promotion and protection of the right to health - Recognition of indigenous health systems 	<ul style="list-style-type: none"> - User satisfaction surveys on accessibility, availability and quality of health services 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENT	Indicator	<ul style="list-style-type: none"> - Characteristics, sources, and percentages of health sector financing - Characteristics, types, amount and extent of incentives, tax deductions (tax incentives), and subsidies for the private health sector - Characteristics, types, amount and extent of state incentives to the private pharmaceutical industry 	<ul style="list-style-type: none"> - Health expenditure as a percentage of government social spending - Public spending per capita on health care - Family health spending as a proportion of current family income - Distribution of health spending by jurisdictions (state, provincial, local) - Percentage of resources allocated to health sector 	<ul style="list-style-type: none"> - Average percentage of household income spent on health, by quintile of family per capita income



			training	
	Signs of progress	- Ratio of economic growth to health care coverage over the last five years		
STATE CAPABILITIES	Indicator	<ul style="list-style-type: none"> - Incorporation in official (public policy) documents of the definition of comprehensive and universal primary health care - Scope, jurisdiction and financing of a national policy on essential, oncological, retroviral and generic drugs - Density of auxiliary professional personnel by number of hospital beds - Characteristics, extent, amounts and management of international technical and financial assistance in the area of health 	<ul style="list-style-type: none"> - Accessibility and availability of health services by jurisdiction and geographic region - Percentage of the population with regular access to essential, oncological, retroviral and generic drugs, by area of residence - Percentage of health services of public responsibility outsourced to private companies or other types of provider - Significant public/private disparities in health spending and coverage - Number of doctors per inhabitant - Number of nurses per inhabitant - Number of professionally assisted births 	<ul style="list-style-type: none"> - Coverage, extent, jurisdiction, and financing of primary health care programs - Coverage of assistance programs for older persons - Health services use rate - Coverage of health insurance plans, by gender, age, and geographic region, in terms of contributors or beneficiaries
	Signs of progress		- Existence of plans/policies to strengthen the cultural adaptability of health services	



			under a rights- and ethnically aware approach	
EQUALITY	Indicator	<ul style="list-style-type: none"> - Rules on abortion - National law or policy on persons with physical and mental disabilities - National law or policy on health that takes into account ethnic diversity (indigenous, African descendants) - Law recognizing sexual and reproductive rights - Type, number, characteristics, jurisdiction, budget, and accessibility of mental health services, by territorial distribution 	<ul style="list-style-type: none"> - Percentage of women and men of reproductive age who use contraception - Estimates for of induced abortions, by age, area of residence (urban or rural), and socioeconomic status of the pregnant woman - Estimates for illegal abortions, by age, area of residence (urban or rural), and socioeconomic status of the pregnant woman, or other available data - Percentage of the population that uses indigenous or alternative health care systems - Characteristics, coverage, budget, and jurisdictions of sexual and reproductive health programs - Percentage of children covered by food programs - Percentage of children and adolescents who receive regular health care/checkups 	<ul style="list-style-type: none"> - Percentage of children under five with stunting or chronic malnutrition. - Percentage of children under five with overall malnutrition - Composition by sex of reported cases of AIDS and HIV diagnoses - Percentage of persons with physical or mental disabilities who have access to health services at public or social welfare institutions - Contraception prevalence in the sexually active adolescent population - Contraception prevalence in the sexually active adult population - Unwanted fertility rate - Percentage of women who go for regular gynecological checkups (PAP smears, mammograms) - Percentage of women who



			<ul style="list-style-type: none"> - Percentage of children who receive perinatal care and care up to age five - Percentage of pregnant women tested for HIV/AIDS - Percentage of children born to HIV-positive mothers who contracted the HIV/AIDS virus within the first two years of life (reported number of vertically transmitted AIDS cases) - Percentage of pregnant women who receive prenatal care - Indicators on exclusive breast-feeding for four and six months. 	<p>go for antenatal checkups in the first trimester</p> <ul style="list-style-type: none"> - Compulsory vaccination coverage
	Signs of progress	<ul style="list-style-type: none"> - Characteristics and frequency of public perception surveys on the relationship between fertility, child mortality, and maternal mortality 	<ul style="list-style-type: none"> - Characteristics and frequency of public perception studies on sexually transmitted diseases (HIV/AIDS, etc.) 	
ACCESS TO PUBLIC INFORMATION AND PARTICIPATION	Indicator	<ul style="list-style-type: none"> - Characteristics, coverage (territorial and thematic), budget, and jurisdiction of the health statistics system Forms of updating and distributing information, and frequency thereof 	<ul style="list-style-type: none"> - Percentage of health providers with confidentiality protocols on health information - Coverage of state public awareness measures or campaigns on sexual and 	<ul style="list-style-type: none"> - Percentage of children born with fetal malformations due to alcohol or drug use - Percentage of full-term births not registered



		<ul style="list-style-type: none"> - Rules and regulations on state protection of the confidentiality of personal health information - Provisions and/or legislation requiring personal consent to accept or reject treatment 	<p>reproductive health policies</p> <ul style="list-style-type: none"> - Coverage of public information measures or campaigns for pregnant women on forms of mother-child HIV/AIDS transmission - Coverage of public information measures or campaigns and awareness programs on the effects of using alcohol, tobacco and other drugs - Geographic, jurisdictional and ethnic distribution of translation services into other languages spoken in the country offered by health providers 	
	Signs of progress	<ul style="list-style-type: none"> - Characteristics, coverage, and frequency of awareness campaigns on the right to health 	<ul style="list-style-type: none"> - Characteristics and coverage of media that distribute information on health care rights - Existence of permanent mechanisms for citizen participation in presenting recommendations on the design and implementation of health policies 	



<p>ACCESS TO JUSTICE</p>	<p>Indicator</p>	<ul style="list-style-type: none"> - Existence of administrative recourse to submit complaints concerning violation of obligations connected with the right to health - Competencies of ministries or oversight agencies in terms of receiving complaints from health system users - Existence of constitutional remedies (actions for constitutional relief (amparo), protection, etc.) - Existence of comprehensive, free legal services for protection of the right to health - Existence of public mediation or conciliation offices for settling issues connected with health - Application of procedural guarantees in judicial proceedings concerning health: (i) an independent and impartial tribunal; (ii) reasonableness of time; (iii) égalité des armes; (iv) res judicata; (v) right to appeal decisions to a higher authority. 	<ul style="list-style-type: none"> - Number of judicial decisions upholding guarantees with respect to health in general as well as in specific cases (sexual and reproductive health, HIV/AIDS, and others). - Number and type of complaints received concerning the right to health investigated and resolved by the competent national human rights institutions - Training policies for judges and lawyers on the right to health. Topics covered and scope 	
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	Signs of progress		- Characteristics and coverage of awareness-raising mechanisms on health-related rights. Coverage of indigenous-language translation services	
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III.3. Right to Education

69. The Protocol of San Salvador gives particular importance and clarifications to the provisions contained in Article 13, which specifically states that: “(1) Everyone has the right to education. (2) The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace. (3) The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: (a) Primary education should be compulsory and accessible to all without cost; (b) Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education; (c) Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education; (d) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction; (e) Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies. (4) In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above. (5) Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.”

70. The right to education has three dimensions: One dimension is the *right to education* itself, which has to do with the nature and normative scope of the right under international human rights instruments, national constitutions, and local laws; another dimension is the realization of all *human rights in education*, which concerns the promotion and guarantee of respect for all human rights in the education process; a third dimension is *human rights through education*, which concerns the role of *education as a multiplier of rights*, that is, the importance of education in facilitating greater enjoyment of all rights and freedoms.³⁵

35. These definitions are taken from concepts developed by the one-time United Nations Special Rapporteur on the right to education, Katarina Tomaševski, in various annual reports, including, Economic, Social and Cultural Rights, Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9; E/CN.4/2001/52, 11 January 2001. See also, Tomaševski K. (2001), Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable, Right to Education Primers No. 3, Novum Grafiska AB, Gothenburg, Sweden.



71. Those three dimensions of the right are encapsulated in a system for classifying governmental obligations and indicators, known as the “4-A scheme.” The scheme pairs the individual components of the right to education (available and accessible), rights in education (acceptable and adaptable), and rights through education with the corresponding governmental obligations: affordability, accessibility, acceptability and adaptability.³⁶

72. These criteria were adopted by the CESCR, which noted the following in its General Comment No. 13: *“While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features: (a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology; (b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: (i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds ...; (ii) Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme); (iii) Economic accessibility - education has to be affordable to all ... [W]hereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education; (c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents ... ; (d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. When considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.”*

36. The 4-A scheme was developed by Katarina Tomaševski. See Economic, Social and Cultural Rights, Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9, E/CN.4/2000/6, 1 February 2000 and ff.



73. The array of progress indicators to measure satisfaction of the right to education follows the framework of the 4-A scheme, with the same conceptual categories and cross-cutting principles.



RIGHT TO EDUCATION		STRUCTURAL	PROCESS	OUTCOME
INCORPORATION OF THE RIGHT	Indicator	<ul style="list-style-type: none"> - Ratification by the State of the following international treaties that recognize the right to education: <ul style="list-style-type: none"> (i) ICESCR and its Optional Protocol (ii) CEDAW and its Optional Protocol (iii) CRC (iv) ICERD (v) Convention against Discrimination in Education (vi) Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (vii) Educational Goals for 2021 (ix) Declaration of the XX Ibero-American Summit (2010) - Incorporation of the right to education in the Political Constitution (and/or state or provincial constitutions) - Specific laws and/or education plans that recognize the right to education. Scope and implementation goals 	<ul style="list-style-type: none"> - Scholastic performance according to the national educational evaluation system - Net attendance rate, by sex, age group, geographic area, scholastic level (early, primary, basic secondary, and oriented secondary), disaggregated by sex, income quintile, ethnicity/race, and area of residence (urban/rural) - Percentage of coverage students, by sex, ethnicity/race, and geographic area - Number of class days by law - Coverage of programs and specific measures at all scholastic levels for access to and completion of education for vulnerable sectors, by area of residence (urban/rural). - Coverage of programs targeting early childhood education and youth and adult education, by area of residence (urban/rural) 	<ul style="list-style-type: none"> - Net education coverage rate by scholastic level (from early childhood education to youth and adult education) - Illiteracy rate in the population over age 15, by sex, ethnicity, race, age group, and geographic area - Percentage of students starting preschool and first grade who complete a full course of primary schooling - Percentage of primary school enrollment and completion, by sex, ethnicity/race, and geographic area - Percentage of secondary school enrollment and completion, by sex, ethnicity/race, and geographic area - Percentage of boys and girls not in school - Percentage of adolescents not in school



		<ul style="list-style-type: none"> - Compulsory education: age ranges and duration - Provisions governing the right to free education, by scholastic level 		<ul style="list-style-type: none"> - Average number of completed years of schooling, by sex, age group (educational profile and adults), ethnicity/race, geographic area, and income quintile - Net enrollment rate, by scholastic level, sex, age, ethnicity/race, geographic area, and income quintile - Primary and secondary completion rate, by sex, age, ethnicity/race, geographic area, and income quintile - Percentage of overage students and inter-annual dropout rate in primary schools - Percentage of overage students and inter-annual dropout rate in secondary schools
	<p>Signs of progress</p>	<ul style="list-style-type: none"> - Coverage characteristics: universal, targeted, or subsidy approaches to meet education demand - Number of registered civil society organizations involved in the promotion and protection of the right to education 	<ul style="list-style-type: none"> - Education system user satisfaction surveys/studies, taking into account if the system is accessible (culturally, geographically and economically) and meets the population's needs - Surveys/studies on satisfaction with and coverage of bilingual and 	



			intercultural education programs for indigenous peoples and persons of African descent	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	Indicator	<ul style="list-style-type: none"> - Sources of education sector financing - Laws and specific measures providing funding for free compulsory education - Amount and extent of incentives, tax deductions (tax incentives), and subsidies for the private education sector, by level of instruction 	<ul style="list-style-type: none"> - Education expenditure as a percentage of government social spending - Public spending on education by levels of instruction (early childhood, primary, secondary, technical, higher) - Investment in R&D in the region as a percentage of GDP - Spending by student, by education level, as a percentage of GDP per capita - Private education spending as a percentage of GDP - Distribution of education spending by jurisdictions (state, provincial, local) - Percentage of teachers without specific qualifications 	<ul style="list-style-type: none"> - Number of students per teacher, by education level - Average percentage of household income spent on education, by income quintile
	Signs of progress		<ul style="list-style-type: none"> - Specific progress by states in ensuring a free, universal and compulsory education and in meeting their education goals 	



STATE CAPABILITIES	Indicator	<ul style="list-style-type: none"> - Percentage of schools that participate in content and education-quality evaluation programs - State sector participation in enrollment, by education level (from early childhood to higher education). - Characteristics, amounts and management of international technical and financial assistance in the area of education 	<ul style="list-style-type: none"> - Number of public education facilities by levels: Early childhood (0 to 6 years); elementary and secondary (6 to 17 years), university, youth and adult education. Number of facilities and places - Percentage of education facilities (at all levels, including university) with libraries, by number of books - Annual rates of growth of specific school enrollment ratios, by age group 	<ul style="list-style-type: none"> - Median instruction level of the population in years of attendance, by gender - Percentage of children aged 0 to 6 who participate in educational programs - Percentage of full-time researchers, by sex and geographic area - Percentage of schools and teachers participating in continuing education and educational innovation programs - Percentage of young people and adults who participate in in-person and distance continuing education and training programs, by sex and geographic area - Percentage of young people who graduate from technical/vocational education who find jobs in fields related to their training, by sex and geographic area
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	Signs of progress		- Existence of plans with specific targets in terms of expansion of access to secondary education where it is not compulsory	
EQUALITY	Indicators	<ul style="list-style-type: none"> - Existence of legal frameworks and policies that guarantee an education without discrimination - Law recognizing bilingual and intercultural education - Inclusion of a gender-, rights-, and indigenous and Afro-descendant culture-aware approach in common basic contents - Inclusion of compulsory sex education at all educational levels - Provisions on inclusion of gifted children and adolescents 	<ul style="list-style-type: none"> - Percentage of families with socioeconomic difficulties that receive support to ensure regular school attendance by their children - Percentage of students who receive scholarships at all levels of education - Percentage of early childhood education teachers who are specifically qualified in that field - Percentage of primary school enrollment on full-day or double-shift, by type of facility (public or private) - Weekly time allotted in schools to art education and physical education, by education level - Number of school computers per student for educational activities - Existence, scope and coverage of programs on the sustainability of a culture of writing 	<ul style="list-style-type: none"> - Girl-boy ratio by level of education, ethnicity/race and geographic area - Female-male literacy in the 15-24 age group. - Percentage of children and adolescents from ethnic minorities or indigenous, Afro-descendant, and rural populations attending preschool, primary and secondary schools - Percentage of students from ethnic minorities, indigenous peoples, and Afro-descendant populations in technical and vocational education (TVE) and university - Percentage of students with special educational needs attending regular schools in the education system - Percentage of students belonging to indigenous peoples



				<p>who receive bilingual education, by education level</p> <ul style="list-style-type: none"> - Highest educational attainment by children and adolescents from indigenous and Afro-descendant groups, by sex and area of residence (urban/rural)
	Signs of progress		<ul style="list-style-type: none"> - Frequency and results of the updating of core educational contents that incorporate a gender-, ethnic-, human-rights-, and civic-awareness approach in curricula at the various education levels 	
ACCESS TO PUBLIC INFORMATION AND PARTICIPATION	Indicator	<ul style="list-style-type: none"> - Characteristics, coverage (territorial and thematic), budget, and jurisdiction of the educational statistics system 	<ul style="list-style-type: none"> - Established mechanisms for dissemination and access to educational databases and statistics - Established mechanisms for dissemination of education quality results and fulfillment of education goals - Number of projects submitted and approved that involve different social sectors and are applied in an integrated way to educational design 	
	Signs of progress	<ul style="list-style-type: none"> - Characteristics, coverage, and frequency of awareness campaigns on the right to education - Characteristics, coverage, and 	<ul style="list-style-type: none"> - Characteristics and coverage of mechanisms that disseminate information on the right to education at all levels of the system (formal, informal, early childhood, youth and adult education) 	



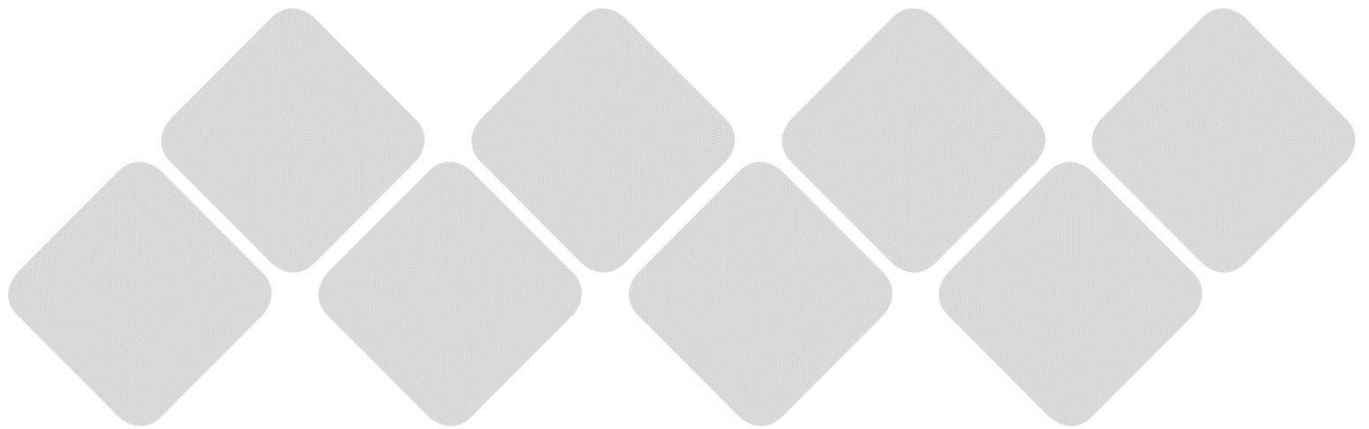
		frequency of awareness campaigns on eradicating illiteracy		
ACCESS TO JUSTICE	Indicator	<ul style="list-style-type: none"> - Existence of administrative recourse to submit complaints concerning violation of obligations connected with the right to education - Existence of contentious-administrative recourse - Existence of constitutional remedies (actions for constitutional relief (amparo), protection, etc.) - Existence of comprehensive, free legal services for protection of the right to education - Existence of public mediation or conciliation offices for settling issues connected with education - Application of procedural guarantees in judicial proceedings concerning education: (i) an independent and impartial tribunal; (ii) reasonableness of time; (iii) <i>égalité des armes</i>; (iv) <i>res judicata</i>; (v) right to appeal decisions to a higher authority 	<ul style="list-style-type: none"> - Number of judicial decisions that have upheld educational guarantees - Number and type of complaints received concerning the right to education investigated and resolved by the competent national human rights and/or educational institutions - Training policies for judges and lawyers on the right to education Topics covered and scope 	



	Signs of progress		<ul style="list-style-type: none">- Characteristics and coverage of awareness-raising mechanisms on education-related rights. Coverage of indigenous-language translation services	
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Progress Indicators: Second Group of Rights



AG/RES. 2823 (XLIV-O/14)

ADOPTION OF THE FOLLOW-UP MECHANISM FOR IMPLEMENTATION
OF THE PROTOCOL OF SAN SALVADOR

(Adopted at the second plenary session, held on June 4, 2014)

THE GENERAL ASSEMBLY,

BEARING IN MIND the 2012-2013 Annual Report of the Permanent Council to the General Assembly (AG/doc.5358/13 add. 1), as well as resolutions AG/RES. 2074 (XXXV-O/05), AG/RES. 2178 (XXXVI-O/06), AG/RES. 2262 (XXXVII-O/07), AG/RES. 2430 (XXXVIII-O/08), AG/RES. 2506 (XXXIX-O/09), AG/RES. 2582 (XL-O/10), AG/RES. 2666 (XLI-O/11), AG/RES. 2713 (XLII-O/12), AG/RES. 2798 (XLIII-O/13), and CP/RES. 1022 (1951/13);

UNDERSCORING the entry into force, in November 1999, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador” and its ratification by 16 member states of the Organization of American States (OAS);

AND THAT Article 19 of the Protocol of San Salvador establishes that the States Parties undertake to submit, pursuant to that article and the corresponding rules to be formulated for that purpose by the General Assembly, periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol; and that the corresponding rules were established by resolution AG/RES. 2074 (XXXV-O/05) and recently updated by resolution AG/RES. 2713 (XLII-O/12);

CONSIDERING that, by resolution AG/RES. 2713 (XLII-O/12), the General Assembly adopted the document “Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador” (GT/PSS/doc.2/11 rev. 2), prepared by the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador corresponding to the first group of rights (rights to social security, health, and education), on the understanding that these are guidelines and criteria for the states parties, which will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Protocol;

And that subsequently the Permanent Council, pursuant to resolution AG/RES. 2798 (XLIII-O/13), approved the document “Progress Indicators for Measuring Rights Considered in the Protocol of San Salvador (GT/PSS/doc.9/13) – Second Group of Rights” corresponding to right to work and trade union rights, right to a healthy environment, right to food, and right to the benefits of culture, through resolution CP/RES. 1022 (1951/13);



BEARING IN MIND that the Working Group has its full complement of regular members and has been operative, therefore, since June 2010, and that it has been complete since April 2014, with the appointment of all its alternate members, with the joining of the Mexican citizen Laura Elisa Pérez Gómez;

REITERATING that none of the provisions of this resolution shall pertain to those member states that are not parties to the Protocol of San Salvador,

RESOLVES:

1. To adopt the progress indicators belonging to the second group for measuring the rights considered in the Protocol (right to work and trade union rights, right to a healthy environment, right to food, and right to the benefits of culture), on the understanding that these are guidelines and criteria for the States Parties, which will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador,” expressing its appreciation to the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador for preparing and presenting them for consideration by the General Assembly.

2. To celebrate the fact that the follow-up mechanism to the Protocol of San Salvador is complete and operative, following the adoption of all progress indicators for measuring rights.

3. To remind the States Parties to the Protocol of San Salvador that they should submit national progress reports corresponding to the first group of rights included in the document “Progress Indicators for Measuring Rights under the Protocol of San Salvador,” which refer to the rights to education, social security, and health, before June 30, 2014.

4. To request the States Parties to the Protocol of San Salvador to submit national progress reports on the second group of rights, corresponding to the right to work and trade union rights, right to a healthy environment, right to food, and right to the benefits of culture, within a period of two years from the adoption of this resolution – before June 30, 2016.

5. To take note of the appointment by the Secretary General, in April 2014, of the alternate independent expert of the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador, pursuant to the mandate contained in resolution AG/RES. 2798 (XLIII-O/13), thus leaving the Working Group fully constituted in accordance with the rules governing its operations.

6. To request the Technical Secretariat of the aforementioned working group to review all existing regulations concerning the composition, designation, and rotation of the members of the Working Group and the length of their terms of office and, as necessary, to submit to the General Assembly any adjustments and clarifications required to ensure the group’s smooth operations in its review of the periodic reports of the States Parties.



7. To urge member states to consider signing and ratifying, ratifying, or acceding to, as the case may be, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador.”

8. To renew the invitation to contribute to the Specific Fund for the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador to all the States Parties to the Protocol of San Salvador, the member states and permanent observers, as well as national or international, public or private persons or entities, as defined in Article 74 of the General Standards to Govern the Operations of the General Secretariat and other provisions and regulations of the Organization of American States.

9. To request that the Permanent Council report to the General Assembly at its forty-fifth regular session on the implementation of this resolution. Execution of the activities envisaged in this resolution will be subject to the availability of financial resources in the program-budget of the Organization and other resources.



OEA/Ser.L/XXV.2.1
GT/PSS/doc.9/13
5 November 2013
Original: Spanish

PROGRESS INDICATORS FOR MEASURING RIGHTS
UNDER THE PROTOCOL OF SAN SALVADOR

SECOND GROUP OF RIGHTS

FINAL DOCUMENT BY THE WORKING GROUP TO EXAMINE THE NATIONAL
REPORTS ENVISIONED IN THE PROTOCOL OF SAN SALVADOR PURSUANT TO
THE MANDATE SET FORTH IN RESOLUTIONS AG/RES 2582 (XL-O/10), AG/ RES
2666 (XLI-O/11), AG/RES. 2713 (XLII-O/12), AND AG/RES. 2798 (XLIII-O/13) AFTER
THE PERIOD
OF CONSULTATION WITH THE STATES AND CIVIL SOCIETY
FROM DECEMBER 3, 2012 TO SEPTEMBER 30, 2013

Washington, D.C., October 31, 2013

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* Please note that the numbering corresponds to the document approved by AG/RES.

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SECOND GROUP OF RIGHTS

1. Article 19 of the Protocol of San Salvador provides that, pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States (OAS), the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.

2. In line with this mandate, the Working Group to Examine the National Periodic Reports Envisioned in the Protocol (hereinafter WG) drew up the document “Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador” (OEA/Ser.L/XXV.2.1, December 2011), drafted on the basis of the Standards and Guidelines presented by IACHR, which was consulted with the States and civil society and adopted by the General Assembly at its forty-second regular session held in Cochabamba, Bolivia in June 2012 [AG/RES. 2713 (XLII-O/12)].

3. The Indicators document defines two groups of rights: the first group which includes the rights to social security, health, and education, whose indicators to measure each right were developed in the above-mentioned document. Thus, in *resolves* clause 1, the States meeting at the General Assembly adopted “*the document ‘Progress Indicators for the Measurement of the Rights Considered in the Protocol of San Salvador,’ prepared by the Working Group to Examine the Periodic Reports of the States Parties to the Protocol of San Salvador, corresponding to the first group of rights (rights to social security, health, and education), on the understanding that these are guidelines and criteria for the states parties, who will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Protocol*” [AG/RES. 2713 (XLII-O/12), 1]. As a result, the States pledged to submit their reports to the WG on the above-mentioned first group of rights in June 2014 [AG/RES. 2713 (XLII-O/12), 4].

4. The second group of rights include the following: right to work and trade union rights (Articles 6; 7, and 8 of the PSS), right to a healthy environment (Article 11 of the PSS), right to food (Article 12 of the PSS), and right to the benefits of culture (Article 14 of the PSS), whose indicators are developed in the present proposal drawn up on the basis of the Standards, the Guidelines, and the Indicators document (OEA/Ser.L/XXV.2.). The methodological principles and formal requirements of the reports that the States Parties to the Protocol must draft are included in the second part of the present document.

5. The experts of the Working Group,¹ after submitting to the consideration of the States Parties and civil society organizations the second group of rights through an open consultation mechanism, which extended from December 3, 2012 to September 30, 2013 [AG/RES. 2798 (XLIII-O/13)], thank OAS member states, civil society organizations,

1. The Working Group is comprised of three standing government experts: Paola Buendía García (Colombia), Flavia Piovesan (Brazil), Ramiro Avila (Ecuador), and an alternate government expert: Andrés Scagliola (Uruguay); also comprised of Commissioner Rose Marie B-Antoine (IACHR, Trinidad and Tobago) as the IACHR’s standing expert; Commissioner Rosa María Ortiz (Paraguay) as the alternate; and Laura Pautassi (Argentina) as the standing independent expert.



specialized agencies, academics, universities and other interested parties² for having forwarded to the WG their comments, most of which have been incorporated into the present document.³

6. The States Parties that sent their reports were: Argentina, Colombia (on two occasions), Costa Rica, Ecuador, Mexico, and Peru. Likewise, the WG thanks the States that sent reports to the WG validating the feasibility and advisability of benefiting from the proposed indicators. The WG stresses the process that already started of consulting inside the various State institutions, headed by the ministries of foreign affairs, in a dialogue with the various technical sectors: the ministries of labor, social development, education, human rights, children and adolescents, culture, environment, agriculture, and rural development, among others. This sound practice has been highly prized and represents a good start to implement Article 19 of the Protocol of San Salvador. Likewise, the WG thanked the attendance and constant contributions of the States in the entities of dialogue, technical assistance, and cooperation in which most of the States Parties have participated since the group started functioning.⁴

7. As set forth in resolution AG/RES. 2798 (XLIII-O/13), under paragraph 2, the following was established: *“To authorize the Permanent Council to approve, during the second half of 2013, the aforesaid document, on the understanding that these are guidelines and criteria for the states parties, which will be able to adapt them to the sources of information available to them in order to comply with the provisions of the Protocol, extending the review process of that document until September 2013.”*

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2. The document was forwarded to the delegations of the States for their review, and at the same time it is available on the OAS website, on the page of the Technical Secretariat of the Working Group: Department of Social Development and Employment (SEDI-OAS). **In addition to the comments sent by the above-mentioned States, contributions were received as well from various specialized agencies of the United Nations, academics and universities, human rights organizations, civil society organizations, networks for the defense of economic, social and cultural rights, among others. They are available at:** <http://www.oas.org/en/sedi/ddse/default.asp>.
 3. The drafting of the present document benefited from the cooperation and technical assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), especially the contributions of Christian Curtis and Víctor Abramovich. The survey and inputs for the present document were drawn up by Camilo Sánchez, with the collaboration of Sergio Chaparro and Carolina Bernal.
 4. The various activities have been specified in the two reports on activities that the Group submitted and remitted on a timely basis. The participation of the States in the regional technical training course entitled “Use of indicators of economic, social, and cultural rights as a tool for effective social policymaking,” held in December 2012 in Montevideo, Uruguay, which was actively supported by this government and the assistance of the Spanish Cooperation Agency (AECID), is noteworthy. In June 2013, the international seminar “Indicators of economic, social and cultural rights (ESCR) and follow-up on social policies to eliminate poverty and achieve equality” was held in Santiago de Chile, on June 12 and 13, 2013 and organized by the Social Development Division of the UN Economic Commission for Latin America and the Caribbean (ECLAC) and the National Human Rights Institute; it was attended by government officials and technical experts, who presented the progress they had achieved in the indicators. It is hoped that these cooperation actions between the WG and the States and amongst the States themselves shall be consolidated, establishing positive synergies on the road to implementing the ESCRs in the Hemisphere.



8. The present document is structured like the document (OEA/Ser.L/XXV.2.1) pertaining to the first group of rights, providing a brief description of each right, with illustrative information and some references to the current situation of safeguarded rights to immediately present the tables with the indicators to be considered for the drafting of the reports. In the last part, there is the methodology to adopt, on the basis of the model comprised of the indicators classified in three conceptual categories (reception of the right, financial context and budgetary commitment, and State's capacity) and three cross-cutting principles (equality and non-discrimination, access to justice, and access to information and participation). In addition, the classification among *types* of indicators stems from the need to show that progress achieved in guaranteeing the right takes place at different *levels*: in the structural conditions of the State's action and the context in which the States operate; in the actions and the processes themselves that the States carry out; and finally in the results in terms of the effective enjoyment of the rights arising from combining given structural conditions with the concrete actions that the State has undertaken to guarantee them.

9. Continuing with the guidelines of the Standards (2005), they establish that "information with respect to each of the protected rights should take the following into consideration: gender equity; special needs groups (children, the elderly, and persons with disabilities); ethnic and cultural diversity, in particular with respect to indigenous peoples and persons of African descent; and involvement of civil society organizations in any progress in legislative and public policy reform,"⁵ for which cross-cutting categories common to all rights have been envisaged and which highlight the efforts made by the States to protect the persons referred to in Articles 15 to 18 of the Protocol (right to the formation and the protection of families, rights of children and adolescents, protection of the elderly, and protection of persons with disabilities). In all cases, the WG, assuming that States dispose of various sources of information, has not instructed which sources must be used, but rather lets the States remit their information on the basis of official sources and other sources accepted by the State Party and methodologically validated by international standards. In each report, it is requested that the sources used be indicated with the consequent methodological reservations pointed out.

10. Below are the indicators selected for each one of the rights envisaged in the second group. The importance of the principle of reciprocity on which the reporting system of the Protocol of San Salvador is based is reiterated so that the measuring process can mainly benefit the State so it can make progress in public policymaking respectful of economic, social, and cultural rights. States are insistently told that the process of including in the country reports all of the indicators set forth in the present report shall be gradual and progressive; therefore it is expected that the States will complete the indicators in line with the sources currently available and adopt the means and resources to build the necessary sources that would enable them to comply with all of the indicators.

5. Resolution AG/RES. 2074 (XXXV-O/05) of June 7, 2005. Annex, Context of the Proposal.



A. RIGHT TO WORK AND TRADE UNION RIGHTS

11. Article 6 of the Protocol of San Salvador indicates the following “1. *Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.* 2. *The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.*” Article 7 establishes the obligation of the States Parties to guarantee just, equitable and satisfactory conditions at work. Trade union rights are enshrined in Article 8, which emphasizes the duty of States Parties to guarantee the right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. The same article adds that no one may be compelled to belong to a trade union. It also guarantees the right to strike.

12. The right to work and trade union rights are recognized in various international treaties adopted by the United Nations (UN) and by the International Labor Organization (ILO). The International Covenant on Economic, Social and Cultural Rights, in its Articles 6, 7, and 8, enshrines the right to work, the right to just and favorable working conditions, and to trade union liberties. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 18, adopted November 24, 2005, asserts that the right to work has an individual and collective dimension and that it is essential for the realization of other human rights and human dignity. Regarding the application of the right to work, the Committee adopts the following criteria: availability, accessibility, acceptability, and quality. It is stressed that the right to work enshrined in the Covenant refers to the right to “decent” work.

13. For the ILO “*decent work is productive, adequately paid work, undertaken in conditions of freedom, equity, security and without any type of discrimination and able to guarantee a decent life for all persons who depend on this work.*” The four central pillars of the Decent Work Agenda are the following: 1) creating quality employment for men and women, 2) extending social protection, 3) promoting and strengthening social dialogue, and 4) respect for the principles and rights at work, as set forth in the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 (freedom of association and trade union organization and recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in respect of employment and occupation).

14. In the ILO report *Global Employment Trends 2012: Preventing a deeper jobs crisis*, the International Labour Organization points out that the world is facing the challenge of creating 600 million jobs over the coming years, in response to the severe economic crisis that has increased unemployment and shows widespread shortages of decent work. It is underscored that young people are the hardest hit, with increased vulnerability at work.



15. In its 2011 *Labour Overview*, the ILO announced, however, that: “*the urban unemployment rate in Latin America and the Caribbean continued to fall in 2011, reaching a historic low of 6.8 percent.*” It warned of the need to tackle “*issues such as youth unemployment, persistent informality, the low level of social security coverage and the need to combat rural poverty through employment.*” The *Labour Overview* indicated that “*the urban youth unemployment rate (the 15 to 24 age group) stands at 14.9 percent, more than double the general rate and triple that of adults, which is 5%.*” It also highlighted “*the persistence of the informal economy, with at least 50% of the employed urban population in informal jobs, which are generally poorly paid, in precarious working conditions and without social protection or access to labour rights. According to estimates based on data from 16 countries, of the 93 million people in an informal situation, 60 million work in the informal sector in production units that are not officially registered, 23 million have an informal job without social protection although they work in the formal sector, and 10 million work as domestic workers. In the case of young people, six out of ten of those who are employed only have access to informal jobs. (...) The female unemployment rate is 8.3 percent, which is higher than the male rate of 5.9 percent. The female participation rate stood at 49.5 percent 2011, which was still lower than the male rate of 71.3 percent.*”

16. In the light of this context and bearing in mind the protection parameters enshrined in the Protocol of San Salvador, there are indicators and signs of progress in terms of the right to work and, separately, the indicators pertaining to the freedom of association under the methodology described in the annex to the present document and which is common to the reporting mechanism (Standards, AG, 2005). In some cases, there are regulatory sources on the basis of which the indicators and statistical sources were built which the States Parties could use to calculate the indicators.



Conceptual categories/cross-cutting principle	RIGHT TO WORK – Key Indicators		
	Structure	Processes	Results
<p>Reception of the right (How it has been assimilated in the State's structure, in public policymaking and in the results achieved in the issue of work as a matter of rights)</p>	<ol style="list-style-type: none"> Enshrining the right to work in the Constitution. The constitutional right to work in the country incorporates which of the following guarantees? i) decent, fair and satisfactory conditions, ii) minimum and mobile wage, iii) job stability, iv) training, iv) safety at work, vii) promoting full employment, viii) nondiscrimination in the right to work of persons for reasons of disability, gender, ethnic origin or others; ix) protecting children and adolescents from any kind of hazardous work. Ratification and entry into force of the eight basic conventions of the ILO, among others: Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labor Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment 	<ol style="list-style-type: none"> Existence of public policies or programs in the following areas: <ol style="list-style-type: none"> Programs or policies to eliminate forced labor, Programs or policies to eliminate child labor, Programs combating discrimination for reasons of ethnic belonging, gender or disability in labor matters; Programs to regularize immigrant workers. Programs aimed at preventing and taking care of occupational accidents, including injury, illness and death. Programs aimed at preventing and punishing forced labor, including the most severe forms of child labor, domestic labor, migrant labor, and trafficking in persons. Existence of tripartite mechanisms to draw up agreements for labor standards, employment plans, professional training, dispute settlement. 	<ol style="list-style-type: none"> Child labor rate (% of children and adolescents between 5 and 17 years old employed as a share of the total child population in that age range). Unemployment rate broken down by gender, age, and schooling. Percentage of salaried workers as a share of the total employed labor force, broken down by gender. Informal employment rate (% of employed persons who do not have a duly registered job and for whom no amount is withheld for health insurance and/or retirement) broken down by gender and age. Proportion of workers with precarious employment (% of employed persons earning



	<p>and Occupation) Convention, 1958 (No. 111), Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities; UN Convention on the Rights of Persons with Disabilities; and the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography. Principal instruments of the Inter-American System.</p> <p>3. Type of compensation for dismissal envisaged (discriminatory, for economic reasons) and mechanisms of access and coverage.</p>	<p>Signs of progress</p> <ul style="list-style-type: none"> - Promoting affirmative action measures in terms of gender, ethnic belonging, race, persons with disabilities and working adolescents. 	<p>income below the minimum wage), broken down by gender and age.</p> <p>6. Proportion of women with paid employment in the non-agricultural sector.</p> <p>7. Proportion of incidence of occupational accidents broken down by gender and schooling.</p> <p>8. Percentage of women in government civil service, broken down by career ranking.</p> <p>9. Rate of participation of persons with disabilities, broken down by gender, who are part of the labor force.</p>
<p>Financial context and budgetary commitment (to what extent has the commitment to the right been reflected in the State's financial decisions)</p>	<p>1. % of national budget allocated to the Ministry of Labor and/or Employment.</p> <p>2. % of national budget allocated to labor policies for vulnerable sectors (children and adolescents, persons with disabilities, indigenous peoples,</p>	<p>1. % implementation of resources on labor programs (% of resources implemented compared to % of the time elapsed of the program's total duration).</p> <p>2. % of investment in occupational safety programs and policies (workplace environment,</p>	<p>1. % of the wage bill as a share of GDP. Share of earned income in the functional distribution of income (National Accounts).</p>



	immigrants). 3. Subsidies or incentives for job creation.	occupational health, etc).	
State's capacity (What is the State's administrative, technical, political and institutional capacity to guarantee the right to work)	1. A Ministry of Labor and/or Employment. In what percentage of regions, departments or local states does it have branch offices?	1. % of progress in achieving the targets of programs related to the right to work in the Planning Law or Development Plan currently in force (% progress compared to % of the time elapsed of the program's total duration). 2. % of unemployed persons with unemployment insurance benefits, by gender and age. 3. Number of work inspectors for every 100,000 workers. 4. Number of Labor Ministry civil servants as a share of employed population by gender and age	1. Jobs created by government programs, by year and by gender. 2. Average duration of unemployment (in days and broken down by age). 3. Long-time unemployment rates (one year or more). 4. Number of collective bargaining agreements signed per year. 5. Number of adolescent workers registered by region, age, gender, ethnic belonging, and disability.
Equality and nondiscrimination	1. Criminal or civil sanctions against labor discrimination in the legal and regulatory framework. 2. Administrative or judicial mechanisms to deal with harassment at work.	1. % of labor discrimination cases settled compared to total complaints filed, by gender and ethnic belonging. 2. % of public institutions that do not fill labor mainstreaming quotas (by gender, age group, etc.) as required by the law.	1. Proportion of the rates of participation, unemployment, informality, wage illegality, overtime and underemployment for various demographic sectors (women, young people, persons with



	<ol style="list-style-type: none"> 3. Adequate and effective legal remedies to prevent labor discrimination. 4. Quotas (gender, multicultural) established for public office or private-sector positions or other affirmative actions envisaged in the legislation. 5. Programs against labor discrimination in ministries focusing on population groups (women, young people, the elderly) or in ministries having jurisdiction in the matter. 6. Programs aimed at reconciling work and family and recognizing unpaid care-giving services. 7. Programs that foster labor insertion in decent conditions for vulnerable and traditionally discriminated population (women, young people, the elderly, Afrodescendants, indigenous peoples, LGBTI, rural inhabitants, immigrants, persons with disabilities, and others.) 	<ol style="list-style-type: none"> 3. Coverage of social protection systems for persons with precarious insertion as a percentage of the population not affiliated to traditional insurance (for example, affiliated to pension systems based on contributions) by gender, age, and ethnic belonging. 	<p>disabilities, ethnic groups, rural workers, etc.) compared to the same indicators for the general population and broken down by gender.</p> <ol style="list-style-type: none"> 2. Average growth of per capita earned income of the poorest quintile (20%) of the population compared with the average growth of per capita earned income over the past five years (convergence in income). 3. % of female workers legally covered by maternity leave benefits. 4. % of male workers legally covered by paternity leave benefits. 5. Measurement of wage discrimination between men and women for the same job.
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<p>Access to justice</p>	<ol style="list-style-type: none"> 1. Number of judges having jurisdiction in the labor sector for every 10,000 inhabitants (broken down by political-administrative units) and by gender and age. 2. Administrative instances to file complaints about failure to fulfill obligations related to the right to work and trade union liberties. 3. Mechanisms to guarantee access to labor justice for the low-income population, the population of persons with disabilities, ethnic population, cultural translators. 4. Administrative and legal mechanisms to tackle breaches of the individual and collective right to work. 	<ol style="list-style-type: none"> 1. Number of incoming and outgoing cases in courts having jurisdiction in labor cases (level of settlement). 2. Average duration of a proceeding in labor courts. 3. Cases settled as a percentage of total cases of complaints filed with administrative instance focusing on the breach of labor rights, because of a breach of rights. 4. There is case law in the following fields: i) protection of job stability against unjustified dismissal, ii) recognition of the type of contract that is really entered into regardless of the formalities, iii) measures against discrimination in the access to work by gender, sexual identify, age group, ethnic belonging or HIV, iv) job protection in case of pregnancy, v) job protection for persons with disabilities, vi) protection of workers against arbitrary employer decisions (for example, <i>ius variandi</i>), vii) minimum conditions of well-being at work, viii) minimum income for the jobless or vulnerable workers. 	<ol style="list-style-type: none"> 1. Levels of violation of labor rights not dealt with by judicial or administrative instances (% of victims who do not resort to any legal or administrative remedy). 2. % of labor exploitation cases involving children brought to court and how many of these cases led to a conviction. 3. % of exploitation involving children for sexual trade and pornography that were brought to court and how many of these cases led to a conviction. 4. % of complaints filed for labor discrimination of persons with disabilities and women for sexual abuse that benefited from a positive response in court or administrative instances.
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<p>Access to information</p>	<ol style="list-style-type: none"> 1. National household survey to monitor how the labor market is performing. How often is it conducted (periodicity)? 2. The national labor market survey provides for the following breakdown with a statistical significance: a. rural/urban, b. by gender, c. by political-administrative divisions, d. by age group, e. by ethnic group, f. by persons with disabilities, g. by income deciles, h. by income-earning activity, and i. by occupational position. 3. Surveys are adapted to cultural diversity and languages and persons with disabilities. 4. There is a public virtual portal of the institution that manages national statistics where the main labor market principal indicators are periodically published. 5. There are court mechanisms to order a government institution to provide information when it has refused to do so. 	<ol style="list-style-type: none"> 1. Periodicity with which the main indicators of the labor market are published: monthly, every two months, quarterly, half-yearly, yearly, in versions that are accessible to persons with disabilities and in the country's most widely used languages. 2. Requests for information answered by the statistics institution as a percentage of the total requests filed over the past year. 3. Protocols in government institutions to protect the confidentiality of the data supplied by those who are surveyed. 	<ol style="list-style-type: none"> 1. Number of users of the public virtual portal with statistical information and breakdown of that information by region, gender, age, disability, immigrant population, and others.
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Conceptual category/cross-cutting principle	TRADE UNION RIGHTS – Key Indicators		
	Structure	Processes	Results
Reception of the right	<p>1. Ratification and entry into force of the following ILO conventions, among others: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Workers' Representatives Convention, 1971 (No. 135); Rural Workers Organisations Convention, 1975 (No. 141); Labour Relations (Public Service) Convention, 1978 (No. 151), Collective Bargaining Convention, 1981 (No. 154); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</p> <p>- Principal OAS instruments: American Declaration of the Rights and Duties of Man; American Convention on Human Rights, Charter of the American States; Protocols of Amendment to the Charter of the OAS: "Protocol of Buenos Aires, Protocol of Cartagena de Indias, Protocol of Washington, Protocol</p>	<p>1. Public policies or programs implemented over the past five years in the following (indicate which):</p> <ul style="list-style-type: none"> a) Promotion of trade unions. b) Promotion of trade organizations for companies. c) Trade union capacity building. d) Elimination of anti-trade union practices. e) Education in trade union liberties and labor citizenship. f) Labor dispute settlement. g) Monitoring of collective bargaining. <p>2. Percentage of labor dispute cases heard in existing administrative entities that have been settled.</p> <p>3. Percentage of trade union registration applications turned down over the past five years (specify the reasons for the rejection).</p>	<p>1. Trade union establishment rate (workers affiliated to trade unions as a share of the total number of employed persons), by gender and schooling.</p> <p>2. Coverage of collective bargaining (workers benefiting from some type of collective bargaining mechanism as a share of total number of employed persons), by gender and age.</p> <p>3. Percentage of total companies belonging to a trade organization of employers.</p> <p>4. Number of days not worked because of strikes (broken down by economic sector) for the last two available years.</p> <p>5. Number of complaints filed with the Trade Union</p>



	<p>of Managua.”</p> <p>2. Trade union liberties enshrined in the Constitution. The constitutional collective right to work in the country contains which of the following guarantees? For what kind of trade union organization—first, second and third tier—are these rights guaranteed?</p> <p>a) Right to associate b) Right to meet c) Right to strike d) Right to collective bargaining</p> <p>3. Is there any constitutional or legal regulation of the right to strike and engage in collective bargaining in the case of basic public services? (If yes, please specify which / if the regulation is pending / if these rights are forbidden for this type of service.)</p> <p>4. Are there any requirements to be affiliated to trade union organizations, engage in collective bargaining or go on strike provided for by law (by type of contract / economic sector / other criteria)?</p>		<p>Liberty Committee over the past five years because of incidents occurring in the country.</p>
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	5. There is a constitutional guarantee that strikes can only be ruled illegal by a judge on the basis of due legal proceedings with full guarantees.		
	Signs of progress 1. Request for cooperation sent to ILO entities or other bodies dealing with trade union liberties.	Signs of progress - Existence of campaigns organized by the State to promote trade union liberties over the past few years.	
Financial context and budgetary commitment	1. % of total justice sector resources allocated to operate the courts having jurisdiction in labor matters.	1. % of implementation of resources on programs aimed at protecting and promoting trade union liberties (% implementation compared to % of the time elapsed of the program's total duration).	1. % of trade unions with less than 500 members (to measure the country's trade union structure, to see if it is comprised mostly of small trade unions or large ones).
State's capacity	1. There is some kind of social dialogue entity—tripartite or of another kind—that has an incidence on how economic and labor policy is drafted. Jurisdiction. 2. There are crimes or disciplinary offenses in the regulatory framework in force associated with breaches of trade union liberties. Specify which ones. 3. There is an information system that records breaches to labor	1. % progress in achieving the targets of programs regarding trade union liberties in the Planning Law or Development Plan in force (% of progress compared to % of the time elapsed of the program's total duration). 2. Cases settled as a percentage of total cases heard by arbitration courts or other mechanisms to settle collective bargaining disputes. 3. Labor agenda or labor agreement	1. Number of labor inspectors for every 100,000 workers. 2. Proportion between the highest rate of trade unionization and the lowest rate of trade unionization among territorial entities. 3. Number of collective bargaining agreements signed every year. 4. Registration of new trade unions every year.



	rights and contributes to capacity building of inspection, follow-up and monitoring activities.	in the framework of social dialogue forums (% of estimated compliance).	5. Number of collective bargaining processes supported by the State over the past five years.
Equality and nondiscrimination	<ol style="list-style-type: none"> 1. Court mechanisms to protect workers affiliated to trade unions from arbitrary actions by their employers (trade union law, criminal sanctions for anti-trade union attitudes). 2. Legal constraints on affiliation to a trade union and on the establishment of trade unions on the basis of various criteria (type of contract, economic sector). 	<ol style="list-style-type: none"> 1. Legal mechanisms, programs or campaigns to guarantee the right of outsourced workers to associate, strike and engage in collective bargaining (meaning those workers not formally and directly employed by companies). 2. Case law on anti-trade union practices. 3. Programs that foster the organization of collective bargaining and related forums for vulnerable or traditionally discriminated population groups (women, young people, the elderly, Afro-descendants, indigenous peoples, LGBTI, population with disabilities, rural inhabitants, immigrants, etc.) 	<ol style="list-style-type: none"> 1. Proportion of trade unionization rates of various demographic groups (women, young people, persons with disabilities, ethnic groups, rural workers, outsourced workers, etc.) compared to the general trade unionization rate. 2. Coverage of collective bargaining broken down by demographic group. 3. % of women and young people who are trade union leaders.
Access to justice	<ol style="list-style-type: none"> 1. Administrative instances to file complaints about the failure to fulfill obligations related to trade union liberties. 2. Arbitration courts or other 	<ol style="list-style-type: none"> 1. Number of incoming and outgoing cases in labor courts having jurisdiction in matters involving trade union liberties (level of settlement). 	



	mechanisms, with tripartite representation, to settle collective bargaining disputes.	<ol style="list-style-type: none"> 2. Average time of duration of a proceeding in the labor courts. 3. Coverage of training provided to civil servants of the judicial branch in collective labor law. 	
Access to information	<ol style="list-style-type: none"> 1. Trade union census in the country. Periodicity and data breakdown. 2. What questions are there in the main source of information (household survey or other) about the labor market situation with respect to trade union liberties? 3. Public information tools to easily gain access to the main sources of standard-setting regulations and case law regarding collective labor law. 	<ol style="list-style-type: none"> 1. Periodicity with which bulletins or information is published on the population's enjoyment of trade union liberties, with a culturally adequate approach, respecting the diversity of languages and the population with disabilities. 	



B. RIGHT TO ADEQUATE FOOD

17. Article 12 of the Protocol of San Salvador establishes that: “1. *Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.* 2. *In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.*” In article 17, PSS refers to adequate food for the elderly when it states, in subparagraph a), that the States Parties agree to progressively take the necessary steps to “...*provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves...*” (Article 17, PSS, subparagraph a). To respond to the evolutionary nature of human rights for increasingly effective protection and in line with the *principio pro personae*, this provision requires systematic interpretation in line with other international standards, which have specified the content and scope of the right to adequate food and have established guidelines on how States can fulfill their obligations stemming from the right to adequate food, including a gender-based perspective.⁶

18. The human right to adequate food has been recognized in other international and regional covenants and treaties and a growing number of States have explicitly recognized the right to adequate food in their political constitutions and increasingly in their domestic legislation (by means of both framework laws and sector laws). Latin America is at the leading edge of this world trend.⁷

19. The Committee on Economic, Social and Cultural Rights, international body with authority to interpret the International Covenant on Economic, Social and Cultural Rights (ICESCR), has defined in its General Comment No. 12 that “*the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.*”

6. Among these standards, the following must be taken into account mainly but not exclusively: General Comment No. 12 of the International Covenant on Economic, Social and Cultural Rights (1966), the Voluntary Guidelines on the Right to Food in the Context of National Food Security (2004), the Guiding Principles on Extreme Poverty and Human Rights (2012), and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests, paragraphs 75 and 76 (2012).

7. Bolivia (Art. 16), Brazil (Art. 10), Ecuador (Art. 13), Guatemala (99), Guyana (Art. 40), Haiti (Art. 22), and Nicaragua (Art. 63) recognize the right to food for all in their constitutions; Colombia (Art. 44), Cuba (Art. 9), and Honduras (Art. 142-146) recognize the right of children to food; Suriname (Art. 24) recognizes the right to food in the context of the right to work. Argentina, El Salvador and Costa Rica implicitly recognize the right to food in their constitutions by granting constitutional or supra-constitutional status to the International Covenant on Economic, Social and Cultural Rights.



The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.⁸ This right “...is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all” (GC 12, paragraph 4).

20. The Committee adds that “...*the precise meaning of ‘adequacy’ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while ‘sustainability’ incorporates the notion of long-term availability and accessibility.*” It means that food eaten by a person must not only be adequate in terms of its amount but also in terms of its quality for the integral development of persons in their respective life cycles, according to cultural, social, economic, and ecological patterns and considering their age, gender, ethnic belonging, race, economic condition and occupation.

21. Although the current world trend is toward highlighting the economic aspect of the right to adequate food, it is necessary to consider it in all of its dimensions, especially its social and cultural dimensions. The threats to, or violations of, the right to adequate food not only undermine a society’s economic growth potential but also undermines social cohesiveness in highly exclusionary societies such as those of Latin America. In view of the principle of interdependence of human rights and because food is a cultural manifestation of peoples, it is necessary to adopt an integral approach and with a direct interdependence between civil and political rights and economic, social and cultural rights.

22. The core content of the right to adequate food, in turn, implies “...*the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights*” (GC 12, paragraph 8). Likewise, the concept of access to resources is closely tied to that of nutrition. When public policy is fragmented, focusing solely on nutrition, it neglects access to production resources; when public policies only focus on production, neglecting the need for nutritional diversity, both the social and cultural dimension of this right is affected.

23. In the opinion of the ICESCR Committee, accessibility is comprised of both economic and physical accessibility, highlighting that “*economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised (...)*”. It also establishes that physical accessibility “*implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill.*

8. UN.Doc E/C.12/1999/5, CESCR General Comment, May 12, 1999, paragraph 6.



Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened” (GC No. 12, paragraph 13). Nevertheless, it has be stressed that, when describing the obligation to comply, the Committee emphasizes the obligation to facilitate the conditions for people to feed themselves, which is an obligation to provide that is subsidiary and must be exercised observing the principle of human dignity and sustainability.

24. Regarding this, FAO member states have agreed upon 19 Voluntary Guidelines to support the progressive realization of the right to adequate food;⁹ the objective of these Voluntary Guidelines is to provide practical guidance to States in their implementation of the progressive realization of the right to adequate food in the context of national food security, in order to achieve the goals of the World Food Summit Plan of Action on the basis of a human rights approach. The Voluntary Guidelines are provided below in sequence: i) democracy, good governance, human rights and the rule of law, ii) economic development policies, iii) strategies; iv) market systems, v) institutions, vi) stakeholders; vii) legal framework, viii) access to resources and assets: a) labor, b) land, c) water, d) genetic resources for food and agriculture; e) sustainability, f) services; ix) food safety and consumer protection, x) nutrition, xi) education and awareness-raising; xii) national financial resources, xiii) support for vulnerable groups, xiv) safety nets; xv) international food aid, xvi) natural and human-made disasters; xvii) monitoring, indicators and benchmarks, xviii) national human rights institutions; and xix) international dimension.

25. In addition, the right to adequate food must also be implemented by the State, as all rights, taking into account a gender perspective. In this respect and in line with the CEDAW, the State must refrain from any discriminatory measure with respect to the right of adequate food for all and each and every women, regardless of their age, economic status, ethnic belonging, raze. Beyond that, the State must act pursuant to Article 12.2 on nutrition for breast feeding mothers and pregnant women and Article 14.2 g) on the access of women living in rural areas to productive resources. Likewise, according to international standards in force, the State must protect all women against many forms of violence (gender, domestic, economic, labor) that prevent them from having access to adequate food. Regarding this, the principle of equality and nondiscrimination must be observed immediately and unavoidably by the State and entails not only negative obligations must also positive ones (in terms of preventing and eliminating all types of violence).

9. Adopted by the 127th Session of the FAO Council, November 2004, available at: <http://www.fao.org/docrep/meeting/009/y9825s/y9825s00.htm>



Conceptual category/cross-cutting principle	RIGHT TO ADEQUATE FOOD Key Indicators		
	Structure	Processes	Results
Reception of the right	<p>1. State's ratification of international human rights treaties that recognize, among others, the right to adequate food:</p> <ul style="list-style-type: none"> a) ICESCR and its Optional Protocol. b) CEDAW and its Optional Protocol. c) Convention on the Rights of the Child (CRC). d) Convention Relating to the Status of Refugees, 1951 and its Protocol of 1967. e) Convention Relating to the Status of Stateless Persons, 1954. f) Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities. g) International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. h) United Nations Declaration on the Rights of Indigenous Peoples. i) FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security; among others. j) Principal instruments of the Inter-American System: American 	<p>1. Public policies or programs in the following areas (these areas measure how the right's principal obligations have been mainstreamed into public policymaking as a way to assess the assimilation of the right's perspective into adequate food in the State's actions):</p> <ul style="list-style-type: none"> a) Elimination of hunger. b) Elimination of child malnutrition. c) Elimination of maternal malnutrition. d) Access to minimum consumption of water. e) Elimination of trans fatty acids in foods and replacing them by unsaturated fatty acids. f) Reducing sodium/salt content in food. g) Reducing the free sugar content in food and nonalcoholic beverages. h) Promoting the availability of healthy foods in all public institutions, including schools and other workplaces. i) Preventing food shortages. 	<ul style="list-style-type: none"> 1. Rate of mortality because of malnutrition for every 100,000 inhabitants. 2. % of persons (broken down by gender, age, ethnic group, geographical location, socioeconomic status, specific situation such as HIV/AIDS or prison inmates), who suffer from food and nutritional insecurity. 3. % of the population below the minimum dietary energy consumption (MDG indicator). 4. % of households with no access to basic sanitation services (MDG No. 7). 5. % of households below the total indigence or extreme poverty line, urban and rural. 6. Child malnutrition rate



	<p>Declaration of the Rights and Duties of Man, American Convention on Human Rights, OAS Social Charter of the Americas.</p> <ol style="list-style-type: none"> 2. Enshrining the right to adequate food and related rights in the Constitution and/or domestic legislation. 3. Legislation on the acceptability, accessibility, adaptability, and quality of the food provided in public supplemental nutrition programs. 		<p>(children under five with some degree of malnutrition).</p> <ol style="list-style-type: none"> 7. General malnutrition rate (or micronutrients deficiency). 8. Pregnant women with low weight, nutritional anemia or obesity for their gestational age. 9. Children from 6 to 59 months with nutritional anemia. 10. Prevalence of overweight or obesity among children and adults. 11. Prevalence of diabetes among children and adults. 12. Prevalence of high blood pressure among children and adolescents.
Financial context and budgetary commitment	<ol style="list-style-type: none"> 1. The Constitution has a provision that requires the State to promote development of the rural and farm and livestock sector as a priority. 	<ol style="list-style-type: none"> 1. Rurality rate in territorial entities (% of the total population in rural areas versus per capita government transfers for each territorial entity for the last available year). 	<ol style="list-style-type: none"> 1. Share of farm and livestock sector in national GDP.



	2. % of the national budget allocated to the Ministry of Agriculture, Rural Development or whichever ministry is in charge and to food programs and policies.		
State's capacity	<ol style="list-style-type: none"> 1. An Agriculture, Rural Development and/or Food Security Ministry. In what percentage of the regions / departments / states does it have branch offices? 2. An authority that regulates, inspects, monitors and oversees food production, distribution and sale activities. 3. A farm and livestock census or a survey that makes it possible to monitor the farm and livestock sector's performance. With what periodicity? 4. A public health program on the quality of food and the promotion of healthy food in connection with chronic non-communicable diseases. 5. Some entity in charge, public policy or government program in the following fields (at what level of government: national, departmental/state, municipal): <ol style="list-style-type: none"> a) Rural worker production promotion programs. b) Emergency supply programs in natural disaster areas. c) Programs for technical advisory services and technology transfer to 	<ol style="list-style-type: none"> 1. % progress in achieving the goals of the programs involving the right to food in the Planning Law or Development Plan currently in forces (% progress compared to % of the time elapsed of the program's total duration). 2. % stemming from the target population benefiting from public supplemental nutrition programs compared to the total population with chronic food insecurity. 3. Existence of pesticide and agrochemical use standards issued by government authorities and private enterprises. Monitoring and control. Complaint filing mechanisms. 	<ol style="list-style-type: none"> 1. Death by food poisoning for every 100,000 deaths. 2. Incidence of food poisoning cases. 3. Percentage of the population covered by a public supplemental nutrition program. 4. Percentage of persons with disabilities as a result of malnutrition-related causes by region, ethnic origin, gender and age.



	<p>farm and livestock producers.</p> <p>d) Farm and livestock research.</p> <p>e) Access of the population to sources of water.</p> <p>f) Crop substitution.</p> <p>g) Food price control.</p> <p>h) Mitigation of climate change impacts on agriculture.</p> <p>i) Direct guarantee of the right to adequate food.</p>		
Equality and non-discrimination	<ol style="list-style-type: none"> 1. The Constitution or legislation incorporates the differential approach (by gender, ethnic belonging and age group) regarding guaranteeing the right to adequate food. 2. Program to ensure the right to adequate food in the ministries focusing on demographic groups (women, young people, children, ethnic groups, the elderly) or in the ministries having jurisdiction in that area (agriculture, rural development). 3. What constitutional and legal mechanisms are there to respect use of the land and territory by the ethnic communities in line with their own practices? 4. Tax incentives, asset transfers or special loan programs for peasant producers, 	<ol style="list-style-type: none"> 1. % of the total target population benefiting from public nutritional programs that belong to traditionally excluded groups compared to the percentage share of these groups in the total population. 2. Policies encouraging breast feeding. Type of measures focusing on food for pregnant women and infants and young children. <p>Signs of progress:</p> <ul style="list-style-type: none"> - Studies and inquiries about food consumption strategies of the most vulnerable sectors, taking into account cultural diversity. 	<ol style="list-style-type: none"> 1. Malnutrition rate for various demographic sectors (children, boys and girls, young people, women, the elderly, persons with disabilities, ethnic groups) as a share of the global malnutrition rate. 2. % of current earnings that families spend to buy food, by income-earning quintile / decile. 3. % of wage income that families spend to buy food, by quintile / decile.



	<p>peasant women, ethnic groups, and other population groups that face conditions of exclusion.</p> <p>5. Policies aimed at the adolescent and young rural population with a gender approach.</p>		
Access to justice	<ol style="list-style-type: none"> 1. Adequate and effective constitutional remedies to prevent severe breaches of the right to adequate food. 2. Adequate and effective constitutional remedies to protect rural property, both individual and collective. 3. Policies are guaranteed to include the principle of equality and nondiscrimination in the access to healthy food. 	<ol style="list-style-type: none"> 1. Number of income and outgoing cases in the courts having jurisdiction in agrarian matters (level of settlement). 2. Average length of time of a proceeding in the courts having jurisdiction in agrarian matters. 3. Case law in the following fields: a) minimum wage and food security; b) economic accessibility to adequate food; c) access to land; and d) right to water. <p>Signs of progress:</p> <ul style="list-style-type: none"> - Coverage of translation services in indigenous languages. 	<ol style="list-style-type: none"> 1. Number of conflicts related to the right to adequate food per year. 2. % of complaints regarding the right to adequate food filed with administrative entities or with courts as a % share of cases settled. 3. % of cases of victims benefiting from adequate redress as a share of total complaints filed.



<p>Access to information and participation</p>	<ol style="list-style-type: none"> 1. National survey that measures nutritional conditions taking into account cultural diversity. 2. The national survey on nutritional conditions makes it possible to obtain the following breakdown with statistical significance: a. rural/urban, b. by gender, c. by political-administrative division, d. by age group, e. by ethnic group, f. for persons with disabilities, and g. by income decile. 3. Food intake survey of the population. 4. Farm and livestock census that monitors the dynamics of production in various sectors. 5. Public virtual portal of the entity that administers national statistics where the principal results of the surveys on food and nutritional issues are published. 6. Information mechanism so that the farm and livestock sector can learn about weather fluctuations and changes in environmental conditions. 7. Public mechanisms to report prices and promote competitiveness in the following media: i) press; ii) television; iii) radio; and iv) Internet. 8. Public and private consumer protection information channels. 	<ol style="list-style-type: none"> 1. Teaching sessions provided by state institutions to build up the public's capacity to interpret statistics on food issues. 2. Programs to disseminate and promote the right to food, taking into account cultural diversity. 3. Number of campaigns carried out by the State to promote healthy food habits over the past five years. <p>Signs of progress</p> <ol style="list-style-type: none"> 1. Characteristics of Internet portals, television coverage, and specific service booths to provide information about the right to food. 	<ol style="list-style-type: none"> 1. Education, information and communication programs to promote healthy food.
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	9. Regulations controlling advertisement promoting the consumption of nutritionally inadequate food such as food with a high sugar or fat content.		
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C. RIGHT TO A HEALTHY ENVIRONMENT

26. Article 11 of the Protocol of San Salvador establishes that: “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.*” On the basis of these two statements and considering the general obligation of States to take measures to guarantee the rights enshrined in the PSS without incurring any discrimination, it is concluded that the States have at least the following obligations with respect to the right to a healthy environment: a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; b) guaranteeing everyone, without any discrimination, basic public services; c) promoting environmental protection; d) promoting environmental conservation; and e) promoting improvement of the environment.

27. Although this is one of the rights that inter-American jurisprudence and doctrine have developed the least, other sources of international law on the environment are useful to elucidate the contents and scope of the above-mentioned obligations. The first matter to be determined is the meaning of the expression “healthy environment.” Although there is no firm legal standard defining precise components of the above, various soft-law instruments, as well as domestic laws on the right to the environment, refer to the concepts “healthy,” “sustainable” or “adequate.” The comparison of these sources is a sign of an emerging trend aimed at protecting an environment that meets certain quality conditions.

28. This linkage between environmental quality and the enjoyment of rights was recognized as early as 1972 by the Declaration of the United Nations Conference on the Human Environment (better known as the Stockholm Declaration). This declaration established in its First Principle that: “*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.*” The 1992 Declaration of Rio de Janeiro also pointed out that: “*Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.*” This principle was subsequently reiterated by the United Nations in 1982 in the World Charter for Nature.

29. In the same respect, Article 12 of the International Covenant on Social, Economic and Cultural Rights (ICESCR) includes improvement of the environment as one of the measures that States must adopt to ensure the right of all persons to enjoy, to the greatest extent possible, physical and mental health. On many occasions, the ICESCR Committee has made statements about the environmental dimension of the rights protected in the ICESCR, in both its Final Comments and General Comments. Although there is no General Comment specifically on the right to a healthy environment, Comment 14 (on the right to enjoy the highest possible level of health), Comment 15 (on the right to water) and Comment 12 (on the right to adequate food) provide useful information on the right to a healthy environment. Regardless of the specific situations of the context, the exercise of the right to a healthy environment must be governed by the criteria of availability, accessibility, sustainability, acceptability, and adaptability.



30. Availability: The States must ensure availability or existence of sufficient resources so that all persons, according to their specific characteristics, can benefit from a healthy environment and have access to basic public services. Environmental conditions depend on the state of various factors such as: a) air, b) water, c) soil, d) forest resources, e) biodiversity, f) energy resources, g) atmospheric conditions, and h) waste production, among others. As for public basic services, they are comprised of the essential services provided by the State (whether delivered directly by the State itself or by third parties) to ensure that persons live in acceptable conditions. Although there is no exhaustive list of these services, the Inter-American Commission has recognized on various occasions that services such as piped water supply, sewage, cleaning, electricity and gas may be viewed as basic services.

31. Accessibility: States Parties must guarantee that all persons, without any discrimination whatsoever, can gain access to a healthy environment and to basic public services. Accessibility has four dimensions: a) physical accessibility, which means that all sectors of the population can have physical access to a healthy environment and basic public services. To achieve this, it is necessary, on the one hand, for the environment in which persons carry out their lives to be healthy and that they not be required to leave their homes, schools or workplaces to find favorable environmental conditions; on the other hand, the coverage of basic public services must be widely extended; b) economic accessibility, which means that the States must dismantle all barriers to access to a healthy environment stemming from the socioeconomic conditions of persons; c) nondiscrimination, which requires that all persons, regardless of their racial, ethnic, gender, age, socioeconomic, disability or other characteristic, must be able to gain access to a healthy environment and to basic public services; and d) access to information as the possibility of requesting, receiving and disseminating information about the conditions of the environment and basic public services.

32. Sustainability: It may be understood as the result of having the criteria of availability interacting with those of accessibility, for the purpose of making sure that future generations will also enjoy the benefits of a healthy environment and basic public services. Some instruments of international law even speak of sustainable development to refer precisely to the fact that the extraction of natural resources must not be done as such to deplete them altogether, but rather must allow for their renewal and reduce environmental risks.

33. Quality: It is precisely this requirement for States that most directly enforces the right to a healthy environment, because the qualifier “healthy” requires that the constituent elements of the environment (such as water, air, or soil, among others) have technical conditions of quality that make them acceptable, in line with international standards. This means that the quality of the elements of the environment must not become an obstacle to persons to live their lives in their vital spaces.

34. Adaptability: Consideration of the various environmental conditions viewed as “healthy” must not keep in mind only technical criteria of compliance with environmental standards (which are examined under the criterion of quality), but also the state of these conditions making it possible for various demographic groups to develop in accordance with



their own specific characteristics. Adaptability also requires that basic public services provided by States meet the specific needs of the context where they are located.

35. As for the Inter-American Commission and Court, they have stressed, with the country reports and their review of individual petitions and cases, that States have obligations to protect the environment which have to be fulfilled to guarantee the rights guaranteed by the instruments of the Inter-American System. These two bodies have also found that environmental impacts can constitute severe harm to other rights coming under the justice system administered by the Inter-American System, such as the right to life. Because of this, requiring States to guarantee environmental protection has become a suitable way to guarantee other human rights.

36. The rights that have most frequently been undermined by environmental impacts are the rights to life, health, property, access to justice, and development. In particular, indigenous peoples are the ones whose fundamental rights are most affected, because as recognized by many instruments of international law—such as the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169—, the physical, spiritual, and cultural well-being of indigenous communities is closely tied to the quality of the environment where they live.

37. The jurisprudence of the Inter-American Commission and Court makes it possible to identify certain specific obligations of States, which in addition to protecting the environment are useful for the protection of other rights. Some of them are: a) adopting prior measures to protect the security and health of the population in cases of natural resources extraction;¹⁰ b) enforcing the regulations aimed at protecting the environment, not simply drafting them, because as indicated by the Commission, “[w]here the right to life, to health and to live in a healthy environment is already protected by law, the Convention requires that the law be effectively applied and enforced;”¹¹ c) fulfilling environmental conservation obligations, even in those cases where development projects are being implemented. In this regard, the Commission pointed out, quoting the Declaration of Principles of the Summit of the Americas, that “[s]ocial progress and economic prosperity can be sustained only if our peoples live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly;” d) In those cases where environmental impacts have played an important role, both the Inter-American Commission and Court have been emphatic about the importance of procedural rights to access to information, to participation and to access to justice. Thus, for example, in Ecuador’s 1997 Report, the Commission pointed out that the quest to guard against environmental conditions that threaten human health, “requires that individuals have access to: information, participation in relevant decision-making processes, and judicial recourse.”¹² These obligations which are highlighted by the bodies of the Inter-American Human Rights System

10. See, for example, the case of Yanomami v. Brazil. Inter-American Commission on Human Rights. Case of Yanomami, Res. No. 12/85, Case 7615 (Brazil), in the 1984-1985 Annual Report, OEA/Ser.L/V/II. 66, doc. 10, rev. 1 (1985).

11. Inter-American Commission on Human Rights. Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II. 96, doc. 10 rev. 1 (1997).

12. Inter-American Commission on Human Rights, op. cit, paragraphs 92 and 93.



are, in turn, enshrined in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Issues (better known as the Aarhus Convention).

38. Because Article 11 enshrined in the Protocol of San Salvador includes both the right to enjoy a healthy environment and the right to access to basic public services, the indicators specified herein are aimed at reflecting, at least partially, the reality of each one of the two components. Thus, first of all, for the right to a healthy environment, indicators have been selected to refer to the status of the environmental components. These components are mainly the following: a) atmospheric conditions, b) quality and sufficiency of water sources, c) air quality, d) soil quality, e) biodiversity, f) production of pollutant waste and their management, g) energy resources, and h) status of forest resources. Second, indicators are proposed to measure coverage of basic public services; that is, the following services: a) aqueduct, b) sewage, c) trash collection, d) electricity, and e) gas.



Conceptual category/cross-cutting principle	RIGHT TO A HEALTHY ENVIRONMENT – Key Indicators		
	Structural	Processes	Results
<p>Reception of the right (How the issue of a healthy environment and access to basic public services has been assimilated as a matter of rights in the State's structure, in public policymaking and in the results achieved)</p>	<p>1. Ratification and entry into force of multilateral agreements on the environment such as the following (list not exhaustive):</p> <ul style="list-style-type: none"> • Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. • Protocol of Cartagena on Biosafety to the Convention on Biological Diversity. • Convention on Biological Diversity. • Convention on International Trade in Endangered Species of Wild Fauna and Flora. • Convention on the Conservation of Migratory Species of Wild Animals. • Convention Concerning the Protection of the World Cultural and Natural Heritage. • Kyoto Protocol to the UN Framework Convention on Climate Change. • Protocol of Montreal on Substances that Deplete the Ozone Layer. • Ramsar Convention on Wetlands of International 	<p>1. Public policies or programs in the following areas:</p> <ol style="list-style-type: none"> a. Promoting the right to a minimum consumption of clean water. b. Water resources sanitation. c. Energy substitution. d. Management of harmful substances and hazardous waste. e. Environmental education. <p>2. Adoption of an environmental policy.</p> <p>3. There is an official system of indicators on the effective enjoyment of the rights to a healthy environment and access to basic public services that is used to design, monitor, evaluate and take public policy decisions.</p>	<p>1. Proportion of the population with sustainable access to improved sources of water supply in urban and rural areas (MDG).</p> <p>2. Proportion of the population with access to adequate sanitation methods in urban and rural areas (MDG).</p> <p>3. Proportion of surface area covered by forests (MDG).</p> <p>4. % of area affected by environmental deterioration.</p> <p>5. % of area affected by desertification and soil erosion.</p> <p>6. Ratio between protected areas to conserve biological diversity and total surface area (MDG).</p> <p>7. Use of energy (equivalence in petroleum kilograms) for each GDP dollar (PPP) (MDG).</p>



	<p>Importance, especially as Waterfowl Habitat.</p> <ul style="list-style-type: none"> • Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. • Stockholm Convention on Persistent Organic Pollutants (POPs). • United Nations Convention to Combat Desertification. • United Nations Convention on the Law of the Sea. • United Nations Framework Convention on Climate Change. • ILO Convention 169 concerning Indigenous and Tribal Peoples. <p>2. Right to a healthy environment and access to basic public services enshrined in the Constitution.</p> <p>3. There is an environmental institutional framework at all levels of government.</p>		<p>8. Carbon dioxide emissions (per capita) and use of chlorofluorocarbons that deplete the ozone layer (ODP tons) (MDG).</p> <p>9. Proportion of the population that uses solid fuels (MDG).</p> <p>10. Proportion of the population with access to each one of the basic public services.</p> <p>11. Greenhouse gas emissions.</p> <p>12. Child mortality rates because of acute respiratory diseases.</p> <p>13. % concentration of pollutants in the air to which the population is exposed (OECD).</p> <p>14. Number of motor vehicles used for every 1,000 inhabitants (UN Statistics Division).</p> <p>15. % hospital admissions of children under five for acute respiratory diseases.</p> <p>16. % of population affected by diseases stemming from the</p>
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			absence of access to clean water.
<p>Financial context and budgetary commitment (to what extent the commitment to the right has been reflected in the States' financial decisions)</p>	<ol style="list-style-type: none"> 1. % of national budget allocated to the Ministry of the Environment and to technical bodies in charge of monitoring activities that exert an environmental impact. 2. % of international cooperation resources aimed at promoting environmental issues. 3. Effectiveness of public spending on the environment. 4. Subsidies or tax incentives with a certain scope and available for companies that adopt environmentally responsible attitudes, for example, incentives for companies that implement energy efficiency mechanisms in using their resources or for companies that implement measures to reduce health and environmental risks arising from chemical products. 5. Some kind of mechanism to estimate the ecological risk in each sector of economic activity, to allocate the budget resources 	<ol style="list-style-type: none"> 1. % of implementation of resources in programs aimed at conserving water sources, energy resource conservation, air quality protection, ozone layer conservation, reduction in the production of pollutant waste and management of this waste, as well as programs to address climate change, forest resource conservation, promotion of sustainable development, and biodiversity conservation (% of resources implemented compared to the % of the time elapsed of the program's total duration). 2. Basic public services coverage rate by political-administrative division compared with per capita transfer per political-administration division for the latest year available. 3. Progress in enforcing the goals of the subsidies or incentives available for environmental responsibility. 	<ol style="list-style-type: none"> 1. % of income coming from the extraction of natural resources in GDP (National Accounts) and which are distributed among various levels of government. 2. Ratio of resources invested in generating clean energy to total resources invested in generating energy. 3. Ratio of the value of clean energy consumption to the total value of energy consumption.



	<p>required for local environmental protection programs.</p> <p>6. Public/private financial funds used as mechanisms to support the sustainability of protected areas (UNEP).</p>		
<p>State's capacity (How much administrative, technical, political and institutional capacity does the State have to guarantee the rights to a healthy environment and access to basic public services)</p>	<ol style="list-style-type: none"> 1. National survey to monitor the impact of the main production projects on the life or health of persons. What is its periodicity? 2. There are entities in charge of the technical review of environmental conditions. 3. There is an institution in charge of public policymaking or a government program in the following fields: a) assessment of the conditions of the State's water resources, b) assessment of air quality, c) State's contribution to depleting the ozone layer, d) possibilities for replacing energy resources by more environmentally friendly options, e) drawing up an environmental risk map, both by area and by economic activity, f) assessment of threats to the survival of species, g) measurement of the level of toxic 	<ol style="list-style-type: none"> 1. Public policies or programs in the following areas: <ol style="list-style-type: none"> a. Conservation, quality and sufficiency of water sources and energy resources. b. Protection of air quality. c. Atmospheric conditions and ozone layer conservation. d. Reduction in the production of pollutant waste and its management. e. Addressing climate change. f. Soil quality management and protection. g. Conservation of forest resources. h. Conservation of biodiversity. 2. Public policymaking instruments for the environment, such as environmental planning, ecological land use and development planning of the territory, financial instruments, environmental regulation of human settlements, environmental impact assessment, self-regulation, and audits. 	<ol style="list-style-type: none"> 1. % of the population benefiting from the service of a water supply pipeline in their household and workplace. 2. % of the population benefiting from electricity/gas network service in their household and workplace. 3. % of the population benefiting from trash collection services (municipal waste disposal) in their household and workplace. 4. Per capita generation of hazardous solid waste. 5. Minimization of waste (recycling rate).



	<p>waste and pollutant production, and h) conservation of protected natural areas. At what level of government (national, regional, municipal) are the institutions addressing these issues.</p> <p>4. Information system that records adverse environmental impacts, who causes these impacts and how state authorities respond to these impacts.</p>	<p>3. Existence of an environmental education plan or program for the public and government civil servants (% estimate of compliance).</p> <p>4. % of interventions of monitoring bodies in activities potentially harmful to the environment, which have been timely over the past year.</p> <p>5. % of national territory for which there are environmental damage risk maps updated over the past year.</p> <p>6. Plan, plans or program of action to mitigate risk in areas and activities identified as potentially endangered and harmful (respectively) to the environment.</p> <p>7. Existence of strategies to conserve endangered species.</p> <p>8. Existence of a plan to reduce the amount of pollutant waste produced.</p>	<p>6. % of population with access to improved services.</p> <p>7. % of the population benefiting from adequate excreta elimination systems (such as toilets or latrines).</p> <p>8. % of the population living in areas prone to natural disasters.</p>
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<p>Access to justice</p>	<ol style="list-style-type: none"> 1. Administrative courts specializing in environmental cases. 2. Number of judges belonging to the courts having jurisdiction in environmental matters for every 10,000 inhabitants (broken down by political-administrative units). 3. Number of prosecutors specializing in environmental crimes per number of inhabitants. 4. Existence of adequate and effective constitutional remedies to prevent severe environmental impacts (for example, the precautionary principle) and to require access to basic public services. 5. Mechanisms guaranteeing the protection of natural resources, even in areas inhabited by low-income population groups. 6. Expeditious, adequate and effective legal remedies, such as the ordering of precautionary measures, that can be used to suspend the progress of projects that severely endanger the environment. 	<ol style="list-style-type: none"> 1. Cases settled as a percentage of the complaints filed in administrative or judicial instances that hear cases of breach of the rights to a healthy environment and/or access to basic public services. 2. Number of incoming and outgoing cases in the courts having jurisdiction in environmental matters (level of settlement). 3. Number of incoming and outgoing cases calling for access to basic public services (level of settlement). 4. Number of cases involving attacks on, or threats to, defenders of the environment. 5. Average time of duration of the various types of proceedings in the courts having jurisdiction in environmental cases. 6. Coverage of provision of training for civil servants of the judicial sector about the importance of protecting the environment and defenders of the environment. 7. Is there case law guaranteeing the right to a healthy environment for traditionally excluded population groups? 	<ol style="list-style-type: none"> 1. Number of complaints on constitutional grounds (<i>amparo</i>) filed calling for defense of a healthy environment. 2. Number of criminal proceedings filed for crimes against the environment, for environmental safety and for attacks or threats against defenders of environmental rights. 3. Number of environmental complaints filed with administrative bodies. 4. Number of places protected as a result of court orders. 5. Number of judgments enforced in environmental cases. 6. Number of defenders of the environment under state protection. 7. Number of proceedings filed and judged.
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<p>Equality and non-discrimination</p>	<ol style="list-style-type: none"> 1. The Constitution or domestic legislation mainstream differential approaches in terms of gender, ethnic belonging, age group, or other with respect to guaranteeing the right to a healthy environment. 2. Are there mechanisms to recognize traditional knowledge held by first-nation peoples about the environment to protect it? 3. Is there a legal mechanism in domestic legislation that enforces ILO Convention 169 regarding prior informed consent? 	<ol style="list-style-type: none"> 1. % of production projects implemented in indigenous settlement areas where prior informed consent was secured. 2. % of areas where the State intervened to mitigate environmental risk and where this action has benefited the traditionally vulnerable population (especially indigenous peoples, peasants, low-income persons, etc.) compared to the total number of areas intervened to adopt risk mitigation actions. 	<ol style="list-style-type: none"> 1. Proportion of households with access to each one of the basic public services from various demographic groups (indigenous peoples, rural population and persons in various income deciles, etc.) compared to the total number of households with access to these services. 2. Proportion of the population belonging to traditionally vulnerable groups with access to improved sanitation services compared to the proportion of the total population with access to improved sanitation services. 3. % of households from various demographic groups (indigenous people, rural population and persons from various income deciles, etc.) who live in high environmental risk areas as a share of total households living in these areas.
<p>Access to information and participation</p>	<ol style="list-style-type: none"> 1. The right to access to public environmental information without any statement of reason is guaranteed in the Constitution 	<ol style="list-style-type: none"> 1. Periodicity with which the main indicators on environmental protection are published: monthly, every two months, 	<ol style="list-style-type: none"> 1. Rating by users of the timeliness and quality of the information received from government entities.



	<p>and domestic legislation.</p> <p>2. Is there a public virtual portal of the entity in charge of managing national statistics where key indicators about environmental protection are presented periodically?</p>	<p>quarterly, half-yearly, yearly.</p> <p>2. There are official programs to disseminate and promote respect for the rights to a healthy environment and access to basic public services.</p>	
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D. CULTURAL RIGHTS

39. Article 14 of the Protocol establishes that “1. *The States Parties to this Protocol recognize the right of everyone: a. To take part in the cultural and artistic life of the community; b. To enjoy the benefits of scientific and technological progress; c. To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.* 2. *The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.* 3. *The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.* 4. *The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.*”

40. The human right to the benefits of culture (hereinafter cultural rights), incorporated into the Protocol, has also been recognized by many international human rights protection instruments.¹³ It is considered to be an integral part of human rights and is universal, indivisible and interdependent.¹⁴ Respect for this right is essential for the development of all the capabilities of human beings and their collectivities and to build a democratic State under the rule of law.

41. “Culture” shall be understood broadly and inclusively “*as a living process, historical, dynamic and evolving, with a past, a present and a future*” and “*encompassing all manifestations of human existence.*” In the view of the Committee on Economic, Social and Cultural Rights (hereinafter the Committee), culture encompasses, among other things, “*ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.*”¹⁵

13. Universal Declaration of Human Rights, Article 27; International Covenant on Economic, Social and Cultural Rights, Article 15; International Convention on the Elimination of All Forms of Racial Discrimination, Article 5; Convention on the Elimination of All Forms of Discrimination against Women, Article 13; Convention on the Rights of the Child, Article 31; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 43; Convention on the Rights of Persons with Disabilities, Article 30; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2; United Nations Declaration on the Rights of Indigenous Peoples, Articles 5, 8, 10, 14; ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, Articles 2, 5, 7, 8, 13 and 15; United Nations Declaration on the Right to Development, Article 1.

14. Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraph 1.

15. Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraphs 10-13.



42. Cultural rights holders are everyone. As indicated by the Committee, “everyone” refers to the individual and the collective. In other words, cultural rights may be exercised by a person as an individual, in association with others persons or collectives, or within a community or group.¹⁶

43. Recognition of cultural rights entails positive and negative legal obligations, of both a general and specific nature, of the States Parties. First of all, there is the immediate obligation to guarantee that the rights recognized in Article 14 are exercised without discrimination and that the States must refrain from interfering in cultural practices, in the enjoyment and development of culture. Likewise, the States must promote, on the basis of available resources, the conditions for cultural rights to be realized progressively, without the absence of resources becoming an excuse for not adopting deliberate and concrete measures specifically. In that regard, as for the other rights enshrined in the Protocol, it is not permitted to take regressive measures, unless they are reasonably justified. Finally, the State has the general obligation of adopting the measures needed for the conservation, development and dissemination of culture,¹⁷ especially in those sectors that have the greatest difficulties in having access to cultural goods and services.

44. As for specific obligations, Article 14 of the Protocol recognizes three rights: (1) to take part in the cultural and artistic life of the community; (2) to enjoy the benefits of scientific and technological progress; and (3) to benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which she/he is the author.

45. The following elements are necessary conditions for the full realization of each one of these rights: availability of cultural goods and services, the manifestations of scientific and technological progress, and the specific possibility for the protection of the authorship of cultural productions and manifestations; accessibility to the full enjoyment of culture and that it be within the physical and financial reach of everyone everywhere; acceptability of the laws, policies, strategies, programs and measures adopted by the State for the exercise, enjoyment, promotion and protection of cultural rights by individuals and communities; adaptability of the measures adopted by the State in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities; appropriateness of the means adopted for each given cultural modality or context, respectful of diverse cultures and their manifestations.¹⁸

46. The right to participate in cultural and artistic life includes the right to act freely, to choose his or her own identity, to identify or not with one or several communities or to

16. Committee on Economic, Social and Cultural Rights, *General Comment No. 17*, 2005, paragraphs 7 and 8; Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraph 9.

17. Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraphs 44-47.

18. Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraph 16.



change that choice, to take part in the political life of society, to engage in one's own cultural practices, to express oneself in the language of one's choice, to seek, develop and share cultural knowledge and expressions, to act creatively and take part in creative activity. Likewise, participating in cultural and artistic life includes access to cultural life and contribution to cultural life.¹⁹

47. The right to enjoy scientific and technological progress includes the possibility of gaining access or not, individually or collectively, to knowledge and the use of the scientific knowledge and technological applications aimed at meeting the human rights of all persons and peoples.

48. Article 3 of the Protocol forbids discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition. As a result, no one can be discriminated for belonging or not to a given cultural community or group or for exercising or expressing a cultural manifestation, or be excluded from access to cultural practices, goods or services. The fight against discrimination entails taking measures of both a special and temporary nature to achieve equality in the exercise and enjoyment of cultural rights. Women, children and adolescents, the elderly, persons with disabilities, LGTBI persons, minorities, immigrants, indigenous peoples and persons living in poverty require special protection to enjoy and manifest their cultural expressions, gain access to cultural goods and services, and the States shall take specific measures to promote and protect their cultural rights.

49. On the basis of these standards, the indicators suggested for the right to culture are presented below; as for all rights, these indicators incorporate the following cross-cutting aspects: the sustainability approach, gender equity, inclusion of the ethnic approach and race, with special attention being focused on the specificities of children, adolescents, the elderly and persons with disabilities.

19. Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The right of everyone to take part in cultural life*, E/C.12/GC/21/Rev. 1, May 17, 2010, paragraph 15.



Conceptual category/cross-cutting principle	CULTURAL RIGHTS – Key Indicators		
	Structure	Processes	Results
Reception of the right	<ol style="list-style-type: none"> 1. State ratification of the following international instruments, among others, that recognize cultural rights: <ol style="list-style-type: none"> a. International Covenant on Economic, Social and Cultural Rights. b. Ratification of UNESCO instruments (with priority given to the Convention on the Protection and Promotion of Diversity of Cultural Expressions, Convention for the Safeguarding of Intangible Cultural Heritage, Convention on the Protection of World Cultural and Natural Heritage). c. International Convention on the Elimination of all Forms of Racial Discrimination. d. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). e. Convention on the Rights of the Child. f. International Convention on the Protection of the Rights of All Migrant Workers and 	<ol style="list-style-type: none"> 1. Campaigns carried out by the State and civil society to disseminate or promote cultural rights over the past few years. 2. National Culture Plan. 3. 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. 4. Progressive adjustments to provide persons with disabilities with access to cultural opportunities. 	<ol style="list-style-type: none"> 1. Literacy rate. 2. Literacy rate in first-nation languages and the languages of the most articulated immigrant communities. 3. Number of museums for every 100,000 inhabitants. 4. Number of libraries for every 100,000 inhabitants. 5. Number of theatres for every 100,000 inhabitants. 6. Number of computers for every 1,000 inhabitants. 7. Percentage of persons who have access to Internet. 8. Percentage of persons attending cultural presentations or shows over the past year. 9. Percentage of persons who went to cultural or sports



	<p>Members of their Families.</p> <p>g. Convention on the Rights of Persons with Disabilities.</p> <p>h. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries</p> <p>i. United Nations Millennium Declaration</p> <p>j. OAS human rights instruments: American Convention on Human Rights, OAS Social Charter of the Americas.</p> <p>2. Country's public support of the United Nations Declaration on the Rights of Indigenous Peoples.</p> <p>3. The right to culture and other related rights enshrined in the National Constitution and state constitutions.</p> <p>4. % of the country's languages into which the regulatory and legal framework related to the right to culture has been translated.</p> <p>5. Legislation that protects the moral and material interests of the authors of scientific, literary and artistic production.</p>		<p>venues (parks, museums, etc.) over the past year.</p> <p>10. Estimated average time per day that the country's inhabitants spend on enjoying culture or consuming cultural goods and services.</p> <p>11. Number of civil society organizations for every 100,000 inhabitants.</p> <p>12. Number of art schools out of total number of universities.</p> <p>13. Number of movies produced every year in the country.</p> <p>14. Number of indigenous and Afro-descendant communities that uphold their traditions.</p> <p>15. Percentage of artistic and academic publications.</p> <p>16. Percentage of public spaces that have cultural agendas.</p>
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	6. Legislation that guarantees protection and autonomy for ethnic, regional (immigrant) and cultural minorities.		
Financial context and budgetary commitment	<ol style="list-style-type: none"> 1. Provision in the Constitution establishing the priority that the State must give to public spending on cultural rights and science. 2. % of the national budget allocated to the Ministry of Culture or whatever institution is in charge of culture, by jurisdiction. 3. % of the budget allocated to public programs involving cultural rights over the past year. 4. % of resources allocated to the National Culture Plan. 5. % of the national budget allocated to science, technology and innovation programs over the past year. 6. Fiscal incentives and/or loans for the development of cultural rights. 	<ol style="list-style-type: none"> 1. % of implementation of resources allocated to the culture sector in the National Development Plan currently in force (% of resources implemented compared to % of the time elapsed of the Plan's total duration). 2. % of implementation of the resources allocated to science, technology and innovation programs in the National Development Plan currently in force (% of resources implemented compared to % of the time elapsed of the Plan's total duration). 3. % of implementation of the resources allocated to R+D programs in the National Development Plan currently in force (% of resources implemented compared to % of the time elapsed of the Plan's total duration). 4. Percentage of total international cooperation resources for the development of the culture sector over the past five years. 	<ol style="list-style-type: none"> 1. Total value of cultural goods and services as a % of GDP. 2. Share of science and technology in GDP. 3. Per capita public spending on culture, science, technology and R+D over the past year. 4. % of household spending aimed at consuming cultural goods and services.



		<ol style="list-style-type: none"> 5. % of State transfers aimed at minority ethnic or cultural groups for enforcement of their cultural rights. 6. Incentive to the private sector to invest in promoting cultural rights in the framework of corporate social responsibility, patronage of the arts, etc. 	
State's capacity	<ol style="list-style-type: none"> 1. A Ministry of Culture or National System of Culture or similar. Determine what percentage of the regions / departments / states have a branch office or agency of the above. 2. Inventory of intangible cultural wealth, religions practiced, languages spoken, theatre schools, movie trends, traditions in plastic arts, dance, rhythms, ethnic and cultural groups (for example, urban tribes). How is this inventory brought up to date? 3. Public system for the dissemination of cultural offerings. Does this system envisage communication strategies in the following media: 	<ol style="list-style-type: none"> 1. % progress in reaching the goals of programs involving cultural rights in the Law on Planning or the Development Plan currently in force (% of progress compared to % of the time elapsed of the program's total duration). 2. % implementation of spending by entities having jurisdiction in culture over the past year. 3. Number of national and regional festivals with government funding in the following cultural sectors: a. music, b. movies, c. dance, d. plastic arts, e. theatre, f. television, and g. gastronomy. % of territorial entities that have their own festival in these sectors. 4. Strategies to guarantee fluid communication between the State 	<ol style="list-style-type: none"> 1. Patents granted to the country for every 100,000 inhabitants. 2. Movies produced every year in the country. 3. Cultural facilities for every 100,000 inhabitants. 4. % of total population of ethnic minorities that do not have an identity card. 5. Percentage growth of persons who have gone to cultural venues over the past five years.



	<p>press, radio, Internet, television, government institutions, other media?</p> <p>4. Existence of significant legislative activity focusing on cultural issues (% of draft bills submitted that have to do with culture).</p> <p>Sign of progress - National survey making it possible to measure cultural diversity and participation of the population in culture (for example, survey on the consumption of culture). What is its periodicity and scope?</p>	<p>and the various ethnic minorities (for example, information on access to State services is translated into the languages spoken in the country or services are in those languages).</p> <p>5. % of the government's civil servants working in the culture sector.</p> <p>6. % of the government's civil servants trained in cultural rights.</p>	
Equality and non-discrimination	<p>1. The Constitution or legislation mainstreams the differential approach (by gender, ethnic belonging, age group, persons with disabilities) to guaranteeing the right to culture.</p> <p>2. Programs to ensure the right to culture in the ministries focusing on population groups (women, young people, children, ethnic groups, the elderly, etc.) or in the ministries having jurisdiction in the culture.</p>	<p>1. % of the target population benefiting from public programs for access to cultural goods and services compared to the percentage share of persons participating, by ethnic belonging, age, and gender, out of the total population.</p> <p>2. Criteria for the equitable allocation of cultural goods and services among regions, ethnic groups and cultural groups in facilities endowment plans.</p>	<p>1. % of current income that families earmark for the consumption of cultural goods and services by income decile, region and ethnic belonging.</p> <p>2. Percentage growth of income (current and available, after spending on basic needs) in the first quintile of the population over per capita income percentage growth.</p>



	<ol style="list-style-type: none"> 3. Information about the enjoyment of the right to culture, broken down by gender, area (rural/urban), region, ethnic group, age group, and socioeconomic condition. 4. The Development Plan or its equivalent envisages differential strategies to ensure the right of traditionally discriminated population groups to culture. 5. Recognition in the Constitution or national legislation of the traditional forms of land ownership of indigenous peoples. 	<ol style="list-style-type: none"> 3. Processes for consulting women's organizations ethnic groups, religious groups, and minority cultural groups to reach a consensus on cultural policy over the past five years. 4. Implementation of public policies for interculturalism, especially in basic education systems. 5. % of State programs aimed at historically excluded cultural groups or sectors. 	<ol style="list-style-type: none"> 3. Geographic concentration index (% of the population that each region has compared to % of the country's cultural goods that it accounts for) of various cultural or recreational goods: libraries, bookstores, theaters, movie houses, parks, etc. 4. Rate of growth or decline of the population speaking first-nation languages. 5. Representation of cultural minorities in the legislative branch of national government and the decentralized government (women, first-nation peoples, LGBTI, Afro-descendants). 6. Cultural, artistic or academic activities representative of historically excluded sectors.
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<p>Access to justice</p>	<ol style="list-style-type: none"> 1. Adequate legal remedies to prevent undermining the moral and material interests of authors of scientific, literary and artistic productions. 2. Constitutional and legal mechanisms to protect ethnic and cultural diversity (and linguistic diversity). 3. The judiciary system envisages traditional justice for indigenous peoples. 	<ol style="list-style-type: none"> 1. Cases settled as a share of total cases heard by judicial and administrative mechanisms to protect the right to culture or to settle intercultural disputes. 2. Case law in the following fields: i) anti-discrimination for cultural reasons in access to social rights and to State programs or for cultural reasons at work; ii) protection of moral and material interests of authors of cultural and scientific production; iii) minimum wage of minority groups at risk; iv) limits of cultural autonomy, v) access to cultural goods, vi) protection of cultural goods, vii) guarantee and protection of freedom of religion, freedom of expression, protection of the free development of the personality, and academic freedom; viii) conscientious objection. 3. Application of procedural guarantees in legal proceedings regarding the breach of cultural rights: i) independence and impartiality of the court; ii) reasonable time-limits; iii) equality of arms (fairness); iv) <i>res iudicata</i>; v) appeals with higher courts to overturn judgments. 	<ol style="list-style-type: none"> 1. Percentage reduction of episodes of violence between religious, cultural or ethnic groups over the past five years. 2. Number of cases that used prior informed consent from ILO Convention 169. 3. Cases settled as a share of total cases heard by judicial and administrative instances to protect cultural rights or to settle intercultural disputes.
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<p>Access to information and participation</p>	<ol style="list-style-type: none"> 1. System to conserve and disseminate the inventory of the country's cultural wealth. 2. Public virtual portal of the national statistics management entity where the main results of surveys on cultural rights are periodically presented. 3. Public mechanisms for the dissemination of cultural supply by means of: i) press, ii) television; iii) radio; and iv) Internet, with formats accessible to persons with disabilities and for the population of diverse cultures. 4. Information system or accountability mechanisms that enable citizen oversight on the allocation and implementation of budgetary resources for cultural programs. Ensuring that information is accessible to persons with disabilities (visual, auditory, intellectual). 	<ol style="list-style-type: none"> 1. % of the government's civil servants who work to conserve and disseminate the country's cultural wealth. 2. Periodicity of the publication of bulletins on cultural offerings in available media. 3. Teaching sessions provided by state institutions to build up the public's capacity to interpret statistics on cultural matters. 	<ol style="list-style-type: none"> 1. Number of examples of participation in, drafting and monitoring of public policies at national, departmental and municipal levels. 2. Number of hits on the virtual portals. 3. Use of cultural indicators by civil society in its alternative reports to international human rights monitoring organizations. 4. Number of requests for cultural data from the population.
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E. METHODOLOGY

1. Principles and sources of information

50. The rules for the preparation of periodic reports that describe the progress achieved in observing the rights enshrined in the Protocol point out that, for every right, information required from the State shall be structured on the basis of the model comprised of indicators classified into three conceptual categories (reception of the right, financial context and budgetary commitment, and State's capacity) and three cross-cutting principles (equality and nondiscrimination, access to justice, and access to information and participation).

51. To classify the proposed indicators, these conceptual categories and the cross-cutting principles interact with the three types of indicators that are traditionally used in the human rights approach: structure, process and results. The conceptual categories respond to the various aspects reflecting the progress achieved in guaranteeing and protecting rights. As for the classification among types of indicators, it stems from the need to show that the progress achieved in guaranteeing the right is made at various levels: in the structural conditions of the State's action and the context in which States operate; in the actions and processes themselves that the States undertake; and finally in the results in terms of effective enjoyment of rights arising from the combination of certain structural conditions with concrete actions that the State has undertaken to guarantee them.

52. The interaction between these dimensions makes it possible to have different indicators to evaluate the specific progress achieved by the State in a given aspect (for example, the reception of a right) and at a given level (for example that of structural conditions), which yields as a result information about the progress achieved in the materialization of the right in a clearly localized sphere of progress—which in this case would be the degree of assimilation of a right in the regulatory sources that are the basis for the State's action and in the basic infrastructure that serves as the support for its actions, on which emphasis would have to be placed, identifying the obstacles that exist in it so as to continue progressing toward the gradual realization of the right. Table 1 briefly explains the spheres of progress with which the proposed indicators are associated and that stem from applying the types of indicators to the three conceptual categories and the three cross-cutting principles.



Table 1. Spheres of action with which the various types of indicators are associated for each one of the conceptual categories and cross-cutting principles of the proposed methodology

Type of indicator	Structure	Process	Results
Conceptual category			
Reception of the right	It refers to mainstreaming the right's main contents and obligations into the country's Constitution and legislation and the State's institutional structure.	It refers to the extent and how the human rights perspective and general obligations regarding the right concerned have been mainstreamed into public policymaking and the actions of the various branches of government.	It refers to the current status in guaranteeing the right's principal components as a result of tackling the structure and public policies regarding the matter concerned as a human rights problem.
Financial and budgetary commitment	It refers to the constitutional and legal provisions that condition the level of financial, material, technical and other resources that must be invested and that are effectively allocated to guarantee the right.	It refers to the process whereby the resources allocated from various sources to guarantee the right are used by the States to implement public policies that contribute to guaranteeing the right. The indicators are aimed measuring the acceptability, relevance, adaptability and efficiency of these processes.	It refers to how the decisions and financial capacities of persons and the variables of the context relevant for the effective enjoyment of rights are transformed by State decisions on the level of resources to invest for their protection and how these resources are used.
State's capacity	They refer to all the characteristics of the State's institutional structure and legal system—in addition to those that must be adopted as part of the immediate obligations that international human rights	They refer to the quality, status, magnitude and characteristics of the efforts that various branches of government have undertaken in the sphere of policies related to the right and that can contribute to	They refer to the progress achieved in the effective enjoyment of rights in those aspects that are closely tied to the type of public policy or action that the State can adopt or, in other words, to that component of the



	instruments require—which indicted the possibilities of undertaking actions of a different kind to make progress in guaranteeing the right.	progressively broadening its enforcement.	results over which the State has the capacity to exert a major impact.
Equality and non-discrimination	They refer to the characteristics of the State’s institutional structure and legal system that contribute to guaranteeing the right concerned in conditions of equality and so that the State can be in condition to undertake actions to eliminate all forms of discrimination in the exercise of the right because of the structural exclusions faced by persons in society.	They refer to the way and extent that the principle of equality and nondiscrimination are mainstreamed into the State’s actions, in internal decision-making processes and in public policies aimed at guaranteeing the right.	They refer to the status of realization of the principle of equality with regard to the right concerned. The indicators of this sphere emphasize measuring the gaps in guaranteeing the principal components of the right amongst persons (whether because of difference in gender, place of residence, ethnical belonging, age group, socioeconomic level, among others). It aims at ensuring true equality not simply formal equality.
Access to justice	It refers, in the legal system, to adequate and effective judicial and administrative remedies to protect the right and to call for its enforcement.	It refers to the level of the population’s access to current legal and administrative remedies to protect the right, to how efficiently they function, and the degree of compliance with the procedural guarantees of these remedies.	It refers to the effectiveness of the legal and administrative remedies for the protection and guarantee of the right by the population. The effectiveness of these resources becomes both an instrument to enjoy the right concerned and a separate right in itself.
Access to information and	It refers to the progress achieved in the basic conditions	It refers to the relevance, characteristics, and type	It refers to the progress achieved in the main components of the



<p>participation</p>	<p>for the population to gain access to relevant and timely information about the contents of the right, the State's obligations regarding that right, and the public actions and policies that it has implemented to enforce fulfillment of these obligations. Among these basic conditions, there are aspects ranging from the availability of information, the recognition of the right to information, as well as to existing resources to have access to that information.</p> <p>Regarding participation, this sphere refers to the current conditions in the State's structure and legal system so that the population can participate in defining the scope of the right, in designing and implementing policies to guarantee it, and in the process to monitor their progress and enforce their compliance.</p>	<p>of public policies that the State has implemented, in view of structural capacities and a regulatory framework that is in force, to guarantee access to information and materialize the ideal of transparency in all state activities to guarantee the right.</p> <p>Regarding participation, this sphere refers to how this principle is mainstreamed into the State's actions and public policies aimed at guaranteeing the right.</p>	<p>right to information with regard to the right concerned.</p> <p>Regarding participation, this sphere refers to the level of effective participation exercised by the population with respect to the right concerned.</p> <p>Both components, that is, access to information and participation, are closely tied, to the extent that the former allows for greater empowerment and capacity building of citizens to participate in the various processes involved in defining and guaranteeing rights.</p>
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Source: own elaboration

53. The advantage of this methodology is that it makes it possible to draw up a *value-based* balance rather than just a *descriptive* balance so that States-Parties can progressively move toward guaranteeing the rights. Indeed, this classification makes it



possible, once the overall picture of the situation of the effective enjoyment of the right has been obtained from consulting the results indicators, to continue the exercise of identifying the causes explaining the progress found through the structural and process indicators. A prolonged standstill in the progress of a given right may be because, at first, there is *structural flaw*, that is, the absence of the right structural conditions to achieve progress in guaranteeing the right—for example, because the right has not even been recognized in the Constitution or because the institutions in the State’s structure have not even been created to work on guaranteeing the right.

54. Second, in the event that it is proven that there has been substantial progress in the indicators of the structural conditions, the standstill may be due to a gap in the State’s capacities, leading to a shortage of actions implemented by the State to ensure advancement in guaranteeing the right, although the structural conditions might be in place to do so. Nevertheless, there may be situations where structural flaws combine with public policymaking flaws, in which case the present methodology makes it possible to identify the importance that should be given to the former and the latter, by consulting the indicators.

55. Progress indicators are useful tools to the extent that they are taken as the multiple approximations of the status of the realization of rights in the countries. The indicators, taken in isolation, do not reflect linearly the degree of progress in guaranteeing the right, but rather constitute a series of tools which, if systematically interpreted, can provide an overview of the materialization of the right in the countries. Comparisons between countries on the basis of one single indicator or a restricted set of indicators, although useful to examine how each country progresses in some aspects in guaranteeing the right, cannot be taken as conclusive proof of country differences in the realization of the right. Since they involve multiple approximations, the analyses of this style must be carried out with much caution and, to the extent possible, by conducting a systematic interpretation based on a broad set of indicators.

56. The combination of indicators also turns out to be an indispensable tool to interpret the progress status of the adequate materialization of rights. A good number of the indicators proposed in the present document, when taken separately, are in no condition to provide an accurate approximation of the realization of rights in the countries. It is important to understand that, for the most part, these indicators serve as *approximations* to the progress achieved in the enjoyment of rights *only if* they are interpreted in connection with others. For example, indicators that measure the progress achieved in the performance of a country’s farm and livestock sector function as a sound approximation to measure the progress achieved in respecting the right to food only when they are combined with others that highlight the improvement in nutritional conditions of various demographic groups. But it is very important to appreciate this class of indicators which can only be interpreted adequately in the framework of a rights perspective and in connection with other indicators, because they provide information that is much needed when judging whether or not there truly are the conditions for a sustainable and wide-ranging exercise of rights: in the case of the right to food, for example, a specific cyclical improvement in food conditions—reflected in the results indicators—in a country that relies on foods imports and starts having severe imbalances in its balance of trade may not be sustainable unless it is coupled with a sound performance of the farm and livestock sector. The systematic interpretation of indicators as



multiple approximations, therefore, makes it possible to have an overview of how countries move forward to build their *effective capacity* to guarantee rights, which is oftentimes not possible using an isolated interpretation of a few “star” or notable indicators.

57. For each right, tables are included as a reference of the information that the State Party must include in its report. In all cases, the States are requested to draw up the tables preferably using the data pertaining to 2010 and thereafter, giving priority to the most recently available measures and, in the case of signs of progress, the latest available source.

58. In those cases where the States do not have the information available to cover all of the indicators requested, it will not be an obstacle to the presentation of the reports, as each State pledges to gradually incorporate the sources of data production and gathering needed for future reports. Likewise, it is considered that, in those cases where the States have other types of indicators different from those suggested, it is valid for the States to include them in the national reports they submit to the WG as long as they are essentially human rights indicators. Furthermore, the sections that have not been completed are open to the possibility of having new indicators and signs of progress defined in the future as the process is developed.

59. Finally, one indispensable aspect to start the process is setting the priority goals and targets by each State, which must be defined on the basis of an implementation strategy or plan, in line with a period of time and a process of discussion, debate, and consensus with the various political and social stakeholders of each State, relying on a detailed timetable that would permit supervision of compliance with the proposed goals. States Parties are requested to promote open and deliberative processes guaranteeing the participation of various stakeholders, specialized technical agencies of the United Nations, universities, human rights organizations and civil society, in order to draw up national strategies for the realization of the rights enshrined in the Protocol, both for the development and implementation of their national strategies and for the procedures to draw up the reports of the Protocol and eventually in the follow-up on the recommendations of the implementing agency. These targets shall contribute to better examining the reports using the progress indicators, making it possible to measure progress not only with respect to a given situation, but also prospectively, with respect to the degree of closeness to reaching the goals and targets set by the State itself, on the basis of the obligations that it has pledged to fulfill. The social and political dialogue that the process of drafting the reports and its supervision can trigger shall be viewed as a praiseworthy fact in itself, viewed as a strategy to guarantee social rights in the States Parties. It should be highlighted that it involves a gradual process, which shall be fine-tuned over time and the course that is imposed on it; however, the will showed by the States to implement it is highly appreciated.

2. Reports of the States Parties

60. The inter-American system of reports must function as a supplement to the procedure of submitting reports to the United Nations Committee on Economic, Social and Cultural Rights and other international and Inter-American monitoring agencies. The monitoring of PSS is not aimed at duplicating other follow-up systems developed in the universal protection system. That is only possible with a correct selection of the specific



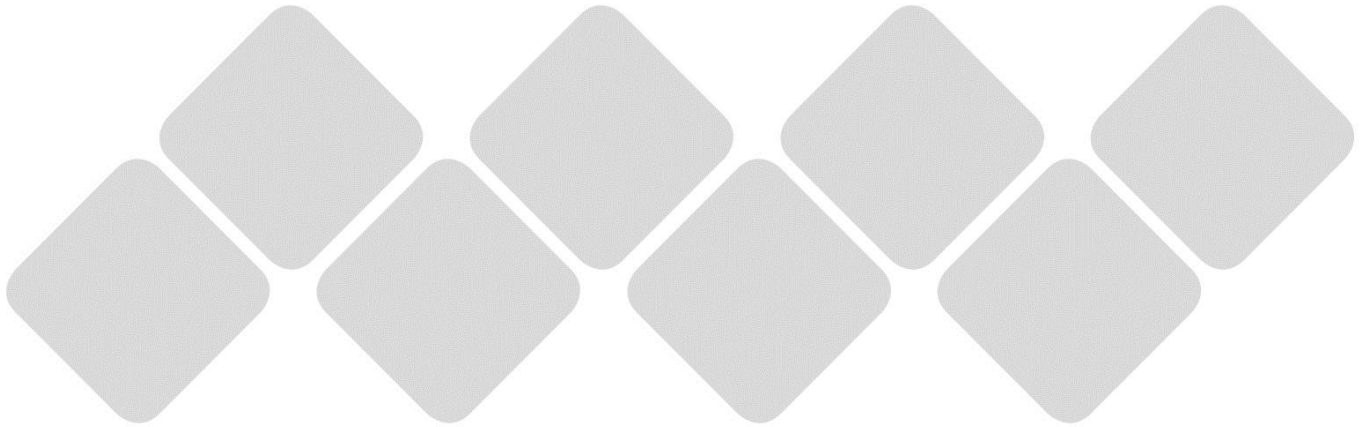
problems of each region and State, so as to reach the highest level of materialization of the principle of accountability. Priority is given to the quality of the evaluation of the process rather than the length of the report, and that is why it is reiterated that the reports cannot be longer than 35 pages. It is suggested that annexes be used in case of dire need.

61. According to the second group of rights proposed, the first report pertaining to the second group of rights must be submitted by the States two years after the adoption of the present document by the OAS General Assembly. After 90 days, the WG shall forward its observations and recommendations to the State Party (preliminary conclusions). Each State Party will be able to make additional comments to the preliminary conclusions within 90 days after the date of receiving said conclusions, which comments shall be reviewed by the Working Group.

62. Within 90 days thereafter, the WG shall forward to the State its preliminary observations and shall set the date for the public session for review of the document between the State's representative, civil society organizations, and experts of the WG. After this session, within 90 days, the WG shall forward the final conclusions to the State Party. The WG shall adopt by consensus the final conclusions regarding the reports that are the targets of the review. The State shall be notified of the conclusions by a written communication and at a meeting with the permanent accredited representative to the OAS. Afterwards, the conclusions shall be made public. The next report shall be issued three years after completion of this first process (first and second groups of rights reported and with conclusions), and on this occasion, the States shall report on both groups of rights in one single report, taking the previous report based on data from 2010 as a baseline to measure progress.



Appendix





ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

Preamble

The States Parties to the American Convention on Human Rights "Pact San José, Costa Rica,"

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified;

Recognizing the benefits that stem from the promotion and development of cooperation among States and international relations;

Recalling that, in accordance with the Universal Declaration of Human Rights and the American Convention on 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;

Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and

Considering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into



the protective system thereof, Have agreed upon the following Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador:"

Article 1
Obligation to Adopt Measures

The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

Article 2
Obligation to Enact Domestic Legislation

If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.

Article 3
Obligation of nondiscrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

Article 4
Inadmissibility of Restrictions

A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

Article 5
Scope of Restrictions and Limitations

The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.



Article 6 **Right to Work**

1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.

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

Article 7 **Just, Equitable, and Satisfactory Conditions of Work**

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

- a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;
- b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;
- c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;
- d. Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;
- e. Safety and hygiene at work;
- f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;
- g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;
- h. Rest, leisure and paid vacations as well as remuneration for national holidays.



Article 8 **Trade Union Rights**

1. The States Parties shall ensure:
 - a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;
 - b. The right to strike.
2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.
3. No one may be compelled to belong to a trade union.

Article 9 **Right to Social Security**

1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.
2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

Article 10 **Right to Health**

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - a. Primary health care, that is, essential health care made available to all individuals and families in the community;
 - b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
 - c. Universal immunization against the principal infectious diseases;
 - d. Prevention and treatment of endemic, occupational and other diseases;
 - e. Education of the population on the prevention and treatment of health problems, and



- f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 11
Right to a Healthy Environment

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.

Article 12
Right to Food

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

Article 13
Right to Education

1. Everyone has the right to education.
2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.
3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:
 - a. Primary education should be compulsory and accessible to all without cost;
 - b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
 - c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
 - d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;
 - e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.



4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.

5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

Article 14

Right to the Benefits of Culture

1. The States Parties to this Protocol recognize the right of everyone:

- a. To take part in the cultural and artistic life of the community;
- b. To enjoy the benefits of scientific and technological progress;
- c. To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.

3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

Article 15

Right to the Formation and the Protection of Families

1. The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions.

2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.

3. The States Parties hereby undertake to accord adequate protection to the family unit and in particular:

- a. To provide special care and assistance to mothers during a reasonable period before and after childbirth;
- b. To guarantee adequate nutrition for children at the nursing stage and during school attendance years;
- c. To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities;
- d. To undertake special programs of family training so as to help create a stable and positive environment in which children will receive and develop the values of understanding, solidarity, respect and responsibility.



Article 16 **Rights of Children**

Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

Article 17 **Protection of the Elderly**

Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

- a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
- b. Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- c. Foster the establishment of social organizations aimed at improving the quality of life for the elderly.

Article 18 **Protection of the Handicapped**

Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

- a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;
- b. Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter;
- c. Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;
- d. Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.



Article 19 **Means of Protection**

1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.

2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.

3. The Secretary General of the Organization of American States shall also transmit to the specialized organizations of the inter-American system of which the States Parties to the present Protocol are members, copies or pertinent portions of the reports submitted, insofar as they relate to matters within the purview of those organizations, as established by their constituent instruments.

4. The specialized organizations of the inter-American system may submit reports to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture relative to compliance with the provisions of the present Protocol in their fields of activity.

5. The annual reports submitted to the General Assembly by the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture shall contain a summary of the information received from the States Parties to the present Protocol and the specialized organizations concerning the progressive measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and the general recommendations they consider to be appropriate in this respect.

6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.

8. The Councils and the Inter-American Commission on Human Rights, in discharging the functions conferred upon them in this article, shall take into account the progressive nature of the observance of the rights subject to protection by this Protocol.



Article 20
Reservations

The States Parties may, at the time of approval, signature, ratification or accession, make reservations to one or more specific provisions of this Protocol, provided that such reservations are not incompatible with the object and purpose of the Protocol.

Article 21
Signature, Ratification or Accession
Entry into Effect

1. This Protocol shall remain open to signature and ratification or accession by any State Party to the American Convention on Human Rights.

2. Ratification of or accession to this Protocol shall be effected by depositing an instrument of ratification or accession with the General Secretariat of the Organization of American States.

3. The Protocol shall enter into effect when eleven States have deposited their respective instruments of ratification or accession.

4. The Secretary General shall notify all the member states of the Organization of American States of the entry of the Protocol into effect.

Article 22
Inclusion of other Rights and Expansion of those Recognized

1. Any State Party and the Inter-American Commission on Human Rights may submit for the consideration of the States Parties meeting on the occasion of the General Assembly proposed amendments to include the recognition of other rights or freedoms or to extend or expand rights or freedoms recognized in this Protocol.

2. Such amendments shall enter into effect for the States that ratify them on the date of deposit of the instrument of ratification corresponding to the number representing two thirds of the States Parties to this Protocol. For all other States Parties they shall enter into effect on the date on which they deposit their respective instrument of ratification.



SIGNATORIES AND RATIFICATIONS

COUNTRY	SIGNATURE	RATIFICATION /ACCESSION	DEPOSIT	INFORMATION *
Argentina	11/17/88	06/30/03	10/23/03 RA	//
Bolivia	11/17/88	07/12/2006	10/05/2006 RA	//
Brazil	//	08/08/96	08/21/96 AD	//
Chile	06/05/01	//	//	//
Colombia	//	10/22/97	12/23/97 AD	//
Costa Rica	11/17/88	09/29/99	11/16/99 RA	//
Dominican Republic	11/17/88	//	//	//
Ecuador	11/17/88	02/10/93	03/25/93 RA	//
El Salvador	11/17/88	05/04/95	06/06/95 RA	//
Guatemala	11/17/88	05/30/00	10/05/00 RA	//
Haiti	11/17/88	//	//	//
Honduras	//	09/14/11	11/10/11 AD	//
Mexico	11/17/88	03/08/96	04/16/96 RA	//
Nicaragua	11/17/88	12/15/09	03/05/10 RA	//
Panama	11/17/88	10/28/92	02/18/93 RA	//
Paraguay	08/26/96	05/28/97	06/03/97 RA	//
Peru	11/17/88	05/17/95	06/04/95 RA	//
Suriname	//	02/28/90	07/10/90 AD	//
Uruguay	11/17/88	11/21/95	04/02/96 RA	//
Venezuela	01/27/89	//	//	//

REF = REFERENCE

D = DECLARATION

R = RESERVATION

INFORMA = INFORMATION REQUIRED BY THE TREATY

INST = TYPE OF INSTRUMENT

RA = RATIFICATION

AC = ACCEPTANCE

AD = ACCESSION