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Special Rapporteur for Economic,
Social, Cultural and Environmental Rights

IACHR Inter-American
Commission on
Human Rights

Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights





OEA/Ser.L/V/II.

Doc. 239

7 August 2020

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights

2020
ichr.org

OAS Cataloging-in Publication Data

Inter-American Commission on Human Rights. Special Rapporteurship
on Unit Economic, Social, Cultural and Environmental Rights.

Report on trans and gender-diverse persons and their economic, social,
cultural and environmental rights : approved by the Inter-American
Commission on Human Rights on August 7, 2020.

v. ; cm. (OAS. Official records ; OEA/Ser.L/V/II)

ISBN 978-0-8270-7113-1

1. Human rights. 2. Gays rights. 3. Transsexuals. 4. Sexual minorities--
Civil rights. I. Title. II. Series.

OEA/Ser.L/V/II Doc.239/20

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In collaboration with:

Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural, and
Environmental Rights (ESCER)

* Commissioner Edgar Stuardo Ralón Orellana dissented from the approval of this report

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INTRODUCTION AND METHODOLOGY

1. For more than a decade, the Inter-American Commission on Human Rights (hereinafter the "IACHR," the "Inter-American Commission," or the "Commission") has received abundant information on criminalization, violence, prejudice, and discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics in the Americas.¹ The information also reveals the situation of extreme vulnerability that LGBTI persons face² throughout the continent, as the violation of their human rights is widespread and present—to a greater or lesser extent—in all Member States of the Organization of American States (hereinafter, the "OAS").
2. These practices are based on a perpetrator's desire to "punish" identities, expressions, behaviors, or bodies that differ from traditional gender norms and roles or that run contrary to the man/woman binary system.³ They include violations of the right to life, including extrajudicial executions committed by State actors or with the acquiescence thereof, as well as murders committed by non-State actors; sexual violence; and acts of discrimination and prejudice that hinder or block the exercise of their rights to identity, to justice, to health and education, among others.
3. In this context, it has been repeatedly observed that, within the universe of LGBTI persons, trans and gender-diverse persons⁴ are exposed to greater vulnerability and

¹ IACHR, *Violence against LGBTI Persons in the Americas*, November 12, 2015. Also see: IACHR, [Press Release No. 54/13](#): "IACHR Condemns Recent Wave of Violence against LGTBI Persons in Haiti," June 30, 2013; IACHR, [Press Release 60/13](#): "IACHR expresses concern about violence and discrimination against LGTBI persons, particularly youth, in the Americas," August 15, 2013; IACHR, [Press Release 79/13](#): "IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons," October 24, 2013; IACHR, [Press Release 92/13](#): "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013; IACHR, [Press Release 23/14](#): "IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas," February 27, 2014; IACHR, [Press Release 153/14](#): "IACHR Expresses Concern over Pervasiveness of Violence against LGBTI Persons and Lack of Data Collection by OAS Member States." December 16, 2014; IACHR, [Press Release 49/15](#): "Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights," May 13, 2015.

² Although in naming its Rapporteurship, the Commission has adopted an acronym that is easily recognizable, it is important to note that the Rapporteurship on the Rights of LGBTI Persons deals with human rights issues related to sexual orientation, gender identity and expression, and sex characteristics. The Commission also recognizes each individual's self identification as the guiding principle. Therefore, it is possible that some individuals who are included in the focus of the Rapporteurship's work are not identified as belonging to the categories implied by the acronym "LGBTI."

³ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 25.

⁴ For the purposes of this report, the term "trans and gender-diverse persons" will include a variety of gender-diverse identities that tend to be included under this umbrella term. The IACHR is aware that there are

tend to suffer higher rates of exclusion, stigmatization, and social prejudice.⁵ Based on the information gathered by the IACHR, it can be stated that the aggravated situation of social exclusion facing trans and gender-diverse persons is a phenomenon that is structural in nature in the region. It deserves urgent and specialized attention from this Commission and from each of the OAS Member States in their respective jurisdictions.

4. The urgency arises mainly from two factors: the first is the alarming data on the lower life expectancy of trans and gender-diverse persons and the extremely high rates of violence and discrimination they face in the region. The second is that the exclusion is often legitimized by State agents and by societies that still maintain and normalize social prejudices against trans and gender-diverse persons, the practical effect of which is that the grave human rights violations to which they are exposed are not given the proper importance and consideration and are therefore not made a public policy priority.
5. In this regard, countless barriers prevent trans and gender-diverse persons from being able to fully develop their potential and access basic rights from an early age, barriers arising from the rejection and violence they are met with when they begin to externalize their gender identities. Numerous reports show a high rate of trans and gender-diverse adolescents are driven out of their homes at a young age. Numerous testimonials describe how relatives' first reaction to gender expression during childhood is abuse and harassment, even from the closest members of the nuclear family. This early rejection tends to trigger a spiral toward exclusion that is highly likely to affect performance at school and even whether they remain in the educational system at all.⁶
6. At the same time, school tends to be a place where violence manifests as verbal and physical aggression from peers, teachers, and administrators, or as exclusion from groups and social isolation. Numerous studies in many of the region's countries show high absenteeism and dropout rates among trans and gender-diverse adolescents because of harassment at school. This tends to further limit the range of opportunities for personal development, and, consequently, opportunities to secure a livelihood and a fulfilling life. The lack of training and education has a direct impact on opportunities to join the labor market, further intensifying their exclusion.
7. As will be shown in this report, this lack of job opportunities is not solely the result of a lack of educational qualifications. Even with sufficient training, prejudice against nonnormative identities will affect whether they are successful in finding a job or at securing a promotion. These same prejudices tend to be held by those with whom they share the space at the workplace, which can weaken workplace cohesiveness and productivity. Additionally, workplace or school attendance and performance can be impacted every time these individuals are the victims of attacks or transphobic harassment in the street that could require medical attention.

numerous forms of gender identity that prefer not to be placed in these categories. For more detail on this, see Chapter 2 of this report.

⁵ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 187.

⁶ For more on this, see Chapter 4 of this report on the right to education.

Healthcare is another area where persons with nonnormative identities can encounter resistance and hostility.

8. All of this adds up to structural discrimination that can significantly reduce or even destroy any opportunity a trans or gender-diverse person may have of securing a minimum of economic welfare or being able to escape the poverty or extreme poverty they often experience as a result of this systemic exclusion.
9. Despite this concerning context, the Commission notes that, in recent years, several States have taken affirmative measures to address this situation and move progressively toward redressing human rights violations against trans and gender-diverse persons. The progress made by States is intimately related to the work of civil society organizations, which work tirelessly and have helped secure progress through legislation and public policy, as well as through the judiciary via strategic litigation. Along these lines, and as described throughout this report, the right to recognition of gender identity is the first step toward effective social inclusion and effective guarantee of the rights of trans and gender-diverse persons.
10. The Commission therefore notes that a number of international organizations, United Nations bodies, multilateral development banks, and human rights bodies have increasingly begun analyzing the issue of the exclusion of LGBTI persons from the point of view of economic and human development. In its report on Poverty and Human Rights, the Inter-American Commission uses the concept of "capabilities" to define "the freedom or the means that make it possible to lead a full life on the basis of what every person chooses to be or do."⁷ This theoretical framework is of particular interest for analysis of the aforementioned cluster of obstacles and barriers to the personal development of those with nonnormative identities.
11. In this regard, each of the dimensions of development examined in this report will be approached from this perspective, with the aim of making a complementary contribution that places special emphasis on the human rights perspective as set forth in the 2030 Agenda. Regarding this, it should be recalled that in 2018, the IACHR joined other international experts to issue a statement aligning the human rights agenda and the sustainable development agenda to *explicitly* include LGBTI persons—and trans persons in particular—as among the beneficiaries of the 2030 Agenda for Sustainable Development (hereinafter, the "2030 Agenda").⁸
12. Having documented the extent of the different forms of violence against trans and gender-diverse persons, and having especially taken note of the extremely grave impacts this violence has on their lives, the IACHR views it as necessary to emphasize that the work to prevent, sanction, and eradicate this violence must include serious efforts to provide comprehensive protection⁹ and full social inclusion for trans and gender-diverse persons, particularly by guaranteeing their effective enjoyment of economic, social, cultural, and environmental rights. With

⁷ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 77.

⁸ IACHR, *Press Release* 110/18: "Leave no LGBT person behind," May 16, 2018.

⁹ IACHR, *Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas*, December 7, 2018, pg. 21.

this understanding, the IACHR deemed it necessary to move forward with this thematic report on the trans and gender-diverse population in the Americas with the aim of identifying the main obstacles and barriers to their full social inclusion, along with the good practices developed thus far and their outcomes, with a focus on the right to recognition of gender identity and, in particular, on the full enjoyment, exercise, and enforceability of economic, social, cultural, and environmental rights (hereinafter, “ESCER”).

13. The IACHR underscores that, for methodological purposes, this report’s analysis will focus on the rights to education, health, work, and social security, including the status of these rights in the context of the COVID-19 global pandemic. While the IACHR is aware that there are multiple rights—like the rights to housing and food—that require specific analysis, and that, under this report’s methodology, will not all be addressed specifically. That said, the Commission underscores its understanding that rights cannot be placed in a hierarchy. The Commission also notes that environmental rights will not be addressed in this report, notwithstanding their importance and their impact on the lives of persons. This is due to the lack of advanced research on the issue and its interrelation with the rights of trans or gender-diverse persons as of the drafting of this report. The Commission underscores the close relationship between the environment and the human rights to liberty, equality, and development, as explored with regard to issues of health (physical and mental), education, the economy, and subsistence. It will therefore continue with its work of monitoring the enjoyment of environmental rights by trans and gender-diverse persons, in compliance with its mandate.
14. At the same time, this report fits within a context of increasing convergence in the inter-American human rights system on ESCER with respect to the principles of universality, interdependence, and full enforceability.¹⁰ As will be explored in this report, this progress is reflected both in the IACHR’s work and in the jurisprudence of the Inter-American Court of Human Rights (hereinafter, the “Inter-American Court”), as well as in the launch of the Working Group of the Protocol of San

¹⁰ See, for example, the rulings of the Inter-American Court: Inter-American Court. *Case of Dismissed Employees of Petroperú et al. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2017. Series C No. 344; *Case of Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349; *Case of San Miquel Sosa et al. Venezuela*. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348; *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340. Also see the following IACHR reports, among others: IACHR, Report 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute *et al.* (Peru), March 27, 2009; Report 100/01, Case 11,381, Milton García Fajardo *et al.* (Nicaragua), October 11, 2001; IACHR. Report No. 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute *et al.* (Peru), March 27, 2009; IACHR Report 22/06, Petition 278-02, Admissibility, Xavier Alejandro León Vega, Ecuador, March 2, 2006; IACHR. Report 55/07, Petition 987-04, Admissibility, Kelyenmagategma Indigenous Community of the Enxet-Lengua People and its members, Paraguay, July 24, 2007; IACHR. Report 17/09, Petition 461-04, Admissibility, Adriana Victoria Plaza Orbe and Daniel Ernesto Plaza Orbe, Ecuador, March 19, 2009; IACHR. Report 140/09, Petition 1470-05, Admissibility, Members of the Union of State Workers of Antioquia (SINTRAOFAN), Colombia, December 30, 2009; IACHR. Report 147/11, Petitions 4418-02 and 980-03, Admissibility, José Antonio Gómez Tello and Iván Víctor Enríquez Feijoo and Sussy Ivette and Wendy Estahel Encalada Cherez, Ecuador, November 1, 2011.

Salvador¹¹ (hereinafter the “WGPSS”) and its system of indicators.¹² This working group has provided the OAS with new tools to monitor, help, and support States in complying with their international obligations on ESCER,¹³ as well as the adoption of the United Nation’s 2030 Agenda.¹⁴

15. The inter-American standards on the rights of LGBTI persons are grounded in the principle of equality and nondiscrimination, the foundation of the OAS¹⁵ human rights protection system, which, pursuant to inter-American jurisprudence, has the status of *jus cogens*, as upon it rests the juridical structure of the national and international order, and it permeates all law.¹⁶
16. Along these lines, this report is based on international human rights law—particularly Inter-American law—and the progressive developments that have taken place, especially in recent decades. As the Commission stated in its 2019 report on the Recognition of the Rights of LGBTI Persons, the principles and obligations governing the rights of LGBTI persons are contained in the international human rights instruments of the Inter-American System (hereinafter the “Inter-American System” or “IAHRS”): principally, the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”) and the American Convention on Human Rights (hereinafter the “American Convention” or “the Convention”), based on interpretations from the cases system—including *Atala Riffo and daughters v. Chile*, *Flor Freire v. Ecuador*, *Duque v. Colombia*, and *Azul Rojas Marín v. Peru*—that have strengthened the Inter-American standards on the protection of the rights of individuals who self-identify as LGBTI or who are perceived as such. The Commission will also use the recommendations it has issued on the human rights of LGBTI persons in the framework of the global COVID-19 pandemic.
17. An additional development that has had an impact on international law with regard to gender identity and expression is the Yogyakarta Principles,¹⁷ issued in 2007 and

¹¹ General Assembly of the Organization of American States, “Standards for the Preparation of Periodic Reports Pursuant to the Protocol of San Salvador,” AG/RES. 2074 (XXXV-O/05); Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, “Progress Indicators for Measuring Rights under the Protocol of San Salvador. Second Group of Rights,” OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13.

¹² For more information on the Working Group of the Protocol of San Salvador (WGPSS), visit its [webpage](#).

¹³ For the purposes of the questionnaire, the following are considered economic, social, cultural, and environmental rights: All the rights enshrined in Article 26 of the American Convention on Human Rights; the rights contained in the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador); and the rights contained in the United Nations’ International Covenant on Economic, Social and Cultural Rights.

¹⁴ United Nations, General Assembly, [Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1, October 21, 2015.

¹⁵ IACHR, [Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas](#), December 7, 2018, para. 29.

¹⁶ See, *inter alia*, Inter-American Court. Gender identity and equal protection, and nondiscrimination for same-sex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 61.

¹⁷ [Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: “The Yogyakarta Principles](#), March 2007.

updated with the adoption of the Yogyakarta Principles plus 10¹⁸ in 2017 (hereinafter jointly referred to as the "Yogyakarta Principles" or the "Principles"). Although these principles are not a binding international instrument, they interpret State obligations that have been enshrined in binding international treaties based on the principle of nondiscrimination as it applies to sexual orientation, gender identity, gender expression, or sex characteristics.¹⁹

18. Likewise, as indicated previously, the Commission will complement its review of the issues under analysis in this report with the commitments made by States in the framework of the 2030 Agenda for Sustainable Development,²⁰ especially where it refers to the principle of the protection of human rights enshrined in international law, which has been identified as one of the foundational principles of the entire Agenda and of the 17 Sustainable Development Goals (hereinafter, "SDGs").²¹
19. International human rights law and global development actions overlap in numerous places, offering significant opportunities to reverse the social exclusion of vulnerable groups. Effectively, the 2030 Agenda has been designed in such a way as to open a space for both fields to operate in synergy. In this regard, States and civil society have built sustainable development capacity based on the promise to "leave no one behind."²² These promises can only be fulfilled if all groups of persons—including LGBTI persons, with special emphasis on trans and gender-diverse persons—share equally in the benefits of development.
20. With regard to the methodology used to produce this report, the Commission has validated an array of sources that enabled it to collect documentary and testimonial information from OAS member States. The sources were additionally compared and contrasted with each other to include divergent points of view on specific situations—mainly, the information submitted by States, the information submitted by civil society organizations, and the information procured *motu proprio* by the IACHR.
21. For the purposes of collecting updated information on the subject of this report, in June 2018, the IACHR circulated a questionnaire in a variety of media and formats.²³ It was submitted officially to each of the representations of the OAS Member States,

¹⁸ [Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles](#), November 2017.

¹⁹ These principles reflect the scholarship of the most prominent jurists and provide an additional means for interpreting the rules of international law.

²⁰ United Nations, General Assembly, [Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1, October 21, 2015.

²¹ United Nations, General Assembly, [Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1, October 21, 2015, paras. 3, 8, 10, 19, 74(e).

²² United Nations, General Assembly, [Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1, October 21, 2015, para. 4. In this regard, see: IACHR, [Press Release No. 110/18: "Leave no LGBT person behind,"](#) May 16, 2018.

²³ IACHR, [Consultation questionnaire for the elaboration of a thematic report on trans persons and economic, social, cultural, and environmental rights in the Americas](#), 2018.

as well as disseminated broadly using distribution lists, social media, and the Commission's website to reach civil society organizations, universities, academic groups, and individuals. Respondents to the questionnaire included 11 OAS Member States—Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Jamaica, Mexico, Panama, Saint Vincent and the Grenadines, and Uruguay—as well as 25 civil society organizations²⁴ and 7 individuals.²⁵

22. The IACHR also made use of the information collected as inputs for producing reports on violence against LGBTI persons in 2015²⁶ and on the 2018 report “Recognition of the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Persons in the Americas.”²⁷ Information has also been used that was produced or collected using the Commission’s monitoring mechanisms. Also, during the public hearings held since 2005, the Commission has received information on the situation of trans and gender-diverse persons in hearings on the situation of trans persons specifically²⁸ or on the LGBTI population in general,²⁹ in addition to the hearings in which the human rights situation of a certain country was discussed³⁰ and hearings held on broader contexts of human rights violations.³¹ Likewise, the IACHR used the information it received during its *in loco* visits and incorporated into the

²⁴ OTRANS Argentina, 100% Diversidad y Derechos, Grupo de Estudos em Direito Internacional dos Direitos Humanos, Núcleo de Direitos Humanos e Cidadania LGBT, Egale Canada Human Rights Trust, Asociación Organizando Trans Diversidades Chile, Colombia Diversa, Fundación Grupo de Acción y Apoyo a Personas Trans (GAAT), Fundación Pakta, Movement Advancement Project, TransLatin@ Coalition, Comité de la Diversidad Sexual de Honduras, México Igualitario, Centro de Derechos Humanos Fray Matías de Córdova, Fundación Colectivo Hombres Libres de Violencia, Hombres XX, Asociación por las Infancias Transgénero, the School of Law and Criminality of the Universidad Autónoma de Nuevo León, Alternativa Nicaragüense de Diversidad Sexual, Comunidad Homosexual de Nicaragua, Hombres Trans Panamá, Panambi Asociación de Travestis, Transexuales y Transgéneros, Red Lac Trans, Promsex, and Venezuela Diversa

²⁵ Leandro Reinaldo da Cunha, Lina Buchely, Natalia Salas, Mónica Espinoza, María de los Ángeles Corte Ríos, Rohan Walters, and José Manuel Simons Domínguez.

²⁶ IACHR, [Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons \(LGBTI\) in the Americas](#), November 12, 2015, para. 85.

²⁷ IACHR, [Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas](#), December 7, 2018.

²⁸ As of July 2018, six (6) specific hearings had been held on the human rights of trans persons: IACHR, [Public hearing: Human rights situation of the trans population in Argentina](#), 167th Period of Sessions, March 2, 2018; [Public Hearing: Human rights situation of the trans population in Panama](#), 156th Period of Sessions, October 19, 2015; [Public Hearing: Allegations of acts of violence against trans persons in Paraguay and impunity](#), 154th Period of Sessions, March 17, 2015; [Public Hearing: Situation of economic, social, cultural, and economic rights of trans persons in the Americas](#), 154th Period of Sessions, March 16, 2015; [Public Hearing: Discrimination against trans persons in the Americas](#), 153rd Period of Sessions, October 30, 2014; [Public Hearing: Allegations of violence against trans persons in El Salvador](#), 149th Period of Sessions, October 29, 2013.

²⁹ The full list of hearings on the rights of LGBTI persons, along with the full-length videos of them, can be accessed [here](#).

³⁰ Including the following: IACHR, [Public hearing: Follow-up on IACHR report on the human rights situation in Jamaica](#), 153rd Period of Sessions, October 28, 2014; [Public Hearing: Follow-up on IACHR report on the human rights situation in Jamaica](#), 150th Period of Sessions, March 27, 2014.

³¹ Including the following: IACHR, [Public Hearing: Religious freedom and the secular State in Latin America](#), 168th Period of Sessions, May 11, 2018; [Public Hearing: Human rights situation of young people in Guyana](#), 161st Period of Sessions, March 22, 2017; [Public Hearing: Human rights, the secular State, and female morbidity and mortality in the Americas](#), 159th Period of Sessions, December 7, 2016.

corresponding country reports, including visits to Jamaica (2008),³² Honduras (2009, 2010, 2014,³³ 2018³⁴), Colombia (2012),³⁵ the Dominican Republic (2013),³⁶ Mexico (2015),³⁷ Guatemala (2017),³⁸ and Brazil (2018).³⁹ It also used the information collected to produce annual reports and the information obtained during working visits of the Office of the Rapporteur on the Rights of LGBTI Persons. The Rapporteurship has worked together with the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA) in producing this report, which the IACHR deeply appreciates.

23. The IACHR also includes in its analysis the statements of a variety of international organizations, working groups, and mechanisms whose mandate is to supervise international treaties. These include reports from the Working Group of the Protocol of San Salvador; the Follow-up Mechanism to the Belém do Pará Convention (hereinafter, “MESECVI” or the “Follow-up Mechanism”); the Office of the High Commissioner for Human Rights; and special treaty and procedures bodies. Additionally, the report takes into account the work of a number of United Nations bodies, especially ones that focus on human rights but also those that deal with sustainable development and international refugee law. The IACHR also appreciates the information contributed by civil society organizations, noting that in drafting this report, it consulted reports from other human rights protection mechanisms and reports prepared for local advocacy. Lastly, the IACHR incorporated additional information that was publicly available in the media from throughout the region.
24. The IACHR wishes to thank the Trust for the Americas, Wellspring, ARCUS Foundation and the Government of the Netherlands for their financial support. These important contributions enabled the Commission to strengthen its work of promoting and protecting the rights of trans and gender-diverse persons in the region and were crucial for the preparation and adoption of this report.

³² IACHR, [Situation of Human Rights in Jamaica](#), August 10, 2012.

³³ IACHR, [Situation of Human Rights in Honduras](#), December 31, 2015.

³⁴ IACHR, [Preliminary observations on the IACHR visit to Honduras](#), August 3, 2018.

³⁵ IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), December 31, 2013.

³⁶ IACHR, [Situation of Human Rights in the Dominican Republic](#), December 31, 2015.

³⁷ IACHR, [Situation of Human Rights in Mexico](#), December 31, 2015.

³⁸ IACHR, [Situation of Human Rights in Guatemala](#), December 31, 2017. Also see: IACHR, [Human Rights Situation in Guatemala: Diversity, Inequality, and Exclusion](#), December 31, 2015.

³⁹ IACHR, [Press Release 238/2018](#): “IACHR concludes visit to Brazil”, November 12, 2018.

CHAPTER 1

HUMAN RIGHTS AND GENDER IDENTITY IN THE AMERICAS

HUMAN RIGHTS AND GENDER IDENTITY IN THE AMERICAS

25. This chapter’s objective is to look at some general aspects of the right to recognition of gender identity, with special attention to how it has been addressed in the Inter-American human rights system. It also reviews some of the terminology needed to understand gender identity, and provides an analysis of the intersectionality between the right to gender identity and groups in historical conditions of vulnerability.

A. *Right to Recognition of Gender Identity*

26. The IACHR has held that gender identity refers to the internal and individual experience of gender as each person feels it profoundly, which may or may not correspond to the sex assigned at birth, including the personal experience of the body and other expressions of the gender with which the person identifies.⁴⁰ This is in line with the Yogyakarta Principles, which define gender identity as “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”⁴¹
27. As a result of the failure to guarantee the right to recognition of gender identity, trans and gender-diverse persons often carry identification documents that do not match their gender identities. As will be explored later on, being prevented from rectifying personal documentation has been identified as one of the greatest obstacles to the effective enjoyment of other human rights, civil and political as well as economic, social, and cultural. There is thus an urgent need for States to adopt measures to guarantee this right pursuant to inter-American and international standards on the subject.

⁴⁰ IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018, para. 77.

⁴¹ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, the Yogyakarta Principles*, March 2007, footnote 2.

1. The Right to Recognition of Gender Identity in the Inter-American System

28. In recent years, the Inter-American Commission has made a specific and specialized effort to address the right to recognition of gender identity, along with the violations of the human rights of trans and gender-diverse persons that take place due, among other things, to the failure to guarantee and protect this right. The IACHR observes that for many decades, the subject of gender identity and discrimination against nonnormative gender identities was invisible. In this regard, 2006 saw the first public hearing before the IACHR during which the lack of legal recognition of gender identity was identified as one of the main problems facing trans and gender-diverse persons in the Americas.⁴²
29. After the OAS General Assembly adopted specific resolutions on violence based on sexual orientation and gender identity,⁴³ the Commission adopted an action plan as part of its 2011-2015 Strategic Plan to specifically address the rights of LGBTI persons. In 2011, it created the Rights of LGBTI Persons Unit, which, in November 2013, was replaced by the current Rapporteurship on the Rights of LGBTI Persons. It began operating on February 1, 2014.⁴⁴
30. Along these lines, in 2012, the IACHR held a hearing specifically on the right of trans persons to gender identity.⁴⁵ At that time, civil society organizations expressed to the Commission the importance of enacting gender identity laws throughout the region. In fact, they stated that the lack of such laws constituted an "historic debt" owed to trans persons by Latin America's democracies.⁴⁶
31. In its two thematic reports on LGBTI persons published so far, the IACHR has addressed in detail the issues surrounding the right to recognition of gender identity. In its report on violence against LGBTI persons, the IACHR included a section on terminology and reiterated the strong link between lack of recognition of this right and the day-to-day violence suffered by trans and gender-diverse persons in the region.⁴⁷ In a report entitled "Progress on and challenges to recognizing the rights of LGBTI persons in the Americas," the IACHR conducted a detailed review of

⁴² IACHR, Public hearing: Situation of discrimination based on sexual orientation in Peru, 124th Period of Sessions, March 10, 2006 – IACHR archives.

⁴³ OAS, General Assembly, Resolution 2435 (XXXVIII/O/08): [Human rights, sexual orientation, and gender identity](#), adopted at the fourth plenary session, held on June 3, 2008, and OAS, General Assembly, Resolution AG/RES. 2504 (XXXIX-O/09) [Human rights, sexual orientation, and gender identity](#), adopted at the fourth plenary session, held on June 4, 2009, operative paragraph 1.

⁴⁴ IACHR, [Press Release No. 94/13](#): "The IACHR creates Rapporteurship to address issues of Sexual Orientation, Gender Identity, Gender Expression, and Body Diversity," November 23, 2013; [Press Release 15/14](#): "IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) persons becomes fully operational and first Rapporteur duly designated," February 19, 2014.

⁴⁵ IACHR, [Public hearing: The right of trans persons to identity](#), 144th Period of Sessions, March 23, 2012.

⁴⁶ IACHR, [Public hearing: The right of trans persons to identity](#), 144th Period of Sessions, March 23, 2012, statement by Marcela Romero, the General Secretary of REDLACTRANS.

⁴⁷ IACHR, [Violence against LGBTI Persons in the Americas](#)¹, para. 28.

the measures adopted and the progress made on the subject by each of the OAS Member States.⁴⁸

32. Regarding its petitions and cases system, in 2016, the IACHR for the first time found that States must guarantee the right of trans persons to change their names and gender identities on identification documents and public records using mechanisms that are simple and clear when it found admissible a petition filed by trans leader Tamara Adrián. It concluded that should the facts be corroborated, the State of Venezuela would be internationally responsible for failing to provide a suitable and effective remedy in the Venezuelan legal system to change an individual's gender identity in documentary records.⁴⁹
33. In 2018, to commemorate International Transgender Visibility Day, the IACHR and the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) urged States to guarantee the full exercise of human rights for trans persons, specifically by adopting—without delay—measures to provide quick, transparent, and accessible recognition of gender identity, guaranteeing the human rights of all trans and gender-diverse persons, and respecting their bodily autonomy.⁵⁰
34. For its part, in its Third Hemispheric Report on the Implementation of the Belém do Pará Convention of 2017, MESECVI included a section specifically on laws guaranteeing the recognition of gender identity on the continent.⁵¹ It has also issued a legislative recommendation calling on the States that ratified the Convention to guarantee the right to gender identity.⁵²
35. Lastly, toward the end of 2017, the Inter-American Court issued Advisory Opinion 24 (hereinafter “AO 24/17”) in which it forcefully laid the inter-American legal groundwork for the right to recognition of gender identity in the American Convention and the American Declaration. Effectively, this advisory opinion remains to this day the main instrument used to interpret the basic elements of this fundamental right. The Court emphasized that “gender identity is a constitutive and constituent element of peoples’ identities,” and therefore, “its recognition by the

⁴⁸ IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018.

⁴⁹ IACHR Report [66/16](#). Petition 824-12 Admissibility. Tamara Mariana Adrián Hernández. Venezuela. December 6, 2016, para. 26.

⁵⁰ IACHR, [Press Release No. 69/18](#): “On the occasion of International Transgender Day of Visibility, the IACHR and a UN expert urge States to guarantee the full exercise of the human rights of transgender persons,” March 29, 2018.

⁵¹ Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Third Hemispheric Report on the Implementation of the Belém do Pará Convention. Prevention of violence against women in the Americas* (2017), pgs. 58, 59.

⁵² Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Third Hemispheric Report on the Implementation of the Belém do Pará Convention. Prevention of violence against women in the Americas* (2017), pg. 209.

State is vitally important to ensure the full enjoyment of human rights."⁵³ The Court's reasoning centers the dignity of the human person and connects it to "the opportunity of all humans for self-determination and to freely choose the options and circumstances that give meaning to their existence, in accordance with their own choices and convictions."⁵⁴

36. Thus, the Court established that, although the right to recognition of gender identity is not explicitly enshrined in the American Convention on Human Rights, it necessarily derives from a harmonious interpretation of Articles 3, 7, 11(2), and 18 of the Convention: that is, the articles that guarantee recognition of juridical personality, the free development of personality, the right to privacy, and the right to a name.⁵⁵

2. Legal Standards on Recognition of Gender Identity

37. The following is an overview of inter-American and international standards on the recognition of gender identity that have been progressively developed by the inter-American human rights system.

a. Correction of Registries

38. As a necessary parallel to the right to recognition of gender identity, States are required to regulate and implement procedures that allow for the correction of identification documents to allow changes to the name, photo, and sex or gender to match the self-perceived gender identity.⁵⁶
39. The Commission has taken note of the references in the Yogyakarta Principles to the effect that States must ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose. Therefore, they recommend eliminating the registration of a person's sex and gender from identification documents like birth certificates, identification cards, passports, and driver's licenses as part of their juridical personality,⁵⁷ preferring removal of the gender marker from identification

⁵³ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 98.

⁵⁴ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 88.

⁵⁵ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 115.

⁵⁶ IACHR, *Violence against LGBTI Persons in the Americas*, Recommendation 26; Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 116; General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, July 12, 2018, para. 21.

⁵⁷ IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018, para. 107(1)

documents.⁵⁸ In this regard, the IACHR is in agreement that explicitly including a gender indicator on all documents identifying persons in their social interactions or that are available to the public is not invariably necessary.

b. Adequate Remedy

40. With regard to adequate remedy to guarantee the right to gender identity, the Inter-American Court established that although States can decide which remedy is the most adequate based on their domestic laws, they must guarantee the remedies allow for changing records, including name, sex marker, and photo; they must be confidential, leaving no visible annotations as a consequence of the correction; they must be quick; and they must tend toward being free of charge.⁵⁹ It also noted that administrative or notary procedures are the ones that best meet these requirements.⁶⁰ In 2018, the IE SOGI indicated likewise, adding that the remedies must “[a]cknowledge and recognize non-binary identities, such as gender identities that are neither ‘man’ nor ‘woman’ and offer a multiplicity of gender marker options.”⁶¹
41. As examples of the guarantee of this right, in 2015, the Commission praised the States of Mexico and Colombia for adopting decrees allowing the sex on identity documents to be changed through simple administrative procedures⁶². At that time, the IACHR contrasted these measures with the procedures in place previously for correcting sex, which required processing through the courts using extensive and onerous procedures.⁶³ In 2018, the Commission also welcomed the steps taken toward recognizing gender identity in Uruguay with the enactment of the Comprehensive Trans Persons Act.⁶⁴ It has also highlighted the Uruguayan law’s important comprehensive human rights protection approach, which, in addition to the recognition of gender identity, complements a 2009 law by requiring collection of information on gender identity in the national census, as well as by providing for

⁵⁸ *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles*, November 2017, Principle 31.

⁵⁹ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160. Likewise, see: Progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 108; IACHR, [Press Release 185/17](#): “On International Transgender Day of Remembrance, the IACHR Urges States to Protect Trans Persons’ Full Access to their Economic, Social, and Cultural Rights,” November 20, 2017.

⁶⁰ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160.

⁶¹ General Assembly, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), A/73/152, July 12, 2018, para. 81(d)(i).

⁶² IACHR, [Press Release No. 75/15](#), “IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons,” July 1, 2015.

⁶³ IACHR, [Press Release No. 75/15](#), “IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons,” July 1, 2015.

⁶⁴ IACHR, [Press Release 275/18](#): “IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region,” December 21, 2018.

reparations to victims of State persecution based on gender identity—real or perceived—during the dictatorship. The comprehensive law also guarantees that access to education and culture, work, and health, will be free from discrimination.⁶⁵ Additionally, the IACHR has highlighted the gender identity law adopted by the State of Argentina on May 24, 2012 (Law 26,743) that not only guarantees correction of sex in registries and name changes on all documents establishing an individual's identity, but also provides for access to comprehensive healthcare, hormonal treatments, and partial or total surgical procedures without the need for judicial or administrative authorization, with the informed consent of the individual being the only requirement.⁶⁶

42. For its part, with Order 7-2018 of the Supreme Tribunal of Elections, the State of Costa Rica amended the Civil Status Registry Regulations and the New National Identification Card Regulations to provide for a process by which individuals could have their gender identities recognized on their national identification cards through an administrative procedure that follows the guidelines set forth in AO 24/17. The decision also found that the gender indicator on identity documents represented sensitive information, the public display of which could be stigmatizing for those who have changed their names to match their self-perceived identities, and therefore ordered it removed from the identification cards.⁶⁷

c. Admissible Requirements

43. The Commission has repeatedly reached decisions with regard to pathologizing, offensive, and/or abusive requirements that tend to be applied to people seeking registry changes, urging States to adopt rules that recognize gender identity without them.⁶⁸ Among the requirements that are not compatible with the Convention are the following: proof of surgery, hormonal therapy, or any other type of body modification; forced sterilization; the submission of mental health evaluations or physician, psychologist, or psychiatrist certifications; proof of gender dysphoria diagnostic, gender identity disorders, or any other disorder; documentation of attestations as to the veracity of the request; and proof of expectation of stability or

⁶⁵ IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018, para. 99.

⁶⁶ IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018, para. 100.

⁶⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the State of Costa Rica, pg. 12.

⁶⁸ See, among other examples: Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 104; IACHR, *Violence against LGBTI Persons in the Americas*, Recommendation 26; [Press Release 64/16](#): “Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness,” May 12, 2016; [Press Release 116/16](#): “IACHR Welcomes Progress on Human Rights of LGBTI Persons,” August 16, 2016; [Press Release 40/17](#): “On Trans Day of Visibility, IACHR Urges States to Ensure Full Inclusion of Trans People and Combat the Factors that Exacerbate Discrimination and Exclusion,” March 31, 2017; [Press Release 185/17](#): “On International Transgender Day of Remembrance, the IACHR Urges States to Protect Trans Persons’ Full Access to their Economic, Social, and Cultural Rights,” November 20, 2017.

of having lived socially with the identity by which the applicant wishes to be recognized (also called a "real-life test").

44. With regard to body modifications, the Inter-American Court has found that requiring a person be subjected to an unwanted surgery or sterilization would be tantamount to restricting the full exercise of a number of rights and would entail the forced renunciation of the full and effective enjoyment of the right to humane treatment.⁶⁹ Additionally, with regard to the other requirements, the Court found that, while for cisgender persons, the sex assigned at birth corresponds to the gender identities they assume autonomously, trans persons are subjected to numerous requirements to secure recognition of and respect for their gender identities,⁷⁰ creating a situation of inequality that is not compatible with the Convention.
45. In line with this, given that it is not reasonable to require compliance with requirements that undermine what should be the simply declarative nature of the process, the only admissible substantive requirement for changing registry documents is the free and informed consent of the applicant.⁷¹

d. Dignified Treatment in accordance with Self-Perceived Gender Identity

46. The Commission wishes to emphasize that the right to recognition of gender identity also entails the right of every individual to be treated in accordance with their self-perceived identities. Practically speaking, this means that an individual's simple declaration of a self-perceived gender gives rise to a duty to treat and refer to that individual based on that identity. It should be emphasized that this duty must be observed fully, without any requirement that the individual rectify their documentation.
47. The Commission notes that one of the most common ways of exercising verbal, symbolic, and psychological violence against trans persons is the malicious or deliberate use of pronouns (and, in languages that use grammatical gender, nouns and adjectives) of a gender other than the one a trans person uses to refer to themselves (a kind of violence known as misgendering).⁷² The aim of this type of violence is to humiliate and insult an individual based on their gender identity or expression. This form of violence has been denounced by numerous civil society organizations as one of the main reasons trans persons face humiliation and mistreatment when seeking health services. Likewise, fear of this violence prevents

⁶⁹ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 146; General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, July 12, 2018, para. 81(d)(i).

⁷⁰ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 131.

⁷¹ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, paras. 127, 133.

⁷² IACHR, *Violence against LGBTI Persons in the Americas*", November 12 2015, para. 132

many trans and gender-diverse persons from visiting health centers and hospitals, schools and educational institutions, and socialization spaces, or from placing themselves in any other situation in which they may be exposed to it.

48. In some States that do not yet have a gender identity law (or prior to the enactment of such a law), measures have been taken to prevent or reduce the prevalence of this kind of violence by authorizing the use of a “social name.” In general, such provisions give people wishing to be identified by a name other than the one found on their documentation the right to be called and/or registered under that name for certain purposes. The IACHR notes that although these provisions are not sufficient in themselves to comply with inter-American standards on the effective recognition of gender identity, these partial and temporary measures can reduce the possibility of exposing trans and gender-diverse persons to this type of violence until their enjoyment of the right to recognition of gender identity can be fully recognized through an appropriate law.

e. Recognition of Gender Identity as a Requirement to Enjoy Other Rights

49. The right to recognition of gender identity is one of the most important aspects to take into account when analyzing the effective enjoyment of other rights by trans and gender-diverse persons. For the purposes of this analysis, such recognition refers both to legal recognition (especially the opportunity to correct registries) and social recognition (the opportunity to live a life free from violence and the opportunity to fully develop one's personal potential and life plans).
50. Legal recognition of gender identity is crucial, as having documentation that does not coincide with one's gender identity is one of the main obstacles to the enjoyment of numerous human rights. This fundamental need of trans and gender-diverse persons has been noted by the IACHR, as well as by the Inter-American Court in Advisory Opinion 24, of 2017.⁷³
51. Specifically, the Court has held that depriving individuals of gender identity creates differences in treatment and opportunities between cisgender persons and trans persons that are not compatible with the principles of equal protection and nondiscrimination. It is also an obstacle with regard to every individual's right to full recognition of juridical personality.⁷⁴ In the universal system, the Committee on

⁷³ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 98.

⁷⁴ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 99.

Economic, Social, and Cultural Rights (hereinafter the CESCR),⁷⁵ the EI SOGI,⁷⁶ and the United Nations High Commissioner of Human Rights have found likewise.⁷⁷

52. The IACHR recognizes that securing legal recognition of gender identity is an essential tool with the potential to noticeably reduce social exclusion and the lack of opportunities. However, legal recognition by itself is not an automatic or comprehensive solution for the marginalization in which the majority of trans and gender-diverse persons are forced to live.⁷⁸

B. The Right to Gender Expression

53. The IACHR has established that gender expression is the external manifestation of an individual's gender.⁷⁹ Similarly, the Yogyakarta Principles have defined "gender expression" as "as each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioral patterns, names and personal references."⁸⁰ In 2016, the World Health Organization adopted a very similar definition.⁸¹ The Yogyakarta Principles also clarified that gender expression may or may not conform to a person's gender identity.⁸²
54. Specifically, just as people have a sexual orientation and a gender identity, they also have a gender expression. This particular form of personal expression tends to be read socially and culturally within a binary, with certain forms of gender expression determined to be "feminine" and other forms of gender expression determined to

⁷⁵ Committee on Economic, Social, and Cultural Rights, Concluding observations on the fifth periodic report of Costa Rica, E/C.12/CRI/CO/5, October 21, 2016, para. 20.

⁷⁶ United Nations General Assembly, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/38/43, May 11, 2018, para. 43, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, para. 23.

⁷⁷ United Nations High Commissioner of Human Rights, Living Free and Equal: What states are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender, and intersex people (New York and Geneva: OHCHR, 2016), 94.

⁷⁸ IACHR, Press Release 85/18: "IACHR Welcomes Brazilian Supreme Court Decision to Allow Trans Persons to Change Name through Self-Declaration," April 23, 2018.

⁷⁹ IACHR, Violence against LGBTI Persons in the Americas", November 12 2015, para. 22.

⁸⁰ Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Preamble.

⁸¹ World Health Organization, Gender Equity and Human Rights (GER), FAQ on Health and Sexual Diversity An Introduction to Key Concepts, WHO/FWC/GER/16.2, pg. 1.

⁸² Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Preamble.

be "masculine,"⁸³ generally mutually exclusive.⁸⁴ However, the reality is that the array of possibilities associated with gender expression is much broader and more diverse than expressions that are strictly "masculine" or "feminine."

55. The expression of nonnormative sexualities and identities is frequently in itself considered "suspicious," "dangerous for society," or "a threat to the social order and public morals," and tends to be a source of great social anxiety.⁸⁵ Thus, femininity from those perceived as men, masculinity from those perceived as women, and gender expression that is ambiguous are ridiculed, rejected, and socially punished.⁸⁶ In other words, persons who do not follow socially and culturally established patterns for how a man or woman "should look" or "should behave" suffer discrimination and violence based on their gender expression.⁸⁷ These rules tend to be rooted in sexism and linked to the role that is attributed, expected, and required of each gender in the binary.⁸⁸
56. The fundamental issue with regard to gender expression as a basis for discrimination is that it is a visible form of personal expression, which, when perceived by other persons—especially in contexts where rejection of and prejudice toward nonnormative expression exists—leads to violent or discriminatory reactions. Effectively, most of the violence and discrimination that takes place against trans and gender-diverse persons tends to occur when the individual's gender identity and expression is perceived by another as contrary to the information found in that person's documentation.⁸⁹ This shows how closely intertwined gender identity and gender expression are when analyzing the bases for the discrimination and systematic oppression to which trans persons are subjected. This issue was identified recently by the IACHR in the context of measures to contain the COVID-19 pandemic, motivating a to call on States to adopt awareness-raising policies aimed specifically at security forces and judicial authorities on gender identity and expression to encourage them to take into account that trans and

⁸³ World Health Organization, Gender Equity and Human Rights (GER), *FAQ on Health and Sexual Diversity An Introduction to Key Concepts*, WHO/FWC/GER/16.2, pg. 1.

⁸⁴ This logic tends to classify as associated with a certain gender such arbitrary things as ways of speaking, gesturing and walking; posture; the use of cosmetics or accessories; focus on aesthetics and personal care; choosing certain clothing and ways of dressing; tastes, personal aspirations, and participation in certain types of games, activities, hobbies, professions, or sports; the expressiveness of emotions and feelings, especially in public; pitch of voice; bodily forms and physiques; names and nicknames; and even color choice.

⁸⁵ IACHR, *Violence against LGBTI Persons in the Americas*, para. 28, citing María Mercedes Gómez, "Chapter 2: Violencia por Prejuicio," in *La Mirada de los Jueces: Sexualidades diversas en la jurisprudencia latinoamericana*. Volume 2. Cristina Motta & Macarena Sáez, eds. (Bogotá: Siglo del Hombre Editores, Red Alas, 2008), 185-186.

⁸⁶ IACHR, *Violence against LGBTI Persons in the Americas*, November 12, 2015, paras. 25, 310.

⁸⁷ In anglophone contexts, the term "gender non-conformity" tends to be used to describe an individual's refusal to match their gender expression to socially and culturally defined patterns. See, among other examples: Allegra R. Gordon e Ilan H. Meyer, "Gender Nonconformity as a Target of Prejudice, Discrimination, and Violence Against LGB Individuals" *Journal of LGBT Health Research* 3, No. 3 (2007).

⁸⁸ General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, July 12, 2018, para. 6.

⁸⁹ Lukas Berredo et al., Submission on language related to gender identity and expression to the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2017), 2.

gender-diverse persons frequently do not have a personal identification document that properly reflects their identities and/or gender expressions.⁹⁰

1. Gender Expression in the Inter-American Human Rights System

57. In the framework of the IACHR's work, an initial precedent on gender expression can be found in a report prepared by the Office of the Special Rapporteur for Freedom of Expression in 2009, which indicates that one of the forms of speech that enjoys special protection “because [it] express[es] an integral element of personal identity and dignity” is speech expressing one’s own gender identity.⁹¹
58. As indicated above, the IACHR has found that gender expression refers to the external manifestation of a person’s gender⁹² and that “the notion of what properly constitutes male or female norms has been a source of human rights abuses against individuals who do not fit or conform to the stereotypical models of masculine or feminine.”⁹³ Also, in its report on violence, the Commission analyzed the information available and issued statements on the laws criminalizing gender expression that were in force at the time, such as in the State of Guyana,⁹⁴ as well as vague or open provisions on “morals and good customs” that violate the Convention and impact trans and gender-diverse persons.⁹⁵ Regarding this issue, the Commission takes note of the decision by the Caribbean Court of Justice (hereinafter CCJ) in the case of Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) v. The Attorney General of Guyana, which found Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, Chapter 8:02, was unconstitutional. The law criminalized the use of clothing socially associated with a different gender (known as cross-dressing).⁹⁶
59. Additionally, the IACHR has explicitly referred to violence and discrimination that is based on the expression of gender diversity. For example, the Commission has welcomed the amendment of Costa Rica's Civil Service Statute, emphasizing that the new regulations establish a duty to respect the right of persons to express themselves in the workplace without fear of being mocked, rejected, bullied, or harassed, for reasons related to, among other things, their gender expression.⁹⁷ Additionally, in expressing its concern at the setbacks in federal protections for

⁹⁰ IACHR, [Press Release 81/2020](#), “The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic”, April 20, 2020.

⁹¹ IACHR, Office of the Special Rapporteur for Freedom of Expression, [Inter-American Framework on the Right to Freedom of Expression](#), December 30, 2009, para. 56.

⁹² IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, para. 22.

⁹³ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, para. 22.

⁹⁴ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, paras. 71, 72, and 85.

⁹⁵ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, paras. 86 to 95.

⁹⁶ Regarding the decision of the Caribbean Court of Justice, see [CCJ declares Guyana’s cross-dressing law unconstitutional](#), November 12, 2018.

⁹⁷ IACHR, [Press Release 28/17: “IACHR Hails Regional Progress on Human Rights of LGBTI People in the Americas”](#), March 10, 2017.

trans and gender-diverse students in the United States, the IACHR reiterated that the State duty to respect gender identity and expression "encompasses the possibility of giving everyone the opportunity to freely express themselves toward others, consistent with their gender identity and the right to be recognized based on that identity."⁹⁸

60. In 2017, the IACHR specifically addressed the existence of laws or regulations that criminalize gender expression, such as those classifying "dressing in the clothing of the opposite sex" or "imitating the opposite sex" as offenses, stating that these types of provisions impact the right to freedom and security and tend to foster a climate "where hate speech, violence and discrimination are condoned and perpetrated with impunity."⁹⁹ It urged States to allow trans and gender-diverse young people to "use their own names and pronouns, and to dress according to their self-defined gender identity and expression," independent of the sex they are assigned at birth.¹⁰⁰ That same year, in expressing concern at the ban on gender education in Paraguay, the IACHR emphasized that children are victims of a variety of forms of violence and bullying in schools—among other places—because of their gender expression.¹⁰¹

2. Gender Expression as a Prohibited Basis for Discrimination

61. Initial developments in international law with regard to sexual and gender diversity revolved mainly around the concepts of "sexual orientation" and "gender identity."¹⁰² However, as studies on the subject became increasingly precise—essentially through the efforts of international civil society organizations—the

⁹⁸ IACHR, [Press Release 33/17](#): "IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States," March 15, 2017.

⁹⁹ IACHR, [Press Release 61/17](#): "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

¹⁰⁰ IACHR, [Press Release 61/17](#): "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

¹⁰¹ IACHR, [Press Release No. 208/17](#): "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017.

¹⁰² The first decisions issued by the former United Nations Commission on Human Rights and the General Assembly on extrajudicial executions that involved sexual diversity only included sexual orientation. See: Commission on Human Rights, [Extrajudicial, summary or arbitrary executions](#), E/CN.4/RES/2000/31, April 20, 2002; [Extrajudicial, summary or arbitrary executions](#), E/CN.4/RES/2002/36, April 22, 2002; [Extrajudicial, summary or arbitrary executions](#), E/CN.4/RES/2004/37, April 19, 2004; United Nations General Assembly, [Resolution 57/214: Extrajudicial, summary or arbitrary executions](#), A/RES/57/214, February 25, 2003; [Resolution 59/197: Extrajudicial, summary or arbitrary executions](#), A/RES/59/197, March 10, 2005; [Resolution 61/173: Extrajudicial, summary or arbitrary executions](#), A/RES/61/173, March 1, 2007; [Resolution 63/182: Extrajudicial, summary or arbitrary executions](#), A/RES/63/182, March 16, 2009; [Resolution 65/208: Extrajudicial, summary or arbitrary executions](#), A/RES/65/208, March 30, 2011. These resolutions began to include gender identity in 2013. See for example: United Nations, General Assembly, [Resolution 67/168: Extrajudicial, summary or arbitrary executions](#), A/RES/67/168, March 15, 2013; [Resolution 69/182: Extrajudicial, summary or arbitrary executions](#), A/RES/69/182, March 30, 2015. Likewise, the first joint statement of States delivered before the Commission on Human Rights by New Zealand only made mention of "sexual orientation." See: Commission on Human Rights, [Joint statement delivered by New Zealand on behalf of a group of 32 States](#), March 2005. Subsequent statements explicitly included gender identity.

concept of "gender expression" gradually came to be viewed explicitly as a differentiated characteristic.¹⁰³

62. In the inter-American system, in 2013, for the first time, the OAS General Assembly explicitly and distinctly included "gender expression" in its annual resolutions on diversity.¹⁰⁴ That same year, the States of the OAS adopted the Inter-American Convention against all Forms of Discrimination and Intolerance, the first international treaty to explicitly include "gender expression" as a prohibited basis for discrimination.¹⁰⁵
63. For its part, the Inter-American Court emphasized in its Advisory Opinion 24/17 that gender expression is a category protected under the Convention. This means that no law, decision, or practice can in any way reduce or restrict the rights of a person based on their gender expression.¹⁰⁶ Additionally, the Court specified that banning discrimination based on gender identity applies not only to real or self-perceived identity but also to outwardly-perceived identity, independent of whether this perception corresponds to reality or not. It concluded that "all gender expression is a protected category under Article 1(1) of the American Convention".¹⁰⁷
64. The Commission views it as important to include gender expression as a specific and distinct basis for discrimination in antidiscrimination legal provisions, as doing so gives a law greater technical clarity and specificity and provides more robust protection from discriminatory acts that may be based on such personal characteristics. However, it is important to take into account that a failure to explicitly mention gender expression does not mean, *contrario sensu*, that such protection from this type of discrimination does not exist.
65. In this regard, it must be taken into account that gender expression constitutes a form of expression, and as such, it is protected under Article 13 of the American Convention and Article IV of the Declaration, in conjunction with the entire legal framework related to protection of the right to gender identity. Thus, the exercise of this specific form of freedom of expression can never be a valid justification for a

¹⁰³ Note that issues of sexual diversity were referred to mainly with the term "SOGI" or "sexual orientation and gender identity." Civil society and various international human rights protection organizations have gradually begun using "SOGIE," with the additional "E" standing for expression ("gender identity and/or expression"). More recently, SOGIESC has come into use, to include sex characteristics ("SC"). In some instances, "SOGII" is used ("sexual orientation, gender identity and intersex issues"), although this acronym does not appear to have been broadly adopted. See, among other examples: Dodo Karsay, *How far has SOGII advocacy come at the UN and where is it heading?: Assessing sexual orientation, gender identity, and intersex activism and key developments at the UN from 2003 to 2014* (2014).

¹⁰⁴ With regard to this addition, the States of Jamaica and Saint Vincent and the Grenadines addressed it at the time, saying the term was "not fully defined or accepted internationally," that it was "ambiguous," and that it was not "internationally accepted." See: OAS General Assembly, Resolution [2807 \(XLIII-O/13\)](#), "Human rights, sexual orientation, and gender identity and expression," June 6, 2013.

¹⁰⁵ Inter-American Convention against all Forms of Discrimination and Intolerance (A-69), adopted in Antigua, Guatemala, on June 5, 2013, Article 1.

¹⁰⁶ Inter-American Court, AO 24, para. 78.

¹⁰⁷ Inter-American Court, AO 24, para. 79.

discriminatory act. On the contrary, it is the Commission's view that the prohibition on discrimination based on gender expression is derived from the protection established for the categories "gender" and "sex," and is ultimately covered, as well, by the open clause prohibiting discrimination—that is, by the phrase “any other social condition.”

C. An Overview of Diverse Gender Identities in the Americas

66. On the American continent, the numbers of people who claim for themselves gender identities or expressions that in some way challenge or question the cisnormative gender binary system is very rich, diverse, and varied.¹⁰⁸ In view of the multiple cultural, racial, generational, historical, social, and political factors, it would be impossible to address this vast array of expressions and identities as a homogenous whole that shares the same parameters, definitions, and stances.¹⁰⁹
67. Therefore, it must first be borne in mind that, as a necessary derivation of the right to personal self-determination and the right to privacy, everyone has a human right to claim for themselves the identity that best fits the way in which they conceive of themselves, and any outside attempt to impose external definitions on that identity category is completely prohibited. The definitions that may be offered or used in the abstract with regard to different identity categories are not always and everywhere strictly in line with the way different people at different historical moments and in different cultural contexts claim them for themselves, personally.
68. Indeed, the only criteria that can be used as a rule generally applicable to all identities and gender-diverse expressions is that they all in some way question cisnormativity. By claiming identities, by expressing them, or through their bodies, they question the standards that assume everyone must identify throughout their lives with the genders assigned to them at birth, and that this identification will necessarily correspond to the gender expression and roles that “match” the gender assigned.¹¹⁰
69. The IACHR notes that some trans persons choose to make their gender identities visible through processes that involve some degree of “transition” to acquire—to a greater or lesser extent—the expression and characteristics socially read as the gender with which the person identifies. This process may include body

¹⁰⁸ The IACHR has defined the concept of cisnormativity as “the expectation that all people are cissexual [or cisgender], that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women.” Cisnormative assumptions are so socially and culturally pervasive that they are difficult at first to even recognize and identify. See: IACHR, [Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons \(LGBTI\) in the Americas](#), November 12, 2015, para. 32.

¹⁰⁹ Likewise, see: General Assembly, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), A/73/152, July 12, 2018, para. 3.

¹¹⁰ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, para. 32.

modifications and procedures of different intensities, such as hormone treatments, implants, and/or surgeries. The decision to undergo these processes—and how to do so—can vary significantly based on numerous social and personal factors, including age, social and cultural context, access to medical services and information, financial resources, and emotional and social support networks. It must be particularly borne in mind that these processes cannot be reduced simply to aesthetic issues. Rather, they entail the personal realization of one's own identity, of how individuals see themselves, and of how they wish to be seen by others.¹¹¹ In other words, these mechanisms enable trans and gender-diverse persons to fully exercise the right to freely develop their personalities in accordance with their own identities and gender expressions.

70. The IACHR has also held that gender identity is associated with the internal and individual experience of gender as each person feels it profoundly, which may or may not correspond to the sex assigned at birth, including the personal experience of the body.¹¹² In this regard, it notes that the choice of whether or not to "transition" is a personal decision of each individual and not to be used as an excuse by States and societies to deny recognition of individuals' gender identities.
71. According to the information received by the IACHR, on the American continent, this vast array of diverse gender identities and expressions includes persons who identify as trans, *travesti*, transsexual, or transgender; people of non-binary gender; and people with gender identities that fall within the framework of ancestral cosmovisions. The Commission is aware that this listing does not exhaust all possible forms of identity, and that each of them contain distinct subgroups and categories that vary in accordance with historical, cultural, and social context.

1. Trans, Travesti, Transsexual, and Transgender Identities

72. The IACHR has noted that there is a degree of consensus with regard to the identity categories most commonly claimed by trans and gender-diverse persons in the hemisphere. This section will include an overview of this consensus, along with a preliminary look at the violence and discrimination to which the persons claiming these identities are exposed.
73. First, the IACHR has indicated that the term "trans person" is the "the umbrella term often used to describe the different variants of gender identity."¹¹³ According to this

¹¹¹ Larissa Pelúcio, "Toda quebrada na plástica": corporalidade e construção de gênero entre travestis paulistas" *Campos - Revista de Antropologia* 6, No. 1-2 (2005), 97-112; José Miguel Labrín Elgueta, "Metamorfosis trans: Cuerpo e identidad transgénero en trabajadoras sexuales travestis" *Revista Nomadías* 19 (2015), 165-212.

¹¹² IACHR, *Violence against LGBTI Persons in the Americas*, November 12, 2015, para. 20.

¹¹³ IACHR, *Violence against LGBTI Persons in the Americas*, November 12, 2015, para. 21. Effectively, the use of the term "trans" as an umbrella term that includes all gender-diverse identities is widespread in the Americas in Spanish- and Portuguese-speaking contexts, and applies to a certain degree in English- and French-speaking contexts as well. For example, see the following documents: [in Spanish] Grupo de Organismos del Estado Nacional para la Protección y Promoción de Derechos de la Población LGBTI (Argentina), [Guía de términos y conceptos sobre diversidad sexual desde la perspectiva de derechos](#) (Buenos Aires, 2015), 15; Violeta Alegre

understanding, the common denominator of all trans persons is that their identities and/or gender expression do not coincide with the identities "socially established" for the gender they were assigned at birth. The "T" in the acronym LGBTI is widely understood to stand for "trans" as an umbrella term.¹¹⁴ This is the logic the Commission used in selecting the name for its LGBTI Rapporteurship¹¹⁵ and on which its use of the acronym LGBTI in its promotion and monitoring work is based.

74. The Commission is aware of the terminology differences that exist in the region and how identity categories can vary depending on the cultural, historical, and political processes of each context and place. In this regard, the IACHR understands that while some terms may be claimed by some groups of persons, those same terms may be viewed differently by others, or may even have been rejected or fallen into disuse on having been found offensive or pathologizing. The IACHR underscores that the personal choice of one category or another cannot have legal effects in terms of enabling or restricting the full enjoyment of the right to gender identity and/or personal autonomy. On the contrary, these decisions form part of the collection of authorities belonging exclusively to the realm of personal self-determination and the private choice of each individual.
75. According to the information received by the Commission, trans and gender-diverse persons tend to identify themselves, to a greater or lesser extent, with experiences that tend to be culturally defined as feminine or culturally defined as masculine, although there are also those who do so with more than one gender, with no gender in particular, or fluidly and variably.¹¹⁶ This demonstrates that, as indicated previously, identity constructs and gender expressions are not determined solely by the two binary possibilities but rather can be placed on a much broader spectrum of possibilities.

et. al, *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros (trans): Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina* (Buenos Aires: UNDP, 2017); [in Portuguese] UNAIDS, *Guia de Terminologia do UNAIDS* (2017), 23; Livres e Iguales, *Nota Informativa: Pessoas Transgenero* (2017); [in English] Ontario Human Rights Commission, *Policy on preventing discrimination because of Gender Identity and Gender Expression* (2014), 3; Organization for Refuge, Asylum & Migration (ORAM), *Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector* (2016), 22; [in French] Dominique Dubuc, *LGBTQI2SNBA+: Les mots de la diversité liée au sexe, au genre et à l'orientation sexuelle* (Quebec: FNEEQ, 2017), 11; Chambre de Commerce Gaie du Québec (CCGQ), *Lexique LGBT sur la diversité sexuelle et de genre en milieu de travail* (2014), 24.

¹¹⁴ However, it should be noted that today, especially in English speaking contexts, the term "transgender" is frequently used as the umbrella term that includes all trans identities, which again demonstrates how much terminology depends on the cultural context in which it is used. Occasionally, an acronym using three "Ts" is used to provide visibility to "travestis, transsexuals, and transgender persons," referencing them explicitly, without an umbrella term. To give a few examples, the coalition of sexual and gender diverse city organizations that lobby before the OAS calls itself the "Coalición LGTTTTI de Incidencia en las Américas," and one of the main trans person organizations in Argentina is called the "ATTTA" (Asociación de Travestis, Transexuales y Transgéneros de Argentina), following the same logic.

¹¹⁵ IACHR, *Press Release 15/14*: "IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) persons becomes fully operational and first Rapporteur duly designated," February 19, 2014.

¹¹⁶ Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 25.

a. Feminine Trans Identities

76. Feminine trans identities include people who, at the time of birth, were assigned a masculine gender, but whose gender identity as socially and culturally constructed, understood, and read, is feminine.¹¹⁷ This includes those who identify as trans women, transgender women, transsexual women, and travestis, among others. In some contexts, especially English-speaking ones, the acronym “MtF” (male to female) tends to be used to cover all trans women. However, some reject this denomination because it denotes a “pathway or trajectory” that grants unwarranted visibility or relevance to the previous place from which an individual transitioned.¹¹⁸
77. In its report on violence against LGBTI persons, the IACHR addressed in depth the issues affecting trans women. Their vulnerability is aggravated by intersection with gender. In this regard, the IACHR set forth general guidelines on intersectional discrimination and violence based on gender in conjunction with gender identity and expression, emphasizing that in view of the obligations enshrined in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”), States have a specific obligation to steadily change social and cultural patterns of conduct to counteract these prejudices, customs, and practices that cause harm to trans women.¹¹⁹
78. Travestis also fall within the category of feminine trans identities.¹²⁰ The IACHR has noted that “[t]here is a wide range of political positions around the use of the term travesti,”¹²¹ as reclamation of this term has been uneven in the region.¹²² However,

¹¹⁷ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 21.

¹¹⁸ See: Rhonda Factor y Esther Rothblum, “[Exploring gender identity and community among three groups of transgender individuals in the United States: MTFs, FTMs, and genderqueers](#)”, *Health Sociology Review* 17, No. 3 (2008), 252.

¹¹⁹ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 275 to 284.

¹²⁰ Note that the concept of *travestismo* as established in Latin America has been characterized as an identity of struggle upon staking out a position outside the binary and because it destabilizes binary categories with its own identity, “neither masculine nor feminine,” although the expression of the *travesti* gender tends to be more in line with feminine gender expression. In this regard, Lohana Berkins adds that while *travestis* build their identities *in the feminine*, frequently with cultural values, symbols, and emblems that reproduce femininity or that are associated with hegemonic femininity, they do so in such a way that these rules and attributes are “redefined and destabilized.” In this regard, see: Lohana Berkins, “Un itinerario político del travestismo” en Diana Maffia (comp.), *Sexualidades migrantes. Género y transgénero* (Buenos Aires: Feminaria, 2006), 129; Lohana Berkins, “Cómo nos decimos: las travestis en Latinoamérica” *Revista E-Misférica* No. 4.2 (2007); Diana Maffia, “Introducción” en *Sexualidades Migrantes: Género y Transgénero* (Buenos Aires: Feminaria Editora, 2003), 6.

¹²¹ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, footnote 47.

¹²² In some contexts, the term is used only to refer to a specific form of gender *expression*, restricted to “the use of clothing from the opposite sex,” generally for amusement or recreational purposes. In English-speaking contexts, the equivalent term (transvestite) still has a strongly pejorative connotation. It does not tend to have the same identarian meaning, and can even be insulting. See, among other things, examples of glossaries that include different definitions on this: Organization for Refuge, Asylum & Migration (ORAM), *Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector* (2016), 48; Chambre de Commerce Gaie du Québec (CCGQ), *Lexique LGBT sur la diversité sexuelle et de genre en milieu de travail* (2014), 25; MOVILH, *Educando en la Diversidad: Orientación sexual e identidad de género en las*

the IACHR highlights that in Latin America, and especially in Argentina, Chile, Uruguay, and Brazil, the term has been given new meaning and reclaimed in terms of identity and politics to mean more than simply the act of occasionally wearing certain clothing. For example, the IACHR has received information indicating that the region's travestis decided to give new meaning to the word travesti and connect it to "the struggle, the resistance, dignity, and happiness,"¹²³ rejecting the insulting connotation it had been given.

79. Part of the trans persons movement also argues for differentiation from other categories, including "transgender."¹²⁴ This argument holds that this term refers to experience largely applicable to the global north. Additionally, while many people who identify as travestis do not identify as "trans women," for others, identification with both terms may be simultaneous or shifting.
80. As regards the life experiences of trans women, preliminary mention should be made of the cycle of systematic exclusion they face as a result of prejudice against them. The result is that 90% of trans women perform sex work, according to information received by the IACHR.¹²⁵ To a lesser degree, they also work in entertainment and performance arts. In this regard, it has been demonstrated that the mass media contribute to the deeply-rooted idea that these marginal identities belong "naturally" to show business, the sex market, street sex work, or even drug trafficking.
81. Essentially, social prejudice creates a series of obstacles to trans women's ability to secure education and professional training throughout their lives, and the spiral of exclusion culminates in the apparent "inevitability" of ending up only in certain limited spaces to which they have been reduced. According to some opinions, these "expectations" can even mean that trans women end up shaping their bodies to meet the demands of these spaces.¹²⁶

b. Masculine Trans Identities

82. Masculine trans identities encompass those persons who, at the time of birth, were assigned a feminine gender, but whose gender identity as socially and culturally constructed, understood, and read, is masculine. The terms "trans man," "transmasculine," or even "varón trans", in Spanish, are the ones most used by this group of people. It also includes those identifying as transexual men or transgender men. Although it is possible that people with masculine gender identities could identify as travestis, the IACHR has received information indicating that, on the

aulas (Santiago: MOVILH, 2010), 10. Its use in English is discouraged because it is offensive: GLAAD, *Media Reference Guide (10th Edition)* (New York-California: GLAAD, 2016), 11, 16.

¹²³ Lohana Berkins, "Cómo nos decimos: las travestis en Latinoamérica" *Revista E-Misférica* No. 4.2 (2007).

¹²⁴ Diana Maffía, "Los cuerpos como frontera", *Revista Pensamiento Penal*, 4 de abril de 2013.

¹²⁵ IACHR, Public hearing: Situation of economic, social, cultural, and economic rights of trans persons in the Americas, 151st Period of Sessions, March 16, 2015.

¹²⁶ José Miguel Labrín Elgueta, "Metamorfosis trans: Cuerpo e identidad transgénero en trabajadoras sexuales travestis" *Revista Nomadas* 19 (2015), 165-212.

continent, the vast majority of those claiming this identity are persons transitioning to a gender identity that is feminine or tends to the feminine. As with the acronym “MtF” described above, the inverse—“FtM”—tends to be used to describe masculine trans identities, and it has been subjected to the same critiques.

83. One of the symbolic effects of the recognition of masculine trans identities is that it breaks cisgender men’s monopoly on masculinity. However, different studies have looked at the tensions between masculine trans identities and what could be called “hegemonic masculinity” and the privileges it offers in patriarchal societies.¹²⁷ Effectively, the IACHR has observed that trans men do not escape the kinds of discrimination and violence produced by cissexism, which has been defined as the combination of the bias that places the feminine subordinate to the masculine, plus the bias that places trans identities as subordinate to cisgender identities.
84. As with feminine trans identities, masculine trans identities encompass a vast diversity of ways of transitioning to one’s own masculine identity, from those who say they “have always felt like a man,” to those who recognize an identity after passing through identities prior to that of a trans man, often as a lesbian woman with a more masculine gender expression.¹²⁸ At the same time, while some testimonials point to the centrality of hormone therapy such as testosterone and its implications and effects on the body,¹²⁹ other trans men opt for interpretations and life experiences other than body modification.
85. In contrast to what happens with trans women, it is said that the lack of visibility of masculine trans identities appears to protect them from violence based on prejudice against gender-diverse identities and the violence that affects others who challenge gender norms.¹³⁰ However, this does not mean they escape experiencing other specific manifestations of cissexism. Specifically, in its report on violence, the IACHR indicated that trans men most often tend to suffer violence that takes place in private spaces outside of which it is frequently not visible.¹³¹ Some studies have found a higher risk of suicide—especially in adolescence—was among the effects of the stigma and discrimination that trans men tend to face,¹³² including internalized

¹²⁷ Keep in mind that the concept of “hegemonic masculinity” also entails interpretations and implications that impact the life experience of cisgender men, especially when their gender expression tends toward the feminine. However, in this report, the IACHR will focus only on trans persons. Regarding the concept of “hegemonic masculinity,” see, in general: Luciano Fabbri, “¿Qué (no) hacer con la masculinidad? reflexiones activistas sobre los límites de los ‘colectivos de varones/grupos de hombres.’” *V Coloquio de Estudios de Varones y Masculinidades* (Santiago de Chile, 2015).

¹²⁸ Simone Ávila y Miriam Pillar Gross “O ‘y’ em questao: as transmaculindades brasileiras” *Seminário Internacional Fazendo Gênero 10*, Anais Eletrônicos (Florianópolis, 2013), 7.

¹²⁹ Simone Ávila y Miriam Pillar Gross “O ‘y’ em questao: as transmaculindades brasileiras” *Seminário Internacional Fazendo Gênero 10*, Anais Eletrônicos (Florianópolis, 2013), 10.

¹³⁰ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015. 104; “An Overview of Violence against LGBTI Persons in the Americas,” annex to Press Release 153/14. December 17, 2014, pg. 3.

¹³¹ IACHR, *Public hearing: Discrimination based on gender, race, and sexual orientation in the Americas*, 133rd Regular Period of Sessions, October 23, 2008; IACHR, 153rd Regular Period of Sessions, October 30, 2014.

¹³² ATTTA and Fundación Huésped, *Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina*, May 2014, pg. 61.

stigma and self-exclusion.¹³³ It has been found in some cases that their lack of visibility is possibly the reason for which they are less empowered as a group and have fewer opportunities to seek support from peers and/or professionals.¹³⁴

c. Non-Binary/Genderqueer Persons¹³⁵

86. The Commission has received information on persons who do not identify with the gender assigned to them at birth, but who also do not identify themselves as "trans," nor in any of the identity categories that tend to be included under this umbrella term. Likewise, there are those who identify as "trans"—or in one of the identity categories included under this umbrella term—who specifically identify as outside any category that reflects the man/woman binary.¹³⁶
87. This realm of gender identities and expressions includes people who identify as "non-binary" or as "genderqueer," among many other possibilities.¹³⁷ There are non-binary individuals who, whatever their physical configuration at birth, identify solely as having a fixed gender that is neither man nor woman. Other non-binary persons do not identify with any particular gender, sometimes referring to themselves as "agender" persons. Occasionally, these individuals view themselves as persons without gender, or dissent from the very idea of gender.¹³⁸ For their part, gender fluid individuals experience gender fluidly, without a fixed and permanent gender.¹³⁹
88. For many of these people, it could be that they never went through a "transition" process but rather assumed a gender identity that challenged conventions or conventional categories.¹⁴⁰ For others, the concept of "transition" may represent the change from living with one of the gender binaries they were assigned at birth to

¹³³ ATTTA and Fundación Huésped, *Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina*, May 2014, pg. 61.

¹³⁴ ATTTA and Fundación Huésped, *Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina*, May 2014, pg. 61.

¹³⁵ The IACHR observes that the fact that this section on nonbinary/genderqueer persons comes under the sections on trans identities does not mean these persons identify as such but is simply a result of how the index is ordered.

¹³⁶ IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, para. 21.

¹³⁷ Rhonda Factor and Esther Rothblum, "Exploring gender identity and community among three groups of transgender individuals in the United States: MTSs, FTMs, and genderqueers", *Health Sociology Review* 17, No. 3 (2008), 252.

¹³⁸ Christina Richards, Walter Pierre Bouman y Meg-John Barker (eds.), *Genderqueer and Non-Binary Genders* (London: Palgrave, 2017), 5; Simone Ávila and Miriam Pillar Gross; *Seminário Internacional Fazendo Gênero 10*, Anais Eletrônicos (Florianópolis, 2013), 8.

¹³⁹ Simone Ávila and Miriam Pillar Gross "O 'y' em questao: as transmaculindades brasileiras" *Seminário Internacional Fazendo Gênero 10*, Anais Eletrônicos (Florianópolis, 2013), 9.

¹⁴⁰ Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 26.

their non-binary identities.¹⁴¹ This largely depends on the experiences of each person.

89. As regards legal recognition of gender identity and amending registries for non-binary persons, the IACHR notes that the IE SOGI specifically recommended that States “[a]cknowledge and recognize non-binary identities, such as gender identities that are neither ‘man’ nor ‘woman’ and offer a multiplicity of gender marker options” in legal processes on recognition of gender identity.¹⁴² Some jurisdictions in the region are just beginning to move toward registry systems that allow people to opt for a third option on their gender marker or even simply eliminate the gender indicator on their official documentation. For example, since 2017, Canada has offered the gender neutral or non-binary indicator (“X”) on passports.¹⁴³ Also, since 2016, public health credentials in the Canadian province of Ontario do not include information on the person's gender, and since 2017, they have had the option of a sex neutral or non-binary mark (“X”) on drivers licenses.¹⁴⁴ Also, in 2018, the public policy on gender identity was amended to allow people born in Ontario to choose a gender neutral or non-binary option (“X”) on their birth certificates or even to simply eliminate the gender indicator on the certificates.¹⁴⁵ Additionally, a third option of a gender neutral or non-binary (“X”) gender indicator is also available in the province of Alberta.¹⁴⁶ The provinces of Saskatchewan and British Columbia also allow birth certificates to be issued without indicating gender.¹⁴⁷
90. The IACHR deems it important to emphasize that, according to reports, many of these changes were made after consultation processes with civil society organizations and other stakeholders involved in the issue. The Commission therefore notes that, in different contexts, there may be different positions and agreements with regard to the applicability, pertinence, or usefulness of offering a third gender indicator. Consultation processes with civil society organizations and other stakeholders involved in the issue should therefore be conducted.
91. Studies find that non-binary and genderqueer persons are often not recognized because of a lack of educational material available to the public. This leads to difficulties in conducting daily activities, including at the workplace and when

¹⁴¹ Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 26.

¹⁴² General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, July 12, 2018, para. 81(d)(v).

¹⁴³ Florence Ashley y Sasha Buchert, “América del Norte” en Zhan Chiam, Sandra Duffy, Matilda González Gil, *Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley* (Geneva: ILGA, November 2017), 117.

¹⁴⁴ “Press release. Ontario Boosts Gender Inclusivity with Changes to Official Documents,” *Ontario.ca*, June 29, 2016.

¹⁴⁵ “Changing your sex designation on your birth registration and birth certificate,” *Ontario.ca*, May 2, 2018.

¹⁴⁶ Service Alberta, “Amend sex information,” visited on July 5, 2018.

¹⁴⁷ Florence Ashley and Sasha Buchert, “América del Norte” in Zhan Chiam, Sandra Duffy, Matilda González Gil, *Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley* (Geneva: ILGA, November 2017), 113.

interacting with public registries.¹⁴⁸ In the United States, those who identify as gender non-binary or genderqueer report higher rates of sexual harassment during their school years and police abuse compared to other persons with diverse identities.¹⁴⁹

2. Ancestral Identities

92. The IACHR has received information on ways of experiencing gender and sexuality that are specific to some indigenous peoples on the continent. In 2013, the Commission held a public hearing on the human rights situation of indigenous lesbian, gay, trans, bisexual, and intersex persons in the Americas.¹⁵⁰ It also received contributions in writing from representatives of some indigenous peoples for drafting its report on violence against LGBTI persons.¹⁵¹
93. According to the information submitted to the IACHR, the different identities in the framework of ancestral gender diversity do not have exact equivalents in Western concepts.¹⁵² Indigenous cosmologies or worldviews understand sexuality and gender as connected to and part of Mother Earth, the Pachamama, and the Abya Yala, in coexistence with the different forms of life therein.¹⁵³
94. One of these ancestral identities is the *muxhe* in the Zapoteca culture in Oaxaca, in the south of Mexico. The word “*muxhe*” comes from the word “*mujer*,” from 16th-century Spanish.¹⁵⁴ It describes a feminine man and is used to describe people who, assigned the masculine gender at birth, grow to take on feminine gender identities.¹⁵⁵ According to the information received by the IACHR, *muxhe* “is identity similar to gay or transgender, but with *sui generis* characteristics,”¹⁵⁶ a “third identity”¹⁵⁷ that breaks with the cisnormative binary gender system. Also, individuals who identify as *muxhe* are integrated into almost all aspects of daily in public life, and one of their important characteristics is being an “integral member

¹⁴⁸ Meerkamper, Shawn Thomas. Contesting sex classification: the need for genderqueers as a cognizable class, *Dukeminier Awards Journal*, Pag. 7

¹⁴⁹ Jack Harrison et al., *A Gender Not Listed Here: Genderqueers, Gender Rebels and Otherwise in the National Transgender Discrimination Survey*, 2 *LGBTQ POL'Y J.* 13 (2012)., citado por Meerkamper, Shawn.

¹⁵⁰ IACHR, Public hearing: Human rights situation of indigenous lesbian, gay, trans, bisexual, and intersex persons in the Americas, 147th Regular Period of Sessions, March 16, 2013.

¹⁵¹ IACHR, Violence against LGBTI Persons in the Americas, November 12 2015, para. 263 to 267.

¹⁵² Fundación Diversencia, Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el contexto de los Pueblos Indígenas en Abya Yala (2013), para. 12. That the existence of these identities is not registered in Western culture has also been noted by the IE SOGI. See: General Assembly, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, para. 3.

¹⁵³ Fundación Diversencia, Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el contexto de los Pueblos Indígenas en Abya Yala (2013), para. 12.

¹⁵⁴ Amaranta Gómez, “Trascendiendo”, *Desacatos* No. 15-16 (autumn-winter 2004), 200.

¹⁵⁵ Amaranta Gómez, “Trascendiendo”, *Desacatos* No. 15-16 (autumn-winter 2004), 200.

¹⁵⁶ Amaranta Gómez, “Trascendiendo”, *Desacatos* No. 15-16 (autumn-winter 2004), 200.

¹⁵⁷ Víctor Hugo Robles, “Un mundo posible (Amaranta Gómez Regalado en Chile)” *Vivo Positivo* (2008), pg. 37.

of society,” with implications for their productive lives and their participation in the commercial, social, and festive life of their community.¹⁵⁸

95. In Panama, the Kuna indigenous people has the *wigunduguid* identity, also called *omeguit* (although the latter term is sometimes used in a pejorative way).¹⁵⁹ According to the Commission’s information, under the Kuna cosmology, nature manifests itself in the form of two spirits that reside in bodies and can take three possible forms and emotional processes: *man kuna*, *woman kuna*, and *omeguid*.¹⁶⁰ In practice, those who self identify as the latter tend to be taught by their mothers “from a very young age to do domestic labor and kept from the work that is socially assigned to heterosexual men.”¹⁶¹ Thus, they take on a feminine sexual and social identity.¹⁶²
96. The precolonial indigenous cosmivision of the geographic region occupied today by the United States (including Alaska) and Canada recognized a Two-Sprit man or woman.¹⁶³ It included a variety of roles and identities from different indigenous peoples throughout North America, including the *winkte* of the Lakota, the *nádleehi* of the Navajo, and the *badés* of the Sioux, among others.¹⁶⁴ The Commission is aware that these individuals are also subject to discrimination and violence due to the intersectionality between their gender identity and/or expression and their ethno-racial origin. In this regard, the IACHR has taken note of the report *Reclaiming Power and Place*, from Canada, which reveals violations of the human rights of indigenous persons with ancestral gender identities represented by the acronym 2SLGBTQIA. They experienced persistent and deliberate violations and abuses of their rights, for which reason the report called for social and legal changes to address the issue facing indigenous peoples in that State.¹⁶⁵
97. The IACHR underscores that all gender-diverse identities, including ones not mentioned in this report, are an intrinsic part of every person's right to self-determination in the framework of their ancestral identity.

¹⁵⁸ Amaranta Gómez, “Trascendiendo”, *Desacatos* No. 15-16 (autumn-winter 2004), 205.

¹⁵⁹ In a reappropriation of the insult, Nandín appears in both forms (*omeguit* and *wigunduguid*). See: Fede Abib, “Nandín: la espiritualidad como derecho político,” *Facción*, May 17, 2015.

¹⁶⁰ Fede Abib, “Nandín: la espiritualidad como derecho político,” *Facción*, May 17, 2015.

¹⁶¹ CLAM, “América Latina: Sexualidades y pueblos indígenas”, May 13, 2010.

¹⁶² CLAM, “América Latina: Sexualidades y pueblos indígenas”, May 13, 2010. Also see: Nandín Solís, “Espíritu de dos almas”, July 3, 2018; UN-Globe, “Nandín Solís: Making Equality Work”, May 16, 2014;

¹⁶³ Fundación Diversencia, *Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el contexto de los Pueblos Indígenas en Abya Yala* (2013), 25.

¹⁶⁴ Ben Vincent and Ana Manzano, “History and Cultural Diversity” in *Genderqueer and Non-Binary Genders*; Christina Richards, Walter Pierre Bouman, and Meg-John Barker (eds.) (London: Palgrave, 2017), 5.

¹⁶⁵ National Enquiry into missing and murdered indigenous women and girls, *Reclaiming Power and Place*, 2019.

D. Diverse Identities and Expressions as They Intersect with Other Groups

98. The IACHR has received information on the serious situation of vulnerability to which trans persons are often exposed when they suffer discrimination and violence because of their identities and/or gender expression in conjunction with other factors, such as age, ethnic-racial background, migratory status, and others.

1. Children and Adolescents

99. The internal and individual experience of gender and the expression thereof are characteristics of persons that can be present from childhood and/or adolescence. Effectively, a number of retrospective studies and surveys have found based on testimonials from trans and gender-diverse persons that they become aware of their gender identity at a young age.¹⁶⁶
100. The IACHR has urged States to facilitate for trans and gender-diverse children and adolescents the quick, transparent, and accessible recognition of their gender identities without abusive conditions.¹⁶⁷ The IACHR has also emphasized the crucial role that families play in creating a safe and loving environment and has described the main challenges facing trans and gender-diverse children and adolescents, such as legal recognition of their gender identities, harassment at school, mental health, medical care, and impunity for violations of their rights.¹⁶⁸ Specifically, the Commission has called on States to foster welcoming family environments for trans and gender-diverse persons.¹⁶⁹
101. For its part, the Inter-American Court determined in Advisory Opinion 24/17 that all juridical standards on the right to gender identity are fully applicable to children

¹⁶⁶ See, among other examples: Arnold H. Grossman, Anthony R. D'augelli y Nickolas P. Salter, "Male-to-Female Transgender Youth," *Journal of GLBT Family Studies* 2, No. 1 (2006), 71-92; Jody L. Herman et al., *Age of Individuals who Identify as Transgender in the United States* (Los Angeles: The Williams Institute, 2017).

¹⁶⁷ See: IACHR, [Press Release No. 61/17](#): "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017. The press release was also signed by the UN Committee on the Rights of the Child; the UN Committee Against Torture; Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights; Ms. Koumbou Boly Barry, Special Rapporteur on the right to education; Mr. Vitit Muntarbhorn, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Mr. Dainius Pūras, Special Rapporteur on the right to health; Ms. Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences; the Working Group on the issue of discrimination against women in law and in practice; Mr. Lawrence Murugu Mute, Chairperson of the Committee for the Prevention of Torture in Africa, and Mr. Nils Muižnieks, Commissioner for Human Rights

¹⁶⁸ IACHR, [Press Release No. 61/17](#): "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

¹⁶⁹ IACHR, [Press Release No. 61/17](#): "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

and adolescents wishing to request recognition of their self-perceived gender identities on documents and registries.¹⁷⁰

102. The Court pointed to Argentina's gender identity law as a good practice on how to legislate recognition of gender identity in cases of minors under the age of 18.¹⁷¹ Said law only requires the freely-expressed consent of the child or adolescent, the consent of their legal representatives, and legal assistance.¹⁷² The law also establishes a complementary administrative process for changing registries, as well as an expedited and exceptional judicial route to be used only for cases in which, for some reason, it is not possible to obtain the consent of the representatives.¹⁷³
103. Parallel to this, in the universal system, the Committee on the Rights of the Child has recognized the discrimination suffered by trans young people and has emphasized "the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy."¹⁷⁴
104. Regarding the recognition of the gender identity of children and adolescents, the IACHR takes note that processes to change the gender indicator are legally available in Argentina,¹⁷⁵ Chile,¹⁷⁶ Uruguay,¹⁷⁷ and in the Canadian provinces of Alberta,¹⁷⁸ British Columbia,¹⁷⁹ Manitoba,¹⁸⁰ New Brunswick,¹⁸¹ Nova Scotia,¹⁸² Ontario,¹⁸³ Québec,¹⁸⁴ Saskatchewan,¹⁸⁵ Terranova, and Labrador,¹⁸⁶ as well as the territories of Nunavut,¹⁸⁷ the Northwest Territories,¹⁸⁸ and Yukon.¹⁸⁹

¹⁷⁰ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 154.

¹⁷¹ Inter-American Court. *Gender identity and equal protection and nondiscrimination for same-sex couples*, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 156.

¹⁷² [Law 26,743](#), Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

¹⁷³ [Law 26,743](#), Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

¹⁷⁴ Committee on the Rights of the Child, General Comment No. 20: on the implementation of the rights of the child during adolescence," December 6, 2016, CRC/C/GC/20, para. 34.

¹⁷⁵ [Law 26,743](#), Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

¹⁷⁶ IACHR, [Press Release 275/2018](#): "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region," December 21, 2018.

¹⁷⁷ IACHR, [Press Release 275/2018](#): "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region," December 21, 2018.

¹⁷⁸ Service Alberta, "[Amend sex information](#)," visited on July 5, 2018.

¹⁷⁹ [Vital Statistics Act](#) [RSBC 1996], Chapter 479, Article 27(1)(d).

¹⁸⁰ [Vital Statistics Act](#) [C.C.S.M. c. V60], Article 25(8)(2)(f).

¹⁸¹ [Vital Statistics Act](#) (S.N.B. 1979, c. V-3), Article 34.1(1).

¹⁸² [Vital Statistics Act](#), Chapter 494, Article 25(2).

¹⁸³ "[Changing your sex designation on your birth registration and birth certificate](#)," *Ontario.ca*, May 2, 2018.

¹⁸⁴ [Civil Code of Quebec](#), Article 71.1.

¹⁸⁵ eHealth Saskatchewan, [Change Sex Designation](#), visited on July 5, 2018.

¹⁸⁶ [Vital Statistics Act](#) (SNL2009) Chapter V-6.01, Article 26.1.

¹⁸⁷ [Vital Statistics Act](#) [R.S.N.W.T. 1988, c.V-3], Article 11.1(5)(e)

¹⁸⁸ [Consolidation Of Vital Statistics Act](#) [R.S.N.W.T. 1988, c.V-3], Article 11.1(5)(e)

¹⁸⁹ [Vital Statistics Act](#) (RSY 2002, c.225), Article 12(1).

105. In contrast, Bolivia¹⁹⁰ and the Federal District of Mexico¹⁹¹ require an individual to be 18 years old in order to change the gender indicator. In Ecuador, the change is made to the national identification card, which is a document that is only obtained at the age of 18, and therefore the possibility of changing the gender indicator is not available to children and adolescents.¹⁹² Meanwhile, in Brazil, the decision of the Supreme Federal Tribunal did not place any specific age limits on the process for changing the indicator.¹⁹³ Lastly, in Colombia, one of the requirements for the procedure is presentation of the national citizen identification card,¹⁹⁴ which is only given to adults when they turn 18.¹⁹⁵ However, in 2017, the Constitutional Tribunal found that changes to the gender indicator must be authorized when it can be proven that "the individual is near the age of majority,"¹⁹⁶ leaving open the possibility that adolescents age 17 or even 16 may be able to change their registry records.

2. Older Persons

106. The IACHR has described how older persons can suffer intersectional discrimination regarding their gender identities.¹⁹⁷ An important issue when considering the human rights situations of trans and gender-diverse persons who are also senior citizens is that most of them lived their lives during a time when there was no legal protection from discrimination based on gender identity or expression. On the contrary, many States had laws explicitly criminalizing trans and gender-diverse persons, as well as State public policies that tended to persecute LGBTI persons and to ignore persecution and acts of violence against them.¹⁹⁸

107. As indicated in its report on violence against LGBTI persons, the Commission is aware of the alarming context that in several countries of the region, trans women have an average life expectancy of around 35 years.¹⁹⁹ In line with this, the information collected by the IACHR between 2013 and 2014 found that 80% of the

¹⁹⁰ [Law No. 807](#), Law of May 21, 2016, Article 4(1).

¹⁹¹ Civil Code for the federal district of Mexico, (in keeping with amendments of February 5, 2015), Article 135 c(II).

¹⁹² Organic Law on the Administration of Identity and Civil Registry Information (Supplementary Official Registry 684, February 4, 2016), Article 76 and 94.

¹⁹³ Supreme Federal Tribunal (Brazil), [RE/670422 - Extraordinary Remedy](#), August 15, 2018.

¹⁹⁴ Decree No. [1227/2015](#), *Whereby section is added to Decree 1069 of 2015, the Unified Regulations of the Justice and Law Sector, regarding the procedure for correcting the sex designation in the Civil Registry*, Article 2.2.6.12.4.5(2).

¹⁹⁵ Zhan Chiam, Sandra Duffy, Matilda González Gil, [Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley](#) (Geneva: ILGA, November 2017), 101.

¹⁹⁶ Constitutional Court of Colombia, [Judgment T-498/17](#), August 3, 2017, para. 5.5.

¹⁹⁷ IACHR, [Press Release 152/17](#): "IACHR Calls on States to Combat Discrimination against Older Persons," October 4, 2017.

¹⁹⁸ Also see: SAGE, *It's about time: Aging in a Changing World. Conference Report: Policy Recommendations* (2009), 7.

¹⁹⁹ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, paras. 275 to 276.

trans persons murdered during a 15 month period were 35 years old or younger.²⁰⁰ In this regard, it has been noted that the short life expectancy of most trans women explains the absence of generations older than 30, which could directly affect young people lacking guidance from older persons "to help them see beyond the present moment and a perspective beyond individuality."²⁰¹

108. Likewise, there is little information collected so far on older trans and gender-diverse persons in the region.²⁰² In fact, the United Nations Independent Expert on the enjoyment of all human rights by older persons, on finding a lack of data in Costa Rica, recommended that the State conduct a study into the situation of older persons to identify trends and the current challenges they face, including trans persons.²⁰³
109. Early investigative work on the issue has identified specific problems that tend to affect older trans persons, especially those who depend on assistance from care workers who are not aware of or sensitive to gender diversity issues. Experiences have been documented of trans persons living in elder care facilities who have suffered from mistreatment and humiliation and who are afraid to demand respect because they could be expelled from the homes.²⁰⁴ The difficulty they face earning income often severely limits any opportunity to live without outside support. Additionally, erosion of connections to family that may have been caused by rejection of the person's gender identity can mean that when they age, the individual does not have relatives who could—or who want to—provide care and support.²⁰⁵
110. The Inter-American Convention on Protecting the Human Rights of Older Persons explicitly prohibits all discrimination based on gender identity.²⁰⁶ Even so, in contexts in which living conditions allow more trans persons to reach old age, they have been found to be the targets of mistreatment and violence, especially at the hands of care workers and healthcare providers,²⁰⁷ as detailed throughout this report.

²⁰⁰ IACHR, Press Release No. 153A/14, *An Overview of Violence against LGBTI Persons in the Americas: A Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014*, annex to Press Release 153/14. December 17, 2014.

²⁰¹ Lohana Berkins, "Cómo nos decimos: las travestis en Latinoamérica" *Revista E-Misférica* No. 4.2 (2007).

²⁰² Loree Cook-Daniels And Michael Munson, "Sexual Violence, Elder Abuse, and Sexuality of Transgender Adults, Age 50+: Results of Three Surveys" *Journal of GLBT Family Studies*, 6 (2010), 142.

²⁰³ Human Rights Council, *Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Costa Rica*, A/HRC/33/44/Add.1, para. 76.

²⁰⁴ Damien W. Riggs and Sujay Kentlyn, "Transgender Women, Parenting, and Experiences of Ageing" in *Queering Motherhood: Narrative and Theoretical Perspectives* (Bradford, Canada: Demeter Press, 2014).

²⁰⁵ See, among other examples: Anna Siverskog "'They Just Don't Have a Clue': Transgender Aging and Implications for Social Work" *Journal of Gerontological Social Work* 57, No. 2-4 (2014).

²⁰⁶ *Inter-American Convention on Protecting the Human Rights of Older Persons*, adopted during the 45th period of sessions of the OAS General Assembly in Washington, DC, United States, on June 15, 2015, Article 5.

²⁰⁷ Erin Fitzgerald, *No Golden Years at the End of the Rainbow: How a Lifetime of Discrimination Compounds Economic and Health Disparities for LGBT Older Adults* (Washington DC: The National Gay and Lesbian Task Force, 2013).

3. Afro-Descendant Persons

111. As the Commission expressed in its report on violence against LGBTI persons, afro-descendant persons face acts of violence and discrimination based on their ethnic-racial background, gender, sex, sexual orientation, gender identity, skin color, and/or situation of poverty.²⁰⁸ In fact, in States with high rates of victimization and discrimination against racial minorities, the level of violence to which trans persons are exposed is even greater when they also belong to a racial or ethnic minority group. This leads to more frequent violations of their rights, including of ESCER, as well as greater difficulty asserting such rights before authorities.²⁰⁹
112. This issue was specifically addressed by the IACHR during public hearings on Colombia²¹⁰ and Brazil.²¹¹ Regarding Colombia, the Commission noted the concerning impacts that the armed conflict has had on the lives of LGBTI persons in the Caribbean region, which is largely inhabited by Afro-descendant persons in the lowest socioeconomic segments who, according to the information received, are specifically targeted by armed groups, and particularly by criminal gangs.²¹² Regarding the hearing on Brazil, the report presented by one of the requesting organizations showed that trans women of African descent are mocked and humiliated, both because of their gender identities and the color of their skin. They also disproportionately experience violence based on prejudice.²¹³ Effectively, although trans women only account for 10% of the LGBTI population in Brazil, trans women of African descent account for around 52% of murders of LGBTI persons there.²¹⁴
113. The IACHR has received little information on the ethnic-racial composition of the region's trans population. However, with regard to the composition of this population in the United States, a study was conducted by the Williams Institute that found that the adult population identifying as trans is more racially and ethnically

²⁰⁸ IACHR, Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas, November 12, 2015, para. 358.

²⁰⁹ See, among other examples: Shanna K. Kattari et al., "Racial and Ethnic Differences in Experiences of Discrimination in Accessing Health Services Among Transgender People in the United States" *International Journal of Transgenderism* 16, No. 2 (2016), 74; Anneliese A. Singh, "Transgender Youth of Color and Resilience: Negotiating Oppression and Finding Support" *Sex Roles* 68 (2013) 690; Robert Garofalo et al., "Overlooked, misunderstood, and at-risk: Exploring the lives and HIV risk of ethnic minority male-to-female transgender youth" *Journal of Adolescent Health* 38, No. 3 (2006) 230–236; National Coalition of Anti-Violence Programs, "Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition," 2014.

²¹⁰ IACHR, Public hearing: Allegations of violence against LGBTI persons in Colombia's Caribbean region, 153rd Period of Sessions, October 27, 2014.

²¹¹ IACHR, Public hearing: Human rights situation of the trans persons of African descent in Brazil, 149th Period of Sessions, October 29, 2013.

²¹² IACHR, Press Release 131A/2014, Report on the 153rd Period of Sessions of the IACHR, December 29, 2014.

²¹³ Global Rights: Partners for Justice, Report on the Human Rights Situation of Afro-Brazilian Transgender Women (2013), 8.

²¹⁴ Global Rights: Partners for Justice, Report on the Human Rights Situation of Afro-Brazilian Transgender Women (2013), 9.

diverse than the general population of the United States. It is estimated that nationally, among those identifying as trans, 55% identify as white, 16% identify as African-American or Black, and 21% identify as Latino or Hispanic, with 8% identifying as another race or ethnicity.²¹⁵

4. Migrant and Internally Displaced Persons and Asylum Applicants

114. On a number of occasions, the IACHR has recognized the heightened vulnerability of trans persons who are immigrants and internally displaced as a result of the intersectional discrimination they face due to their identities and gender expressions, as well as their migratory status.²¹⁶
115. The migration process tends to be a context in which a considerable number of human rights violations are committed against trans persons. For them, migration is a significant risk, as the documentation they carry does not reflect their gender identities, even when migrating internally.²¹⁷ Under these circumstances, a migrant trans person tends to face multiple instances of institutional violence at the hands of immigration authorities, security forces, border guards, and airport personnel, including arbitrary denial of entry at borders, invasive security examinations and searches, degrading questions, arbitrary delays or detentions, being held in detention centers intended for persons of a gender with which they do not identify, hostile and humiliating treatment, unjustified suspicion, and refusal to accept asylum requests.²¹⁸ Private groups also take advantage of the inconsistent documentation or of the greater vulnerability to which trans persons are exposed to exploit them through human trafficking rings.
116. Although the risk can be lower, migrating with documentation that reflects one's gender identity but is not consistent with the genitalia socially and culturally assigned to that gender can also entail risk.²¹⁹ This can lead to situations in which more modern forms of security technology or other circumstances expose an individual as a trans person. Prejudice and a lack of training of those working as security agents and/or migration officials in these areas can lead to the perceived "inconsistency" being considered an indication of "fraud," therefore leading to

²¹⁵ Andrew R. Flores et al., *Race and Ethnicity of Adults who Identify as Transgender in the United States* (Los Angeles: The Williams Institute, 2016), 2.

²¹⁶ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 189; *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 371.

²¹⁷ United Nations General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/38/43, May 11, 2018, para. 43.

²¹⁸ See, among other examples: Amnesty International, *No Safe Place: Salvadorans, Guatemalans, and Honduran seeking asylum in Mexico based on their sexual orientation and/or gender identity* (London: Amnesty International, 2017); Human Rights Watch, *Do You See How Much I'm Suffering Here? Abuse against Transgender Women in US Immigration Detention*. (2016).

²¹⁹ Egale Canada, "Policy Paper: "Sex" Inscriptions on the Canadian Passport" (Toronto, 2011), 3.

denial of entry to the country, or even to subjecting the person to stricter and more degrading screenings.²²⁰

117. With regard to internal displacement, it has been documented how trans persons tend to feel the need to migrate from rural areas or small cities to large urban areas to settle in contexts that are less violent and less prejudicial against gender diversity. The anonymity that large cities provides enables them to live lives that are subject to less scrutiny than in places with smaller populations, which tend to be more conservative and openly hostile. Such places also offer more opportunities to socialize with other trans persons and to participate in mutual support activities and even political and social mobilization.²²¹
118. Lastly, an additional vulnerability is that in many countries where the right to gender identity is guaranteed and processes are provided for changing the gender indicator on personal documentation, they often require nationality or permanent residency. This becomes an obstacle, often insurmountable, that forces many trans persons in situations of human mobility to have to remain in the vulnerable position of carrying documentation that does not match their own gender identities. For example, in the Federal District of Mexico, corrections to the registry can only be requested by persons of Mexican nationality.²²² Colombia requires the applicant submit a copy of the national identification card carried by Colombian citizens,²²³ and Bolivia explicitly limits the scope of the gender identity law to Bolivian nationals.²²⁴ Although Argentina provides for the possibility of amending the registry for migrants, the procedure requires the person to obtain permanent residency in the country.²²⁵ Consequently, trans persons who have not secured permanent residency—or are still processing it—are not able to amend the documentation they carry.

E. Data Collection

119. On several occasions, the IACHR has underscored the crucial importance of adequate State mechanisms for data collection, which are necessary for obtaining statistical information and measurements they can effectively inform the design of

²²⁰ Egale Canada, “Policy Paper: “Sex” Inscriptions on the Canadian Passport” (Toronto, 2011), 4.

²²¹ Lohana Berkins, “Cómo nos decimos: las travestis en Latinoamérica” *Revista E-Misférica* No. 4.2 (2007).

²²² Civil Code for the federal district of Mexico, (in keeping with amendments of February 5, 2015), Article 135 c(l).

²²³ Decree No. 1227/2015, *Whereby section is added to Decree 1069 of 2015, the Unified Regulations of the Justice and Law Sector, regarding the procedure for correcting the sex designation in the Civil Registry*, Article 2.2.6.12.4.5(2).

²²⁴ Law No. 807, Law of May 21, 2016, Article 4(1).

²²⁵ Decree 1007/2012, *Correction of sex registry and change of name(s) and photo* (Official Bulletin of July 3, 2012) Article 9(a). Also see: Matilda González Gil, “Argentina: La aplicación de una ley que fue un hito en materia de reconocimiento del género” in Zhan Chiam, Sandra Duffy, Matilda González Gil, *Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley* (Geneva: ILGA, November 2017), 96.

public policies on human rights.²²⁶ In its report on violence against LGBTI persons, the IACHR emphasized that this State duty is necessary to uniformly and accurately measure the prevalence, trends, and other aspects of violence in a given State or region.²²⁷ Along the same lines, echoing the importance of producing such information, the Yogyakarta Principles indicate that States are required to compile statistics and research on the extent, causes and effects of violence, discrimination, and other harm, and on the effectiveness of measures to prevent, prosecute and provide reparation for such harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics.²²⁸

120. In this regard, a cause for concern is the lack of public policies on collecting statistical information to effectively inform on the human rights situation of the LGBTI population, specifically of trans persons. Although starting in 2013 and in every subsequent year, the States of the OAS have committed to collecting and compiling information on gender identity,²²⁹ the IACHR has confirmed that few States have effective mechanisms in place for collecting information to assess the living situations of trans and gender non-binary persons in their respective jurisdictions.²³⁰ In its Report on Progress on and Challenges to Recognizing the Rights of LGBTI Persons, the IACHR examined in detail the existing initiatives on the subject.²³¹
121. For its part, the Working Group of the Protocol of San Salvador (WGPSS) has pointed repeatedly to the need to disaggregate the statistical information produced by States based on gender identity.²³² Regarding this, it should be noted that the "gender

²²⁶ See, among other examples: IACHR *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 392; Report on the Situation of Afro-Descendant Persons in the Americas, 2011, paras. 14, 22 and 75; IACHR, Report: Access to Justice for Women who are Victims of Sexual Violence: education and health, December 28, 2011, para. 32, *Annual Report 2009, Chapter V: Follow-up on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, August 7, 2009, para. 216; Report: *Situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination, Chapter IV: Recommendations to improve the application of due diligence to prevent violence against women in Ciudad Juárez and improve their safety*, March 7, 2003; Press Release 153A/14, "An Overview of Violence against LGBTI Persons in the Americas: A Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014, annex to Press Release," Annex to Press Release 153/14. December 17, 2014.

²²⁷ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, November 12, 2015, para. 394.

²²⁸ Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics, 2017. Principle 30 (Right to State protection).

²²⁹ OAS, General Assembly, Human rights, sexual orientation, and gender identity and expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary session, held on June 6, 2013. Likewise, in subsequent years, the General Assembly continued to adopt resolutions with similar content.

²³⁰ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, November 12, 2015, paras. 395 to 399; Progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 42; IACHR, Press Release 79/13, "IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons," October 24, 2013.

²³¹ IACHR, Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas, OEA/Ser.L/V/II.170 Doc. 184, December 7, 2018, paras. 42 to 54.

²³² Working Group to examine the Periodic Reports provided for the Protocol of San Salvador, Concluding observations and recommendations to the Republic of Peru (2018), pg. 9, 17; Concluding observations and recommendations to the State of Honduras (2017), pg. 7; Concluding observations to the United Mexican

perspective" frequently used to disaggregate data is read solely as the separation between cisgender men and women using a binary logic, which makes invisible and completely hides trans persons. Recently, the WGPSS launched a special guide intended to operationalize the indicators of the Protocol of San Salvador from a crosscutting LGBTI perspective.²³³

122. The IACHR was informed of a number of initiatives carried out by States in the region in recent years. Of particular note is the national census of trans persons conducted in Uruguay in 2016.²³⁴ The IACHR particularly welcomes this initiative implemented nationally by the Ministry of Social Development, as it constitutes a good practice worth replicating by other States.²³⁵ Also, two initiatives specifically focused on collecting data regarding the trans-population were implemented in Argentina, although at a smaller scale: a pilot survey was conducted of the trans population in the Municipio of La Matanza in 2012,²³⁶ and a census of the feminine trans-identity population was carried out in the Province of Jujuy.²³⁷ In other States of the region, different surveys have been carried out that, while not focused on trans persons, aimed to assess the living conditions of LGBTI persons in general, including trans-persons within their samples, with varying degrees of disaggregation. These initiatives include surveys carried out by Ecuador,²³⁸ El Salvador,²³⁹ Mexico,²⁴⁰ and Peru.²⁴¹
123. In some countries of the region, initiatives to collect data have been led by civil society.²⁴² The IACHR welcomes and praises these types of initiatives, especially

States (2016), pg. 5, 11; Concluding observations to the Republic of Paraguay (2016), pg. 4, 8; Concluding observations to the Plurinational State of Bolivia (2016), pg. 5, 6; *Concluding observations to the Oriental Republic of Uruguay* (2016), pgs. 7, 17;

²³³ OAS. Working Group of the Protocol of San Salvador. *Measuring all Gaps: Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective* (2019).

²³⁴ For more information on how this census was implemented, see: Alejandra Iervolino Carrió, *Sistematización del proceso del Censo de Personas Trans en Uruguay* (Montevideo: MIDES, 2017).

²³⁵ See the preliminary results of the census at: Ministry of Social Development (Uruguay), *Transform 2016: "Revealing realities: Preliminary results of the first census of trans persons"* (2016), pg. 8.

²³⁶ National Institute against Discrimination, Xenophobia, and Racism (Argentina). *First Survey of the Trans Population 2012: Travestis, Transsexuals, Transgender persons, and Trans Men*. Technical report of the Pilot Program, Municipio of La Matanza, Buenos Aires Province).

²³⁷ Provincial Office on Statistics and Census (Jujuy Province), *Survey of Feminine Trans Identities* (2018).

²³⁸ National Institute on Statistics and Census, *Case study on living conditions, social inclusion, and fulfillment of human rights for the LGBTI population in Ecuador* (2013).

²³⁹ Office on Sexual Diversity (Secretariat of Social Inclusion) *National Survey on LGBTI Realities in El Salvador* (2012).

²⁴⁰ See: National Human Rights Committee, *Survey on discrimination based on sexual orientation and gender identity* (ENDOSIG).

²⁴¹ National Institute on Statistics and Information (INEI), *First Virtual Survey for LGBTI Persons* (2018).

²⁴² These initiatives include the ones that led to the production of the following reports: Lohana Berkins and Josefina Fernández, *La gesta del nombre propio. Informe sobre la situación de la comunidad travesti en Argentina* (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2005); Lohana Berkins, *Cumbia, Copeteo y Lagrimas: Informe nacional sobre la situación de travestis/transexuales/transgéneros* (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2008); *La Revolución de las Mariposas: A diez años de la Gesta del Nombre Propio* (Buenos Aires: MPD-CABA, 2017).

because they have been groundbreaking in collecting data, have called attention to the need to collect this important information, and, in many cases, because trans persons themselves have played a leading role in the project. However, the IACHR notes that these valuable activities led by civil society cannot be used by the State as an excuse or reason to postpone or withdraw from its obligation to collect the necessary information itself. Furthermore, the fact that the sole source of information on an extremely vulnerable group like trans persons is often social organizations means that while civil society is organized, the State is also failing to honor its commitments on the subject. In this regard, the IACHR underscores that, according to the recommendations it has made in its various reports,²⁴³ the collection and disaggregation of statistical information is work that must fall to the State, without prejudice to the initiatives that other actors may voluntarily carry out.

124. Lastly, the IACHR underscores the importance that States, in collecting data, include quali-quantitative information on laws and public policies affecting ESCER and access to and enjoyment thereof by LGBTI persons, particularly trans and gender-diverse persons. Finally, the Commission highlights that this information must be grounded in respect for the specific characteristics and sensibilities of these individuals and carried out by staff who are duly trained and sensitized in the diversity of gender identity and gender expression. Such processes must be guided by principles of information confidentiality and security so that no trans or gender-diverse persons are exposed to systematic violations, including by the State's own institutions.

²⁴³ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, General recommendation 1, *Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas*, December 7, 2018, para. 267.1.

CHAPTER 2

ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

125. The protection of gender identity as a protected category under Article 1(1)²⁴⁴ of the American Convention and the guarantee of related rights requires, in addition to laws, public policies that change the reality of discrimination and violence to which trans and gender-diverse persons are exposed.²⁴⁵ The Commission recognizes that the comprehensive protection inherent to the effective recognition and application of all the human rights of trans and gender-diverse persons is intrinsically linked to guaranteeing their economic, social, cultural, and environmental rights, as well as their civil and political rights.
126. In this regard, the IACHR recalls that the ideal of being a free human being can only be realized if the conditions are established that enable persons—including trans and gender-diverse persons, considering their unique situation of exclusion—to exercise their civil and political rights as well as their economic, social, cultural, and environmental rights in view of their indivisible and interdependent nature.²⁴⁶ This is particularly important given the direct relationship between the enjoyment of economic, social, cultural, and environmental rights and disproportionate poverty and inequality²⁴⁷ affecting trans and gender-diverse persons.
127. In this regard, from the inter-American instruments on ESCER arise obligations to attend to the basic needs of human development, grounded in the principles of equal protection and nondiscrimination, and respect for and guarantee of these obligations is just as enforceable as for those arising from civil and political rights, including the right to effective judicial protection, both individually and collectively.²⁴⁸ Thus, the IACHR recalls that ESCER must be guaranteed by all the States of the region, with special emphasis on groups facing greater vulnerability, such as trans and gender-diverse persons.
128. In view of the importance of these rights and their direct impact on the scope of other rights, the IACHR has reiterated the importance of taking a specialized

²⁴⁴ Inter-American Court, AO 24, para. 78 and IACHR, Report on progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 32.

²⁴⁵ IACHR, *Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas*, December 7, 2018, para. 40.

²⁴⁶ See, for example, IACHR, Third Report on the Human Rights Situation in Paraguay, March 9, 2001, para. 4 and the report on Work, Education and Resources for Women, November 3, 2011. Para. 29

²⁴⁷ 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*, 2007, para. 48-50.

²⁴⁸ 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*, 2007, paras. 324-339.

approach to ESCER in the region. Therefore, starting in 2017, the Office of the Special Rapporteur on Economic Social Cultural and Environmental Rights (hereinafter “REDESCA”) has been responsible for supporting the IACHR in fulfilling its mandate to promote and protect environmental, social, cultural, and environmental rights in the Americas and the application of the principle that all human rights are indivisible and cannot be ranked one over another.

A. Regional Instruments and Their Approach to ESCER

129. Economic, social, cultural, and environmental rights are set forth in the American Declaration, in Articles XI, XII, XIII, XIV, XV, and XVI; generally in Article 26 of the American Convention on Human Rights; and in greater detail in the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador).
130. Also, the Charter of the Organization of American States (hereinafter, “the Charter” or “Charter of the OAS”), adopted in 1948 and amended in 1967, includes provisions on the comprehensive development and well-being of the inhabitants of the hemisphere as regards the application of mechanisms and principles for the full realization of the aspirations of their life projects. In its Article 45, the OAS charter explicitly mentions rights to work, organize, Social Security, and health, as well as the principles and mechanisms on which States agreed to focus their efforts.²⁴⁹
131. The Charter provides an institutional framework for addressing these issues comprehensively. Therefore, it first establishes that human beings have a right to achieve material well-being and spiritual development, among other provisions related to the right to work and education. Likewise, through the Protocol of Buenos Aires, the OAS Charter incorporates in its Article 34 the measures to provide basic goals for comprehensive development, including acceptable working conditions for all, expansion of educational opportunities, adequate housing, and others.
132. Like the OAS Charter,²⁵⁰ the American Declaration does not draw distinctions between the rights set forth in its text. The Declaration includes economic, social, cultural, and environmental rights, as well as civil and political rights, specifying that in the inter-American system, all human rights are interdependent and indivisible.²⁵¹ For its part, the Inter-American Democratic Charter (2001) underscores the importance of reaffirming, developing, fine-tuning, and protecting

²⁴⁹ In the pertinent section of the Charter, the text of Article 45 states as follows: “man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace (...),” with subparagraph b) of the article reading as follows: “b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; (...),” Organization of American States, Charter of the Organization of American States, signed in Bogotá in 1948 and amended in Buenos Aires in 1967, by the Protocol of Cartagena in 1985, and on other occasions.

²⁵⁰ Inter-American Court, Advisory Opinion OC-10/89, July 14, 1989, para. 44.

²⁵¹ Id. Pg. 106. Articles IX through XVI of the American Declaration of the Rights and Duties of Man.

ESCER. Along these lines, the Social Charter of the Americas (2012) holds that the "promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere."

133. At the same time, the American Convention on Human Rights establishes in its preamble the incorporation into the OAS Charter of "broader standards with respect to economic, social, and educational rights" and the "determin[ation of] the structure, competence, and procedure of the organs responsible for these matters."²⁵² The Convention includes a general commitment to implement and protect ESCER through its Article 26,²⁵³ which is aimed at securing "progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."²⁵⁴
134. In view of the importance of ESCER, OAS Member States adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter the "Protocol of San Salvador"), which entered into force on November 16, 1999.
135. The Protocol reaffirms the integral nature of all human rights,²⁵⁵ emphasizing that all rights inherent to the human person comprise an indivisible whole that is grounded in recognition of the dignity of the human person."²⁵⁶ The text enshrines protection for a number of rights, including the right to work, the right to just, equitable and satisfactory conditions of work, trade union rights, the right to social security, the right to health, the right to food, the right to education, and the right to the benefits of culture, among other rights. The Protocol of San Salvador also enshrines the principle of equal protection and nondiscrimination and the obligation to adopt domestic measures to progressively secured the full effectiveness of the rights set forth in the text.²⁵⁷ Thus, the Protocol of San Salvador describes with more clarity States' obligations with regard to ESCER, recognizing in its text the contentious jurisdiction of the inter-American system to directly supervise Articles 13 (right to education) and 8(1)(a) (trade union rights). Additionally, the obligations established in the Protocol are supervised through the

²⁵² OAS, American Convention on Human Rights, Preamble.

²⁵³ Elizabeth Salmón, "Los Derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano: El Artículo 26 de la Convención Americana sobre Derechos Humanos y El camino hacia una lectura social de los Derechos Civiles y Políticos," German Development Corporation (GIZ), 2010, pg. 30.

²⁵⁴ OAS, American Convention on Human Rights, Article 26.

²⁵⁵ Florentín Meléndez, "Los derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano de Protección a los Derechos Humanos," *Cuadernos Electrónicos* No. 5, human rights and democracy.

²⁵⁶ Organization of American States, "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights," San Salvador, November 17, 1988, Preamble.

²⁵⁷ Articles 2 and 3, Protocol of San Salvador.

review of State reports sent to the Working Group of the Protocol of San Salvador under a monitoring system established in Article 19 of that treaty.

136. In this regard, the Working Group of the Protocol of San Salvador supervises progress toward creating and implementing public policies on the existing obligations established in the Protocol. To carry out these evaluations, the Working Group has developed indicators to determine States' level of compliance with their obligations under the Protocol.²⁵⁸ Civil society and States participate in setting the indicators and establishing their methodologies.²⁵⁹ The monitoring system combines structural, progress, and outcome indicators using a methodology with a human rights approach.
137. Thus far, the Working Group has established two groups of rights set forth in the Protocol. The first²⁶⁰ includes the rights to health, social security, and education. The second²⁶¹ includes the rights to work, to trade union rights, to adequate food, to a healthy environment, and to the benefits of culture.
138. The Commission and its REDESCA particularly emphasize the importance of preparing the "Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective" as an extremely valuable tool for formulating public policies to address this population and help it effectively realize its ESCER. The guidebook serves especially as a source of assistance for States as they establish and adjust methodologies for collecting statistical information and data on this population. For civil society, academia, and LGBTI groups in general, it serves as a tool for advocacy and monitoring.²⁶²
139. The Monitoring Mechanism of the Protocol of San Salvador promotes open discussion with different sectors of society within States to establish clear objectives, targets, and priorities to enable transparent supervision of compliance with the obligations established in the protocol.²⁶³
140. The Commission underscores the importance of the work done by the Working Group and its valuable contributions in the form of the comments it submits to States; the creation of indicators; and the collection of data on the ESCER situation

²⁵⁸ Along with this, the IACHR was asked to propose indicators to measure State progress—or any setbacks. They were included in the system's first indicators document, "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, Cultural, and Environmental Rights" (CP/doc.4250 corr.1).

²⁵⁹ Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador, 2nd ed. 2015. Pg. 2.

²⁶⁰ OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador: First Group of Rights, OEA/Ser.L/XXV.2.1, December 16, 2011.

²⁶¹ OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador: Second Group of Rights, OEA/Ser.L/XXV.2.1, November 5, 2013.

²⁶² OAS. Working Group of the Protocol of San Salvador. Measuring all Gaps: Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective (2019).

²⁶³ Organization of American States, Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador," OEA/Ser.D/XXVI.11 (2015), pg. 18, 20.

in the region.²⁶⁴This work complements the IACHR's work, particularly the work of its REDESCA, and the Rapporteur takes part in the Working Group as the representative of the IACHR.

B. Development of ESCER in the Inter-American Human Rights System

141. The standards on economic, social, cultural, environmental rights have been developed over time by the bodies of the inter-American system, demonstrating increasing and positive synergy between the Commission and the Inter-American Court on the protection of these rights. Specifically, the Commission and its REDESCA observe that these rights have historically been integrated within the evaluation, promotion, and protection granted to human rights by the IACHR through its different mechanisms.²⁶⁵
142. Through its contentious function, the Inter-American Court initially took these rights into account by examining them indirectly, via violations of civil and political rights such as the rights to life, humane treatment, and property,²⁶⁶ reiterating their enforceability and the applicability of the obligations to respect and guarantee.²⁶⁷
143. In this regard, although in the case of *Suárez Peralta v. Ecuador*, the Court did not directly apply the provisions of Article 26 to the specific case, in recognized, *inter alia*, that health is a fundamental human right and indispensable for the full exercise of the other human rights.²⁶⁸ Subsequently, in the case of *Gonzales Lluy v. Ecuador*, the Inter-American Court determined the State had discriminated and prevented the victim from exercising the right to education by failing to guarantee access to the educational system because the individual was living with HIV.²⁶⁹ In that case, the Inter-American Court applied for the first time the Protocol of San Salvador, which grants authority to monitor compliance with State obligations on this specific right.

²⁶⁴ Organization of American States, Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador," OEA/Ser.D/XXVI.11 (2015). Pg. 32.

²⁶⁵ See, *inter alia*, IACHR. Report 100/01. Case 11,381, Milton García Fajardo *et al.* v. Nicaragua, October 11, 2001, paras. 94-101; IACHR, Merits Report 27/09, Case 12,249, Jorge Odir Miranda Cortez *et al.* v. El Salvador, March 10, 2009, para. 105; IACHR. Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights. September 7, 2007; IACHR. Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010; IACHR. Report on Poverty and Human Rights in the Americas, September 7, 2017.

²⁶⁶ Inter-American Court. Case of Ximenes Lopes. Brazil. Judgment of July 4, 2006. Series C No. 149; Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261; Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98.

²⁶⁷ Inter-American Court, Case of Acevedo Buendía *et al.* v. Peru, Judgment of July 1, 2009, para. 100.

²⁶⁸ Inter-American Court. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 132.

²⁶⁹ Inter-American Court, Case of Gonzales Lluy *et al.* v. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 252, 256, 265, 274, and 291.

The Court also found that a law banning the payment of pensions to same-sex couples, thereby preventing them from exercising the right to social security, violated the right to equal protection and nondiscrimination.²⁷⁰

144. Later, the Court took a step forward in establishing the autonomy of these rights by finding a direct violation of Article 26 of the ACHR in the case of *Lagos del Campo v. Peru*.²⁷¹ In that judgment, the Court found that protection of the right to work fell within the framework of the Inter-American system, particularly as regards job stability and the right to not be unjustly removed from a job,²⁷² establishing direct and autonomous access to international justice for ESCER in the IAHRs.
145. The Inter-American Court continued to extend and more clearly develop its interpretation of the application of Article 26 of the ACHR and States' obligations to make ESCER effective by applying the provision in subsequent decisions, in both its contentious and advisory roles, particularly with regard to the rights to health,²⁷³ social security,²⁷⁴ and a healthy environment.²⁷⁵ For example, in the case of *Poblete Vilches*, the Inter-American Court ruled for the first time with regard to the right to health on its own, establishing that this right is protected by Article 26 of the Convention.²⁷⁶ Along these lines, in its judgment in the case of *Cuscul Pivaral et al.* regarding protection of the right to health for people who live with HIV in Guatemala, the Court found that "a literal, systematic, and teleological interpretation leads to the conclusion that Article 26 of the American Convention protects the rights derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter,"²⁷⁷ and reiterated its competence to review immediate enforcement obligations as well as progressive obligations regarding ESCER.²⁷⁸ More recently, the Court ruled the right to health of persons deprived of liberty and the right to social security—specifically, pensions for older adults—were

²⁷⁰ Inter-American Court. Case of *Duque v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 26, 2016. Series C No. 310, para. 125.

²⁷¹ Inter-American Court. Case of *Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 34.

²⁷² Inter-American Court, Case of *Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143.

²⁷³ Inter-American Court. Case of *Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349; Inter-American Court. Case of *Cuscul Pivaral et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359

²⁷⁴ Inter-American Court. Case of *Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375; Inter-American Court. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence *v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394.

²⁷⁵ Inter-American Court. The Environment and Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

²⁷⁶ Inter-American Court. Case of *Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 105.

²⁷⁷ Inter-American Court. Case of *Cuscul Pivaral et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, párr.97

²⁷⁸ Inter-American Court. Case of *Cuscul Pivaral et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, párr.98

integral parts of ESCER protected directly and autonomously at the Inter-American level.²⁷⁹

146. For its part, the IACHR has also reaffirmed and exercised its competence to consider potential violations of Article 26 of the American Convention and the ESCER set forth in the American Declaration and the framework of the individual petitions and cases system. It has emphasized the interdependence and indivisibility of economic, social, cultural, and environmental rights and civil and political rights.²⁸⁰
147. In general terms, the Commission has underscored that Article 26 of the ACHR establishes that States Parties have an obligation to progressively develop the social rights derived from the OAS Charter. Thus, the Commission has indicated that it first needs to be established if the right in question in the case is derived from “the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States,” as referred by Article 26. That is, Article 26 of the ACHR is the article that identifies the Charter of the OAS as the direct source of these rights, assigning the provisions in that treaty applicable to these issues the character of human rights. As the objective of the Charter of the OAS was not to identify rights but to establish an international organization, the IACHR has indicated that outside texts must be used to identify the rights derived from the provisions of that instrument. With this established, it must then be determined whether the State in question failed to comply with the obligation to “achiev[e] progressively” the full effectiveness of that right or the general obligations to respect and guarantee it. This second level of analysis must take into consideration the nature and scope of the State’s obligations—both immediate and progressive—under Articles 1(1), 2, and 26 of the Convention, as well as the obligations contained in the right in question.²⁸¹
148. Based on this, the Commission has indicated that Article 26 of the American Convention imposes a series of obligations on States beyond simply limiting regression—this is part of the obligation of progressiveness, but cannot be understood as the only legally actionable obligation in the inter-American system. Thus, the Commission finds that, taking into account the interpretive framework of Article 29 of the American Convention, Article 26 analyzed in view of Articles 1(1) and 2 of the Convention entails, at a minimum, the following immediate and

²⁷⁹ Inter-American Court. Case of Hernández v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395; Inter-American Court. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394.

²⁸⁰ IACHR. Resolution 12/85, Case 7615 (Yanomami Community), Brazil, March 5, 1985; IACHR. Merits Report 50/16. Undocumented Workers (United States) November 30, 2016; IACHR Merits Report 25/18. Employees of the Fireworks Factory in Santo Antonio de Jesús and their relatives (Brazil), March 2, 2018; IACHR Merits Report 64/18. Opario Lemoth Morris *et al.* (Miskito divers) (Honduras), May 8, 2018; IACHR. Merits Report 110/18. Paola del Rosario Albarracín Guzmán and relatives (Ecuador), October 5, 2018; IACHR. Merits Report 107/18, Martina Rebeca Vera Rojas (Chile), October 5, 2018.

²⁸¹ IACHR Report No. 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following; and IACHR Report 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives. October 5, 2018, paras. 103 and following.

enforceable obligations: (i) general obligations to respect and guarantee, (ii) application of the principle of nondiscrimination to economic, social, cultural, and environmental rights; (iii) obligations to take steps or adopt measures to make it possible to enjoy the rights included in that article; and (iv) obligations to provide suitable and effective remedies for protecting those rights.²⁸²

149. Regarding the immediate and enforceable components of the obligation to take steps or adopt measures, the IACHR recalls that the CESCR has indicated, for example, that the adoption of measures in itself is not limited or conditioned on other considerations; thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations. The State also has basic obligations to meet the minimum standards for these rights. These obligations are not subject to progressive development but rather must be provided immediately.²⁸³
150. The Commission and its REDESCA underscore that the directly enforceable component of the ESCER is a highly relevant step forward toward guaranteeing the integrality and indivisibility of human rights. They also recognize that access to justice to the Inter-American system in this regard is making it possible to consolidate protection of these rights for rights holders more visibly and robustly. At the same time, it is making it possible to address grave situations that impact or threaten the dignity and human rights of more vulnerable persons more assertively, particularly taking into account social inequality, poverty, and the involvement of non-State actors. Without prejudice to this, they also underscore the importance of States effectively applying standards on progressiveness, non-regression, immediate obligations, and recommendations related to such rights, such as the analysis of their juridical content and specific characteristics as identified and developed by the Commission and its REDESCA in the Inter-American context under the mechanisms for human rights promotion and protection.
151. It is the Commission's view that inter-American standards on ESCER demonstrate that all human rights must be understood and protected integrally, without unnecessary hierarchies. They should be made enforceable by the authorities with competence to do so. Pursuant to this, for the purposes of this thematic report, a review is needed of the scholarship and case law on ESCER in the region, highlighting the experiences, central challenges, and situation of trans and gender-diverse persons in this regard.

²⁸² IACHR Report No. 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following; and IACHR Report 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives. October 5, 2018, paras. 103 and following.

²⁸³ United Nations Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant), 1990. In this sense, see: IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

C. *ESCER in the Framework of the Sustainable Development Goals*

152. In addition to Inter-American standards, in the universal system, in 2015, the United Nations approved the 2030 Agenda, which sets forth the Sustainable Development Goals (SDGs). The SDGs are a call for every State on the planet to adopt sustainable development measures that include economic, social, and environmental aspects. There are 17 SDGs, rooted in the achievements of the Millennium Development Goals, and they have the equality and dignity of persons at their core. The SDGs encourage States to leave no one behind, with a focus on protecting the rights of groups that have historically faced greater vulnerability and discrimination. This is a universal commitment made by both developing and developed countries in the framework of a reinforced global alliance focused on cooperation and prevention.²⁸⁴
153. The Commission recognizes that the SDGs offer a new development paradigm aimed at eliminating the conditions that produce systemic inequality on the planet. In this regard, several of the ESCER are reflected from a crosscutting perspective, through an understanding of the human rights of development. The Commission particularly notes that the SDGs were adopted by the 193 Member States of the United Nations, including 35 OAS Member States, with the direct involvement of actors from civil society, academia, and the private sector following a negotiation process that was open, democratic, and participatory.
154. The SDGs are integrated and indivisible, and therefore, their implementation requires tools that transcend sector-bound and fragmented approaches to analyze the nature of the interactions between the objectives and targets, identify conflicts and synergies, and take into account not only the policies' impacts on the here and now but also their impacts around the world and in the long term. As the IACHR indicated in its report on Poverty and Human Rights, the SDGs recognize the fundamental nature of human dignity as a guiding principle and respect for human rights and the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.²⁸⁵
155. It is the IACHR's view that the SDG's offer an opportunity to promote positive synergies and move forward with the design and implementation of integrated public policies for the realization of human rights in general that tie together the economic, social, and environmental dimensions of sustainable development and contribute to eradicating gender inequalities, as well as inequality within and among countries.²⁸⁶

²⁸⁴ CEPAL, "Agenda 2030 y los Objetivos de Desarrollo Sostenible: Una Oportunidad para América Latina y el Caribe", January (2018), pg. 7.

²⁸⁵ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 290.

²⁸⁶ CEPAL, "La Agenda 2030 y la Agenda Regional de Género", Gender Series No. 143, pg. 7-8.

156. As regards development commitments adopted in the framework of the SDGs, the IACHR reiterates²⁸⁷ that, although they are not legally obligatory, governments are expected to adopt them as official goals and establish national frameworks for attaining their proposed objectives. In this regard, immediate action is needed to address the systematic exclusion of vulnerable groups, like trans persons. The Commission therefore calls on States to take measures to remove systemic barriers that exclude trans persons from the benefits of the development agenda.
157. Regarding this, it should be noted that, for example, the Commission has emphasized that poverty rates, lack of housing, and food insecurity are higher among LGBTI persons than in the community in general. This situation is directly related to SDGs 1, 8, 10, and 11, which include guaranteeing “that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services” and creating “sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies.”²⁸⁸
158. In this context, the Commission recalls that trans and gender-diverse persons are subjected to living in conditions of extreme hostility and instability, both in their places of work and in their daily lives, and that it is the State’s job to change the situation directly and gradually at several levels. The IACHR has addressed the systemic exclusion of trans persons from good-quality education—the subject of SDG 4—as the result of harassment, violent abuse, and even expulsion of these individuals from schools. Across all regions of the world, harassment based on real or perceived sexual orientation and gender identity is commonplace, leading to school dropout rates that are much higher for LGBTI persons and that worsen exclusion from economic opportunities.²⁸⁹
159. Regarding these situations, it is the IACHR’s view that in order to guarantee the protection of trans persons and their human rights—including the right to development—within the framework of compliance with the SDGs, States must provide optimal conditions, in both their laws and their application of public policy, to ensure development is comprehensive and sustainable, while at the same time centering respect for and protection of human rights.

²⁸⁷ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 291.

²⁸⁸ IACHR; [Press Release 110/2018](#), “Leave no LGBT Person Behind”, May 17, 2018.

²⁸⁹ IACHR; [Press Release 110/2018](#), “Leave no LGBT Person Behind”, May 17, 2018.

CHAPTER 3
RIGHT TO EDUCATION
AND CULTURE

RIGHT TO EDUCATION AND CULTURE

A. *Human Right to Education*

160. The human right to education is enshrined in a considerable number of inter-American and international human rights treaties.²⁹⁰ The right has been called a "key pillar (...) to ensure enjoyment of a decent life"²⁹¹ and "indispensable (...) for realizing other human rights."²⁹² Education is also necessary for full intellectual development and the development of one's own identity, personality, talents, and skills, all of which provides people with valuable tools for developing their full potential, as well as for finding good quality jobs and for escaping poverty or avoiding falling into it.²⁹³
161. States' international obligations regarding the right to education arise from a vast body of international law. At the Inter-American level, important provisions include Article 26 of the American Convention; Articles 34(h), 47, and 49 of the OAS Charter; Article XII of the American Declaration;²⁹⁴ and the Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural, and Environmental Rights.²⁹⁵

²⁹⁰ Charter of the Organization of American States, Article 49; American Declaration of the Rights and Duties of Man, Article XII; Universal Declaration of Human Rights, Article 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the "Protocol of San Salvador," Articles 13 and 16; Inter-American Democratic Charter, Preamble and Article 16; Convention on the Elimination of All Forms of Discrimination against Women, Article 10; Convention on the Rights of the Child, Articles 28 and 29; Convention on the Elimination of All Forms of racial discrimination, Articles 5 and 7; Convention against Discrimination in Education, Article 1; International Covenant on Economic, Social and Cultural Rights, Article 13.

²⁹¹ Inter-American Court. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/2002 of August 20, 2002. Series A No. 17, para. 86.

²⁹² IACHR, [Report on Poverty and Human Rights](#), September 7, 2017, para. 356; [Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights](#) 2011, paras. 18 and 170.

²⁹³ In general terms, see: IACHR, [Report on Poverty and Human Rights](#) September 7, 2017,, para. 356; Inter-American Court. Case of Yean and Bosico Children v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, para. 185.

²⁹⁴ Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

²⁹⁵ Article 13(1). Everyone has the right to education.

162. While all OAS Member States recognize this human right under the American Declaration, some of them have also ratified the Protocol of San Salvador,²⁹⁶ which enshrines the right to education separately. On this legal basis, States have explicitly committed themselves to orient education “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.”²⁹⁷ The Protocol also explicitly references the value of education in promoting democratic participation, pluralism, and coexistence among people with the aim of fostering peace.²⁹⁸
163. Additionally, the Commission notes that many international instruments place the focus on education for children and adolescents.²⁹⁹ Although there is no question that this right is vitally important during childhood,³⁰⁰ it must be emphasized that, pursuant to the terms of Article 13 of the Protocol of San Salvador, all persons, including adults and older adults, enjoy the same right with equal conditions.
164. Specifically with regard to the duty to guarantee the right to education, the IACHR notes that in order to secure its effective exercise, States must implement public policies that are backed by adequate and sufficient financial resources, complemented by monitoring measures to evaluate their effectiveness.³⁰¹ Also, as for the measures that must be taken to guarantee this right, both the IACHR³⁰² and the Inter-American Court³⁰³ have followed the standards set forth by the CESC,

-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.

²⁹⁶ As of the approval of this report, the following States had ratified the Protocol of San Salvador: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.

²⁹⁷ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the “Protocol of San Salvador,” Article 13(2).

²⁹⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the “Protocol of San Salvador,” Article 13(2).

²⁹⁹ Declaration of the Rights of the Child (1959), Principle 7; Protocol of San Salvador, Article 16; Principle 11 of the International Conference on Population and Development, adopted on September 5-13, 1994, in Cairo, Egypt (1994).

³⁰⁰ Inter-American Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 258, *Case of Yean and Bosico Children v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 244; *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, para. 161.

³⁰¹ IACHR. [Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights](#) November 3 2011, para. 184.

³⁰² IACHR. [Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights](#) November 3, 2011, paras. 23 and 181.

³⁰³ Inter-American Court. *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 235, citing the Committee on Economic, Social

which has established four essential criteria that States must guarantee with regard to the general right to education.

165. In that regard, it must first ensure the *availability* of education—that is, the existence of sufficient educational institutions and programs in the State, with the right health and safety conditions to operate, trained teaching staffs with competitive salaries, and adequate and sufficient teaching materials, among other requirements.³⁰⁴ States also must guarantee the accessibility of education from a *material* point of view (in terms of geographic location and the physical ability of all persons to gain access), as well as from an *economic* point of view (by ensuring that primary school is free of charge and that secondary school is becoming so progressively). They must ensure that there is no discrimination, especially against vulnerable groups.³⁰⁵ Furthermore, they must guarantee *acceptability*, in terms of both form and merits, including programs of study and pedagogical methods that are pertinent, culturally adequate, and of good quality.³⁰⁶ Lastly, States have a duty to ensure the *adaptability* of education in order to be able to meet the specific needs of varied cultural and social contexts.³⁰⁷
166. For the Commission and its REDESCA, the right to education of trans and gender-diverse persons is a key element for breaking cycles of poverty and providing them with skills to offer the conditions of a life with dignity. The IACHR also underscores that the principle of equal protection and nondiscrimination must apply to the education and training of all persons, for which reason States must ensure that neither public nor private educational institutions discriminate or spread hate speech and intolerance against trans persons. The Commission also underscores the importance and urgency of States ensuring that educational systems incorporate gender perspectives, especially spaces for age-appropriate sexual and reproductive health education that is grounded in scientific evidence and human rights standards. In general, the Commission and its REDESCA underscore that it is important that pedagogical methods, educational processes, and curriculum, especially at the primary and secondary levels, do not undermine the enjoyment of human rights by trans persons; on the contrary, they should strengthen these persons' active participation and help empower them and inspire the collective work of other students.
167. It is the understanding of the IACHR and its REDESCA that an inclusive educational system not only enables progress toward guaranteeing the human rights of trans persons throughout their lives, but also expands teaching and learning to all who need it and strengthens societal coexistence by promoting diversity, mutual respect,

and Cultural Rights, General Comment 13: The right to education (Article 13 of the Pact), E/C.12/1999/10, December 8, 1999, para. 6.

³⁰⁴ Committee on Economic, Social and Cultural Rights, General Comment 13: The right to education (Article 13 of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(a).

³⁰⁵ Committee on Economic, Social and Cultural Rights, General Comment 13: The right to education (Article 13 of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(b).

³⁰⁶ Committee on Economic, Social and Cultural Rights, General Comment 13: The right to education (Article 13 of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(c).

³⁰⁷ Committee on Economic, Social and Cultural Rights, General Comment 13: The right to education (Article 13 of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(d).

tolerance, and solidarity as principles of democratic societies. In this regard, States must ensure that trans persons are not directly or indirectly marginalized within the educational system. It also must supervise to ensure the education that it provides is good quality; that it includes training and awareness-raising on the issues that affect them; that it respects the development of their personalities and autonomy; and that it includes mechanisms for overcoming and eradicating harassment, stigmatization, violence, and discrimination against trans persons. The State must prioritize access to an inclusive education for trans children and adolescents that protects their best interest. It must emphasize the establishment of mechanisms for training young trans persons and eliminating the obstacles to education faced by older gender-diverse persons.

168. The Inter-American System has developed specific standards on the human right to education, many of which will be used throughout this chapter, particularly as regards their relevance and application to the situation of trans and gender-diverse persons.

B. The Enjoyment to the Right to Education by Trans and Gender-Diverse Persons

169. The information the IACHR has received in recent years reflects a concerning reality as regards the barriers faced by trans and gender-diverse persons to exercising their human right to education. Although the IACHR cannot dismiss the possibility of problems surrounding *availability*, strictly speaking, the information received indicates that the restrictions and barriers facing trans and gender-diverse persons are essentially related to *accessibility* without discrimination and the *acceptability* and *adaptability* of the education.
170. The Commission notes that the challenges facing the States of the OAS in this area are significant. The IACHR will first look at the extent of the problem by noting some relevant figures and statistics in the region. According to the information submitted by civil society, according to a regional survey, only 25% of trans persons have been able to complete their secondary school studies.³⁰⁸ Similar figures were found in multiple surveys conducted by civil society in different countries throughout the region. In Argentina, the data collected by civil society show that 73.2% of the trans persons surveyed were not able to complete their secondary school studies,³⁰⁹ while in El Salvador, the figure stood at 81% of persons surveyed.³¹⁰ In Uruguay, preliminary data from the Trans Census revealed that 60% of trans persons had not completed junior high; that 75% had dropped out of school; and that 55% had

³⁰⁸ REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41.

³⁰⁹ Lohana Berkins (comp.), *Cumbia, Copeteo y Lágrimas: Informe nacional sobre la situación de travestis, transexuales y transgéneros* (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2015), pg. 164.

³¹⁰ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2015), para. 97.

dropped out or been expelled from the system before the age of 18, with the average dropout age being 14.³¹¹

171. According to the information received, the Commission notes that trans and gender-diverse persons are not able to matriculate, remain in, and/or join the educational system, leading in the end to the violation of their right to education as a cumulative result of a series of situations that gravely affect and directly or indirectly impact their opportunity to effectively enjoy this right. These situations include being forced out of their homes, which often leaves them facing poverty, homelessness, or unstable living situations with no family support network; a lack of recognition of their gender identity; having to attend educational establishments governed by cisnormative disciplinary and behavioral rules; and harassment and bullying, at the hands of both peers and teachers and authorities. The following sections, while not exhaustive, examine the challenges in this area.

1. Forced to Leave Home and Situation of Poverty

172. In its first report on poverty, the IACHR indicated that the poverty, discrimination, and exclusion affecting LGBTI persons are associated with the barriers they encounter when seeking to access safe and good-quality education.³¹² In this regard, one of the main reasons trans and gender-diverse persons are forced to drop out of school, especially during childhood, is they were forced to leave their homes—generally as a result of assuming their gender identities and encountering a hostile family environment—and the extreme vulnerability in which this places children and adolescents.³¹³
173. The high number of trans persons forced to leave their nuclear families at a young age, regardless of their economic or social background, leads to a high number of trans persons severely impoverished over the course of their lives.³¹⁴ Depending on the subsidiary networks of support they may have, being forced to leave home can lead to experiencing homelessness or unstable housing conditions and having to find a way to support themselves from early adolescence. All of this significantly reduces the possibility of staying in school³¹⁵ and, as will be examined in the following chapter, frequently means entering the child prostitution circuit. In this regard, some organizations refer to the trans childhoods impacted by these

³¹¹ Ministry of Social Development (Uruguay), *Transform 2016: “Revealing realities: Preliminary results of the first census of trans persons”* (2016), pg. 8.

³¹² IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 457.

³¹³ Mauro Cabral and Johanna Hoffman, *“Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...”: trans latinoamericanas en situación de pobreza extrema* (OutRight Action International, 2009), pg. 7.

³¹⁴ Mauro Cabral and Johanna Hoffman, *“Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...”: trans latinoamericanas en situación de pobreza extrema* (OutRight Action International, 2009), pg. 6.

³¹⁵ Martín Jaime, *Diversidad sexual, discriminación y pobreza frente al acceso a la salud pública demandas de las comunidades TLGBI en Bolivia, Colombia, Ecuador y Perú* (Buenos Aires, CLACSO, 2013), pg. 134; Instituto Runa de Desarrollo y Estudios de Género, *Informe de derechos humanos sobre la comunidad trans en la ciudad de Lima* (2016), pg. 9.

phenomena as "interrupted childhoods" that cast them into the adult world at a young age and force them to develop tools for survival.³¹⁶

174. Effectively, having a home and a certain level of family support until they finish secondary school is described in the information received by the IACHR as an important factor toward enabling trans and gender-diverse persons to complete their studies.³¹⁷ Along these lines, for example, one study conducted in Argentina looked at the relationship between the education levels of trans women and the age at which they took on their gender identities socially. According to the information obtained, those who took on their gender identities at a young age did not get as far in their studies. Notably, those who did so after the age of 19 were much more likely to finish secondary school.³¹⁸ It has therefore been noted that even trans persons who attempt to recommence their studies as adults "often find they are subjected to the relentless logic of poverty and have to 'choose' between going to night school or working during the time they should be studying."³¹⁹

2. Lack of Recognition of Gender Identity

175. Another reason trans persons tend to be pushed out of educational systems involves the lack of recognition of their gender identities. The IACHR notes that many OAS States still do not offer mechanisms for changing the gender indicator in keeping with the standards of the Inter-American system, and only a few jurisdictions offer this procedure to children and adolescents.
176. Consequently, most trans and gender-diverse children and adolescents must attend school using the name and gender indicator that was assigned to them at birth. Along with this, teachers and authorities frequently refuse to recognize the gender identities of trans and gender-diverse students, continuing to call them by their names found in the registry and treating them in accordance with the gender assigned to them at birth. This can become a permanent source of humiliation and offense to the dignity of any trans person, as well as cause and encourage bullying.³²⁰ This inability to change the gender assigned at birth impacts all areas with a component of separation by gender, including the use of bathrooms or dressing

³¹⁶ Lohana Berkins (comp.), *Cumbia, Copeteo y Lágrimas: Informe nacional sobre la situación de travestis, transexuales y transgéneros* (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2015), pg. 75.

³¹⁷ Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in *De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual*, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 78.

³¹⁸ Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 85.

³¹⁹ Mauro Cabral and Johanna Hoffman, "*Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...*": *trans latinoamericanas en situación de pobreza extrema* (OutRight Action International, 2009), pg. 8.

³²⁰ REDLACTRANS, *Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe* (2014), pg. 32.

rooms, playing certain sports, the use of uniforms, makeup, the length of hair, and other things.

177. A number of civil society organizations have reported to the IACHR on cases of trans girls in the city of Quito, Ecuador, who are prevented from using their names. They are forced to change schools after experiencing constant rejection by teachers.³²¹ The reports also indicated that the inability to correct their documentation until the age of majority is a complication for fathers and mothers trying to enroll them in a school.³²² Likewise, the Commission received information on a number of cases in which teachers refused to recognize the gender identities of trans students in Costa Rica³²³ and El Salvador.³²⁴ The IACHR was also informed that, in Panama, trans boys are not allowed to wear their hair short or use the uniform or bathroom facilities corresponding to their own gender identities.³²⁵ Regarding this latter issue, the IACHR notes that an inability to freely use the bathroom becomes a source of anxiety and makes the school day extremely difficult.³²⁶ It can even lead to health complications.
178. The IACHR notes that the United States has also seen serious setbacks on the protection of trans and gender-diverse persons as regards education. In 2017, the IACHR expressed concern at the federal government's decision to remove a significant number of protections for trans students.³²⁷ These protections included equal treatment, the immediate recognition of gender identity regardless of whether identification documents have been corrected; protection from harassment based on identity or gender expression; the use of bathroom facilities and participation in sports, classes, and/or extracurricular activities based on their own gender identities; the confidentiality of personal information; and the option to correct educational records.³²⁸ A U.S. civil society organization submitted a report to the IACHR indicating that, out of the 50 states, only 14 had laws prohibiting school

³²¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 13. Also see: *Wambra*, “Niñez trans: entre el ocultamiento y la libertad,” February 6, 2018; *La Marea*, “La mamá de Cattleya,” December 17, 2017; *El Comercio*, “Madre de niña trans pide respeto por mensajes que circulan en las redes,” July 17, 2018.

³²² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 13. Also see: *Wambra*, “Niñez trans: entre el ocultamiento y la libertad,” February 6, 2018; *La Marea*, “La mamá de Cattleya,” December 17, 2017; *El Comercio*, “Madre de niña trans pide respeto por mensajes que circulan en las redes,” July 17, 2018.

³²³ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2015), paras. 53 and 54.

³²⁴ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2015), para. 100.

³²⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Hombres Trans Panamá, pg. 7.

³²⁶ Cecilia Rocha Carpiuc, “Educación y personas trans en Uruguay: insumos para repensar las políticas públicas” in *De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual*, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 48.

³²⁷ IACHR, *Press Release 33/17*: “IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States,” March 15, 2017.

³²⁸ IACHR, *Press Release 33/17*: “IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States,” March 15, 2017.

discrimination based on gender identity; only 20 prohibited school bullying based on gender identity; and 7 had enacted laws prohibiting all mention of issues of sexual and gender diversity in schools.³²⁹

179. An additional difficulty arising from lack of recognition of gender identity in education is the discrepancies that arise between an individual's gender identity and the information on the documentation accrediting the educational level attained. This can lead to more significant difficulties when applying for scholarships, further programs of study, requests for equivalency certifications, or other opportunities where an accredited degree is a requirement, something that can especially be true when applying for jobs.³³⁰
180. The IACHR takes note of a survey conducted in 2013 in Argentina that found that, once it was possible to amend registries under the gender identity law, 1 of every 10 trans women and 3 of every 10 trans men returned to the educational system.³³¹ Years later, another study confirms the results indicating improvements in access to education.³³² For example, 84.7% of trans men who said they were attending school indicated that treatment by peers and teachers had improved since the enactment of the gender identity law. Also, whereas in 2005, the main reason for not studying was fear of discrimination, in 2016 it was "lack of money and lack of time or scheduling difficulties."³³³ The IACHR emphasizes that the collection of data is vitally important for producing concrete evidence on the benefits of laws and public policies impacting groups of persons in situations of extreme vulnerability.
181. The IACHR observes that in some jurisdictions without a gender identity law, mechanisms have been implemented to recognize a so-called "social name."³³⁴ Under these provisions, trans persons have the right to use their own names in

³²⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations, pg. 2.

³³⁰ See Chapter 5 of this report on the right to work.

³³¹ AA. VV., *Situación de los derechos humanos de las travestis y trans en la Argentina: Evaluación sobre el cumplimiento de la convención para la eliminación de todas las formas de discriminación contra las mujeres (CEDAW)* (2016), pg. 16.

³³² Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 85.

³³³ Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 90.

³³⁴ The Commission wishes to underscore several terminology issues with regard to "name." As opposed to what happens with cisgender persons—who usually adopt the name they receive from their parents or legal guardians—transgender persons tend to use names they have selected as part of the right to self-determination that belongs to every individual. The name with which they were registered at birth tends to be known as their "registry name" or "birth name." Thus, what the law describes as a trans person's "social name" is nothing more and nothing less than that person's *name*. Therefore, the expressions "real name" or "true name" as referring to a trans person's name on official documents must always be avoided. Additionally, this information and the gender assigned at birth are protected by the right to privacy, and therefore, in the absence of a compelling reason that is duly justified by the competent authority, it cannot be required or requested.

school records, which tends to require teaching staff and school administrators to call these persons by that name, prohibiting use of the name in registry files.

182. For example, in Brazil, prior to the decision of the Supreme Federal Tribunal regarding gender identity and/or expression, numerous jurisdictions had moved toward implementing laws and public policies on the use of the "social name."³³⁵ Additionally, in 2015, Resolution 12 of the National Council on the Struggle against Discrimination and the Promotion of The Rights of Lesbians, Gays, Bisexuals, *Travestis*, and Transsexuals established the legal figure of the "social name" for both oral and written use. It also established that uniforms, bathrooms, changing rooms, and other gender segregated spaces could be used in accordance with one's own gender identity. This resolution also applies to the admissions processes of educational institutions and systems, as well as competitive processes and enrollment.³³⁶ Additionally, in 2018, Resolution 1 of the Ministry of Education established that the social names of *travestis* and transsexual persons would be used in school records, for those both under and over the age of 18.³³⁷
183. In Chile, in 2017, Circular 768 of the Superintendency of Education³³⁸ established an obligation to use the social name regardless of whether the registry had been corrected.³³⁹ Likewise, a right was established to use the school uniform and bathroom facilities in accordance with one's own gender identity, and each school is allowed to offer inclusive or alternative bathrooms as agreed-upon with families.³⁴⁰
184. In Colombia, the Constitutional Court protected the right to recognition of gender identity of a trans man to whom the National Educational Service had denied identification under the masculine gender and refused to provide him with the corresponding uniform.³⁴¹ The Court also ordered an educational institution to admit a trans student who had been rejected due to her manner of dress.³⁴² In a

³³⁵ In 2008, the State of Pará was the first Brazilian state to implement a public policy to guarantee the use of social name. Currently, the states of Goiás, Mato Grosso, Maranhão, Paraná, Rio Grande del Sur, Santa Catalina, Tocantins, Alagoas, Espírito Santo, Ceará, Bahía, Mato Grosso del Sur, and the Federal District also have regulations in place on the use of social name in educational institutions. For more information, see: Cláudio Eduardo Resende Alves, Guilherme Freitas Silva and Maria Ignez Costa Moreira, "[A política pública do uso do nome social por travestis e transexuais nas escolas municipais de Belo Horizonte: uma pesquisa documental](#)" *Pesquisas e Práticas Psicossociais* 11, No. 2 (2016).

³³⁶ Secretariat on Human Rights (Brazil): National Council on the Struggle against Discrimination and the Promotion of The Rights of Lesbians, Gays, Bisexuals, *Travestis*, and Transsexuals, [Resolution 12/2015](#), January 16, 2015.

³³⁷ Ministry of Education (Brazil), [Resolution 1](#), January 19, 2018.

³³⁸ Superintendency of Education (Chile), [Circular 768: "Rights of trans students with regard to education,"](#) April 27, 2017.

³³⁹ Superintendency of Education (Chile), [Circular 768: "Rights of trans students with regard to education,"](#) April 27, 2017, parts 5 and 6(c).

³⁴⁰ Superintendency of Education (Chile), [Circular 768: "Rights of trans students with regard to education,"](#) April 27, 2017, parts 6(e) and 6(f).

³⁴¹ Constitutional Court (Colombia), [Judgment T-363 of 2016](#), July 11, 2016. Also see: [Judgment T-141 of 2015](#), March 27, 2015.

³⁴² Constitutional Court (Colombia), [Judgment T-804 2014](#), November 4, 2014.

similar case, it protected the right of a trans student to attend school with long hair and wearing makeup.³⁴³

185. The Commission notes that implementation of public policies on the use of a "social name" is a measure to encourage trans and gender-diverse persons to remain within the educational system and notably reduces the reasons for which a trans person may suffer school bullying. At the same time, it is a measure that sends a clear message of respect for the gender identity of these persons and their right to personal self-determination. Still, it must be borne in mind that these types of measures must be viewed as medium-term or temporary solutions until each State can have a general law in place on gender identity that is applicable to all situations and that meets Inter-American standards. As regards the setbacks that have been mentioned in this section, the IACHR reiterates that the nature of the obligations derived from Article 26 of the American Convention and from other international instruments means that the full effectiveness of the rights enshrined therein must be achieved progressively, with the corresponding duty to not reverse the progress achieved this way.³⁴⁴ This is particularly relevant for recognition of gender identity and gender expression in the area of education.

3. Cisnormative School Rules

186. The Commission observes that the existence of cisnormative school rules constitutes another of the central reasons trans persons tend to be pushed out of the educational system, closely related to the failure to recognize gender identity and expression.³⁴⁵ These rules assert cisnormativity in educational establishments, offering legal bases for discrimination based on gender identity or expression. They tend also to apply to teaching and other staff at schools, which can also have a severe impact on trans or gender-diverse teachers. The existence of these rules is an indication that schools are not neutral spaces in terms of sexuality and gender. Rather, the spaces incorporate norms and incentives intended to produce socially expected identities and expressions.³⁴⁶
187. In its report on violence against LGBTI persons, the Commission took note of the existence of rules in schools that discriminate based on gender identity or expression.³⁴⁷ Also, it is common for the visibility of nonnormative identities and expressions to be explicitly prohibited under school rules that assume a student

³⁴³ Constitutional Court (Colombia), Judgment T-565 of 2013, August 23 2013.

³⁴⁴ IACHR Admissibility and Merits Report 38/09, Case 12,670, "National Association of Ex-employees of the Peruvian Social Security Institute et al. v. Peru," March 27, 2009. Para. 138

³⁴⁵ In this category the IACHR places all laws, decrees, orders, resolutions, regulations, statutes, codes of conduct, internal regulations, or any other rules that governs how a public or private educational institution functions and is organized.

³⁴⁶ Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in *De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual*, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 41.

³⁴⁷ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 323.

body that is binary and essentially divided into "women" and "men."³⁴⁸ Also, the legitimacy granted to a cisnormative environment gives school teaching and administrative staff a green light to act out their prejudices by discriminating against and pathologizing trans and gender-diverse persons.

188. In fact, the information provided by different organizations shows how in multiple countries of the region, trans persons are frequently admonished, reprimanded, suspended, and even expelled from educational institutions simply because they had begun their transition process.³⁴⁹ Indeed, school authorities frequently require them to dress, behave, and present themselves in accordance with the expected parameters of the gender assigned them at birth. In a survey in Honduras, at least 15 people reported having been rejected on trying to enroll—or even having been expelled from their own schools—based on their gender identity or expression or sexual orientation.³⁵⁰ The IACHR has received information on similar cases in El Salvador³⁵¹ and Guatemala.³⁵²

4. School Bullying

189. School bullying is a specific type of violence that takes place in educational environments.³⁵³ In its report on violence against LGBTI persons, the IACHR compiled numerous sources from throughout the region showing that school bullying is special cause for concern in the hemisphere,³⁵⁴ and that it tends to be one reason for the high rates of school abandonment by trans and gender-diverse persons.³⁵⁵ In the framework of the universal system, the UN secretary-general expressed concern over school bullying based on sexual orientation or gender identity, indicating that this type of violence is a grave human rights violation.³⁵⁶
190. The United Nations agencies, UNESCO has led the work on school bullying, addressing in depth the specific issue of how this phenomenon affects trans and

³⁴⁸ Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in *De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual*, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 47.

³⁴⁹ REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 40; REDLACTRANS, *Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe* (2014), pg. 33.

³⁵⁰ Comité de la Diversidad de Honduras, *Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras ante la Visita In Loco de la Comisión Interamericana de Derechos Humanos* (2014).

³⁵¹ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2015), para. 98.

³⁵² REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2015), para. 148.

³⁵³ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 317.

³⁵⁴ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, paras. 318 to 330.

³⁵⁵ IACHR, *Press Release 49/15: "Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights,"* May 17, 2015.

³⁵⁶ UN News, "Homophobic bullying represents grave violation of human rights – Ban" December 8, 2011.

gender-diverse persons.³⁵⁷ In fact, in May 2016, in the framework of the International Ministerial Meeting on violence based on sexual orientation and gender identity and expression hosted by UNESCO in Paris, 17 OAS Member States³⁵⁸ joined States from other regions of the world in committing to implementing comprehensive policies to prevent and address violence in schools, and violence for reasons of gender identity or expression in particular. This is the first international instrument to speak specifically to violence in schools based on gender identity or expression.³⁵⁹

191. Acts of intimidation or harassment in an educational context send a strong social message to trans and gender-diverse persons that their identities are not accepted. It promotes and legitimizes prejudices throughout the educational community and reinforces stigma and feelings of shame and inferiority in trans persons.³⁶⁰ Several studies have found that bullying and discrimination based on gender identity and expression lead to absenteeism and dropping out of school;³⁶¹ lesser achievement in academics and sports; reduced intent to pursue higher education; higher levels of depression and low self-esteem; and even suicide.³⁶²
192. Studies on school bullying tend to show that trans and gender-diverse persons suffer the highest rates of victimization. A national survey conducted in the United States found that more than 77% of trans persons experienced some type of mistreatment at some time between preschool and the end of secondary school: more than half (54%) were verbally harassed, almost a quarter (24%) were physically attacked, and 13% were sexually assaulted for being trans.³⁶³ Similar findings in Canada indicate that 78% of trans students feel unsafe because of bullying, and their dropout rate is higher than for their classmates.³⁶⁴ One survey in Argentina found that up to 45% of trans students dropped out of school because of intimidation and

³⁵⁷ See, among other examples: UNESCO, Out in the open: Education sector responses to violence based on sexual orientation and gender identity/expresión (2016); La violencia homofóbica y transfóbica en el ámbito escolar: hacia centros educativos inclusivos y seguros en América Latina (2015); El bullying homofóbico y transfóbico en los centros educativos. Taller de sensibilización para su prevención (2015); Respuestas del Sector Educativo hacia el Bullying Homofóbico (2012); Review of Homophobic Bullying in Educational Institutions, Prepared for the International Consultation on Homophobic Bullying in Educational Institutions, Río de Janeiro, Brazil (2012).

³⁵⁸ The States that signed on are: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and Uruguay.

³⁵⁹ UNESCO, Call for Action by Ministers for an inclusive and equitable education for all learners in an environment free from discrimination and violence, October 2016, Article 4(2).

³⁶⁰ IACHR, Press Release 92/13: “The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings.” November 22, 2013.

³⁶¹ REDLACTRANS, Esperando la muerte: Informe Regional 2016-2017 (2017), pg. 41.

³⁶² Peter Goldblum, Rylan J. Testa, Samantha Pflum *et al.*, “The Relationship Between Gender-Based Victimization and Suicide Attempts in Transgender People” *Professional Psychology: Research and Practice* 43, No. 5 (2012); Ann P. Haas, Philip L. Rodgers and Jody L. Herman, Suicide Attempts among Transgender and Gender Non-Conforming Adults (2014).

³⁶³ Sandy E. James, Jody L. Herman, Susan Rankin *et al.*, The Report of the 2015 U.S. Transgender Survey (Washington, DC: National Center for Transgender Equality, 2016), pg. 131.

³⁶⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 4.

abuse.³⁶⁵ Furthermore, the IACHR was informed of the significant prevalence of negative comments about trans persons in studies conducted in Brazil,³⁶⁶ Chile,³⁶⁷ Colombia,³⁶⁸ Peru,³⁶⁹ and Uruguay.³⁷⁰

C. Toward an Inclusive Education

193. It is the IACHR's view that the right to education must be specifically guaranteed for trans and gender-diverse persons by ensuring that they are able to access and remain in the educational system on equal footing. They should also be guaranteed dignified and equal treatment by students, parents, staff, and teachers within the educational system, without discrimination based on gender identity or expression.³⁷¹ In order to make this a reality, States must work to ensure these individuals have access to educational opportunities and resources.³⁷² As proposed in the Yogyakarta Principles, education should be directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and respond to the needs of students of all sexual orientations and gender identities.³⁷³
194. Based on this, the Commission and its REDESCA consider that in order to provide a comprehensive solution to this issue, States must approach the right to education with a multimodal strategy with the aim of removing the barriers that trans and gender-diverse persons face today. Likewise, as will be explored later, education provides an opportunity to offer answers to eradicating prejudice and discrimination. Therefore, a serious educational strategy holds potential benefits for the exercise and enjoyment of other human rights.
195. It is the IACHR's understanding that, in addition to enacting laws on gender identity, repealing cisnormative regulations, and designing monitoring and reporting mechanisms to address bullying, States must adopt measures to guarantee a gender

³⁶⁵ 100% Diversidad y Derechos, Encuesta de clima escolar en Argentina dirigida a jóvenes LGBT (Buenos Aires, 2017), pg. 17.

³⁶⁶ Associação Brasileira e Lésbicas, Gays, Bissexuais, Travestis e Transexuais (ABGLT), Pesquisa nacional sobre o ambiente educacional no Brasil 2016 (Curitiba: Imprensa da Universidade Federal do Paraná, 2017), pg. 34.

³⁶⁷ Fundación Todo Mejora Chile, Encuesta nacional de clima escolar en Chile 2016 (Santiago, 2017), pg. 35.

³⁶⁸ Sentido y Colombia Diversa, Mi voz cuenta: Encuesta de clima escolar LGBT en Colombia 2016 (Bogotá, 2016), pg. 28.

³⁶⁹ Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), Estudio Nacional sobre Clima Escolar en el Perú 2016 (Lima, 2017), pg. 34.

³⁷⁰ Colectivo Ovejas Negras, Encuesta nacional de clima escolar en Uruguay 2016 (Montevideo, 2016), pg. 15.

³⁷¹ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 16(a).

³⁷² *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 16(h).

³⁷³ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 16(b).

diversity perspective and all educational processes offered throughout the population, especially human rights education and comprehensive sex education. The objective is to eradicate prejudice against trans and gender-diverse persons and provide them with tools that enable them to exit poverty or avoid falling into it.

1. Measures of Affirmative Action

196. In view of the structural exclusion facing trans and gender-diverse persons, simply ensuring there are no formal or legal obstacles is often not enough. Under these circumstances, it will also be necessary to move toward affirmative action measures that specifically address the situation of aggravated vulnerability and aim to reverse it progressively.³⁷⁴ This means that States, in coordination and consultation with organizations representing trans and gender-diverse persons, must design strategies to address the local reality in which trans persons live and facilitate their access to educational spaces and institutions by offering tutoring or advisory services, reserved spaces or quotas, scholarships, subsidies, or exemptions specifically reserved for trans persons, leveling activities,³⁷⁵ and other measures.
197. Additionally, in order to ensure the success of the measures taken, it will often be necessary to adapt the availability of the educational offerings to the schedules of trans and gender-diverse persons, many of whose daily lives revolve around nighttime hours, including those who do sex work.³⁷⁶ In this regard, initiatives must be flexible and available enough to be effectively used by individuals whose routines or schedules are a reflection of the extreme vulnerability in which they live.

³⁷⁴ Keep in mind that with regard to specific implementation of public policies on education, it must be emphasized that these legal obligations must be applied in both public educational institutions and private schools. Thus, States maintain the obligation to oversee the provision of public interest services like education even when the services are provided by private entities, specifically through regulation and supervision of the services. This is particularly important when supervising services that involve the protection, supervision, care, and education of children. In this regard, see: IACHR, *Violence against LGBTI Persons in the Americas* (2015), para. 308; Report on Corporal Punishment and Human Rights of Children and Adolescents (2009), para. 69; Inter-American Court. Case of Ximenes Lopes. *Brazil*. Judgment of July 4, 2006. Series C No. 149, paras. 94, 96, 99; Inter-American Court. Case of Alban Cornejo *et al.* v. Ecuador. Merits, Reparations, and Costs. Judgment dated November 22, 2007. Series C No. 171, para. 119.

³⁷⁵ Ministry of the Public Defender and Bachillerato Popular Trans ‘Mocha Celis,’ *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 171.

³⁷⁶ Diego Sempol, “Jóvenes y trans: posibles líneas de acción para el Plan de Acción de Juventudes 2015-2025” in *Plan de Acción de Juventudes 2015 – 2025: Estudios* (Montevideo: MIDES, 2014), pg. 46. Regarding sex work, the IACHR will conduct a more extensive analysis in Chapter IV of this report. For now, it underscores that it is aware of the existence of the vigorous debates surrounding the nature of sex work and that sex work, in and of itself, is not a form of exploitation, as long as the necessary guarantees are in place. In this regard, it takes note of the comparative jurisprudence (European Court of Justice: C-340/14 and C-341/14 *Trijber and Harmsen* [2015] EU:C:2015:641).

198. The IACHR has been informed that several of Brazil's public universities have reserved enrollment spots for trans persons.³⁷⁷ In 2017, the Universidade Federal da Bahia (UFBA) became the first federal university to set aside enrollment spots in master's and doctoral programs for trans persons. In 2018, the Universidade Federal do Cariri in Ceará also issued a resolution reserving enrollment spots for trans persons. For its part, Universidade Federal do Sul da Bahia was the first to establish quotas for trans persons at the graduate level.³⁷⁸ The Commission also takes note with concern of the decision of the Brazilian government to challenge the legality of these reserved enrollment spots and cancel them.³⁷⁹ It is the IACHR's view that given their situation of extreme vulnerability, reserving enrollment spots for trans persons is or could be an important State policy toward generating opportunities for trans persons by providing them with ways of securing protection and comprehensive development.
199. Other good practices in this regard include the establishment and operation of the Mocha Celis *Travesti-Trans People's High School*, in the Autonomous City of Buenos Aires Argentina,³⁸⁰ an initiative highlighted by the IE SOGI.³⁸¹ It was established as a free educational space aimed specifically at *travestis*, transsexuals, transgender persons, and trans women and men to invite them to recommence their studies and provide them with a new tool offering training, cooperation, and self-confidence in overcoming specific situations, with an official degree to certify it. Additionally, the institution's comprehensive approach to gender diversity allows for raising awareness regarding healthcare, participation, and the full exercise of citizenship among students, as well as the management of micro enterprises and cooperatives that provide a way out of prostitution and the problems related to it.³⁸²
200. Among the measures of affirmative action proposed is the establishment of socio-educational programs to work with the families of trans and gender-diverse persons to end intrafamily discrimination and violence by working in coordination with teams from educational institutions. This is because it has been found that family

³⁷⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Grupo de Estudos em Direito Internacional dos Direitos Humanos (GEDI-DH) and Núcleo de Direitos Humanos e Cidadania LGBT (Nuh/UFMG) (Brazil), pg. 5.

³⁷⁸ Ministério da Educação, Universidade Federal Do Sul Da Bahia, Pró-Reitoria de Gestão Acadêmica, *Edital Nº 06/2018: Processo seletivo para área básica de ingresso das licenciaturas interdisciplinares da rede Anísio Teixeira de colégios universitários* (2018). Also see: G1 (Bahía), *Universidade na Bahia é pioneira na criação de cotas para transexuais e travestis na graduação: 'Emblemática'*, March 15, 2018.

³⁷⁹ Folha de São Paulo, *Bolsonaro anuncia suspensão de vestibular para trans em universidade federal*, 16 de julio de 2019.

³⁸⁰ Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 21.

³⁸¹ *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina*, A/HRC/38/43/Add.1, April 9, 2018, paras. 36-37.

³⁸² Agustín Fuchs, "El Bachillerato Popular para Jóvenes y Adultxs 'Mocha Celis'. Experiencias en el diseño y planeamiento de un Bachillerato Popular para personas travestis, transexuales y transgéneros" *Educación, Sexualidades y Relaciones de Género* (Buenos Aires: FFyL-UBA, 2011), pg. 3; AA. VV., *Situación de los derechos humanos de las travestis y trans en la Argentina: Evaluación sobre el cumplimiento de la convención para la eliminación de todas las formas de discriminación contra las mujeres (CEDAW)* (2016), pg. 16.

support is a differentiating factor that enables individuals to continue with their educations and build future expectations for jobs other than sex work³⁸³

201. In view of this, it is clear that States still face significant challenges to comprehensively guaranteeing the right to education for trans persons, with one of the main obstacles being the lack of recognition of gender identity, which leads to violence and discrimination in schools, poor performance, and dropping out. It is therefore urgent for States to systematically monitor the prevalence of violence and bullying based on sexual orientation and gender identity and expression in educational institutions. They have an obligation to ensure that both public and private educational institutions provide spaces that offer protection and an opportunity for anonymous reporting, as well as early prevention and detection strategies, intervention protocols, and clear progress indicators that focus on the realization of this right for these individuals.

2. Education as a Tool for Eradicating Prejudice

202. One of the main causes of the grave situation of exclusion forced upon trans and gender-diverse persons is the extremely high rates of overall social prejudice with regard to sexual and gender diversity. States must therefore implement strategies to address and eventually eradicate these prejudices at all levels and using a variety of mechanisms. The Commission observes that acceptance of and respect for sexual and gender diversity is an objective that can only be attained by designing and implementing a planning strategy that includes public policies capable of producing short-, medium-, and long-term results.
203. Human rights education and education on sexual and reproductive health are both closely related to the right to education, and they mutually complement and strengthen each other. In the area of international human rights, both of them contribute to legitimizing diversity from their respective areas based on the principle of equal protection and non-discrimination. Thus, their implementation has the potential to progressively eradicate deeply rooted prejudices against sexual and gender diversity.³⁸⁴
204. The Yogyakarta Principles identify the key role played by educational methods and resources in increasing understanding of and respect for diverse gender identities and expressions, including the specific needs of those targeted by such efforts and their family members.³⁸⁵ For its part, the IACHR has underscored the role of education as a strategic instrument for addressing and eliminating prejudice, stereotypes, and false conceptions of persons with diverse sexual orientations or

³⁸³ Diego Sempol, "Jóvenes y trans: posibles líneas de acción para el Plan de Acción de Juventudes 2015-2025" in *Plan de Acción de Juventudes 2015 – 2025: Estudios* (Montevideo: MIDES, 2014), pg. 55.

³⁸⁴ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 2(f).

³⁸⁵ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 16(d).

gender identities.³⁸⁶ Likewise, the United Nations Office of the High Commissioner for Human Rights has emphasized the role of comprehensive sex education as a tool for combating discrimination against LGBT persons.³⁸⁷ The UN Special Rapporteur on education has indicated likewise,³⁸⁸ as has the United Nations International Children's Fund (UNICEF).³⁸⁹ More specifically, the IE SOGI has invited States to reevaluate their educational curricula and textbooks and produce pedagogical tools and methodologies to promote an open mind and respect for diversity.³⁹⁰

205. Furthermore, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have indicated that States must implement educational measures to promote broader and deeper discussion as a means of exposing and combating existing negative stereotypes against trans and gender-diverse persons.³⁹¹ Pursuant to the Yogyakarta Principles, these initiatives must include facts and information on the historical truths behind the causes, nature, and consequences of discrimination and violence against trans persons in order to comprehensively raise awareness of how trans and gender-diverse persons have been and still are treated.³⁹²
206. Additional to this, the IACHR highlights that teaching staff play a fundamental role in guaranteeing a safe learning environment. They must therefore have the necessary training and preparation to respond to discriminatory language and acts of violence that are based on gender identity and expression. Effectively, according to the information received by the IACHR, those who report more frequent interventions from school staff in response to denigrating comments tend to feel less unsafe and less fear at school.³⁹³ For example, regarding sexual violence and discrimination against girls, women, and adolescents, the IACHR has indicated that certain predominant social and cultural beliefs can prevent the development of educational policies capable of guaranteeing the right to education, as they promote or facilitate forms of socialization that violate human dignity. Therefore, for the

³⁸⁶ IACHR, [Press Release 92/13](#): "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013; [Press Release 110/18](#): "Leave no LGBT person behind - Statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia," May 16, 2018; [Violence against LGBTI Persons in the Americas](#) (2015), para. 326; [Report on Poverty and Human Rights](#) (2017), para. 457. As a precedent, also see: IACHR, [Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights](#) (2011), paras. 86 and 87. [Press Release No. 208/17](#): "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017.

³⁸⁷ United Nations High Commissioner of Human Rights, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), A/HRC/29/23, May 4, 2015, para. 57.

³⁸⁸ Report of the United Nations Special Rapporteur on the right to education, A/65/162, July 23, 2010, para. 23.

³⁸⁹ UNICEF, [Position Paper 9](#): UNICEF Position Paper: Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, pg. 4.

³⁹⁰ United Nations General Assembly, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#), A/HRC/35/36, April 19, 2017, para. 61.

³⁹¹ IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, para. 226.

³⁹² [Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles](#), November 2017, Principle 37(h).

³⁹³ See, among other examples: Sentido y Colombia Diversa, [Mi voz cuenta: Encuesta de clima escolar LGBT en Colombia 2016](#) (Bogotá, 2016), pg. 54.

IACHR, the right to education cannot be treated as marginal to gender issues. Educational systems are required to eliminate the prejudices, customs, and practices—often violent—that are based on stereotypical roles and that impact trans and gender-diverse persons.³⁹⁴

207. Finally, the Commission holds that the obligations arising from the Convention of Belém do Pará benefit all cisgender women as well as the array of feminine trans identities, including their right “to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination.”³⁹⁵ There is thus a complementary international jurisprudence that clearly and explicitly establishes an obligation to progressively change social and cultural patterns of behavior within educational programs to promote inclusive and egalitarian societies by prejudices and prejudicial and discriminatory customs or practices.³⁹⁶

3. Comprehensive Sexuality Education

208. Comprehensive sexuality education (hereinafter “CSE”) is a technical term describing a specific approach to teaching sexuality through age-appropriate teaching of the cognitive, emotional, social, interactive and physical aspects of human sexuality based on precise scientific data and impartial information. It is aimed at equipping students with the knowledge, skills, and values they need to make informed decisions in order to enjoy their sexuality fully, healthily, and safely.³⁹⁷
209. Of particular relevance to the region is the Montevideo consensus on population and development, led by CEPAL,³⁹⁸ which establishes specific compromises on CSE. Specifically, the IACHR highlights priority measures 11, 14, and 40, whereby States committed to guaranteeing the effective implementation of comprehensive sexuality education programs and recognizing the effectiveness from a young age of a participatory, intercultural, gender, and human rights approach aiming to prevent teen pregnancy, eliminate unsafe abortion, and guarantee emergency contraceptive without prescriptions, as well as both male and female condoms.
210. The Commission recalls that the invisibility of nonnormative gender identities and expressions is still common in the region, and that the subject of gender diversity is

³⁹⁴ IACHR Report No. 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives (Ecuador), October 5, 2018, para. 116.

³⁹⁵ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 282.

³⁹⁶ IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 282.

³⁹⁷ UNESCO, *Emerging Evidence, Lessons and Practice In Comprehensive Sexuality Education: A Global Review 2015* (Paris: UNESCO, 2015), “Annex 2: Definitions of CSE”.

³⁹⁸ CEPAL, *Montevideo consensus on population and development*. First meeting of the Regional Conference on Population and Development in Latin America and the Caribbean: Full integration of the population and its dynamic in equitable sustainable development and a focus on rights: key for Cairo Programme of Action post 2014. Montevideo, August 12-15, 2013.

still considered "inappropriate" for children. The IACHR has already issued pronouncements on the extremely harmful effects of the absence of serious public policies on comprehensive sexuality education, highlighting how this shortcoming strengthens already widespread taboos on sexuality and ensures sexuality continues to be viewed as something negative that is not discussed publicly, even to report abuse.³⁹⁹

211. The United Nations Special Rapporteur on the Right to Education has indicated that the perpetuation of the patriarchal system depends precisely on the denial of the right of every person to receive an education with a gender and diversity perspective.⁴⁰⁰ Specifically in the case of trans and gender-diverse persons, CSE is a vital tool for the process of learning about, understanding, maturing, and transitioning in the ways one identifies and expresses oneself. Effectively, having the information, aptitudes, skills, and values necessary to question, deconstruct, and eradicate stereotypes and prejudices that remain prevalent with regard to gender diversity is vital for the full and healthy development of trans and gender-diverse persons.⁴⁰¹
212. At the same time, access to comprehensive sexuality education with a diversity perspective can, among other things, provide critical thinking tools for forming and expressing one's own opinions on inequality in relations among genders, which is a necessary step for raising awareness regarding diversity. Therefore, the IACHR urges States to implement effective comprehensive sexuality education policies with a diversity perspective.⁴⁰²
213. In the same regard, effective implementation of comprehensive sexuality education policies is one of the main and most important tools for strengthening the reproductive autonomy of persons.⁴⁰³ The Commission has indicated that States must "guarantee full access to adequate maternal health services," including CSE programs at all education levels, as well as healthcare centers that work on issues of prevention and comprehensive care.⁴⁰⁴ In this regard, the Commission wishes to

³⁹⁹ IACHR, [Report on Poverty and Human Rights](#) (2017), para. 331.

⁴⁰⁰ [United Nations Special Rapporteur on the right to education](#), A/65/162 (2010), para. 23.

⁴⁰¹ For detailed analysis on how vital it is for trans and gender-diverse persons to have information free of prejudice in the educational system, see: Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in [De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual](#), Diego Sempol (comp.) (Montevideo: MIDES, 2014), pg. 66 to 72.

⁴⁰² IACHR, [Violence against LGBTI Persons in the Americas](#), November 12 2015, para. 455; [Public Hearing: Allegations of discrimination and violence based on sexual orientation and gender identity against children in Guyana](#), 149th Period of Sessions, October 28, 2013; [Public Hearing: Gender politics and sexual diversity in Paraguay](#), 167th Period of Sessions, February 26, 2018; Annex to Press Release 41/18: IACHR Wraps Up 167th Session in Colombia: Public Hearings, Working Meetings, Promotional Activities and Bilateral Meetings," April 6, 2018.

⁴⁰³ IACHR, [Report on Poverty and Human Rights in the Americas](#), September 7, 2017, para. 331; also see: [Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles](#), November 2017, Principle 17(o). UNESCO has found likewise. See: UNESCO, [Education sector responses to homophobic bullying](#), 2012, pg. 42.

⁴⁰⁴ IACHR, [Report on Poverty and Human Rights](#) (2017), Recommendation 8(c).

specify that the diversity approach under which all CSE content must be approached, in both formal and informal education, must include masculine trans identities in all content and subject matter regarding reproductive and sexual health in what has been traditionally understood exclusively as “*maternal health*.” This includes content on preventing unwanted pregnancies, care during pregnancy, and morbidity and mortality during or after giving birth. This content should not be restricted to cisgender women, and should thus explicitly include masculine trans identities within the range of persons who can become pregnant and carry pregnancies.

214. As regards sexually-transmitted infections (hereinafter “STIs”), all CSE programs must include scientific information that is free of prejudices and stereotypes on ways of preventing STI transmission in *all* types of sexual relations. Trans persons have been identified by UNAIDS as a key population for the HIV-AIDS epidemic,⁴⁰⁵ for which reason the standards developed by the Commission and the Inter-American Court on the right to education and HIV-AIDS must be followed by States with regard to this population as well.⁴⁰⁶ This specifically includes the right to timely information on HIV-AIDS that is free of prejudice; prohibiting restrictions on people who live with HIV from accessing schools; and the right to education that promotes their inclusion and nondiscrimination within society.
215. The IACHR is deeply concerned at the information it has been receiving on the fierce resistance in the region to the implementation of CSE policies. In 2017, the Commission expressed its concern over the decision of the Ministry of Education and Science of Paraguay to prohibit the dissemination and use of materials referring to “gender theory and/or gender ideology.”⁴⁰⁷ At that time, the Commission urged Paraguay to repeal the ban and guarantee that educational material include the gender perspective, in keeping with international standards.⁴⁰⁸ The IACHR also received information on the intensification of hostile and discriminatory stances taking the form of movements and marches calling for a ban on the use of such materials, as well as statements by the Ministry of Education and Science who, during a public event, said he was in favor of burning books about “gender ideology.”⁴⁰⁹
216. Also, in Ecuador, anti-rights groups demonstrated against the regulations of the Elimination of Violence against Women Act, which included a provision-requiring the Ministry of Education to update curriculum content to add a crosscutting gender approach, including new masculine identities, diversity, and the elimination of

⁴⁰⁵ According to UNAIDS estimates, a trans person is 49 times more likely to contract the HIV virus than a cisgender adult. See: UNAIDS, *The Gap Report: Transgender People* (2014), pg. 3.

⁴⁰⁶ Inter-American Court. Case of Gonzales Lluy *et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 241.

⁴⁰⁷ IACHR, [Press Release 208/17](#): “IACHR Regrets Ban on Gender Education in Paraguay,” December 15, 2017. See: Resolution No. 29,664 of October 5, 2017 of the Ministry of Education and Science.

⁴⁰⁸ IACHR, [Press Release 208/17](#): “IACHR Regrets Ban on Gender Education in Paraguay,” December 15, 2017.

⁴⁰⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Panambí, Asociación de Travestis, Transexuales y Transgéneros), pg. 20. Also see: ABC Color, “[Ministro Riera se ofreció a quemar libros sobre ideología de género](#)”, October 6, 2017.

stereotypes. As a result of pressure by these groups, mentions of "new masculinities" and "diverse women" were eliminated from the final text.⁴¹⁰

217. In 2016, the Ministry of Education of Peru presented the National Elementary Education Curriculum,⁴¹¹ which explicitly includes the gender equality and diversity approach.⁴¹² According to the information received by the IACHR, approval of this document was met with fierce resistance from anti-rights groups, which have launched campaigns in the media and in public spaces that have had a significant impact on the population. One of these organizations filed a lawsuit over a ministerial resolution ordering a new school curriculum, and the First Civil Chamber of the Superior Court of Justice of Lima ruled in its favor.⁴¹³ This decision was appealed to the Supreme Court of Peru, which found the lawsuit groundless⁴¹⁴ in April 2019. It is further noted that the Ministry prepared educational support material with content supporting *machista* stereotypes like the objectification of women and stereotyping of sexual and gender diversity. After it was challenged by civil society organizations, the materials were removed from schools where they were already being used.⁴¹⁵
218. Related to this, these groups also mounted fierce resistance to other complementary laws and initiatives aimed at addressing sexual and gender diversity in schools. For example, in Colombia, Law 1620 of 2013 established the National School Coexistence System explicitly to address discrimination based on gender identity or sexual orientation.⁴¹⁶ However, the IACHR was informed that as a result of pressure from anti-rights groups, no specific measures or programs have yet been developed to implement it.⁴¹⁷

4. Human Rights Education

219. Human rights education is one of the fundamental pillars of the global effort to make human rights effective.⁴¹⁸ Providing a human rights education means building a

⁴¹⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 15.

⁴¹¹ Ministry of Education. [National Elementary Education Curriculum](#) (2016), adopted through Ministerial Resolution 281-2016-MINEDU and amended through [Ministerial Resolution 159-2017-MINEDU](#).

⁴¹² Ministry of Education. National Elementary Education Curriculum (2016), pg. 23.

⁴¹³ [Judgment of the Superior Court of Justice of Lima, First Civil Chamber](#), June 13, 2017 and [Judgment of the Supreme Court of Justice](#) of March 6, 2018.

⁴¹⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX, pg. 2.

⁴¹⁵ Ministry of Education (Peru), [Press Release](#), June 27, 2018.

⁴¹⁶ [Law 1620 of March 15, 2013](#), Creating the National School Coexistence System and Training for the Exercise of Human Rights, Sexuality Education, and the Prevention and Mitigation of School Violence (Colombia).

⁴¹⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pgs. 1, 4.

⁴¹⁸ United Nations Office of the High Commissioner of Human Rights, [Panel discussion on the implementation of the United Nations Declaration on Human Rights Education and Training: good practices and challenges](#), A/HRC/35/6, March 27, 2017, para. 5.

universal human rights culture by passing on knowledge, teaching techniques, and attitudes to empower students, offering them tools to develop their critical thinking, demand effective enforcement of rights, and be aware of the need in a democratic society to find solutions that are inclusive.⁴¹⁹ Human rights education and training are essential for promoting universal and effective respect for human rights and the fundamental liberties of persons in keeping with the principles of equality, universality, indivisibility, and interdependence.⁴²⁰

220. Since at least 2005, the Member States of the OAS have supported human rights education through various resolutions of the General Assembly, including the importance of disseminating the content of the inter-American system in the schools of the hemisphere.⁴²¹ Additionally, starting in 2007, the General Assembly moved forward in proposing the inclusion of human rights education in formal education, in accordance with the Protocol of San Salvador, urging States to follow the Curricular and Methodological Proposal prepared for this by the Inter-American Institute of Human Rights (hereinafter, "IIDH").⁴²² Parallel to its periodic reports on the subject, in 2010, the IIDH adopted the Inter-American Covenant on Human Rights Education in formal education in the Americas.⁴²³ In 2011, the United Nations adopted the Declaration on Human Rights Education and Training,⁴²⁴ which sets forth the consensus on the importance of human rights education as a process that fosters knowledge, skills, and attitudes to promote respectful behaviors.
221. The IACHR reiterates that, pursuant to the instruments of the Inter-American system, especially the Protocol of San Salvador, States have an obligation to provide human rights education in both formal and informal educational contexts and to ensure the effective professional training of the teaching staff, particularly on issues related to equal protection and nondiscrimination.⁴²⁵ This must particularly be borne in mind given that the IIDH has identified specialized training and the training

⁴¹⁹ See, in general: UNESCO and OHCHR, [Plan of Action. Plan of Action. World Programme for Human Rights Education](#) (New York: UNESCO, 2006); Inter-American Institute of Human Rights, [Curricular and methodological proposal for incorporating human rights education into formal schooling for children from 10 to 14 years of age](#) (San Jose: IIDH, 2006).

⁴²⁰ United Nations, General Assembly, [Resolution 66/137: United Nations Declaration on Human Rights Education and Training](#), A/RES/66/137, February 16, 2012.

⁴²¹ OAS General Assembly, AG/RES. 2066 (XXXV-O/05), Dissemination of Information on the Inter-American System for the Promotion and Protection of Human Rights in Educational Institutions in the Countries of the Hemisphere, June 7, 2005.

⁴²² OAS General Assembly, AG/RES. 2321 (XXXVII-O/07), Proposal to Incorporate Human Rights Education into Formal Education for Schoolchildren Aged 10 to 14, in accordance with the Protocol of San Salvador, June 5, 2007; AG/RES. 2404 (XXXVIII-O/08), Education on human rights in formal education in the Americas, June 3, 2008; AG/RES. 2466 (XXXIX-O/09), Education on human rights in formal education in the Americas, June 4, 2009; AG/RES. 2604 (XL-O/10), Education on human rights in formal education in the Americas, June 8, 2010; AG/RES. 2673 (XLI-O/11), Education on human rights in formal education in the Americas, June 7, 2011; AG/RES. 2732 (XLII-O/12), Education on human rights in formal education in the Americas, June 4, 2012.

⁴²³ Inter-American Institute of Human Rights, [Inter-American Covenant on Human Rights Education](#) (2010).

⁴²⁴ United Nations, General Assembly, [Resolution 66/137: United Nations Declaration on Human Rights Education and Training](#), A/RES/66/137, February 16, 2012.

⁴²⁵ IACHR, [Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights](#) November 11, 2011, para. 182.

of teaching staff and human rights pedagogy as the area in which the region is furthest behind.⁴²⁶

222. Furthermore, the IACHR emphasizes that human rights education plays an important role in addressing and eliminating structural prejudice, historical discrimination, stereotypes, and false ideas regarding persons with diverse gender identities. It is indispensable for full embrace and promotion of diversity and the acceptance of diverse sexual orientations and gender identities toward achieving a cultural change "that fully embraces diversity and the promotion of acceptance of diverse sexual orientations and gender identities."⁴²⁷

5. Education as a Tool for Emerging from Poverty

223. In its General Comment 13, the Committee on Economic, Social and Cultural Rights underscored that, as an empowerment right, the right to education "is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."⁴²⁸
224. Regionally, the Inter-American Democratic Charter included an article specifically highlighting the key relationship between education and alleviating poverty.⁴²⁹ Likewise, in its earlier judgments on ESCER, the Inter-American Court included the right to education among the obligations that States must fulfill to guarantee the right to a life with dignity, especially as regards persons facing vulnerability.⁴³⁰ The Court also links the right to education to the opportunity to reverse the situation of vulnerability.⁴³¹ It later did so again on the specific legal basis offered by Article 13 of the Protocol of San Salvador.⁴³² Although the case dealt with a lack of registration

⁴²⁶ Inter-American Institute of Human Rights, *Informe Interamericano de la Educación en Derechos Humanos* (2013), 13.

⁴²⁷ IACHR, *Press Release 208/17*: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017; *Press Release 92/13*: "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013. Likewise, see: *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement That Yogyakarta Principles*, November 2017, Principle 30(e).

⁴²⁸ CESCR, *General Comment 13: The right to education (Article 13 of the Pact)*, E/C.12/1999/10, December 8, 1999, para. 1.

⁴²⁹ General Assembly of the Organization of American States, *Inter-American Democratic Charter*, 28th Extraordinary Period of Sessions, adopted on September 11, 2001, Article 16.

⁴³⁰ Inter-American Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 162 and 163; *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, para. 159.

⁴³¹ Inter-American Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 169.

⁴³² Inter-American Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 211.

in the civil registry at the time of birth in the case of the girls named Yean and Bosico, the Court emphasized that the lack of documentation deprived them of their right to education, worsening their situation of vulnerability.⁴³³

225. For its part, the Commission has identified the "instrumental" nature of the right to education as well as its value as a tool for escaping poverty.⁴³⁴ In its first report on poverty and human rights, the IACHR emphasized that education is necessary for children to be able to fully develop their personalities, talents, and skills, as well as to enhance opportunities to find good-quality jobs and escape poverty.⁴³⁵
226. In 2017, the IACHR and other international experts outlined the specific connections between the human right to education and SDG 4,⁴³⁶ which proposes securing inclusive, equitable, and good quality education by 2030, as well as promoting life-long learning opportunities for young people and adults.⁴³⁷ The 2030 Agenda also places renewed emphasis on principles of inclusion, equity, and gender equality, especially under its goal 4(5), which focuses on eliminating gender disparities and securing respect for the most vulnerable population groups.⁴³⁸
227. Specifically, from the point of view of human development, education is where an individual acquires the skills and knowledge necessary to fully develop their human potential. Exclusion from educational opportunities will necessarily have an impact that seriously limits opportunities to obtain work with dignity or even enter the labor market at all. In other words, because educational achievements—especially the completion of secondary or preparatory school—tend to be a significant determining factor of the economic status individuals may achieve over the course of their lives, when trans persons have their right to education restricted or impacted, their future economic outlooks are also impacted, and their social vulnerability increases, among other negative effects that can be extremely difficult to reverse.
228. According to information received by the IACHR, the lack of access to education has a direct causal relationship with access to work.⁴³⁹ A survey conducted in Argentina and published in 2017 found that education level has a noticeable impact on the performance of sex work as a principal source of income. It found that 76% of

⁴³³ Inter-American Court. Case of Yean and Bosico Children v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, paras. 185 and 225. Also see: Mónica Pinto, "[La justiciabilidad del derecho a la educación](#)" *Revista del Instituto Interamericano de Derechos Humanos* (2010), 217.

⁴³⁴ IACHR, [Access to Justice for Women who are Victims of Sexual Violence](#), December 9, 2011, paras. 3 and 13.

⁴³⁵ IACHR, [Report on Poverty and Human Rights in the Americas](#), September 7, 2017, para. 356.

⁴³⁶ Although most of the efforts regarding inclusive education are placed under SDG-4, other SDGs also include targets that are relevant for trans and gender-diverse persons in the area of education, such as education and reproductive and sexual health (SDG-3 and SDG-5) and reducing the proportion of young people outside the educational system (SDG-8).

⁴³⁷ United Nations, General Assembly, [Resolution 70/1: Transforming our World: The 2030 Agenda for Sustainable Development](#), A/RES/70/1, October 21, 2015, para. 19.

⁴³⁸ UNESCO, [Unpacking Sustainable Development Goal 4: Education 2030](#) (2016), pg. 11.

⁴³⁹ Mauro Cabral and Johanna Hoffman, "[Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans latinoamericanas en situación de pobreza extrema](#)" (OutRight Action International, 2009), pg. 8.

individuals who had not finished secondary school supported themselves with sex work, a figure that was lower for those who had a secondary school education or higher.⁴⁴⁰ The situation of exclusion from education and job opportunities produced by discrimination based on gender identity and expression is chronic in nature and "not only reproduces poverty but incessantly produces more poverty, and therefore more poor trans persons."⁴⁴¹

229. Lastly, it should be highlighted that, in view of the labor vulnerability that tends to characterize trans and gender-diverse persons, professional education or skills training (also called "job-specific training") can play a key role in offering dignified, safe, and profitable opportunities for escaping economic and social marginalization.⁴⁴² Establishing public policies to offer job opportunities that provide trans persons with a way out in the short-term can have a substantial impact on realization of their human rights, improving their employability, and guaranteeing the conditions for the enjoyment of a life with dignity.

D. *The Human Right to Culture*

230. The right to participate in cultural life has been enshrined in the Universal Declaration of Human Rights,⁴⁴³ in the International Covenant on Economic, Social and Cultural Rights,⁴⁴⁴ and in other treaties and instruments in the framework of the universal system of human rights.⁴⁴⁵ At the inter-American level, Article 13 of the American Declaration establishes that every person has the right "to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries." This right is recognized by Article 14 of the Protocol of San Salvador, and the IACHR observes that it can also be protected under Article 26 of the ACHR via the OAS Charter. Indeed, Article 47 of the Charter indicates that States must give primary importance to stimulating culture for the comprehensive betterment of human individuals as a basis for social justice and democracy, followed by recognizing the individual and joint commitment to preserving the cultural heritage of the American peoples

⁴⁴⁰ Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 21.

⁴⁴¹ Mauro Cabral and Johanna Hoffman, "*Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...*": *trans latinoamericanas en situación de pobreza extrema* (OutRight Action International, 2009), pg. 8.

⁴⁴² See: Ministry of Labor, Employment, and Social Security – Violeta Alegre, *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros: Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina* (Buenos Aires: UNDP, 2017), pg. 20.

⁴⁴³ Universal Declaration of Human Rights, Article 27.

⁴⁴⁴ International Covenant on Economic, Social and Cultural Rights, Article 15.

⁴⁴⁵ Convention on the Rights of the Child, Article 31(2); Convention on the Rights of Persons with Disabilities, Article 30(1); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e); Convention on the Elimination of All Forms of Discrimination against Women, Article 13(c); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 43(1)(g); 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, and 10 through 13.

(Article 48); and Article 45(f) recognizes the right to participation of sectors that have been excluded and discriminated against in a country's cultural life.

231. For the purposes of this report, the Commission will take into account the standards set forth by the Committee on Economic, Social and Cultural Rights (CESCR) and its General Comment 21 on the right of everyone to take part in cultural life.⁴⁴⁶ In it, the Committee adopted a dynamic, broad, and inclusive definition of the concept of "culture" that includes "all manifestations of human existence" and is "a living process, historical, dynamic and evolving, with a past, a present and a future."⁴⁴⁷ It is also worth noting that the Committee identified at least three main components of the exercise of this right, those being each individual's right to *participation in, access to, and contribution to* cultural life.⁴⁴⁸ Specifically, the Commission underscores that "[t]he protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life."⁴⁴⁹ This means that the State must redouble its efforts to protect trans and gender-diverse persons as a group that faces particular vulnerability and historic discrimination in view of the delicate relationship between and obstacles involved in access to participation in cultural life and the social and legal limitations that are set based on binary criteria in a majoritarian society.
232. For the IACHR and its REDESCA, the right of trans persons to participate in cultural life means they have the right to freely express their identities in all areas of cultural life, contribute to its development, and enjoy the benefits thereof. Thus, programs and policies aimed at promoting culture must constructively integrate this population and ensure its full participation and that it is not discriminated against, so as to preserve its distinctive forms of expression and promote societal tolerance and respect. Considering that cultural activities, goods, and services are a means of transmitting values, identities, reflections, forms of existence, worldviews, and ways of living together, the Commission and its REDESCA recognize that they are more than just a form of expression: indeed, they comprise the elements that structure and impact economic, social, and political relations. In this regard, States have an obligation to promote a cultural environment that is respectful of gender diversity, as well as to adopt legislative, administrative, and judicial measures aimed at guaranteeing trans persons their right to culture and eradicating negative prejudices and stereotypes against such persons in this area.

⁴⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a)), E/C.12/GC/21, December 21, 2009.

⁴⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a)), E/C.12/GC/21, December 21, 2009, para. 11.

⁴⁴⁸ Committee on Economic, Social and Cultural Rights, General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a)), E/C.12/GC/21, December 21, 2009, para. 15.

⁴⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a)), E/C.12/GC/21, December 21, 2009, para. 40.

1. The Right of Trans and Gender-Diverse Persons to Culture

233. The IACHR has received limited information on the specific challenges facing trans and gender-diverse persons with regard to their effective enjoyment of their right to participate in cultural life. Extreme vulnerability tends generally to severely restrict any person's opportunity to access or participate in cultural activities, and especially to contribute to producing cultural or scientific expression. Additionally, the historical prevalence of stigma and discrimination has helped completely exclude trans and gender-diverse persons from areas of culture, or ensure they are included in a way that is denigrating or mocking, where they play roles representing the "undesirable," "perverse," or "criminal."
234. The Commission has not received substantial information on public policies to encourage the participation of trans or gender-diverse persons in cultural promotion or production activities. In this regard, it is the IACHR's view that the diversity of voices to which space must be given in the media and when planning cultural policies must offer trans and gender-diverse persons specific opportunities to make their own local and regional contributions to culture. Also, civil society organizations play a fundamental role, as many of them carry out activities for the trans population while promoting their participation and involvement in cultural life in general.⁴⁵⁰ Additionally, this State duty to guarantee the diversity of voices is closely related to its duty to promote the dismantling of harmful prejudices and stereotypes. This relationship was underscored by the CESCR, which noted that the right to education "is fed by and closely linked to the promotion of culture and development of science."⁴⁵¹
235. As regards contribution to cultural life, the Commission emphasizes that trans and gender-diverse persons must be able to exercise the opportunity to be involved in creating the spiritual, material, intellectual and emotional expressions of the community, as well as participate in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.⁴⁵² The IACHR notes with satisfaction that, in some countries of the region, certain cultural expressions led or managed by trans or gender-diverse persons have been identified, including poetry, music, recitals, and literature.⁴⁵³ In this regard, the IACHR urges the replication of these initiatives in the region, with the objective of increasing the visibility of culturally diverse expression, as well as producing alternative discourses and models in which the trans population can see itself reflected and included. Lastly, with regard to the production of knowledge,

⁴⁵⁰ REDLACTRANS, *Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe* (2014), pg. 34.

⁴⁵¹ Committee on Economic, Social and Cultural Rights, *General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a))*, E/C.12/GC/21, December 21, 2009, para. 2.

⁴⁵² Committee on Economic, Social and Cultural Rights, *General Comment 21: Right of everyone to take part in cultural life (Article 15, paragraph 1(a))*, E/C.12/GC/21, December 21, 2009, para. 15.

⁴⁵³ Juan Tautil, "Testiga: Crónicas, entrevistas y otras rarezas" (La Plata: EDULP, 2015), 19; Marina Rosenzvaig, "¡Que otros sean lo normal! Performatividad y representaciones discursivas transgénero en la obra de la artista argentinx Susy Shock" *XII Congreso Internacional Locas. Escritoras y personajes femeninos cuestionando las normas* (Universidad de Sevilla, 2015).

trans and gender-diverse persons must be able to progressively occupy positions in which they can participate actively in knowledge production, research, and cultural and scientific documentation, especially as regards the realities of their own lives. However, in order for this objective to be met, at least in the short or medium term, States will need to pursue affirmative-action measures as described previously.

E. Toward more Inclusive Education and a Culture that Respects Gender Identity and Expression

236. States face significant challenges to comprehensively guaranteeing the right to education for trans persons, with one of the main obstacles being the lack of recognition of gender identity, which leads to violence and discrimination in schools, poor performance, and dropping out. Because of the interdependence of human rights, restrictions on the right to education—whether *de jure* or *de facto*—mean limitations on other rights. For example, the lack of a higher education means trans persons risk losing the opportunity to access better jobs, meaning less economic empowerment and significant limitations on their personal autonomy.
237. Additionally, the IACHR has found that States have not only a duty to protect trans persons' from violence or direct discrimination in their right to education but also an obligation to identify and eradicate practices or legal provisions that indirectly present obstacles to the comprehensive inclusion of these individuals in the education system. As addressed earlier, this means revising cisnormative regulations, but it also means revising existing measures and mechanisms of protection that do not explicitly include or provide for trans persons and their particular needs. The IACHR reiterates that enacting laws on violence or discrimination, even laws specifically targeting schools, is only effective when they have been designed to prevent and root out anti-trans prejudices. Such measures must include adequate mechanisms for investigating violence and discrimination that take into account the age of the perpetrator, the person's hierarchical relationship with the victim and the educational level at which the violence takes place, as well as set up procedures for compensating and providing comprehensive care to the victims of the violence.
238. Third, the Commission analyzed education's power as a tool of transformation. In certain cases, education can provide a way out of a situation of vulnerability through personal empowerment. Collectively, education provides a pathway for transmitting messages that eradicate prejudices and disinformation on trans identities, as well as a way of building more inclusive and tolerant societies.
239. Lastly, the Commission has underscored the importance of collecting data in other areas. It now calls for the collection of data and statistics in the area of education. The information collected by some States on the impact of gender identity laws or certain regulations, such as on the use of a "social name," for example, contribute to the regional understanding of the benefits of such measures. Likewise, the collection of this data enables better follow-up, monitoring, and evaluation by State institutions and by civil society watchdogs. Additionally, figures on violence and

discrimination can give shape to the actions, plans, public policies, and legislation intended to combat trans phobia in the educational sector.

240. Regarding this, it is clear that States must move forward in addressing circumstances that place effective limits on the real opportunities that trans and gender-diverse persons have to participate in, access, and contribute to cultural life in their societies. The IACHR recalls that States have an obligation to produce a comprehensive policy on promoting, accessing, and enjoying cultural, sporting, artistic, community, and academic spaces that actively includes trans and gender-diverse persons. Participation is one of the main guiding principles in designing public policies with a human rights approach,⁴⁵⁴ and it is therefore crucial that these policies take into account the opinions and experiences of trans persons. However, in this context, it is also necessary to listen to the voices of artists, cultural promoters, and the defenders of these rights in order to strategically eradicate the barriers that make it difficult for trans persons to exercise their cultural rights. As the Inter-American Court has found, the duty to prevent human rights abuses includes a duty to adopt all legal, policy, administrative, and cultural measures to promote the protection of human rights. In that framework, the State also has an obligation to adopt measures to ensure that non-State actors like companies, media outlets, and cultural groups and associations do not interfere with or negatively impact the right of trans and gender-diverse persons to participate in cultural life.

⁴⁵⁴ IACHR, Report on public policies with a human rights approach, para. 56

CHAPTER 4

RIGHT TO WORK AND ITS JUST, EQUITABLE, AND SATISFACTORY CONDITIONS

RIGHT TO WORK AND ITS JUST, EQUITABLE, AND SATISFACTORY CONDITIONS

A. *The Human Right to Work and Its Just, Equitable, and Satisfactory Conditions*

241. The human right to work and its just, equitable, and satisfactory conditions are broadly recognized within the Inter-American system. The Inter-American Court and the Commission have found that this right is protected by Article 26 of the American Convention, deriving from it the economic, social, educational, scientific, and cultural standards contained in the OAS Charter.⁴⁵⁵ They have specifically indicated that Article 45(b) of the Charter establishes that “[w]ork is a right and a social duty,” with Article 34(g) of the Charter including among its goals for achieving comprehensive development “[f]air wages, employment opportunities, and acceptable working conditions for all.” Likewise, Article XIV of the American Declaration establishes that “[e]very person has the right to work, under proper conditions, and to follow his vocation freely [...].”
242. The Protocol of San Salvador also enshrines the right to work under just and equitable conditions in its Articles 6 and 7. Article 6 requires States 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. Article 7 addresses working conditions, including compensation, stability, time off, etc. Also, in Article 8, the Protocol establishes a right to organize and join unions and a right to strike.
243. Meanwhile, according to the CESCR, the right “is an important component of other labour rights enshrined in the Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work,” mentioning as well that social security systems serve to compensate for a lack of income from work. Regarding working conditions the Committee has indicated that “The enjoyment of the right to just and favorable conditions of work is a prerequisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical

⁴⁵⁵ [Case of Lagos del Campo v. Peru.](#) Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143; IACHR Report 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following.

and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration.”⁴⁵⁶

244. For its part, the Inter-American Democratic Charter indicates that the promotion and strengthening of democracy requires the full and effective exercise of workers’ rights and the application of core labor standards, such as those contained in the Declaration and conventions of the International Labour Organization.⁴⁵⁷
245. Is also important to highlight that Article 6 of the American Convention bans slavery, involuntary servitude, and forced labor. In this regard, the Inter-American Court has indicated that this prohibition is an absolute provision of international law, as it has acquired the status of *jus cogens*. That is, it is *erga omnes* applicable and all States are required to comply with it.⁴⁵⁸
246. The IACHR has underscored that one of the substantive elements of the right to work is that jobs can be freely chosen or accepted, which means each person can pursue their vocation and dedicate themselves to the activities reasonably in accordance with their expectations or life plans, either by creating opportunities or by taking measures that do not obstruct them.⁴⁵⁹ It has also indicated that in order for States to comply with the minimum content of this right, an essential elements is that they must regulate and carry out actions intended to ensure effective compliance, specifically by overseeing public and private employers and punishing violations. This becomes even more important should there be unequal and abusive labor practices deriving from unstable labor relations.⁴⁶⁰ It has likewise underscored that States have an obligation to fight workplace discrimination against the LGBTI population:⁴⁶¹ That is, not only must they refrain from such practices but they must establish a comprehensive system for actively combating discrimination based on gender identity or expression in the workplace.
247. Lastly, the IACHR and its REDESCA highlight that although the right to work and the right to do so under just and equitable conditions are autonomous and independent rights, their contents are essential for the realization of other human rights and constitute an indivisible and inherent part of human dignity. The right to work means the survival of both the individual and their family.⁴⁶²

⁴⁵⁶ CESCR, General Comment General comment No. 23 (2016) on the right to just and favourable conditions of work, para. 1.

⁴⁵⁷ IACHR. Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights (2011), para. 88.

⁴⁵⁸ Inter-American Court. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 249, 412, and 413.

⁴⁵⁹ IACHR. Report 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. December 7, 2018, para. 65

⁴⁶⁰ IACHR. Report 64/18. Case 12,738. Merits. Opario Lemoth Morris *et al.* (Miskito divers). Honduras. May 8, 2018, para. 261.

⁴⁶¹ IACHR. Report 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. December 7, 2018, para. 63

⁴⁶² Cf. UN. Committee on Economic, Social and Cultural Rights. General Comment 18: The right to work. E/C.12/GC/18, February 6, 2006, approved on November 24, 2005, para. 1.

B. Exclusion of Trans and Gender-Diverse Persons from Work

248. The information received by the Commission indicates that the exclusion from work as experienced by trans and gender-diverse persons is a regionwide phenomenon. In the report “Business and Human Rights: Inter-American Standards,” the Commission and its REDESCA observed that trans persons are the ones who tend to face the most severe forms of labor discrimination.⁴⁶³ The Commission reiterates that in Latin America, structural discrimination and exclusion in the labor market for reasons of gender identity and expression is one of the factors that sets in motion “an endless cycle of poverty.”⁴⁶⁴ Previously, in its report on violence against LGBTI persons, the IACHR made reference to numerous studies and reports from international bodies, civil society organizations, State authorities, activists, and academics documenting and explaining that generalized violence, prejudice, and discrimination obstruct trans persons’ opportunities to access the formal labor market.⁴⁶⁵
249. As has been mentioned, few statistics have been systematically collected in the countries of the region on trans or gender-diverse persons, or the information has not been disaggregated based on gender identity. Even so, the quantitative information that the IACHR was able to obtain is very concerning. For example, the data from the Uruguay Census indicated that only 23% of trans and gender-diverse persons have formal employment.⁴⁶⁶ The IACHR was informed by the Human Right Secretariat of Argentina that it estimates that only 10% of the trans population has gained entry to the job market.⁴⁶⁷ In El Salvador, the UNDP has found that only 5% of trans persons have formal employment in a business.⁴⁶⁸ In Ontario, Canada, 37% of trans persons have been able to obtain full-time jobs.⁴⁶⁹ The data collected in the United States by civil society in 2015 show that the unemployment rate among trans persons was three times higher than the unemployment rate for the population as a whole, with Black and Latino participants and participants of Arab and indigenous origins suffering the highest rates of unemployment.⁴⁷⁰

⁴⁶³ IACHR, *Business and Human Rights: Inter-American Standards*, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019, para. 382

⁴⁶⁴ IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 187.

⁴⁶⁵ IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, paras. 275.

⁴⁶⁶ Ministry of Social Development (Uruguay), *Transform 2017; Comprehensive Trans Persons Act: Toward new horizons* (2017), 4.

⁴⁶⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 27.

⁴⁶⁸ UNDP, *Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador* (2015), 28.

⁴⁶⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 6.

⁴⁷⁰ National Center for Transgender Equality, *Report on the US Transgender Survey: Executive Summary* (2016), 10.

250. The lack of access to jobs, the inability to obtain identification reflecting their gender and name, and the disrespect for the names they have taken on and their gender expressions in the workplace, as well as the harassment and bullying from employers and colleagues are problems that the IACHR and its REDESCA have identified as obstacles to the realization of trans persons' right to work. As indicated throughout this report, the lack of access to formal employment tends to expose trans persons to dangerous working conditions, often forcing them to turn to sex work as a survival strategy.⁴⁷¹
251. Additionally, and in view of States' obligations in this area, the Commission and its REDESCA consider it important for States to include trans persons in their national employment plans and policies as a group facing particular vulnerability. It should also include specific evaluation indicators for these individuals in the public policies that address the different aspects of this right, including reduction of the unemployment rate, salary levels, workplace health and safety, time off or paid vacation, etc.
252. In the following sections, the Commission will delve into the reasons behind the alarming rates of labor market exclusion facing trans and gender-diverse persons in the region, with a special emphasis on the barriers to their entry into the labor market, the discrimination and harassment they often suffer in the workplace, and the survival strategies they use in this context of exclusion to support themselves economically.

1. Barriers to Entering the Labor Market

253. The IACHR observes that several of the main barriers to entering the labor market specific to trans and gender-diverse persons have to do with the lack of educational opportunities mentioned in the previous chapter; the lack of recognition of their gender identities; high rates of prejudice and discrimination; criminal records; and other barriers, such as migratory status, age, or living with HIV.

a. Failure to Recognize Gender Identity

254. The inability to secure official documentation that identifies them with the names and gender indicators that match their gender identities is one of the main obstacles facing trans persons throughout the region.⁴⁷² This issue has been addressed by the

⁴⁷¹ IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019, para. 382.

⁴⁷² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 2.

United Nations CESCR, which indicated that the lack of legal recognition of gender identity is a barrier to accessing work.⁴⁷³

255. The IACHR has received information indicating that trans and gender-diverse persons are rejected upon being interviewed,⁴⁷⁴ and many have found themselves in a situation of having moved far along in the selection process, even to the point that employers have demonstrated interest in hiring them, but a radical change in attitude takes place when they submit documentation showing their names according to the registry and the sex assigned at birth—or when they are finally seen as trans persons.⁴⁷⁵ Even in States where the change is possible, many times there are bureaucratic hurdles, or problems that arise from a failure to amend other documentation, as described in information received by the IACHR regarding Ecuador.⁴⁷⁶ For example, almost half of the trans persons living in Ontario, Canada, said they had not been able to provide job references or degrees with their names or registered sexes corrected when seeking employment.⁴⁷⁷

b. Prejudice and Discrimination

256. In addition to being the main cause of violence, discrimination, and a lack of educational opportunities, social discrimination and stigma on gender diversity is one of the main reasons why trans and gender-diverse persons are not hired by employers, even when they hold the qualifications necessary and are eligible, or when they have been able to rectify their documentation.⁴⁷⁸
257. The same prejudices that pathologize and stigmatize trans and gender-diverse persons mean that in the context of a hiring process, they are not considered a good fit or capable of contributing to the development of a company or enterprise. For

⁴⁷³ Committee on Economic, Social, Cultural, and Environmental Rights, Concluding observations on the fifth periodic report of Costa Rica, E/C.12/CRI/CO/5, October 21, 2016, para. 20.

⁴⁷⁴ IACHR, Public hearing: Human rights situation of trans persons in Chile, 162nd Period of Sessions, May 24, 2017; International Labour Organization (ILO), ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica (2016), pg. 26.

⁴⁷⁵ Defensoria Pública do Estado de Goiás, Defensoria Pública do Estado de Pernambuco, Forum de Transexuais de Goiás, Associação de Homens Trans & Transmasculinidades, Articulação e Movimento para Travestis e Transexuais de Pernambuco, Coletivo Lutas e Cores, Relatório sobre o reconhecimento e garantia efetiva dos direitos econômicos, sociais e culturais das pessoas trans no Brasil (2018), 16; UNDP, Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador (2015), 29.

⁴⁷⁶ According to the response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas submitted by Pakta (Ecuador), trans persons can request a change to their sex indicator to that of their gender on their identity document (national identification card) after the age of 18. They can do so one time, in the presence of two witnesses who can attest that they have been trans for at least two years.

⁴⁷⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 6.

⁴⁷⁸ UNDP, Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador (2015), 28; Ignacio Gabriel Ulises Borgogno, La transfobia en América Latina y el Caribe un estudio en el marco de REDLACTRANS (2015), 44; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa (Venezuela), pg. 8.

example, in Surinam, civil society has reported that trans women are not accepted in teaching positions.⁴⁷⁹ Likewise, and confirming these prejudices, according to information received by the IACHR, the positions that tend to be offered to trans and gender-diverse persons are the ones where it is assumed that they will not be in visual contact with the public or with customers.⁴⁸⁰

258. According to information sent by civil society in Barbados, the level of scrutiny to which trans and gender-diverse persons are often subjected during hiring processes is higher than for other candidates.⁴⁸¹ They indicate that although they often receive expressions of interest following a written application, this is not the case for in-person interviews. They even note that some employers have cut off interviews upon detecting visual or verbal cues of a nontraditional gender expression, fiercely monitoring the femininity and masculinity of those who participate in interviews.⁴⁸²
259. In a survey conducted in Venezuela by civil society, 84% of the trans and gender-diverse persons surveyed stated that they had been denied jobs at least once because of their gender identities. In Colombia, that figure stood at 87%.⁴⁸³ In Guatemala, while 23% of the trans women surveyed said they had been subjected to stigma and discrimination when attempting to find work, 21% said they were certain they had been turned down for a job simply because of their gender identities.⁴⁸⁴ Additionally, in the process of securing formal employment, the legal burden of having to subject oneself to a medical examination can expose an individual to the company or the individual doing the hiring as trans. When this forced exposure takes place in oppressive contexts, it can pose a grave risk to the individual and expose them to abuse and humiliation. Therefore, the medical examination requirement can strongly discourage searching for jobs in the formal sector.
260. Another equally discriminatory and violent practice that may be encountered during hiring processes involves requiring the individual deny or renounce their

⁴⁷⁹ LGBT Platform Suriname, *Human Rights Situation for LGBTI Persons and Sexual Rights in the Republic of Suriname: List of Issues submitted to the Working Group on the Suriname report* (2014), para. 12.

⁴⁸⁰ Defensoria Pública do Estado de Goiás, Defensoria Pública do Estado de Pernambuco, Forum de Transexuais de Goiás, Associação de Homens Trans & Transmasculinidades, Articulação e Movimento para Travestis e Transexuais de Pernambuco, Coletivo Lutas e Cores, *Relatório sobre o reconhecimento e garantia efetiva dos direitos econômicos, sociais e culturais das pessoas trans no Brasil* (2018), 16; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by “Hombres XX” (Mexico), pg. 11.

⁴⁸¹ EQUALS, Eastern Caribbean Alliance for Diversity and Equality (ECADE) and ARC International, *Report on Barbados: 29th Session of the Universal Periodic Review* (2018), 6.

⁴⁸² EQUALS, Eastern Caribbean Alliance for Diversity and Equality (ECADE) and ARC International, *Report on Barbados: 29th Session of the Universal Periodic Review* (2018), 6.

⁴⁸³ Carsten Balzer, Carla LaGata y Jan Simon Hutta, *The social experiences of trans and gender-diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela*, (TGEU, 2015), pg. 16.

⁴⁸⁴ OTRANS Organización Trans Reinas de la Noche, *Situación de los Derechos Humanos de las Personas Travestis, Transgénero y Transexuales en Guatemala: Lista de temas sugeridos presentada al Grupo de Trabajo Sobre el Informe de Guatemala. Comité de Derechos Humanos* (2015), para. 30.

gender identity in order to be hired or to remain in a position.⁴⁸⁵ In a study conducted by the International Labour Organization (ILO) in Costa Rica, the trans individuals interviewed who were working in stable positions said they had undergone their transition processes after being hired—that is, they did not go through the hiring process with their trans identities explicit.⁴⁸⁶ The same study found that for trans men, the situation was more difficult, as there was a significant lack of awareness surrounding their identities.⁴⁸⁷ In this context, the Commission and its REDESCA have indicated that companies play an important role in changing stereotypical conceptions of LGBTI persons, and through inclusion, they can foster the principles of acceptance and nondiscrimination and help change harmful social perceptions regarding sexual diversity and gender identity.⁴⁸⁸

c. Criminal Records

261. The Commission has received information indicating that as a result of the application of legal provisions not compatible with the Convention—or the arbitrary application of legal provisions that are used to persecute trans persons—a large number of trans and gender-diverse persons throughout the region have criminal records. Such legal provisions can include laws that explicitly criminalize gender expression; the criminalization of sex work, the arbitrary application of laws on "morality" or "decency", and the use of other various laws to persecute and criminalize trans and gender-diverse persons.
262. This is particularly serious because not only does it affect the rights directly harmed by the acts of persecution, but it produces a record of conduct or criminal record that can present an insurmountable obstacle to obtaining employment, therefore preventing individuals from exercising their right to work.
263. Additionally, the United Nations' Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has described how laws criminalizing sex work tend to be used to persecute trans persons.⁴⁸⁹ Effectively, trans and gender-diverse persons who do sex work in jurisdictions where it is criminalized are exposed to extortion, violence, and persecution at the hands of security agents.⁴⁹⁰ Additionally, when detentions are officially recorded

⁴⁸⁵ UNDP, *Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador* (2015), 28; International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 32.

⁴⁸⁶ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 42.

⁴⁸⁷ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 28.

⁴⁸⁸ IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019. 385.

⁴⁸⁹ Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 49.

⁴⁹⁰ IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, para. 131.

and judicial processes are brought against them based on these laws, not only are they denied their only means of subsistence, but the resulting criminal record can make it even more difficult to hold any other type of job. These types of laws tend to be applied arbitrarily, even against trans and gender-diverse persons who are not necessarily performing sex work. Civil society has documented how the police in New York detain trans Latina women on suspicion of performing sex work while they are walking through their own neighborhoods. As stated in the testimony of one of the trans women interviewed, "for the police, all trans women are prostitutes."⁴⁹¹

264. The Commission is likewise aware that many other States have legal provisions in place that, although they do not directly criminalize trans and gender-diverse persons, are used in practice to persecute and criminalize them. This especially includes provisions with vague or imprecise terminology like references to "scandal," to "public morals," or to "indecency."⁴⁹² Such provisions tend to give security forces broad powers and discretion to let loose their prejudices and discriminate against trans and gender-diverse persons by arbitrarily regulating the use of public space and judging people based on their physical appearances.⁴⁹³ In the United Nations framework, such provisions have been called into question by the Human Rights Committee⁴⁹⁴ and the Committee against Torture.⁴⁹⁵
265. Within this margin of arbitrariness, many trans persons, especially trans women, have been subjected to institutional violence, arbitrary detentions, and baseless charges. For example, the IACHR has received information indicating that following the *coup d'état* in 2009 in Honduras, the Policing and Social Coexistence Act of 2002 was frequently used to arbitrarily arrested many trans and gender-diverse persons, especially sex workers, based on highly subjective interpretations of concepts like

⁴⁹¹ Human Rights Watch, *Sex Workers at Risk, Condoms as Evidence of Prostitution in Four US Cities* (2012), pg. 20.

⁴⁹² IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, paras. 86 and 87. The IACHR report cited the following examples: [Argentina] Law 219-1951, Province of Jujuy, "against morals and good customs;" and the Province of Salta, Law 7135, Article 114, "prostitution;" [Chile] Criminal Code, Article 373, "good customs," "scandal;" [El Salvador] Ordinance on Citizen Coexistence of the Municipality of San Salvador, Article 32, "morals and good customs;" [Ecuador] Guayaquil, Ordinance Regulating the Urban Renewal Zone, Article 4(4), "public order" and "good customs;" [Guatemala] Criminal Code, Article 489, "good customs;" [Honduras] Policing and Social Coexistence Act, Article 100, "suspicious conduct;" [Mexico] Criminal Code of the State of Jalisco, Article 135, "acts against public morals," "obscene displays," and others.

⁴⁹³ IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, paras. 86.

⁴⁹⁴ Human Rights Committee, Concluding observations on the third, fourth and fifth periodic reports of El Salvador, CCPR/CO/78/SLV, August 22, 2003, para. 16.

⁴⁹⁵ Committee against Torture, Concluding observations: Costa Rica, CAT/C/CRI/CO/2, July 7, 2008, para. 11.

"social coexistence" and "morality."⁴⁹⁶ In other States, drug laws or laws against "resisting authority" are used similarly.⁴⁹⁷

2. Workplace Discrimination and Harassment

266. Trans and gender-diverse persons who are able to join the labor market face high rates of discrimination and workplace harassment.⁴⁹⁸ The ILO has recognized that trans persons are the ones facing the most severe forms of discrimination at work.⁴⁹⁹
267. Such aggression can include anything from pejorative comments to serious workplace harassment and firing for being trans or gender-diverse. In many contexts, it is common to allow pejorative comments that humiliate people based on their gender-diverse identities. Such comments are often described as tongue-in-cheek, jokes, or part of "having some fun" and are dismissed or normalized by superiors, colleagues, and even by those targeted by them.⁵⁰⁰ This harassment is often seen as "low intensity" or an "innocent joke," with no bad intentions.⁵⁰¹ Legitimizing and normalizing these types of comments perpetuates an environment of hostility toward trans and gender-diverse persons, impacting their emotional health and leading to permanent anxiety and discomfort. Trans persons often must struggle with themselves over whether to keep the job or demand respect for their identities or gender expressions. Additionally, when the harassment does not stop, victims are absent more often from work, and they may eventually end up leaving the job.⁵⁰² Other examples of mistreatment frequently described by trans or gender-diverse persons include being forced to hide or deny their gender identities,⁵⁰³ using

⁴⁹⁶ Carsten Balzer and Jan Simon Hutta, *Transrespect Versus Transphobia Worldwide: a comparative review of the human-rights situation of Gender-variant/Trans people* (Berlin: TGEU, 2012), pg. 52.

⁴⁹⁷ Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 58; United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina, A/HRC/35/30/Add.3, April 12, 2017, para. 37; Akahatá (*et al.*), *Situación de los derechos humanos de las personas travestis y trans en la Argentina* (2016), 5; REDTRASEX, *Trabajo sexual institucional y violencia* (2016), 4.

⁴⁹⁸ Commission on Human Rights of the Federal District *et al.*, *Derechos laborales de las personas LGBTI* (2017), 8; IACHR, Public Hearing: *Human rights situation of young people in Guyana*, 161st Period of Sessions, March 22, 2017.

⁴⁹⁹ ILO, *Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project* (2016), 2.

⁵⁰⁰ REDLACTRANS, *Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe* (2014), pg. 40. See examples in: ILO, UNAIDS, and UNDP, *Promoção dos Direitos Humanos de pessoas LGBT no Mundo do Trabalho: Construindo a igualdade de oportunidades no mundo do trabalho: combatendo a homo-lesbo-transfobia* (Brasília: OIT/UNAIDS/PNUD, 2015), 25.

⁵⁰¹ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 72.

⁵⁰² International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 30.

⁵⁰³ UNDP, *Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador* (2015), 29.

a bathroom that does not correspond with their gender identity;⁵⁰⁴ being forced to wear uniform corresponding to a gender with which they do not identify;⁵⁰⁵ or superiors or colleagues sharing information on their gender identities without permission.⁵⁰⁶

268. According to data collected in the United States by civil society in 2015, 80% of trans and gender-diverse persons with jobs stated they had experienced some type of discrimination in the workplace or had had to take some action to prevent these discriminatory actions.⁵⁰⁷ A study carried out by the ILO in Costa Rica found that 100% of the trans persons surveyed said they had suffered from some type of workplace discrimination.⁵⁰⁸ In Ecuador, a study found that 67.4% of trans persons with jobs had experienced discrimination, exclusion, or violence in the workplace.⁵⁰⁹
269. The IACHR has received information on cases in which trans women have been dismissed for "being a bad look" or have been explicitly asked to "not move forward" with their transition processes.⁵¹⁰ In general, the moment of the transition is identified as the point after which the harassment and abuse can increase considerably. In fact, for many trans persons, having the opportunity to pursue formal employment depends largely on when they transition.⁵¹¹ Discrimination can occasionally be so strong that some people opt to postpone their transition in order to keep their jobs.⁵¹² Additionally, the fact of having been able to obtain a job in such a difficult context means that individuals are willing to tolerate a significant amount of hostility or onerous conditions in order to keep the job and earn an income.
270. The Commission also learned of cases of trans persons who suffered harassment as public employees, responsibility for which can be directly attributed to the State.⁵¹³ For example, in Costa Rica, a trans woman working for the Ministry of Public Works

⁵⁰⁴ REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41. National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016), 155.

⁵⁰⁵ IACHR, Public hearing: Human rights situation of trans persons in Chile, 162nd Period of Sessions, May 24, 2017.

⁵⁰⁶ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016), 155.

⁵⁰⁷ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016), 155.

⁵⁰⁸ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 26.

⁵⁰⁹ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 85.

⁵¹⁰ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2016), 30.

⁵¹¹ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 54.

⁵¹² International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 42.

⁵¹³ Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 139.

and Transportation was subjected to violence and verbal and physical harassment at the hands of her colleagues after having begun to transition. When the institution failed to react, the attacks increased, allowing the general harassment to proliferate, eventually leading her to leave her job.⁵¹⁴

3. Options for Survival

271. Faced with the difficulty of securing a job, trans and gender-diverse persons have developed a variety of survival strategies to sustain themselves. The following sections look at the main activities trans and gender-diverse persons pursue to earn income in the contexts of exclusion in which they must operate.

a. Self-employment and Trades

272. Self-employment tends to be one of the alternatives that trans and gender-diverse persons with some knowledge or skills in a trade find. Even so, it is often difficult to fight stereotypes and the sexist division of labor, which tends to narrow the possibilities—especially for trans women—to certain work that society has historically distributed based on gender.⁵¹⁵ Thus, activities related to sewing, beauty work, makeup, or hairdressing, are areas where trans women have tended to meet with some level of acceptance. Although these types of occupations can provide support and the means to meet needs, they frequently end up being normalized as trades that are “inherent” to trans women, and therefore, the only ones available to them.⁵¹⁶

b. Trans Labor Networks and Cooperatives

273. The IACHR has received information on several initiatives carried out by organizations of trans persons that, in response to the lack of job opportunities, organized labor or cooperative networks.⁵¹⁷ These collectives tend to arise from contexts in which groups of trans persons have been able to establish a strong degree of cohesion and organization. The basic aim of these types of projects tends to be to provide an alternative to sex work as the sole form of support. The initiatives

⁵¹⁴ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2016), 17.

⁵¹⁵ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 82.

⁵¹⁶ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 85.

⁵¹⁷ Mauro Cabral and Johanna Hoffman, *“Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...”: trans latinoamericanas en situación de pobreza extrema* (OutRight Action International, 2009), pg. 8.

include community radio stations,⁵¹⁸ textile cooperatives,⁵¹⁹ theater companies,⁵²⁰ and hairdressers.⁵²¹

c. Sex Work

274. The Commission has received a large amount of information on the few job opportunities available to trans women, often forcing them to do sex work to support themselves.⁵²² Likewise, the stigma and prejudices faced by trans and gender-diverse persons has normalized sex work as inevitable and "as an inherent characteristic of trans women and not a result of historic marginalization and stigma."⁵²³ It is the Commission's understanding that the discrimination faced by trans women creates a cycle of poverty and exclusion that makes them vulnerable, thus compelling them to turn to sex work as a source of income.
275. The figures collected in surveys conducted mostly by civil society organizations are particularly concerning.⁵²⁴ For example, the IACHR has been informed that, on average in the region, 90% of trans women perform sex work.⁵²⁵ In Chile, 95% of the trans women surveyed perform sex work.⁵²⁶ The figure was the same in Colombia.⁵²⁷ In Paraguay, the survey found that 86% of trans women support themselves using sex work,⁵²⁸ and in El Salvador, the UNDP found the rate approach 85%.⁵²⁹ In Argentina, a recent survey revealed that sex work is still the main source

⁵¹⁸ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 92.

⁵¹⁹ El Teje, "La cooperativa Nadia Echazú: Corte y Confección de una Cooperativa", December 2008; International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 40.

⁵²⁰ Telam, "Una cooperativa trans apuesta al teatro como salida laboral y como canal de identidad," September 3, 2013.

⁵²¹ Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 39.

⁵²² IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, paras. 280, 372, and 373; *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 158.

⁵²³ REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41.

⁵²⁴ The IACHR is aware that the surveys and studies conducted by the different organizations and States did not systematically collect data in a way that is comparable and may have had different methodologies, geographic scopes, and sizes. Therefore, the results presented in this chapter are meant to be illustrative and not intended to provide a statistical measurement for comparing States.

⁵²⁵ REDLACTRANS, *Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe* (2014), pg. 20.

⁵²⁶ Ignacio Gabriel Ulises Borgogno, *La transfobia en américa latina y el caribe un estudio en el marco de REDLACTRANS* (2015), 44.

⁵²⁷ Carsten Balzer, Carla LaGata, and Jan Simon Hutta, *The social experiences of trans and gender-diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela* (TGEU, 2015), pg. 16.

⁵²⁸ Panambí Asociación de Travestis, Transexuales y Transgéneros, *Informe 2017: Situación de violencia hacia el colectivo trans* (Asunción: Panambí, 2018), 31.

⁵²⁹ UNDP, *Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador* (2015), 28.

of income for more than 70% of trans women.⁵³⁰ The only exception to these figures received by the IACHR is the information sent by the State of Ecuador from its survey on the living conditions of the LGBTI population. It found comparatively lower results, with 37.4% of the trans persons interviewed reporting they are or were involved in sex work.⁵³¹

276. Many of the conditions in which sex work is performed expose trans women to grave risk of becoming victims of exploitation and extreme violence at the hands of clients, security agents, or even those who live nearby when they do this work on the street.⁵³² For example, a 2017 study conducted in the province of Neuquén, Argentina, found that over the last five years, of those trans persons who perform sex work, 64% suffered physical and verbal attacks from clients, 33% experienced this from neighbors, 33% had contact with the police, and 18% were infected by some illness. Only 12% said they had not experienced any of these problems.⁵³³ Likewise, 97% of the trans persons surveyed in Venezuela reported having experienced harassment from the police, and 56% said this type of violence was constant.⁵³⁴ In some contexts, trans women who perform sex work are also the victims of organized crime and gangs, which extort them and require them to participate in violence against their will.⁵³⁵
277. The IACHR is aware of the existence of the vigorous debates surrounding the nature of sex work. The Commission has received information indicating that a significant portion of the trans women who do this kind of work do not wish to continue doing it. Surveys have found that in Venezuela, 86% of the trans women surveyed perform sex work, and that of that group, more than 90% said they "would leave sex work if

⁵³⁰ Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 45.

⁵³¹ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 85.

⁵³² Carsten Balzer and Jan Simon Hutta, *Transrespect Versus Transphobia Worldwide: a comparative review of the human-rights situation of Gender-variant/Trans people* (Berlin: TGEU, 2012), pg. 46; Panambí Asociación de Travestis, Transexuales y Transgéneros, *Informe 2017: Situación de violencia hacia el colectivo trans* (Asunción: Panambí, 2018), 10 and 24; Instituto Runa, *Realidades Invisibles: Violencia contra Travestis, Transexuales y Transgéneros que Ejercen Comercio Sexual en la Ciudad de Lima* (Lima: Instituto Runa, 2007); Miluska del Carmen Luzquiños Tafur, *CEDOSTALC PERU 2017: Un informe, que demuestra que nos siguen vulnerando el derecho a la identidad* (2017), 11; LGBT Platform Suriname, *Human Rights Situation for LGBTI Persons and Sexual Rights in the Republic of Suriname: List of Issues submitted to the Working Group on the Suriname report* (2014), para. 12.

⁵³³ Undersecretary of Human Rights of the Province of Neuquén, *Personas trans y derechos económicos, sociales, culturales y ambientales en la Provincia de Neuquén* (2018), pg. 13.

⁵³⁴ Carsten Balzer, Carla LaGata, and Jan Simon Hutta, *The social experiences of trans and gender-diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela* (TGEU, 2015), pg. 19.

⁵³⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by CDHFMC (Mexico), pg. 12. The IACHR also underscores that the lack of protection for different types of work, including sex work, exposes trans persons to situations of enhanced vulnerability, such as the manipulation of their work by exploitative criminal agents and networks. The comparative case law of the European Union Court of Justice addresses the lack of protection from this type of exploitation: C-340/14 and C-341/14 *Trijber and Harmsen* [2015] EU:C:2015:641).

they had any other type of work that would enable them to live.”⁵³⁶ In Argentina, 87.2% of the trans women and *travestis* surveyed said they would leave prostitution if they had access to employment.⁵³⁷ It is worth noting that the persons interviewed frequently described sex work as something to which they are “condemned” or something they are “forced” to do, or they describe it as something that they have “fallen into.”⁵³⁸

278. The IACHR is concerned at information indicating that numerous trans and gender-diverse girls have been involved in prostitution, especially starting in their adolescence.⁵³⁹ The IACHR emphasizes that any involvement of an individual under the age of 18 in sex work cannot, from any perspective, be considered labor. Rather, it is a grave form of child sex exploitation.
279. Lastly, although it is impossible to generalize, some sources indicate that trans men do not turn to sex work as often and can find other ways to engage in labor, as long as their gender identities as trans are not noticed.⁵⁴⁰ For example, in Argentina, a study found that 85% of the trans men surveyed said they had a job—48.5% in the informal sector and 36.4% in the informal sector—and the other 15% were supported by family.⁵⁴¹

4. Exclusion from the Right to Social Security

280. One of the consequences of the exclusion from the labor force experienced by trans and gender-diverse persons is the inability to enjoy the benefits of social security. By supporting themselves through informal labor, they are kept out of the formal system of social benefits that tends to be available from formal employment.
281. The Yogyakarta Principles urge States to take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave,

⁵³⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 2.

⁵³⁷ Ministry of the Public Defender and Bachillerato Popular Trans ‘Mocha Celis,’ *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 61.

⁵³⁸ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador* (2017), pg. 88. International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 36.

⁵³⁹ IACHR, *Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas*, November 12, 2015, para. 280; Carsten Balzer, Carla LaGata, and Jan Simon Hutta, *The social experiences of trans and gender-diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela* (TGEU, 2015), pg. 17.

⁵⁴⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by “Hombres XX” (Mexico), pg. 11.

⁵⁴¹ Ministry of the Public Defender and Bachillerato Popular Trans ‘Mocha Celis,’ *La Revolución de las Mariposas. A diez años de La Gesta del Nombre Propio* (Ministry of the Public Defender, 2017), pg. 45.

unemployment benefits, health insurance or health care or benefits, other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death.⁵⁴² The human right of trans persons to social security will be looked at in more detail later in this report.

282. Regarding this, the IACHR also recalls that the bodies of the Inter-American system have recognized protection of the right to Social Security under both Article 26 of the ACHR⁵⁴³ and Article XVI of the American Declaration.⁵⁴⁴ The Commission has specifically indicated that States must ensure their legislation, policies, programs, and resources facilitate access to social security for all members of society. In this context, they must adopt specific measures on the application of social security plans, particularly plans intended to protect disadvantaged and marginalized individuals and groups, and adopt oversight measures to assess to what degree this right is exercised. The Commission has also indicated that the approach of State social security programs to health must be based on this right. Not only must their design and scope take into account the financial capacity and employment status of recipient populations, they must also consider specific health needs.⁵⁴⁵

C. Inclusion of Trans and Gender-Diverse Persons in the Workforce

283. OAS States face a significant challenge in guaranteeing the right to work to trans and gender-diverse persons and ensuring they are fully included in the labor market. The level of exclusion the majority of them face is so significant that in order to reverse it, strategies must be designed that include the implementation of measures of affirmative action in the short term.
284. It is the IACHR's view that in order to achieve this and effectively comply with general international obligations to guarantee rights and adopt domestic measures, States must address the issue with a series of complementary measures.—Among them, the Commission would emphasize the following: enact a workplace antidiscrimination regulatory framework; implement public policies aimed specifically at inserting trans persons into the labor market; adopt measures to involve the private sector and businesses in the strategy for including trans and gender-diverse persons in the labor market; promote the participation of unions in the area of addressing discrimination based on gender identity and expression; and

⁵⁴² *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 13(a).

⁵⁴³ Inter-American Court. *Case of Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, paras. 170 and following.

⁵⁴⁴ IACHR Report No. 50/16 Case 12,834, Merits (publication), *Undocumented Workers (United States)* November 30, 2016, paras 115 and following.

⁵⁴⁵ IACHR. Report 64/18. Case 12,738. Merits. *Opario Lemoth Morris et al. (Miskito divers)*. Honduras. May 8, 2018, paras. 266 and 268.

adopt positive measures to reverse the effects of decades of exclusion and marginalization.

285. Also, the IACHR welcomes the recommendation made by the Committee on Economic, Social, and Cultural Rights that laws and policies related to the right to just and favorable conditions of work must be formulated in consultation not only with traditional social partners such as workers and employers and their representative organizations, but also with direct beneficiaries who could be organized in collectives, such as those representing trans and gender-diverse persons.⁵⁴⁶

1. Antidiscrimination Labor Regulations

286. The Inter-American Court has found that the principle of nondiscrimination in the area of labor rights is especially relevant because the very nature of this branch of law is grounded in the protection of the worker as the more vulnerable party in the unequal relationship with the employer.⁵⁴⁷ Thus, States must ensure strict compliance with those labor regulations that best protect workers and do so without any discrimination. They must adopt all administrative, legislative, or judicial measures necessary to amend *de jure* discriminatory situations and eradicate discriminatory practices used by individual employers or groups of employers.⁵⁴⁸ Along these lines, the Committee on Economic, Social, Cultural, and Environmental Rights underscored that juridical equality with regard to labor rights must be guaranteed to all workers, without distinctions based on gender identity.⁵⁴⁹
287. In this framework, one basic measure for protecting trans and gender-diverse persons as regards their right to work is the enactment of laws explicitly prohibiting discrimination based on gender identity or expression. The scope of the law must include protecting those who already have jobs as well as those who are seeking employment, so as to protect from discriminatory treatment or decisions in the context of hiring processes. In this regard, the Yogyakarta Principles urge States to prohibit discrimination based on gender identity and expression in public and

⁵⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, para. 56.

⁵⁴⁷ Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 149.

⁵⁴⁸ Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 149.

⁵⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, para. 11.

private employment, including with regard to professional training, hiring, promotions, dismissals, working conditions, and remuneration.⁵⁵⁰

288. So far, only several States have moved forward in enacting antidiscrimination laws whose scope specifically focuses on labor discrimination. In Canada, the Canadian Human Right Act bans employment discrimination based on gender identity or expression.⁵⁵¹ In Chile, Law 20,940, on the modernization of labor relations, added gender identity to the Labor Code as a prohibited grounds for discrimination.⁵⁵² In the United States, although there is no federal labor law enacted by Congress that protects gender identity or expression, more than 20 states and jurisdictions have enacted local legislation providing such protection.⁵⁵³ Additionally, the IACHR highlights the decision of the Supreme Court of the United States in the consolidated cases known as *Bostock v. Clayton County*,⁵⁵⁴ in which it found that employers who fire a person for being gay or trans violate the ban on labor discrimination set forth in Title VII of the Civil Rights Act. The Commission takes note that the protection granted for the protected category of "sex" extends to the entire federal jurisdiction of the United States.
289. In other OAS States, general antidiscrimination laws have been enacted that specifically banned discrimination based on gender identity and that also apply to labor issues. In this regard, the Commission takes note of the experience of Ecuador, the only OAS State so far that has enshrined protection from discrimination based on gender identity in its Constitution.⁵⁵⁵ Countries that have enacted laws in this regard include Bolivia,⁵⁵⁶ Colombia,⁵⁵⁷ Honduras,⁵⁵⁸ and Uruguay.⁵⁵⁹ Lastly, some antidiscrimination laws explicitly include gender identity but are more narrow in scope. For example, in El Salvador⁵⁶⁰ and Costa Rica,⁵⁶¹ the ban only covers people who work in public administration.
290. It is the Commission's view that enacting these types of antidiscrimination laws must be a priority for OAS Member States. The lack of a protective legal framework enhances the vulnerability faced by trans and gender-diverse persons and, with regard to their access to the right to work, allows for their arbitrary exclusion from

⁵⁵⁰ *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles*, March 2007, Principle 12(a).

⁵⁵¹ *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, Articles 2 and 3(1).

⁵⁵² *Law 20,940*, "Modernizing the labor relations system," and acted on August 29, 2016, Article 1(1).

⁵⁵³ For a full list of the states that provide protection, see: Movement Advancement Project (MAP), *State Employment Non-Discrimination Laws* (2018). Also, with regard to Puerto Rico, see Law 22-2013 (Senate Bill 238); 2013.

⁵⁵⁴ Supreme Court of the United States, *Bostock v. Clayton County*, Georgia, judgment of June 15, 2020.

⁵⁵⁵ Constitution of Ecuador, Article 11(2).

⁵⁵⁶ Criminal Code of Bolivia, Article 281; Youth Act (2013), Article 6(7)

⁵⁵⁷ Criminal Code, Article 134(A) (added by Law 1482 of November 30, 2011).

⁵⁵⁸ Article 321 of the Criminal Code (amended by Decree 23 of 2013).

⁵⁵⁹ Law 17,817 (Struggle against Racism, Xenophobia, and Discrimination), Article 2 (includes "sexual identity" among grounds for discrimination that are prohibited).

⁵⁶⁰ Decree No. 56 (2010), *Official Newspaper*, Volume 387, Article 1.

⁵⁶¹ Decree No. 38,999: Policy of the executive branch to eradicate discrimination against the sexually-diverse population from its institutions. *Gazette* 93, May 15, 2015.

hiring processes, for discrimination against them, for harassment and mistreatment as they do their work; or for their arbitrary dismissals for the simple fact of being trans or gender-diverse. Without a law that explicitly includes gender identity and expression as prohibited grounds for discrimination, victims are unprotected and at a disadvantage when asserting their rights. In this context, the IACHR views it as essential for OAS Member States to move forward with the ratification of the Inter-American Convention against all Forms of Discrimination and Intolerance.

2. Public Policies on Entry to the Labor Market

291. The Commission underscores the importance of the leadership role played by the Executive Branch in sending a clear message that the inclusion of trans persons in the workforce is a priority. There are many and varied initiatives that can be advanced from the Executive Branch.
292. Regarding progress made by States in this area, the IACHR highlights that the United States' Office of Personnel Management⁵⁶² has issued "Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace."⁵⁶³ It addresses critical legal questions around trans and gender-diverse persons, such as confidentiality regarding their transition processes, the protection of medical information, the elimination of dress codes that establish requirements based on the gender of the person, unconditional respect for self-perceived identity, the obligation to speak and refer to everyone in accordance with their gender identities regardless of whether their documentation has been formally changed, and access to bathrooms based on self-identification, among other things.
293. In Argentina, the Ministry of Labor, Employment, and Social Security established the Secretariat of Labor, Gender Advisory Services, and Sexual Diversity with the aim of moving towards crosscutting labor policies, programs, and affirmative actions aimed at incorporating individuals who are the victims of discrimination, violence, and/or exclusion based on their genders and/or sexual orientations. Additionally, the Ministry of Labor, Employment, and Social Security worked with UNDP to issue the *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros* [Action guide for the socio-labor inclusion of *travestis*, transsexuals, and trans persons].⁵⁶⁴ The document includes specific recommendations, with a series of good practices on designing and implementing actions to improve the employability and socio-labor inclusion of trans persons.
294. With regard to the high rates of prejudice that currently exist against trans and gender-diverse persons, the IACHR emphasizes that programs to help insert trans

⁵⁶² The United States' Office of Personnel Management (OPM) is an independent agency of the United States federal government that administers human resources for the civil service side of the federal government.

⁵⁶³ Office of Personnel Management, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* (2011).

⁵⁶⁴ Ministry of Labor, Employment, and Social Security – Violeta Alegre, *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros: Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina* (Buenos Aires: UNDP, 2017).

persons into the labor market must necessarily be accompanied by ongoing training processes for the people in charge of their implementation and for those with whom the beneficiaries are supposed to work. Additionally, the programs must include monitoring to provide close support to beneficiaries during the incorporation process and address any problems that may arise as implementation moves forward.

295. During a hearing held in 2013, the representation of the State of El Salvador informed the IACHR that trans women were being hired at different sites of the “Ciudad Mujer” program with proper recognition of their gender identities, facilitating access to a formal job and the support needed.⁵⁶⁵ However, years later, the Commission received information indicating that the trans women hired had been harassed—even with death threats—by the program heads, and so many of them had needed to quit.⁵⁶⁶ In the words of the ILO, “a workplace that has not been prepared ahead of time for the inclusion of trans women can lead to their expulsion, adding to the many that have been historically expelled.”⁵⁶⁷
296. The IACHR reiterates that, from a human rights approach, the principle of participation in the public policy cycle is particularly relevant when pursuing the inclusion of trans and gender-diverse person in the labor market. The planning, implementation, monitoring, and evaluation of these policies will not be successful without provisions for the specific needs and modalities under which these beneficiaries could take advantage of them.

a. Coordination with Companies and the Private Sector

297. The relationship between human rights and the business world was placed on the world policy agenda in 1990, heightening global social awareness as to the impact that businesses have on human rights.⁵⁶⁸ Years later, in 2005, in the framework of the United Nations, the mandate was established for the General Secretary’s Special Representative on human rights and transnational and other commercial enterprises, the main result of which was the “UN Guiding Principles on Business and Human Rights,” formally adopted by the Human Rights Council in its resolution 17/4 of 2011.⁵⁶⁹ Although the principle of State responsibility is the same, this instrument establishes categorically that businesses must respect human rights, which means that “they should avoid infringing on the human rights of others and

⁵⁶⁵ IACHR, [Public hearing: Allegations of violence against trans persons in El Salvador](#), 149th Period of Sessions, October 30, 2013 (see minute 33:12). Available at:

⁵⁶⁶ REDLACTRANS, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* (2016), 29.

⁵⁶⁷ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 37.

⁵⁶⁸ Human Rights Council, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.” A/HRC/17/31. March 21, 2011, para. 1.

⁵⁶⁹ Human Rights Council, [Resolution 17/4. Human rights and transnational corporations and other business enterprises](#), A/HRC/RES/17/4, July 6, 2011.

should address adverse human rights impacts with which they are involved.”⁵⁷⁰ It is noteworthy that, among their first paragraphs, the Principles refer to the principle of nondiscrimination and even to its crosscutting application, indicating that businesses should pay “particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.”⁵⁷¹

298. Complementary to this, in 2017, the United Nations High Commissioner on Human Rights developed the “Standards of Conduct for Tackling Discrimination against LGBTI people.”⁵⁷² The guidelines of this particular document are based on the “Guiding Principles on Business and Human Rights” and set forth a series of minimum standards that businesses must meet in order to respect and promote diversity. The elimination of all forms of discrimination in business, including discrimination based on gender identity or expression, is included among the priorities that businesses must set.⁵⁷³ Specific recommendations are also included on implementing policies within businesses to help prevent and eradicate all forms of harassment and raise awareness on diversity. The instrument also points to a series of economic reasons to help explain the benefits of adopting these types of business policies, including reduction of the macroeconomic costs resulting from discrimination in businesses, as well as the cost to businesses themselves from the loss of talent, missed days of work, and decline in motivation when diversity is not valued.⁵⁷⁴
299. The Principles and Standards of Conduct do not aim to establish new obligations, but rather to maintain the central role of State responsibility for human rights. They therefore offer guidelines on how the State can play an active promotional role with the private sector while at the same time guaranteeing human rights, ensuring that laws are followed and expeditiously processing all allegations of rights violations.
300. For its part, in 2019, the Commission approved the report “Business and Human Rights: Inter-American Standards,” prepared by its REDESCA. The report serves to analytically document pronouncements from within the inter-American system on the subject and provide a systematic and developmental analysis that seeks to clarify, organize, and develop State duties and their impacts on business compliance based on the inter-American juridical experience. Regarding trans and gender-diverse persons, it presents information including certain challenges and risks they face in the framework of business activities, recognizing that the workplace is an area where LGBTI persons tend to be the victims of discrimination. It urges States

⁵⁷⁰ Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Annex), A/HRC/17/31*, March 21, 2011, Principle 11.

⁵⁷¹ Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Annex), A/HRC/17/31*, March 21, 2011, General Principles.

⁵⁷² United Nations Office of the High Commissioner for Human Rights, *Tackling Discrimination against Lesbian, Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses*, (New York: OHCHR, 2017).

⁵⁷³ United Nations Office of the High Commissioner for Human Rights, *Tackling Discrimination against Lesbian, Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses*, (New York: OHCHR, 2017), 9.

⁵⁷⁴ United Nations Office of the High Commissioner for Human Rights, *Tackling Discrimination against Lesbian, Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses*, (New York: OHCHR, 2017), 19.

to enhance their efforts toward guaranteeing that companies, as key actors in the labor market, fulfill their responsibilities with regard to the human rights of these individuals. Likewise, it recommends that States adopt special measures of protection for vulnerable groups—such as trans persons—in the area of business and human rights.⁵⁷⁵

301. As an example of progress reported to the IACHR on this issue, the Secretariat of Human Rights of Argentina coordinates a project called Businesses, Organizations, and Unions Committed to the Human Rights of the LGBTIQ Population as part of the National State Program on Businesses and Unions: Human Rights Policies to Protect, Respect, and Remediate. According to the State, one of the central objectives of this project is to promote the inclusion of trans persons in the businesses sector labor market, as well as in that of public, private, and mixed organizations. As part of this work, support is being provided to an initiative of a group of businesses called "Opening Doors," in the form of technical support and forwarding curriculum vitae. Implementation of this program began in 2017 with the hiring of four trans persons by these businesses.⁵⁷⁶
302. There are also initiatives within the private sector that can make significant contributions to promoting the human rights of trans and gender-diverse persons. In Brazil, the Businesses for LGBT Rights Forum was established as an informal organization built around large enterprises—many of them multinationals—and their commitment to respect and promote the human rights of LGBT persons. It also serves as a space to discuss and exchange good practices for creating a working environment that is free from discrimination. The Forum was established in 2013 and promotes the 10 Business Commitments to the Promotion of LGBT Rights.⁵⁷⁷ Similarly, in Costa Rica, several private enterprises decided in 2014 to form the LGBTI Business Group, with the aim of providing a "space for discussion, reflection, and exchange of experiences to create tools enabling companies to identify themselves as workplaces that are free from discrimination and stigma."⁵⁷⁸ In Mexico, the Mexican Federation of LGBT Business Owners is a not-for-profit body made up of business owners, entrepreneurs, and professionals who identify as part of the LGBT community.
303. Although the Commission understands that States are the ones with the duty to comply with international obligations by incorporating into their legal frameworks and public policies protective actions that benefit trans and gender-diverse persons, it has also indicated more generally that these obligations apply to businesses and

⁵⁷⁵ IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019. See, *inter alia*, paras. 384 and 413.22.

⁵⁷⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 35.

⁵⁷⁷ Laís Abramo, *Uma década de promoção do trabalho decente no Brasil: uma estratégia de ação baseada no diálogo social* (Brasília: OIT, 2015), 111.

⁵⁷⁸ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 65.

entail legal responsibilities in terms of avoiding provoking or contributing to provoking human rights violations through their operations. They have a duty to operate with due diligence in this area and be held accountable for the results of their actions.⁵⁷⁹ Along with this, States are the ones with the responsibility to ensure that enterprises—whether public or private—acting within their jurisdictions, including transnational activities, operate within the bounds of the international legal frameworks and guarantees to which States⁵⁸⁰ have committed by enabling trans and gender-diverse persons to realize their right to work under just and equitable conditions. Complementary to this obligation, States must also coordinate in promoting, raising awareness, and changing culture to contribute to breaking the circle of workplace exclusion through public-private partnerships.

b. Coordination with Unions

304. Unions can play a key role in efforts to achieve full labor market inclusion for trans persons. This requires fully raising awareness on the need to value diversity and defend the labor rights of trans and gender-diverse persons among those who lead and are members of unions and worker associations in general. Their interventions with management and the State can serve as a vitally important tool in producing dignified working conditions, preventing the legitimization of discrimination in the workplace, improving working conditions, and defending the rights of trans and gender-diverse persons.
305. The Commission also recalls that, in July 2019, it activated the Inter-American Court’s advisory mechanism when it presented a request for an advisory opinion, prepared jointly with its REDESCA.⁵⁸¹ The request is related to the scope of State obligations with regard to guaranteeing the freedom to join labor unions, its relationship with other rights, and its application from a gender perspective. Among its central points, the request seeks to clarify the expansion of the principle of equal protection and nondiscrimination with regard to women in the area of unions and the workplace. The Inter-American Court’s considerations in this regard will also be fundamental and guiding to the exercise of the freedom to join unions of trans and gender-diverse persons.
306. For example, the Commission notes that in Argentina, the Ministry of Labor, the National Institute against Discrimination, Xenophobia, and Racism (INADI), and more than 80 labor unions comprised the group *Intersindical por la Diversidad Sexual*, which aims to promote diversity in collective bargaining and add clauses prohibiting discrimination based on sexual orientation and gender identity to collective bargaining agreements.⁵⁸² The INADI also published an informational

⁵⁷⁹ IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA), para. 196.

⁵⁸⁰ IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019, para. 174.

⁵⁸¹ IACHR. [Request to the Inter-American Court of Human Rights for Advisory Opinion](#), July 31, 2019.

⁵⁸² Ministry of Labor, Employment, and Social Security, *Empleo y Diversidad Sexual: Un material para la formación sindical* (2015), 5.

guide on sexual diversity for unions, with a specific section on labor inclusion for the trans population.⁵⁸³

307. The ILO has reported that in El Salvador, the Coordinator of the Social and Union Unit added the issue of sexual diversity to their agenda. Also, the Federation of Independent Associations and Unions of El Salvador published a study entitled *Desafiando el heterosexismo en el mundo del trabajo y sindical* [challenging heterosexism in labor and labor unions] in May 2016.⁵⁸⁴ In Canada, several unions work to defend the labor rights of LGBT persons, taking action before courts and in communities, and by using inclusive language in collective bargaining agreements to promote equality and protect workers from discrimination.⁵⁸⁵
308. Additionally, the Commission highlights that the coordination of the work of unions with civil society organizations is key for moving forward toward the inclusion of the labor needs of trans and gender-diverse persons. Regarding this, the IACHR has been informed of a number of agreements signed between unions and LGBT organizations in Argentina to build spaces within labor that are inclusive of sexual diversity.⁵⁸⁶
309. The Commission urges States to establish sponsorship measures to help trans and gender-diverse persons to take part in unions and other spaces of political participation in order to guarantee the effectiveness of legislation, policies, and programs intended to improve their working conditions, as well as to guarantee the full enjoyment and exercise of their human rights toward the realization of their life projects.

c. Measures of Affirmative Action

310. The IACHR has noted the importance of the existence of measures of affirmative action, such as reserving jobs for trans persons, and has stated that:

These types of measures seek to encourage trans persons' access to public areas and to further the exercise of their economic and social rights. These measures contribute not only to reduce the levels of poverty faced by trans persons, but also to reduce homicides and police violence as a result of reducing the number of trans persons

⁵⁸³ National Institute against Discrimination, Xenophobia, and Racism (INADI), *Diversidad sexual en el ámbito del trabajo Guía informativa para sindicatos* (2016).

⁵⁸⁴ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica* (2016), pg. 68.

⁵⁸⁵ Jane Pillinger, *Violencia y acoso contra las mujeres y los hombres en el mundo del trabajo perspectivas y acción sindical* (Geneva: ILO, 2017), 18.

⁵⁸⁶ International Labour Organization (ILO), *ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2016), pg. 45.

working in criminalized informal economies, and bringing down stereotypes and prejudice related to gender identity.⁵⁸⁷

311. In Uruguay, the Youth Employment Act requires State agencies and nonstate public persons to set aside 2% of positions for young trans persons.⁵⁸⁸ Additionally, the Ministry of Social Development has opened some hiring processes exclusively to trans persons with the objective of supporting their inclusion in society and the workforce and for the symbolic effects it will have on society as a whole.⁵⁸⁹ In 2013, Uruguay also established a 2% trans persons quota in the framework of the Uruguay Works Program, a social program to temporarily employ individuals who had been unemployed for several years with the aim of improving their trade skills and abilities, their educations, and their access to basic computing tools.⁵⁹⁰ Also, since 2012, Uruguay has implemented a cash transfer program that provides trans persons with universal access to the Uruguay Social Card, which can be used to purchase food and cleaning products.⁵⁹¹ Finally, the Commission emphasizes the important step forward with the passage of the Comprehensive Trans Persons Act, which aims to provide comprehensive protection to a variety of human rights for trans persons.⁵⁹² The law establishes that 1% of all hiring processes conducted by the State must be reserved exclusively for trans persons.⁵⁹³
312. In Argentina, one of the main initiatives to reserve jobs for *travesti* and trans persons was enacted in the Province of Buenos Aires in September 2015⁵⁹⁴ with the Diana Sacayán Provincial Act.⁵⁹⁵ However, multiple sources have informed the IACHR regarding the law's lack of implementation, as its regulations have never been established.⁵⁹⁶ According to the information received, other districts in the country

⁵⁸⁷ IACHR, [Press Release 122/15](#): "IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons," October 30, 2015.

⁵⁸⁸ Law 19,133, Article 23 (October 16, 2013).

⁵⁸⁹ Ministry of Social Development (Uruguay), *Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014)* (2014), 123.

⁵⁹⁰ Ministry of Social Development (Uruguay), *Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014)* (2014), 139.

⁵⁹¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Uruguayan State, pg. 8. Also see: Ministry of Social Development (Uruguay), *Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014)* (2014), 133.

⁵⁹² IACHR, [Press Release 275/18](#): "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region, December 21, 2018.

⁵⁹³ Ministry of Social Development (Uruguay), *Transform 2017; Comprehensive Trans Persons Act: Toward new horizons* (2017), 4.

⁵⁹⁴ [Law 14,783](#) of the Province of Buenos Aires.

⁵⁹⁵ The law was named after *travesti* leader Amancay Diana Sacayán, who led the civil society push for the law and was the victim of a *travesticide* in 2015.

⁵⁹⁶ IACHR, [Public hearing: Human rights situation of the trans population in Argentina](#), 167th Period of Sessions, March 2, 2018; Office of the Ombudsperson of Buenos Aires, *Derecho al trabajo de las personas trans y travestis en la Provincia de Buenos Aires: Obstáculos para la implementación de la ley de cupo laboral* (2018); Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT), Asociación

have also move forward with similar measures, although with different levels of implementation because many districts depend on implementation at the level of the Province of Buenos Aires.⁵⁹⁷ Quotas and job placement programs for trans persons have also been opened in autonomous State bodies, such as universities⁵⁹⁸ and the Office of the Ombudsperson.⁵⁹⁹

de Travestis, Transexuales y Transgéneros de Argentina (ATTTA), and Defensoría LGBT, pg. 6. Agencia Presentes, “[MAPA: Así está el cupo laboral trans en Argentina](#),” May 25, 2018.

⁵⁹⁷ These districts include cities and neighborhoods in the provinces of Buenos Aires, Chaco, Córdoba, Corrientes, La Pampa, Mendoza, Río Negro, San Luisa, Santa Fe, Tierra del Fuego, and Tucumán. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 3.

⁵⁹⁸ La Capital de Mar del Plata, “[La Universidad Nacional sumó las primeras ingresantes por cupo laboral trans](#),” December 12, 2017.

⁵⁹⁹ Office of the Ombudsperson, Resolution 164/16 (2016). The resolution sets aside a minimum of 2% of the staff positions for trans persons, *travestis*, transsexuals, transgender persons, and intersex persons who meet the requirements for the position. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by la Office of the Ombudsperson (Argentina), pg. 15.

CHAPTER 5
RIGHT TO HEALTH

RIGHT TO HEALTH

A. *The Human Right to Health*

313. The right to health is enshrined in a considerable number of human rights instruments, both in the universal system and regionally.⁶⁰⁰ In the inter-American system, the American Declaration establishes in its Article XI that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care,” thus explicitly enshrining the right and articulating a broad concept of health.⁶⁰¹ At the same time, Article 10 of the Protocol of San Salvador confirms this by proclaiming that “[e]veryone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being” and classifying it as a “public good.” It also establishes a State commitment to guarantee “primary health care,” “extension of the benefits of health services to all individuals subject to the State’s jurisdiction,” “universal immunization against the principal infectious diseases,” “Prevention and treatment of endemic, occupational and other diseases,” “education of the population on the prevention and treatment of health problems,” and “satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”⁶⁰²
314. For its part, the Inter-American Convention against All Forms of Discrimination and Intolerance stipulates in its Article 7 that States commit to adopting legislation that defines and prohibits discrimination in—among other areas—health and sets forth in its Article 1(1) that discrimination may be based on gender identity and expression. For its part, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem Do Para) recognizes in its Article 5 that the State must protect the economic, social, cultural, and environmental rights of all women and ensure they are able to exercise them freely and fully. It also states explicitly that violence against women can take

⁶⁰⁰ Regarding the universal system, see: Universal Declaration of Human Rights (1948), Article 25(1); International Covenant on Economic, Social and Cultural Rights (1966), Article 12; International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5(e); Convention on the Elimination of All Forms of Discrimination Against Women (1979), Article 12(1); Convention on the Rights of the Child (1989), Article 24(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 28; Convention on the Rights of Persons with Disabilities (2006), Article 25; Vienna Declaration and Programme of Action (1993), section II.41; in the European system: European Social Charter (1961), Article 11; in the African system: African Charter on Human and Peoples’ Rights (1981, entry into force 1986), Article 16. Along with these treaties and declarations, there have been numerous resolutions and decisions, some of which will be addressed in this chapter due to their relevance in the inter-American system.

⁶⁰¹ American Declaration of the Rights and Duties of Man, Article XI.

⁶⁰² Protocol of San Salvador, Article 10.

place in health facilities (Article 3). Other regional legal instruments likewise enshrine the right to health, reflecting the new national and international developments in this area. They include the Social Charter of the Americas⁶⁰³ and the Inter-American Convention on Protecting the Human Rights of Older Persons.⁶⁰⁴

315. The American Convention does not have a specific provision in this regard. However, as the Inter-American Court has held in its recent judgments on the issue, a literal, systematic, and teleological interpretation of the treaty, based also on other complementary approaches, allows for the conclusion that the right to health, to which the aforementioned body of international law gives content and scope, is protected under Article 26 of the Convention.⁶⁰⁵ To start with, this means the general obligations to respect and guarantee set forth in Articles 1(1) and 2⁶⁰⁶ apply, as do the principles of non-regression, progressiveness, and equal protection and nondiscrimination.⁶⁰⁷
316. In its Resolution 1/2020, the Commission noted that health is a public good that must be protected by all States and that the human right to health is an inclusive right related to the enjoyment of other rights, whose basic and social determinants include the series of factors on which its exercise and enjoyment depend.⁶⁰⁸ In its resolution, the IACHR recommended that States adopt immediate and conscientious

⁶⁰³ [Social Charter of the Americas](#), approved in the second plenary session held on June 4, 2012, Article 17.

⁶⁰⁴ [Inter-American Convention on Protecting the Human Rights of Older Persons](#), adopted on June 15, 2015, Article 19.

⁶⁰⁵ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 75-99; Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 100-103 and 106-110.

⁶⁰⁶ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 73, 83-85, 96, 97, and 100; Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 100; Case of San Miguel Sosa *et al.* Venezuela. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348, para. 220; Case of Dismissed Employees of Petroperú *et al.* v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2017. Series C No. 344, para. 192; Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 142; Case of Acevedo Buendía *et al.* (“Discharged and Retired Employees of the Comptroller”) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 100.

⁶⁰⁷ IACHR. Report 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute *et al.* (Peru), March 27, 2009, paras. 134-137, 139 and 140; Inter-American Court. Case of Acevedo Buendía *et al.* (“Discharged and Retired Employees of the Comptroller”) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, paras. 102 and 103; Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 104; Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 79-81. For a more comprehensive development of the implications of these principles for general State obligations and specifically with regard to the right to health, see the CESCR. *General Comment 3: “The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant),”* E/1991/23, December 14, 1990, and General Comment 14: “The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights”, E/C.12/2000/4, August 11, 2000, paras. 30-45, respectively.

⁶⁰⁸ IACHR, [Resolution 1/2020: Pandemic and Human Rights in the Americas](#), April 10, 2020.

reform measures to prevent violations of the right to health, personal integrity, and life.

317. In the inter-American system, the right to health is conceived as "not only the absence of afflictions and infirmities but also a complete state of physical, mental, and social well-being resulting from a lifestyle that enables people to achieve overall balance,"⁶⁰⁹ which was underscored in the above-cited Resolution 1/2020. It is likewise defined by its instrumental nature⁶¹⁰ and by four essential and interrelated elements that States must guarantee in the provision of medical services—whether public or private—in view of their duties to regulate, supervise, and oversee them continuously.⁶¹¹
318. *Availability* means these medical services must be available in sufficient quantity and include the underlying determinants of health. *Accessibility* means that these services must be accessible to everyone—especially the most vulnerable or marginalized sections of the population—both physically and economically and without *de jure* or *de facto* discrimination. It includes the right to request, receive, and disseminate information and ideas on issues related to health.
319. *Acceptability* means services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, and designed to respect confidentiality and improve the health status of persons. Lastly, services must be good *quality*, meaning scientifically and medically appropriate. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.⁶¹²

⁶⁰⁹ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 105; Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 118; CESCR. *General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights"*, E/C.12/2000/4, August 11, 2000, paras. 1 and 4.

⁶¹⁰ CESCR. *General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights"*, E/C.12/2000/4, August 11, 2000, para. 1; Inter-American Court. *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17 of August 20, 2002*. Series A No. 17, para. 86; *Case of Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 118; *Case of Cuscul Pivaral et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 105.

⁶¹¹ Inter-American Court. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, paras. 89, 90, 96, 99, 141; *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, paras. 130, 134, and 135; *Case of Albán Cornejo et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, paras. 119 and 121; *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 171, 175, 177, 184; *Case of Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120, 121, 124, and 152; *Case of Cuscul Pivaral et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 106.

⁶¹² CESCR. *General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights"*, E/C.12/2000/4, August 11, 2000, para. 12; Inter-American Court. *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 173; *Case of Poblete Vilches et al. v. Chile*. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120, 122, and 123; *Case of Cuscul*

In general, the obligation to protect health translates into a State duty to guarantee access to services, goods, and medications that are essential for health and guarantee provision of good quality and effective medical care, while pushing to improve the population's health conditions.

320. The Commission and its REDESCA underscore that in order to comply with their international obligations in this area, not only must States guarantee the provision of health services without discrimination, but they also must supervise to guarantee the conditions allowing for a life with dignity and social equality with respect to the right to health. That is, the Commission highlights States' obligation to include the basic and social determinants for the effective realization of the right to health in their policies and legal frameworks, particularly with regard to vulnerable populations.
321. Among the central determinants is the guarantee of other rights to enable the enjoyment of a healthy life with access to adequate food and water, as well as healthy working conditions. The Commission notes that the right to health must be understood as a right in itself. However, it is crucial to take into account the social determinants with a direct impact on health, such as of the equitable distribution of resources; cultural, ethno-racial, and gender perspectives; the population's effective participation in health policies; the impact of harmful stereotypes and stigmatization on services; and the identification of power relationships, violence, legal, institutional, social, and domestic discrimination; and harmful community practices that impede the effective realization and exercise of this right.⁶¹³ In this context, for the IACHR, States must adopt measures to not only provide adequate medical goods and services themselves but also to provide the physical and psychosocial environments required for the enjoyment of the right to health, both physical and mental.
322. In this context, the Commission and its REDESCA observe that, as with other vulnerable populations that face historic discrimination, in many cases, existing threats and violations as regards the right to health of trans and gender-diverse persons also have to do with the State's failure to address basic social determinants of the right to health, as these persons tend to face obstacles to the enjoyment of this right not only as a result of a lack of access to adequate healthcare goods and services but also because multiple basic social determinants that play an interconnected role in their human rights are not taken into account. The following are some of the main challenges in this regard.

Pivara *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 106 and 107.

⁶¹³ In this regard, see the Committee on Economic, Social and Cultural Rights. General Comment 14, "The right to the highest attainable standard of health." E/C.12/2000/4, August 11, 2000, paras. 4, 11, 16, and 18; WHO, "Closing the gap in a generation: Health equity through action on the social determinants of health – Final report of the Commission on social determinants of health" (Geneva, 2008); UN. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/HRC/41/34, April 12, 2019.

B. Exclusion of Trans and Gender-Diverse Persons

323. The information received by the Commission indicates that the right to health is one of the ones most impacted by the systemic exclusion forced upon trans and gender-diverse persons in the region, something that has been made particularly clear in the context of the COVID-19 pandemic.
324. Based on the information received, the IACHR notes that trans and gender-diverse persons see their enjoyment of the right to health severely limited mainly as a result of the pathologization of their identities; the lack of recognition of their gender identities; and the high rates of violence and discrimination they experience when they seek medical care. These situations are connected with economic and social exclusion where they tend to occur, exposing trans and gender-diverse persons to greater risk of contracting HIV when they are forced to perform sex work to support themselves and when they seek body modification without the necessary medical supervision, endangering their health and even their lives.⁶¹⁴ The stigma and social stereotypes surrounding trans persons means they are often mistakenly associated only with certain health needs, generally services related to sexually transmitted infections (STIs) or transition processes.⁶¹⁵
325. The fact of having to live in contexts harboring violence, discrimination, and rejection of their identities and forms of expression means trans and gender-diverse persons often have prematurely poor physical and mental health, contributing to their short life expectancy in the region.⁶¹⁶

1. Pathologizing Diverse Gender Identities and Expressions

326. Pathologizing has been defined as a psycho-medical, legal, and cultural practice of identifying a trait, an individual, or a population as "intrinsically disordered."⁶¹⁷ Pursuant to this understanding, diverse gender identities and expressions are conceived and conceptualized as the result of a mental disorder or illness.⁶¹⁸ Thus, trans and gender-diverse persons have been identified as inherently pathological

⁶¹⁴ Human Right Division – National Office on Socio-cultural Promotion; Evaluation Division – National Office on Evaluation and Monitoring; and Ministry of Social Development of Uruguay, *Transform 2016: Revealing realities: Preliminary results of the first census of trans persons* (2016), pg. 12.

⁶¹⁵ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 37; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

⁶¹⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 20.

⁶¹⁷ Sheherezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017), 4.

⁶¹⁸ IACHR, [Press Release 64/16](#): "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

based only on the way in which they express their gender.⁶¹⁹ This impacts not only the health of trans and gender-diverse persons but also their human rights. Effectively, pathologization is a broad basis for discrimination and violence against trans and gender-diverse persons.⁶²⁰

327. In 2018, the World Health Organization took an important step toward depathologizing trans and gender-diverse person when it adopted the latest revision of its International Classification of Diseases (ICD-11).⁶²¹ Therein, the WHO eliminated categories related to trans identities from the chapter on mental disorders and created a new chapter on “conditions related to sexual health.”⁶²² This new edition is based on the need to include certain situations that can indeed have health implications, although not under a paradigm that is pathologizing. In this way, the WHO established that the fact of being trans or expressing a diverse gender does not constitute a mental illness. The IACHR welcomed the adoption of the new ICD revision, emphasizing that “the right to personal identity is a grounding element of human character and failing to recognize it directly impacts on trans persons’ comprehensive enjoyment of their human rights.”⁶²³ The IACHR had noted prior to the adoption of ICD-11 that pathologizing and stigmatizing medical classifications have been used to justify subjecting trans persons to forced or coercive sterilization, hormone therapy, surgeries, and psychiatric evaluations, and in other ways abusively conditioning their human rights and recognition of their gender identities.⁶²⁴
328. The IACHR has been informed that the pathologization of trans and gender-diverse persons in the provision of health services continues to be one of trans persons’ greatest obstacles to accessing medical care. Although some States have moved forward with specific measures to eradicating the pathologizing paradigm, the change is not yet reflected in the attitudes of healthcare staff and the way that they attend to trans patients.⁶²⁵
329. Regarding the legal processes for the recognition of gender identity, pathologization takes the form of requirements forcing trans persons to subject themselves to invasive and humiliating medical examinations and having to secure diagnoses characterizing their identities as pathologies. Specifically, as described in Chapter 2 of this report, the pathologization paradigm has been the basis for many of the legal requirements in the majority of states for amending identification documentation.

⁶¹⁹ Shehrezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017), 4.

⁶²⁰ IACHR, [Press Release 64/16](#): “Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia,” May 12, 2016.

⁶²¹ World Health Organization (WHO), [Clasificación Internacional de Enfermedades](#) (2018).

⁶²² World Health Organization (WHO), [Clasificación Internacional de Enfermedades](#) (2018).

⁶²³ IACHR, [Press Release 153/18](#): “IACHR Welcomes Change by WHO to Stop Regarding Gender Identity as a Disorder,” July 18, 2018.

⁶²⁴ IACHR, [Press Release 64/16](#): “Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia,” May 12, 2016.

⁶²⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 21.

Regarding this, the Inter-American Court has emphasized that the medical, psychological, or psychiatric certifications that are often required in order to amend identification documents are invasive and call into question the legitimacy of the identity of the person requesting the change.⁶²⁶ It also added that these requirements "are based on the assumption that having an identity that is not the same as the sex assigned at birth is a pathology" and they therefore contribute to perpetuating the prejudices associated with the binary masculine/feminine construction of gender.⁶²⁷

2. Discrimination and Violence in Health

330. In its 2015 report, the IACHR found that health is an area in which discrimination and violence against LGBTI persons manifest strongly.⁶²⁸ At that time, the Commission also indicated that trans persons are especially vulnerable to this type of violence. In the same regard, the information received for preparing this report demonstrates how those acts of discrimination and violence constitute one of the main barriers to the effective enjoyment of the right to health by trans and gender-diverse persons.
331. The lack of training and sensitivity among those who work as healthcare professionals or workers perpetuates this situation. Based on the information received, the IACHR observes that the lack of permanent public policies oriented toward training and raising awareness on sexual and gender diversity mean that social prejudice persists in public health institutions and in healthcare spaces in general.⁶²⁹ Multiple sources informed the IACHR that because of this violence and discrimination, many trans and gender-diverse persons decide to protect themselves by avoiding health centers, which makes them more vulnerable. A

⁶²⁶ Inter-American Court, Advisory Opinion 24, para. 130.

⁶²⁷ Inter-American Court, Advisory Opinion 24, para. 130.

⁶²⁸ IACHR, [Violence against LGBTI Persons](#), November 12, 2015, para. 196.

⁶²⁹ This concern was put forward in the following responses: [Jamaica] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 6; [México] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 10; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11; [Nicaragua] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15; [Paraguay] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Asociación Panambi (Paraguay), pg. 23; [Perú] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13; [Venezuela] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7. Also see: TransLatin@ Coalition, *The State of Trans Health: Trans Latin@s and their Healthcare Needs*, 2016, pg. 11.

regional study found that healthcare workers or professionals are among the main perpetrators of human rights violations against trans women.⁶³⁰

332. As far as the information collected in OAS Member States, a survey carried out in Ontario, Canada, found that up to 33.2% of trans persons said their medical care needs were not met, partly because of denial of medical care and the lack of training of medical staff on issues surrounding gender identity.⁶³¹ In Ecuador, a study carried out by the National Council for Gender Equality found that 62% of the trans persons surveyed experienced discrimination in healthcare.⁶³² It also found that such violence was the main reason trans persons stopped seeking care from health professionals.⁶³³ In the United States, a survey found that a third (33%) of the trans persons surveyed said they had had at least one negative experience in receiving healthcare services over the last year, including verbal harassment, physical attacks, or having to explain to healthcare professionals issues related to trans or gender-diverse identities in order to receive adequate care.⁶³⁴ In addition, 23% said they had not visited health professionals over the last year when they needed to over fear of being mistreated as a trans person.⁶³⁵
333. Meanwhile, in Nicaragua, civil society organizations have reported that a large portion of medical and health services staff, in both the public and private sector, openly stigmatize and discriminate against trans persons, calling them "mentally ill."⁶³⁶ In fact, there have been cases of denial of medical services "because they believe [trans persons] are evil or possessed by a demon and what they need is to read the Bible and conduct an exorcism."⁶³⁷ Likewise, according to the information received from Paraguay, numerous cases have been documented of mistreatment and discrimination against trans persons by health professionals, including everything from belittling looks, stigmatizing comments, whispering, and poor care, to physical violence.⁶³⁸ In Venezuela, the organizations reported that in public and private health services, trans persons are subjected to psychological aggressions,

⁶³⁰ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pgs. 34 and 35.

⁶³¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pgs. 5 and 6.

⁶³² National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador*, (2017), pg. 71.

⁶³³ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador*, (2017), pg. 73.

⁶³⁴ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*, 2016, pg. 10.

⁶³⁵ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*, 2016, pg. 10.

⁶³⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15.

⁶³⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15.

⁶³⁸ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Panambi (Paraguay), pg. 23;

humiliation, and denigrating treatment because of their gender identities and expression.⁶³⁹

334. From Uruguay, the IACHR received data from the National Trans Persons Census indicating that 30% of trans persons did not go for a medical checkup even when they were ill (a figure that increased to 40% in the case of trans men).⁶⁴⁰ With regard to the reasons for not having gone, 18.2% said they wanted to avoid a situation of discrimination.⁶⁴¹
335. In many OAS Member States, the facilities and organizational structures of health institutions still segregate people by binary gender. The IACHR has received reports from Paraguay⁶⁴² and Venezuela⁶⁴³ indicating that trans persons face serious difficulties when they need hospitalization or to be admitted to a health facility because of a lack of clear policies on accommodations for trans and gender-diverse persons.
336. The IACHR has also received information on the difficulties trans persons face when seeking care that is “marked” as corresponding to a certain gender, such as mammograms, gynecological exams, Pap smears, and reproductive health services for trans men, and urology services for trans women.⁶⁴⁴ Because of this, many trans persons who could access the health system prefer not to, which may end up delaying the preventative examinations needed for early identification of illnesses like cancer.⁶⁴⁵ This is a serious obstacle to self-care and can aggravate preventable health problems.

3. Failure of Health Systems to Recognize Gender Identity

337. The failure to recognize gender identity and healthcare contexts is another of the major reasons that trans and gender-diverse persons are limited in their exercise of the right to health. The nonrecognition of their identities means that they often must

⁶³⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7.

⁶⁴⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pg. 53.

⁶⁴¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pg. 53.

⁶⁴² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Asociación Panambi (Paraguay), pgs. 25 and 26.

⁶⁴³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7.

⁶⁴⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 10;

⁶⁴⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 10; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13.

suffer the humiliation of being called in public by the name found in registry documents or having clinical records filed only under that name.⁶⁴⁶

338. Regarding this, the Commission has been informed of documented cases in which health personnel insist on calling trans persons by their names found in registry documents, including when their birth certificates recognize their self-perceived genders.⁶⁴⁷
339. In 2017, the IACHR recognized the progress made in Paraguay with the adoption of Resolution 695/2016 of the Ministry of Public Health and Social Welfare permitting trans persons to use their social names in health institutions.⁶⁴⁸ However, civil society organizations reported that healthcare staff continually failed to comply and that trans women continue to be listed as men.⁶⁴⁹ Organizations in Nicaragua reported that the Ministry of Health has authorized the use of a social name for medical records. However, they say compliance by healthcare providers is spotty, and because the name on registry documents must be included with the social name, the registry name is often used intentionally.⁶⁵⁰ Similar reports have been received from Brazil, where, despite a right to use social names in the public health system, numerous staff members and health professionals refused to do so.⁶⁵¹
340. The IACHR received information indicating that in Mexico, a lack of federal or general legislation on the right to gender identity has resulted in not only an overwhelming number of bureaucratic procedures for changing documents but also a persistent lack of legal certainty for persons who were born in other states who must undertake legal proceedings there to complete the recognition process. This means that people in this legally-confusing situation are exposed to higher risk of violence and discrimination in healthcare environments when their documentation is not consistent.⁶⁵²

⁶⁴⁶ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 36.

⁶⁴⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by “Hombres XX” (Mexico), pg. 11.

⁶⁴⁸ Ministry of Public Health and Social Welfare. Resolution 695/2016, October 31, 2016. See: IACHR, [Press Release No. 28/17: “IACHR Hails Regional Progress on Human Rights of LGBTI People in the Americas,”](#) March 10, 2017.

⁶⁴⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Panambi (Paraguay), pgs. 24 and 25; Rosa Posa Guinea and Carolina Robledo Desh, *Frente al Terrorismo de Estado, Dignidad y Resistencia: Derechos Humanos de Lesbianas, Gays, Personas Trans, Bisexuales e Intersexuales* (Asunción: Codehupy, 2017), 19.

⁶⁵⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pg. 11.

⁶⁵¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

⁶⁵² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 10.

4. Body Modifications without Medical Supervision

341. The IACHR has been informed that trans and gender-diverse persons find themselves having to seek body modification without medical supervision to ensure aseptic and hygienic conditions, adequate materials and instruments, and the professional care and follow-up necessary.⁶⁵³ This exposes them to body modification methods that are invasive, unhealthy, and risky that can severely impact their health and bodily integrity, and even end their lives.⁶⁵⁴
342. Based on the information collected, the IACHR notes that this circumstance is the result of a series of factors of exclusion and lack of interest on the part of the State, which frequently operate cumulatively. Essentially, the fact that trans persons view their access to health services from professionals as systematically obstructed by the mistreatment, pathologization, discrimination, and violence they tend to suffer in healthcare environments—as described throughout this chapter—is the primary reason they distance themselves from it. Additionally, the laws in force frequently do not require health services to specifically offer body modification services; the professional staff is not trained or sensitized in this area; or they do not have the medical materials necessary for these types of procedures. There are also economic barriers when the services are available but not covered by health insurance or the benefits offered by public systems. The Commission has indicated that some of these circumstances prevent trans persons from accessing safe body modification processes, which has led to premature and preventable deaths from unsafe and clandestine procedures throughout the region.⁶⁵⁵
343. The IACHR observes that among the most common practices is the self-administration of hormones without a prescription. For example, the State of Uruguay reported that according to the trans survey it conducted, 42.9% of trans

⁶⁵³ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 38.

⁶⁵⁴ [Colombia] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Grupo de Acción y Apoyo a Personas Trans, pgs. 2 and 3; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia Diversa (Colombia), pg. 10; [Jamaica] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 6; [Nicaragua] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 13 and 14. [Peru] Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Informe CEDOSTALC Perú, 2017*, pg. 8. [Venezuela] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 8.

⁶⁵⁵ IACHR, *Press Release 64/16*: “Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia,” May 12, 2016.

women surveyed took hormones on their own.⁶⁵⁶ This practice is more common among trans women than trans men. Among trans men, only 7.4% self medicate.⁶⁵⁷

344. The IACHR has also received information indicating that it is common to use soft tissue filler injections to modify the appearance and shape of different parts of the body. In these unsupervised procedures, filler materials like industrial silicone, fat, or oils are injected that can be extremely harmful to health. Also, the lack of supervision means they are generally carried out in settings that are not aseptic and without the proper instruments, posing a high risk of bacterial contamination and different infections that can lead to death.⁶⁵⁸ Cases have been documented of complications caused by harmful fillers where extremities have had to be amputated in order to avoid greater harm when it was impossible to extract the fillers because they had shifted or leaked, or because of other complications. Although these types of procedures are often because individuals want to change their bodies to match their self-perception, the IACHR has also received information highlighting the pressures of the logic of sex work, especially on trans women (and especially with regard to the need to change their bodies to match socially and culturally hegemonic patterns of "feminine" beauty).⁶⁵⁹
345. An investigation conducted in Bogotá found that 96% of trans women reported using informal mechanisms to transform their bodies: 55.4% at the home of a friend and 13.8% in garages or underground clinics. Additionally, 62% repeated such informal body transformation processes more than four times.⁶⁶⁰ A study of trans persons born in Latin America who live in the United States found that 57% had injected various substances to improve or maintain their physical appearances.⁶⁶¹
346. Economic barriers can also block access to body modification processes under medical supervision.⁶⁶² For example, it has been reported in Canada that, although public health services and programs are publicly funded, many medical care services that are crucial for trans persons are not covered, including access to gender-affirming hormone therapy. Such services must therefore be fully paid for

⁶⁵⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 59 and 60.

⁶⁵⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 59 and 60.

⁶⁵⁸ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

⁶⁵⁹ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 38.

⁶⁶⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

⁶⁶¹ TransLatin@ Coalition, *TransVisible: Transgender Latina Immigrants in U.S. Society*, 2013, pg. 25.

⁶⁶² Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 38; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

by the individual seeking them.⁶⁶³ According to the information received, in Panama, the majority of those offering professional health services with knowledge of gender identity issues work in the private sector and their services are very expensive. Although the public sector does have “trans-friendly clinics,” they do not have specialists in endocrinology or professionals trained in hormone treatment.⁶⁶⁴ An exploratory study carried out in Lima found that there were no public health services covering the needs of the trans population related to body modification, and that gender affirmation hormonal or surgical therapies were prohibitively expensive for most people,⁶⁶⁵ especially when 89% of the trans-women surveyed said they did not have social security.⁶⁶⁶

347. For its part, the State of St. Vincent and the Grenadines explicitly informed the IACHR that it does not recognize trans persons by their self-perceived gender, and therefore it also does not provide them with body modification services or specific healthcare services.⁶⁶⁷
348. The Commission was also informed of the challenges surrounding implementation in States that have made progress toward protecting and guaranteeing the rights of trans and gender-diverse persons through progressive laws and public policies. For example, although the Gender Identity Act in Argentina guarantees comprehensive access to health, including, under the Obligatory Medical Plan, all gender affirmation procedures and treatments,⁶⁶⁸ the information received by the IACHR shows that serious disparities still exist with regard to this law's implementation. The communications received indicate that the regulations of the article with regard to health issues do not require funds for this to be specifically budgeted to the public health system. Hospitals are not prepared to meet these needs, and professionals are not properly trained in this area. This has led to long waiting lists, with delays of up to four years. Instances have also been documented of trans persons meeting with formal resistance and denial of specific services by private companies and service providers within the social work system.⁶⁶⁹ Similarly, in Chile, organizations

⁶⁶³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pg. 5.

⁶⁶⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Hombres Trans (Panama), pgs. 8-10.

⁶⁶⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13; Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Informe CEDOSTALC Perú*, 2017, pg. 8.

⁶⁶⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS) Perú (Peru), pg. 10.

⁶⁶⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by St. Vincent and the Grenadines (Permanent Mission to the Organization of American States), pgs. 3 and 5.

⁶⁶⁸ Law 26,743, Gender Identity Act (2012), Article 11.

⁶⁶⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 19.

have reported that in the entire public health service, there is only a single medical team in with the training necessary to perform gender affirmation surgeries.⁶⁷⁰

5. Exposure to HIV

349. As explored in preceding chapters, the structural exclusion forced upon the majority of trans and gender-diverse persons, particularly trans women, means they find in sex work the only way to support themselves.⁶⁷¹ In this context, exposed to high rates of violence and serious difficulties finding safe conditions, they are often exposed to sexually transmitted infections, especially HIV. Regarding this, the Commission recalls that it is not "being trans" that makes infection by HIV more likely; rather it is the discrimination and vulnerability they face that makes them more vulnerable to HIV.⁶⁷²
350. Indeed, trans women are one of the populations most affected by the HIV-AIDS epidemic, with infection rates that are notoriously higher than for the general population. The information received by the IACHR indicates that in Latin America, the prevalence of HIV in the general population ranges between 0.5% and 1%, while for trans women, it stands at around 35%.⁶⁷³ Along these lines, the IACHR has received information on local assessments that are equally concerning. For example, Honduras has found HIV prevalence among trans women of 17.2% in Tegucigalpa, 23.6% in San Pedro Sula, and 33.3% in La Ceiba⁶⁷⁴. Meanwhile, in Lima, Peru, the figures show that 30% of trans women live with HIV.⁶⁷⁵
351. The situation is no less concerning in North America. In the United States, a national survey carried out in 2015 found that the rate of trans persons living with HIV is almost five times higher than for the general population, and that rates are even higher among trans women, especially among black, indigenous, and Latina trans women.⁶⁷⁶ In Ontario, Canada, HIV cases within the trans community were 10 times the provincial estimate. Also, in that province, criminalization of the failure to

⁶⁷⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Organizando Trans Diversidades (OTD) (Chile), pg. 4.

⁶⁷¹ See, especially, Chapter 5 of this report on the right to work.

⁶⁷² IACHR, *Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas*, December 7, 2018, para. 169.

⁶⁷³ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 37.

⁶⁷⁴ Comité de la Diversidad Sexual de Honduras, *Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras* (2017), pgs. 6 and 7.

⁶⁷⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS) Perú (Peru), pg. 10.

⁶⁷⁶ This is the largest survey on the experiences of trans persons in the United States, with 27,715 participants in all 50 states plus Washington DC, American Samoa, Guam, Puerto Rico, and US military bases abroad. See: National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*, 2016, pg. 10.

disclose HIV positivity poses an additional obstacle to diagnosing and accessing other healthcare services.⁶⁷⁷

352. The Commission notes that this situation further worsens the stigma on trans and gender-diverse persons. For example, organizations from a number of OAS Member States informed the IACHR of extremely high levels of discrimination and stigma faced by trans persons who are automatically associated with persons living with HIV. This leads to more stigma and discrimination in access to treatment.⁶⁷⁸ Nicaragua has clinics that specialize in providing HIV-AIDS⁶⁷⁹ care to LGBTI persons that are informally and pejoratively called “*cochón* clinics”⁶⁸⁰ or “AIDS clinics.”⁶⁸¹ Additionally, Peruvian civil society organizations indicated that trans persons are only taken into account when it comes to public policies on infections and/or illnesses and not in instruments or laws to fully recognize their right to health—among other rights—thus reinforcing the social stigma faced by this group.⁶⁸²
353. The IACHR notes that epidemiological and statistical studies and reports that were sent to the IACHR focus almost exclusively on the trans women population. There is little information regarding HIV-AIDS and trans men, much less gender non-binary persons.⁶⁸³ One study did find that, in the case of trans men, there is a reverse and equally concerning prejudice, which is that because they are considered “biologically women,” trans men are not viewed as people who could have HIV.⁶⁸⁴ In this regard, the IACHR notes with concern that this prejudicial and stereotypical belief could make the population of people with trans masculine identities invisible to public policies on preventing and treating HIV.

⁶⁷⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pg. 5.

⁶⁷⁸ Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Esperando la muerte: Informe Regional CeDoSTALC 2016-2017* (2018), pg. 37; Comité de la Diversidad Sexual de Honduras, Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras (2017), pg. 8; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

⁶⁷⁹ So-called VICITS clinics specialize in providing care to the LGBTIQ population under a mandate from Law 249-2009. These clinics offer services related to diagnosing and treating STIs.

⁶⁸⁰ “*Cochón*” is a vulgar term used to disparage and discriminate against members of the LGBTIQ community. It has a strong discriminatory connotation and stigma.

⁶⁸¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 13 and 14.

⁶⁸² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pgs. 2 and 3.

⁶⁸³ The IACHR has found a few studies, carried out especially in the United States and Canada. See, among other examples: Jae Sevelius “There’s no pamphlet for the kind of sex I have”: HIV-related risk factors and protective behaviors among transgender men who have sex with non-transgender men” *Journal of the Association of Nurses in AIDS Care* 20, No. 5 (2009), 398-410; Jeffrey H. Herbst et al., “Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review” *AIDS and Behaviour* 12, No. 1 (2008), 8.

⁶⁸⁴ National Council on Gender Equality (Ecuador), *Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador*, (2017), pg. 76.

354. Lastly, the Commission notes that the lack of public policies on methods for preventing the transmission of sexually transmitted infections and the importance of regular testing mean that many vulnerable trans and gender-diverse persons are not aware of the effective means of protecting their health and learning their HIV status.⁶⁸⁵

6. Mental health

355. The Commission received information on the impact that the systemic exclusion forced upon trans persons and the discrimination and violence to which they are generally exposed have on their mental health. The rejection that they tend to experience from a young age within their families and from society as a whole, as well as the pathologization of their diverse identities and expressions tend to have an impact on their psychological integrity and mental health in the form of high rates of stress, sadness, depression, and feelings of abandonment.⁶⁸⁶

356. In the United States, a study found that the 50.5% of the trans persons surveyed reported suffering anxiety, while 26.4% said they were experiencing some degree of depression. Likewise, 46.7% said that the lack of care for their mental health needs was because of a lack of resources, while 43.7% said it was principally because of the lack of support groups.⁶⁸⁷ Among the trans persons of Latin American origin living in the United States, almost 75% said they felt or had felt depressed in the last 12 months, although only 32% said they were seeing a mental health specialist at the time of the survey.⁶⁸⁸ According to a survey conducted in Chile, 56% of the trans persons surveyed there said they had attempted to commit suicide, most of them between the ages of 11 and 15.⁶⁸⁹

357. The IACHR also notes that the transphobic and homophobic violence, harassment, and bullying experienced by young people as a result of their gender identities have a severe impact on their mental and physical health and well-being, reflected in high rates of suicide, depression, and self-harm.⁶⁹⁰

⁶⁸⁵ See, among others: Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Informe CEDOSTALC Perú*, 2017, pg. 4.

⁶⁸⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 10.

⁶⁸⁷ TransLatin@ Coalition, *The State of Trans Health: Trans Latin@s and their Healthcare Needs*, 2016, pg. 11.

⁶⁸⁸ TransLatin@ Coalition, *TransVisible: Transgender Latina Immigrants in U.S. Society*, 2013, pg. 26.

⁶⁸⁹ Organizando Trans Diversidades, 1ª Encuesta para personas trans y de género no-conforme en Chile, October 2017.

⁶⁹⁰ IACHR, Press Release 64/16: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

C. Toward the Provision of Comprehensive and Inclusive Health Services

358. OAS States face a significant challenge when it comes to reversing the effects of the exclusion forced upon trans and gender-diverse persons. In this regard, the Inter-American Court has emphasized that State obligations regarding the right to health take on a special dimension when it comes to protecting vulnerable persons⁶⁹¹ given that, under the crosscutting condition that health services be accessible to all, the State is required to guarantee equal treatment to everyone.⁶⁹²
359. Regarding this, the Court has indicated that the right to equal protection and nondiscrimination has two sides: A negative one, related to the prohibition of arbitrary differentiation of treatment, and an affirmative one related to the obligation of States Party to create real equal conditions toward groups who have been historically excluded or who are exposed to a greater risk of discrimination.⁶⁹³ In this regard, the adoption of positive measures is even more important when it comes to the protection of vulnerable or at risk individuals, as their access to health services must be guaranteed equally.⁶⁹⁴
360. The Court has found that the general obligation to protect health begins with the duty to regulate. It has therefore indicated that States are responsible for constant regulation of the provision of services (both public and private) and the execution of national programs aimed at providing good quality services.⁶⁹⁵ The Court has taken into account General Comment 14 of the ESCER on the right to enjoy the highest attainable standard of health. Specifically, the comment emphasizes that the right to health means care that is timely and suitable, as well as the essential and interrelated elements of availability, accessibility, acceptability, and quality, application of which will depend on the prevailing conditions in each State.⁶⁹⁶
361. Additionally, the IACHR emphasizes that, pursuant to the obligations arising from Articles 1(1), 2, and 26 of the American Convention, as well as the corresponding provisions of the American Declaration, OAS Member States must adopt a series of complementary measures with the aim of making the right to health effective for the trans and gender-diverse persons under their jurisdiction. These measures must include the adoption of laws prohibiting discrimination based on gender identity

⁶⁹¹ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 131.

⁶⁹² Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 129.

⁶⁹³ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 123.

⁶⁹⁴ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 123.

⁶⁹⁵ Cf. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 134, and Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 119.

⁶⁹⁶ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 106.

and/or expression, specifically in the provision of health services; the adoption of specific measures against pathologizing gender-diverse identities; the adoption of inclusive public policy; and the provision of specialized health services that meet the specific needs of trans and gender-diverse persons.

1. Antidiscrimination Laws and Regulations

362. Recalling the Inter-American standards highlighted at the beginning of this chapter, the IACHR also underscores that the Yogyakarta Principles established that all individuals have the right to the highest possible level of physical and mental health, without discrimination based on gender identity or expression, and urge States to ensure that all health service providers provide care without discrimination on the basis of sexual orientation or gender identity.⁶⁹⁷
363. In this regard, some OAS Member States have adopted measures that explicitly prohibit this type of discrimination. For example, in Uruguay, the Comprehensive Trans Persons Act guarantees access to health services without any type of discrimination based on gender identity.⁶⁹⁸ In Nicaragua, a 2014 resolution from the Ministry of Health prohibits all acts of discrimination based on gender identity in public and private health establishments.⁶⁹⁹ Like regulation 249-2009 that came before, which required public servants and State healthcare centers to provide health services to trans persons without discrimination, it does not have the rank of law; 5% of medical staff are aware of its existence and very few apply it. Those who do know of it apply it however they like and at whim, saying it does not have the legal weight and backing necessary for application.⁷⁰⁰

2. Depathologizing Diverse Gender Identities and Expressions

364. According to the information received by the IACHR, OAS Member States are making steady progress on taking measures to depathologize diverse gender identities and expressions. Such measures have been adopted in the form of laws, regulations issued by the executive branch, and judicial rulings.
365. In Argentina, the National Mental Health Act, enacted in 2010, explicitly prohibits diagnoses based on "sexual identity."⁷⁰¹ Similarly, Uruguay's Mental Health Act,

⁶⁹⁷ Yogyakarta Principles, Principle 17(h).

⁶⁹⁸ [Law 19,684 \(Uruguay\)](#), "Comprehensive Trans Persons Act," October 26, 2018.

⁶⁹⁹ [Ministerial Resolution 671-2014](#), July 23, 2014; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted ANDISEX Diversa (Nicaragua), pg. 5.

⁷⁰⁰ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Comunidad Homosexual de Nicaragua (Nicaragua), pg. 10.

⁷⁰¹ [Law 26,657 \(Argentina\)](#), National Mental Health Act, Article 3(c).

enacted in 2017, prohibits any diagnoses based exclusively on an individual's gender identity.⁷⁰²

366. In Brazil, the Federal Psychology Council issued Resolution 1 of January 29, 2018, which aims to serve as a code of ethics for the treatment of trans persons based on a non-pathologizing approach.⁷⁰³ Under this resolution, trans persons who work as psychology professionals "shall take no action to foster the pathologization of transsexual and *travesti* persons" and will recognize the self-determination of gender identity.⁷⁰⁴ Additionally, the resolution prohibits proposing, conducting, or taking part in private, public, instructional, community, or promotional events or services that, using a pathologizing approach, promote conversion therapy for transsexual and *travesti* persons.⁷⁰⁵
367. In 2012, the Colombian Constitutional Court found that under no circumstances did being a trans person constitute an illness or a psychiatric condition, nor was a diagnosis of "gender dysphoria" required to access health services associated with a trans person's identity.⁷⁰⁶ The following year, this Court found that the diagnoses are necessary "in order to access medical care, as this condition precedes the prescription of procedures related to sexual or gender affirmation,"⁷⁰⁷ indicating as well that "although the diagnosis is psychiatric, the treatment is medical. Consequently, *although this is not a disorder*, it is a condition that needs the appropriate medical care in order to make the rights to identity and health comprehensively effective." In this ruling, the Court reiterated that "guaranteeing access to appropriate medical care for trans persons means recognizing not only the specific characteristics of health issues associated with emotional, mental, and physical transitions during the identity affirmation but also the marginalization and discrimination they face, which constitute a barrier to accessing the Social Security System." Lastly, in a judgment from 2015, the Court recognized that requiring medical tests or dysphoria diagnoses in order to amend the registry is invasive and "calls into question the individual's identity registration (because) they are based on the supposition that having an identity that does not match the one assigned at birth is a pathology (...) that must be treated medically and psychiatrically."⁷⁰⁸ The IACHR recognizes the developments of the jurisprudence in this area, particularly where it recognizes the right of trans persons to self-determination over and above a medical diagnosis requirement.

⁷⁰² [Law No. 19,529](#) (Uruguay), Mental Health Act, Article 4(d).

⁷⁰³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 21.

⁷⁰⁴ Federal Psychology Council (Brazil), [Resolution 1](#), January 29, 2018, Article 6.

⁷⁰⁵ Federal Psychology Council (Brazil), [Resolution 1](#), January 29, 2018, Article 7.

⁷⁰⁶ Constitutional Court (Colombia), Judgment T-918/12 (2012).

⁷⁰⁷ Constitutional Court (Colombia), Judgment T- 771/13 (2013); Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

⁷⁰⁸ Constitutional Court (Colombia), Judgment T-063/15 (2015).

368. Additionally, the Commission notes positively that the Manual on Health Care for LGBTI Persons prepared by the Ministry of Public Health in Ecuador, application of which is obligatory in the National Health System, includes a section specifically on health care for trans persons with an approach that depathologizes diverse identities.⁷⁰⁹
369. It should also be noted that, as explored in Chapter 2 of this report, several States have taken measures to eliminate pathologizing requirements for recognizing the gender identities of trans and gender-diverse persons. They include Argentina,⁷¹⁰ Colombia,⁷¹¹ Brazil,⁷¹² and Mexico City.⁷¹³

3. Public Health Policies that are Inclusive and Do Not Discriminate

370. The Commission notes that in order to effectively guarantee the right to health for trans and gender-diverse persons, States must design and implement public health policies that are inclusive of their specific needs and that guarantee that all health services are available, without any discrimination based on gender expression or identity. In this regard, States are in charge of supervising and overseeing the provision of health services, both public and private, as well as ensuring that

⁷⁰⁹ Ministry of Public Health of Ecuador, [Resolution 125](#), November 15, 2016, pg. 22-27.

⁷¹⁰ The Gender Identity Act, enacted in 2012, was a milestone in the depathologization of trans identities in the region because it completely eliminated all pathologizing requirements for a person to access legal recognition of their gender identities. It abandoned the mythologizing paradigm to fully adopt a paradigm of self perception, guaranteeing the full right to free development of personality. See: Law 26,743 (Argentina), Gender Identity Act (2012).

⁷¹¹ In 2015, Ministerial Decree 1227 was issued, permitting changes to the sex component of the birth certificate through an administrative procedure before a notary public, the presentation of an affidavit, and simple copies of the birth certificate and national citizen identification card, with no requirement to submit any other documentation or additional evidence. IACHR, [Press Release No. 75/15](#), "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

⁷¹² In 2018, the Supreme Federal Tribunal authorized amendment of trans persons' birth certificates without the need for any surgical interventions or medical or psychological reports, marking a significant step forward toward eradicating the pathologization of diverse gender identities. Also see: IACHR, [Press Release No. 85/18](#): "IACHR Welcomes Brazilian Supreme Court Decision to Allow Trans Persons to Change Name through Self-Declaration," April 23, 2018.

⁷¹³ In 2015, a decree took effect permitting recognition of the gender identity of trans persons in the Federal District via an administrative procedure, eliminating pathologizing requirements like the need to submit evidence of a psychiatric diagnoses and/or medical examinations. According to the information received, this decree was the result of the joint work carried out by a number of state entities, the Mexico City Council to Prevent and Eliminate Discrimination, and civil society organizations that defend the rights of trans persons, particularly Coalición T47. Also see: IACHR, [Press Release No. 75/15](#), "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

professionals have the necessary qualifications to perform such services in order to protect the lives of their patients.⁷¹⁴⁷¹⁵

371. Along the same lines, the Yogyakarta Principles urged States to adopt the education and training policies and programs necessary to make it possible for those working in the health sector to provide all individuals with the highest possible level of healthcare while fully respecting each one's gender identity.⁷¹⁶
372. For these reasons, States must work to guarantee the right to health for trans and gender-diverse persons living with HIV. To do so, a comprehensive approach is needed that includes a continual sequence of prevention, treatment, care, and support.⁷¹⁷ A limited response to access to antiretroviral drugs is a failure to comply with the obligations to prevent, address, and support derived from the right to the highest possible level of health. States must foster safe environments with good quality and comprehensive services that provide information, testing, condoms, lubricants, sterile injection materials, health education, and advise as appropriate, strengthening sexual and reproductive health programs.⁷¹⁸
373. Additionally, serious efforts must be made to combat the prejudices and inequalities causing the stigma and vulnerability that trans and gender-diverse persons who live with HIV-AIDS often experience. Along the same lines, the 2030 Agenda for Sustainable Development establishes the objective of ensuring that people of all ages can live a healthy life and promoting their universal well-being, with emphasis on the vulnerability facing different groups, such as people who live with HIV-AIDS. States thus agreed to take the actions necessary to ensure that by 2030, they have put an end to epidemics such as AIDS and to other communicable diseases like HIV. States also committed to providing universal healthcare, including access to medications and vaccinations for everyone.⁷¹⁹
374. Additionally, States must guarantee that people who live in poverty are effectively able to fully exercise their right to health. Indeed, those who live in poverty—including many trans and gender-diverse persons in the region—often do not have equal access to health services and information, exposing them to enhanced risk of

⁷¹⁴ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120 and 121; Case of Albán Cornejo *et al.* v. Ecuador. *Merits, Reparations, and Costs*. Judgment of November 22, 2007. Series C No. 171, para. 119

⁷¹⁵ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 146.

⁷¹⁶ Yogyakarta Principles, Principle 17(i).

⁷¹⁷ Inter-American Court. Case of Gonzales Lluy *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 198.

⁷¹⁸ See: Inter-American Court. Case of Gonzales Lluy *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 197; Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 113.

⁷¹⁹ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 109.

infection and to receiving medical care that is inadequate or incomplete.⁷²⁰ The Inter-American Court has held that medical care in institutions that are unprepared, that do not have the right infrastructure or cleanliness to provide medical services, or whose professionals do not have the proper qualifications for providing such services could significantly impact the rights to life or integrity of the individuals receiving the services.⁷²¹

375. The IACHR highlights as a step forward in the region that in recent years, many OAS Member States have moved to implement measures in the framework of their health policies to improve care for trans and gender-diverse persons and offer specialized services to meet their specific needs.
376. The Argentine State reported to the IACHR that the Ministry of Health's National Office on Sexual and Reproductive Health is maintaining a rolling survey of specialists and health centers offering hormone therapy or body modification surgical procedures in order to make progress in determining the number of trans persons who seek such treatments.⁷²² This office also conducts a training program for healthcare staff, including administrative and patient records staff, nurses, laboratory personnel, medical professionals in different specializations, social workers, and health advocates.⁷²³ Additionally, in 2015, this office published a guide to providing comprehensive care for trans persons.⁷²⁴ It establishes guidelines and recommendations intended to improve trans persons' access to comprehensive health care in a context of respect for sexual and reproductive rights and with a depathologizing approach focused on good quality care.⁷²⁵ Additionally, in the Autonomous City of Buenos Aires, Casa Trans, opened in 2017, has become a point of reference for the city's trans population. Services at Casa Trans include rapid HIV tests, vaccinations, and psychological support provided by trans persons for trans persons.⁷²⁶
377. The IACHR has been informed that the Ministry of Health and Wellness of Jamaica, in collaboration with the Regional Health Authorities and sexual and gender

⁷²⁰ Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 131.

⁷²¹ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 124; Case of Suárez Peralta v. Ecuador, para. 149

⁷²² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pg. 20.

⁷²³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pgs. 31 and 32.

⁷²⁴ Office of the President, Argentina, Comprehensive Care for Trans Persons, Guide for Health Teams, June 2015.

⁷²⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pgs. 31 and 32.

⁷²⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Argentina (LGBT Office of the Ombudsperson's Office of the City of Buenos Aires), the Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT) and the Asociación de Travestis, Transexuales y Transgéneros de Argentina (ATTTA), pg. 7.

- diversity organizations have provided training and resources to facilitate trans persons' access to medical care. This initiative included specific materials documenting the life experiences of trans persons to raise awareness and inform health professionals and the general public.
378. Also, in 2014, the Ministry of Health of Bolivia drafted a Comprehensive Care Manual for the Trans Population whose application is required in the national health system.⁷²⁷
379. In 2016, the National Penitentiaries and Prisons Institute of Colombia issued new general rules for the country's prisons that included guidelines on providing health care to trans persons deprived of liberty.⁷²⁸ The resolution established that trans persons receiving hormone treatment or with health problems as a result of body transformations carried out prior to or during their imprisonment must receive comprehensive health care.⁷²⁹
380. For its part, Ecuador's Ministry of Public Health issued Resolution 125 of 2016, requiring use of the Manual on Health Care for Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Persons," which includes a specific section on health care for trans persons that stresses depathologizing trans identities.⁷³⁰ Likewise, in response to discrimination reported in health centers, a number of trans organizations joined the Ministry of Public Health to organize and form ties to specific centers—known as “trans-friendlies”—where trans persons can receive medical care from trained and sensitized professionals.⁷³¹
381. In Mexico City, the Human Rights Program of the Federal District is in charge of guaranteeing access and healthcare—of good quality, that follows scientific principles, and that is free from discrimination—to the sectors comprising the LGBTI population. It is also in charge of training health services personnel at all levels to generally raise awareness regarding gender identity.⁷³² According to the information received, there are health programs that specialize in sexually transmitted infections⁷³³ where trans persons—including migrants—can get

⁷²⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Bolivia (Unidad de Diversidades Sexuales), pg. 4.

⁷²⁸ National Penitentiaries and Prisons Institute of Colombia, [Resolution 006349](#), December 16, 2016.

⁷²⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia Diversa (Colombia), pg. 6.

⁷³⁰ Ministry of Public Health of Ecuador, [Resolution 125](#), November 15, 2016, pg. 22-27.

⁷³¹ National Council on Gender Equality (Ecuador), [Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador](#), (2017), pg. 74.

⁷³² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 13.

⁷³³ Including the CAPASITs (Outpatient Centers for AIDS and STI Care and Prevention) and the SAIHs (Comprehensive Hospital Care Centers). Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 9 and 10.

regular care.⁷³⁴ The Condesa Specialized Clinic offers support for hormone treatment, comprehensive care for HIV and sexual transmitted infections, and mental health care.⁷³⁵ The specialized clinic has a free specialized care clinic for trans persons between the ages of 16 and 71, where the median age is 29. Of registered participants, 79% are trans women and 21% are trans men.⁷³⁶

382. Additionally, in Mexico City, a series of provisions are in place on diversity and health, including the Preventing and Eliminating Discrimination in CDMX Act, which requires public agencies to implement health programs to provide care, support, information, education, and advice, especially regarding sexual health, including HIV and sexually transmitted infections. The law requires care that is comprehensive, up-to-date, personalized, and free of stereotypes, prejudices, and stigma that takes into account the specific conditions and needs of each individual, and also promotes access to public health services, specifically regarding trans persons.⁷³⁷ Likewise, the Rights of Young Persons in CDMX Act establishes that the State shall provide support and guidance to young persons so they can obtain the medical, legal, and informational services they need to enable them to build their sexual and gender identities.⁷³⁸ For its part, the Federal District Health Act establishes in its Article 24 that the State must implement a specialized healthcare program to meet the health needs of trans persons, including the administration of hormones, psychotherapy, preventative measures, and medical treatment for STIs and HIV.⁷³⁹ Additionally, the Comprehensive HIV-AIDS Care and Prevention Act of the Federal District establishes that its implementation authority is in charge of providing specialized medical care and support for hormone therapy, hormone therapy support, HIV-AIDS prevention and care, and prevention and care for other STIs to the trans persons living in the Federal District.⁷⁴⁰

⁷³⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 9 and 10.

⁷³⁵ The IACHR also received information on the lack of crosscutting care in services for trans person. Frequently, trans persons with any health issue are told they must go exclusively to the specialized clinic, where there is a hormone replacement treatment program for trans persons. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by “Hombres XX” (Mexico), pg. 11.

⁷³⁶ Article 38; response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pgs. 3-5.

⁷³⁷ Preventing and Eliminating Discrimination in CDMX Act, published in the Official Gazette of the Federal District on February 24, 2011. Latest amendment published in the Official Gazette of the Federal District on November 18, 2015.

⁷³⁸ Rights of Young Persons in CDMX Act, published in the Official Gazette of the Federal District on August 13, 2015, Article 40.

⁷³⁹ Federal District Health Act, published in the Official Gazette of the Federal District, September 17, 2009, Article 24(XXI).

⁷⁴⁰ Comprehensive HIV-AIDS Care and Prevention Act of the Federal District, published in the Official Gazette of the Federal District on June 20, 2012. Latest amendment published in the Official Gazette of the Federal District on September 23, 2014, Article 24(II)(d).

383. In Peru, the 2014-2016 National Human Rights Plan for the first time included LGBTI persons as a group needing special protection, with one of the strategic objectives in that regard being guaranteeing access to health services.⁷⁴¹ Although under this plan, procedures were established for providing comprehensive care to LGBTI persons through the public health system, the development of protocols for the private sector on specialized care and specific measures remains pending.⁷⁴² Although it is limited to HIV-AIDS, the Peruvian Ministry of Health also issued Resolution 980 and approved Technical Regulation 126 on Comprehensive Care for Trans Women, establishing specific guidelines on providing care to trans women as part of the differentiated services aimed at preventing STIs and HIV.⁷⁴³ It also approved the Strategic Multisector Plan on Preventing and Controlling STIs and HIV-AIDS 2015-2019, which aims to improve access to preventing these illnesses for the trans population by combating the stigma on them.⁷⁴⁴
384. The State of Uruguay reported that the trans population census found that 96% of respondents have access to care in a health center.⁷⁴⁵ The city of Montevideo has found success with comprehensive health care for the trans population in the teaching unit (*Unidad Docente Asistencial*, UDA) of Saint Bois Hospital, under the State Health Services Administration (ASSE).⁷⁴⁶ More than 60% of trans persons—regardless of origin—find care at ASSE facilities or the Hospital de Clínicas. Regarding the quality of care that trans persons receive in the health centers where they go most frequently, the State reported that, according to users, it was good or very good, although this was less true for trans men (69.6%) than for trans women (80.9%).⁷⁴⁷ The service provided by Saint Bois Hospital stands out, with 73.3% of patients reporting the care was very good.⁷⁴⁸ The Center on Infectious Diseases also has the highest levels of satisfaction by users, with 63.8% reporting the care received was very good and 29.3% reporting it as good.⁷⁴⁹

⁷⁴¹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 3.

⁷⁴² Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pgs. 14 and 15.

⁷⁴³ Ministry of Health of Peru, *Ministerial Resolution 980*, December 21, 2016.

⁷⁴⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 12.

⁷⁴⁵ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 52.

⁷⁴⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Secretariat of Diversity – Montevideo Department), pg. 7.

⁷⁴⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 56.

⁷⁴⁸ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 56.

⁷⁴⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 56 and 57.

4. Medical services related to body modification

385. The information available to the Commission indicates that some States have begun taking measures to guarantee that people can access body modification with the proper medical supervision. These measures are in line with the Yogyakarta Principles, which urge States to facilitate access to non-discriminatory and competent treatment, care, and support for individuals seeking body modification related to gender reassignment⁷⁵⁰ and to provide the best-quality health services for gender affirmation based on consent freely expressed by the individual. It states that these services must be provided through a public health system or through insurance or reimbursement systems that cover their costs.⁷⁵¹
386. In Argentina, Article 11 of the Gender Identity Act guarantees comprehensive access to health, including, under the Obligatory Medical Plan, all gender affirmation procedures and treatments.⁷⁵² According to the information received, individuals wishing to undergo these types of surgeries can in principle do so free of charge. In order to promote good quality care under medical supervision and with the recommended materials, a number of procurement processes have been undertaken since 2015 through the Office of Sexual and Reproductive Health of the Ministry of Health of Argentina. The aim is for people turning to the public health subsystem for hormone treatments under the Gender Identity Acts to be able to access materials free of charge.⁷⁵³
387. In Canada, a number of provinces—including British Columbia,⁷⁵⁴ Ontario,⁷⁵⁵ and New Brunswick⁷⁵⁶—have adopted measures so provincial health insurance could extend coverage to health services specifically for trans persons, including gender affirmation. However, civil society organizations have reported that in other provinces and territories, such medical care is still not covered.⁷⁵⁷

⁷⁵⁰ Yogyakarta Principles, Principle 17(g).

⁷⁵¹ Yogyakarta Principles, Principle 17(k) and 17(l).

⁷⁵² Senate and Chamber of Deputies of the Argentine Nation, Law 26,743, promulgated on May 23, 2012.

⁷⁵³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pg. 33.

⁷⁵⁴ In 2015, British Columbia's Provincial Health Services Authority launched Trans Care BC, which is the first program in Canada to provide support for the health issues faced by trans persons. Its aim is to support the delivery of equitable and accessible care, surgical planning, and peer and community support. Also see Frohard-Dourlent, Hélène, Coronel Villalobos, Mauricio and Saewyc, Elizabeth, "A survey of experiences with surgery readiness assessment and gender-affirming surgery among trans people in Canada: Focus on British Columbia," Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre, School of Nursing, University of British Columbia, 2017, pgs. 1 and 2.

⁷⁵⁵ In March 2016, Ontario announced that gender affirmation surgeries would be covered by the Ontario Health Insurance Plan.

⁷⁵⁶ In June 2016, New Brunswick announced that gender affirmation surgeries would be covered by Medicare.

⁷⁵⁷ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pgs. 5 and 6.

388. In Colombia, the Constitutional Court found that gender affirmation processes must be covered by the Obligatory Health Plan, as such processes are closely tied to the rights to a life with dignity, to health, and to the free development of personality.⁷⁵⁸ Thus, a number of procedures for body modification used by the trans population were added to the Obligatory Health Plan through Resolution 29 of 2011 of the Health Regulation Commission.⁷⁵⁹
389. In the United States, 23 states and the District of Columbia have explicitly prohibited private insurance providers from excluding services from coverage based on gender identity,⁷⁶⁰ and in another 21 states, Puerto Rico, and the District of Columbia, social security programs explicitly cover such services.⁷⁶¹
390. In Uruguay, the Comprehensive Trans Persons Act guarantees all persons over the age of 18 access to full and partial surgical procedures and/or comprehensive hormone treatment to modify their bodies without the need for judicial or administrative authorization. Under this law, these procedures are included in the National Comprehensive Health System, and cover private healthcare providers as well.⁷⁶² Additionally, the State Health Services Administration has prepared a Cross-sex Hormone Therapy Protocol on providing these services.⁷⁶³ In 2017, the Ministry of Public Health presented a Clinical Guide on Hormone Therapy for Trans Persons with the aim of improving the healthcare response offered in this area. According to the information received, these policies were prepared based on intersectional dialogue and direct work with users. It is based on a paradigm of depathologizing trans identities.⁷⁶⁴

⁷⁵⁸ See: Constitutional Court (Colombia), Judgments T-876/2012, T-918/2012, T-771/2013, and T-522/2013.

⁷⁵⁹ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia (Permanent Mission to the Organization of American States), pgs. 13 and 14.

⁷⁶⁰ They are: Washington, Oregon, Nevada, California, Nuevo Mexico, Montana, Colorado, Minnesota, Illinois, Michigan, Pennsylvania, Maine, Maryland, Delaware, New Jersey, Connecticut, New York, New Hampshire, Vermont, Virginia, Massachusetts, Rhode Island, and Hawaii. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations (United States), pg. 3. And Movement Advancement Project. "Equality Maps: Healthcare Laws and Policies." https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies. Visited on June 22, 2020.

⁷⁶¹ They are: Washington, Oregon, California, Nevada, Montana, Colorado, Minnesota, Illinois, Wisconsin, Michigan, Pennsylvania, Maryland, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, New York, and Hawaii, as well as Puerto Rico and D.C. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations (United States), pg. 3, and Movement Advancement Project. "Equality Maps: Healthcare Laws and Policies." Visited on June 6, 2020.

⁷⁶² [Law No. Law 19,684 \(Uruguay\)](#), "Comprehensive Trans Persons Act," October 26, 2018.

⁷⁶³ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 20 and 21.

⁷⁶⁴ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 20 and 21.

391. Lastly, the IACHR received information on at least five hospitals offering medical services related to gender affirmation treatments in Brazil.⁷⁶⁵ Despite this progress, the organizations note that these institutions cannot keep up with demand.⁷⁶⁶ The IACHR was also informed that, in Mexico City, the Condesa Specialized Clinic is the institution that offers support for hormone treatment.⁷⁶⁷
392. Finally, the Commission underscores that despite the significant progress made in access to health for trans and gender-diverse persons, including the recognition of access to health services without the need for diagnoses that are pathologizing, significant challenges persist in the region if the right to health is to be realized with equal protection and nondiscrimination. Most importantly, the IACHR highlights that the lack of training and sensitivity among those who work as healthcare professionals or workers perpetuates this situation, and this must be taken into account by States in their corresponding policies and legislation.

⁷⁶⁵ According to the information received, the services are offered in the following health centers: Hospital das Clínicas da Universidade Federal de Goiás Goiânia; Hospital Universitário Pedro Ernesto Universidade Estadual do Rio de Janeiro; Hospital de Clínicas de Porto Alegre Universidade Federal do Rio Grande do Sul; Hospital de Clínicas da Faculdade de Medicina FMUSP Fundação Faculdade de Medicina MECMPAS; and Hospital das Clínicas da Universidade Federal de Pernambuco. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

⁷⁶⁶ Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

⁷⁶⁷ Article 38; response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pgs. 3-5.

CHAPTER 6

EFFECTS OF THE COVID-19 PANDEMIC ON THE ESCER OF TRANS AND GENDER-DIVERSE PERSONS

EFFECTS OF THE COVID-19 PANDEMIC ON THE ESCER OF TRANS AND GENDER-DIVERSE PERSONS

A. *The IACHR Response to the Pandemic*

393. During the drafting of this report, the global community has been impacted by the pandemic illness caused by the novel coronavirus 19 (COVID-19). Recognizing the complexity of the problem faced by the States in the region with the global pandemic caused by COVID-19, the Inter-American Commission installed its Rapid and Integrated Response Coordination Unit to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19) to strengthen its institutional capacities to protect and defend fundamental freedoms and human rights in this context, especially the right to health and other ESCER.⁷⁶⁸
394. Regarding this emergency and in the operating context of its SACROI COVID-19, the IACHR adopted Resolution 1/2020, “Pandemic and Human Rights,” which is a comprehensive approach by the Commission to the situation of the pandemic, which includes the standards of the Inter-American Human Rights System and a set of recommendations to the States of the region to address the COVID-19 from a human rights perspective.⁷⁶⁹ In its Resolution, the IACHR recommended that States immediately, urgently, and with all due diligence adopt all measures necessary to protect the rights to life, health, and humane treatment of the persons under their jurisdiction from the risks presented by this pandemic.
395. The IACHR also received information on the measures taken by different States in the region to address the pandemic, as well as the impacts it has had on different groups within society. The information indicates that the COVID-19 pandemic has had differentiated and intersectional impacts on the realization of ESCER for certain particularly vulnerable groups and populations.⁷⁷⁰
396. Therefore, in its resolution, the Commission included a section of recommendations regarding particularly vulnerable groups, such as older persons, persons deprived of liberty, women, indigenous peoples, persons in a state of human mobility, children and adolescents, LGBTI people, people of African descent, persons with disabilities. The IACHR emphasize that when issuing emergency and containment measures in response to COVID-19, the States of the region must apply intersectional approach and pay special attention to the needs and differentiated

⁷⁶⁸ IACHR, [SACROI COVID-19 website](#), visited on June 16, 2020.

⁷⁶⁹ IACHR, [Press Release 73/2020](#) “IACHR adopts Resolution on Pandemic and Human Rights in the Americas”, April 10, 2020.

⁷⁷⁰ IACHR, [Resolution 1/2020](#), Pandemic and Human Rights in the Americas, April 10, 2020.

impact of those measures on the human rights of historically excluded or high-risk groups.

B. LGBTI Persons during the Pandemic

397. In the framework of the SACROI COVID-19, the IACHR took note that LGBTI persons have been particularly affected during the crisis caused by the pandemic as a result of pre-existing conditions of violence, exclusion, and want⁷⁷¹ due to the invisibility of LGBTI persons and, particularly, of trans and gender-diverse persons when drafting policies to respond to national and global emergencies, including plans for humanitarian assistance and economic recovery. In view of this reality, in addition to the recommendations set forth in the resolution, the Commission issued a press release exploring in more depth the rights situation of LGBTI persons during the pandemic and formulating recommendations complementary to those set forth in the resolution.

398. The main recommendations made by the IACHR in this area generally involve the social inclusion of trans persons in eventual economic recovery measures; the adoption of healthcare protocols and protocols on domestic violence reporting; adopting or strengthening policies to guarantee respect for gender identity in hospitals and to guarantee the continuity of medical services provided to trans persons; and the implementation of campaigns to prevent and combat homophobia, transphobia, and discrimination based on sexual orientation, thereby guaranteeing protection of the right to gender identity.

399. Based on these general recommendations, the following sections provide an overview of two of the main situations the Commission would point to during the pandemic as resulting from trans and gender-diverse persons' lack of access to ESCER. The Commission will also highlight some relevant recommendations for protecting the rights of trans and gender-diverse persons.

1. The Persistence of Acts of Violence and Discrimination Based on Gender Identity/Expression

400. During the pandemic, incidents of violence and discrimination against LGBTI persons continued. The Commission has received information from the region indicating that some of the provisions adopted by States in response to the pandemic put the rights of trans and gender-diverse persons at risk or are perceived as doing so, leading to acts of prejudice-based discrimination and violence.

401. For example, the Commission learned that a number of States in the region established measures to restrict the free movement of persons that set certain days for the movement of women and others for men. The IACHR underscores that such

⁷⁷¹ OutRight Action International, *Vulnerability Amplified*, May 2020.

measures are in themselves discriminatory against trans and gender-diverse persons, as protocols were not generally in place for their movement, nor were there guidelines for how security forces should act should a person's identification documents not match their gender identity or expression.⁷⁷²

402. This was particularly important during security forces interventions and interactions with trans and gender-diverse persons moving about on the day corresponding to their true gender identities. Regarding this, the Commission noted with concern the incidents of violence and discrimination perpetrated by security forces against trans women whose identification documents did not correspond to their gender identities and expression. This highlights how important it is for States to provide simple and quick legal mechanisms to enable all persons to register and/or change, rectify, or amend their names and other essential components of their identities, such as their images or the reference to sex or gender, and for this to be a priority, especially during the pandemic.⁷⁷³
403. Regarding the actions of security forces agents, the Commission called on States to implement policies to sensitize security forces and judicial authorities on issues of gender identity and expression that take into account that trans and gender-diverse persons frequently do not have a personal identification document that correctly reflects their identities and/or gender expressions.

2. Intensification of Social Exclusion and Poverty Affecting Trans and Gender-Diverse Persons

404. The IACHR also received information on trans women and sex workers who continued to work even during efforts to contain COVID-19 because they did not have other sources of income in a context of social exclusion and high homelessness rates. The Commission received information from organizations that work on the rights of trans and gender-diverse persons indicating that it was impossible to continue paying rent for residences that are often also used as a workplace. The IACHR also received information describing the particular vulnerability of trans persons who, given the impossibility of obtaining economic resources and work, are forced to migrate, exposing them to risks that include human trafficking.⁷⁷⁴
405. In response to this, the Commission called on States to guarantee LGBTI persons access to social programs with an integrated human security approach, guaranteeing LGBTI persons living on the street access to food and medication, especially for trans women who perform sex work.

⁷⁷² IACHR, [Press Release 81/2020](#): “The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic”, April 20, 2020.

⁷⁷³ IACHR, [Press Release 81/2020](#): “The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic”, April 20, 2020.

⁷⁷⁴ Caleidoscopio, *Situation of LGBTIQ Persons in Venezuela: The Complex Humanitarian Emergency and COVID-19*, document received on June 22.

406. As good practices in this area, the IACHR received information from the State of Mexico on actions taken by the Secretariat of Inclusion and Social Welfare, jointly with Mexico City government, to provide care and protection to especially vulnerable populations, including economic support for sex workers and persons living on the street.
407. The Commission takes note of the essential role that civil society has played during the pandemic, with information indicating that in response to State pandemic response measures that excluded trans and gender-diverse persons, they were supported by civil society organizations through activities including collection and distribution of food and water, sanitary materials and masks; the activation of communications networks; access to sources of financing; and other measures, as the Commission joined other international bodies and human rights experts in highlighting.⁷⁷⁵
408. Lastly, the IACHR underscores the importance of States reacting during national, regional, or global emergencies like the pandemic to redouble their efforts in the struggle against homophobia, lesbophobia, transphobia, and biphobia, clearly condemning prejudicial acts of violence and discrimination and working to guarantee their prevention, investigation, prosecution, punishment, and reparation.

⁷⁷⁵ IACHR, [Press Release 110/2020](#): “On the eve of the International Day against Homophobia, Biphobia and Transphobia, the IACHR and various international experts call attention to the suffering and resilience of LGBT people during the COVID-19 pandemic” May 14, 2020.

CHAPTER 7

**CONCLUSIONS AND
RECOMMENDATIONS**

CONCLUSIONS AND RECOMMENDATIONS

409. In this report, the Inter-American Commission has highlighted some specific measures adopted by States in the area of economic, social, cultural, and environmental rights in an attempt to address, to a greater or lesser extent, the structural exclusion facing trans and gender-diverse persons. In this regard, the Commission notes that the ever-increasing number of measures adopted shows that States are beginning to recognize the need to move in that direction and act in accordance with their Inter-American obligations to protect human rights.
410. The Commission reiterates the importance of the progress made by some OAS Member States to implement a variety of legislative, judicial, executive, and public policy measures that recognize gender identity and gender expression as prohibited categories of discrimination, along with other specific actions to enable the legal recognition of gender identity through the correction of identification documents.
411. While the IACHR welcomes this trend, it also emphasizes—as shown throughout this report—that the road to fully meeting the needs of the region’s trans and gender-diverse persons for protection and recognition remains long. Indeed, the effects of the structural exclusion forced upon them will only be eliminated by continuous work, given the widespread persecution, violence, and discrimination inflicted upon trans and gender-diverse persons. The situation is a historical one: It has been widely normalized and rarely questioned until this day.
412. The Commission notes that violations of the rights of trans and gender-diverse persons were not even considered within the human rights field until they themselves began to steadily organize to raise awareness about their situation, denounce it, and demand recognition for their rights before State authorities and international bodies, openly questioning the paradigms of pathologization and criminalization of their diverse identities and expressions.
413. Trans and gender-diverse persons have lived most of their lives without any protection, in the context of social exclusion described in this report, which tends to trap them in a vicious circle of poverty, lack of opportunity, exposure to grave risks to their lives, discrimination, and violence. This situation is extremely difficult to reverse without a strategy designed to address both the roots of the problem and the consequences and effects of this spiral of exclusion that seriously impacts their fundamental rights, particularly impeding their access to ESCER.
414. Consequently, the IACHR reiterates that OAS Member States must design and implement legal and public policy frameworks that explicitly address the specific impacts of the exclusion that trans and gender-diverse persons have historically faced, and these frameworks must include an integrated strategy aimed at reducing the inequalities suffered by these persons. Additionally, States must include tools and conceptual frameworks in their efforts to effectively comply with the general

duty to guarantee all the human rights of trans and gender-diverse persons under their jurisdiction, particularly with regard to their economic, social, cultural, and environmental rights. Lastly, the courts must also take into account inter-American law and standards in this regard when applying, analyzing, and interpreting domestic laws to rule on remedies sought to protect the rights of trans and gender-diverse persons.

415. The framework used should be the 2030 Agenda, which applies universally to the benefit of all persons, as emphasized multiple times in the resolution.⁷⁷⁶ This repeated emphasis that the SDGs apply "to everyone" necessarily means that trans and gender-diverse persons must be included in the efforts made to achieve the objectives set forth in the agenda. The Commission reiterates that the promise that "no one will be left behind"⁷⁷⁷ can never be kept if certain groups that have historically been excluded from effectively realizing their rights and subjected to discrimination—as is the case with trans and gender-diverse persons—do not share equally in the benefits of sustainable development.
416. In this regard, the IACHR underscores that affirmative-action measures are among States' most important tools for reversing historical and systematic exclusion. The Commission has repeatedly expressed its positions regarding the juridical nature, scope, implications, and compliance requirements of these types of measures—known also as "affirmative action measures," "special temporary measures," "measures of positive discrimination," or "inverse discrimination"⁷⁷⁸—aimed at addressing inequalities in the internal distribution and opportunities⁷⁷⁹ available to different social groups that face structural inequalities or have been the victims of historical exclusion, especially with regard to women, persons of African descent, and trans persons.⁷⁸⁰ These measures are exceptional, as they have a specific objective, and their temporary nature is contingent on the attainment of the expected results and their consistency over time. These measures are temporary

⁷⁷⁶ United Nations, General Assembly, *Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, October 21, 2015.

⁷⁷⁷ United Nations, General Assembly, *Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, October 21, 2015, para. 4. In this regard, see: IACHR, *Press Release No. 110/18: "Leave no LGBT person behind,"* May 16, 2018.

⁷⁷⁸ IACHR, *Report on Poverty and Human Rights* (2017), para. 161; *Situation of Afro-Descendant Persons in the Americas* (2011), para. 227; *The Road to Substantive Democracy: Women's Political Participation in the Americas* (2011), para. 36; *Annual Report 1999: Chapter VI: Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination* (1999); IACHR, *Press Release 40/16: "IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women,"* March 21, 2016.

⁷⁷⁹ IACHR, *Situation of Afro-Descendant Persons in the Americas* (2011), para. 202; IACHR, *Report on the Human Rights Situation in Ecuador 1997*, Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador; *Annual Report 1999: Chapter VI: Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination* (1999).

⁷⁸⁰ See, among other examples: IACHR, *Report on Poverty and Human Rights* (2017), Recommendation 11; IACHR, *Violence against LGBTI Persons in the Americas* (2015), Recommendation 68; *Situation of Afro-Descendant Persons in the Americas* (2011), Recommendation 23; IACHR, *Press Release No. 040/16, IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women,* March 21, 2016.

and progressive, and they seek to foster a process of building equality in the effort to construct more just, diverse, and equal societies. Therefore, they must be subject to strict validation criteria, and must be: i) appropriate to the situation in question; ii) legitimate; iii) necessary in a democratic society; iv) respectful of the principles of justice and proportionality; v) temporary; vi) designed and implemented to meet a need; and vii) based on a realistic assessment of the situation of the individuals and communities affected.⁷⁸¹

417. The consensus on the usefulness of these types of measures as tools in the struggle against the effects of historical patterns of exclusion is clear in the large number of international bodies that have issued pronouncements on them under a variety of international legal frameworks.⁷⁸² In the OAS, both the Inter-American Court of Human Rights⁷⁸³ and the Inter-American Commission of Women⁷⁸⁴ have addressed such measures. In the universal system, the Committee On Economic, Social, and Cultural Rights has addressed them,⁷⁸⁵ as have the Human Rights Committee,⁷⁸⁶ the Committee on the Elimination of Discrimination against Women (CEDAW Committee),⁷⁸⁷ and the Committee on the Elimination of Racial Discrimination.⁷⁸⁸ Additionally, when it adopted the "Plan of Action for the Decade for Persons of African Descent in the Americas (2016-2025)," the OAS General Assembly included affirmative action measures to benefit persons of African descent in the framework of several of its main objectives, especially access to education,⁷⁸⁹ work opportunities,⁷⁹⁰ and implementation of the 2030 Agenda.⁷⁹¹
418. Multiple affirmative-action measures proposed and implemented by different OAS Member States have been analyzed in this report, especially measures on the right

⁷⁸¹ IACHR, *Situation of Afro-Descendant Persons in the Americas* (2011), para. 240.

⁷⁸² The treaties that specifically provide for affirmative-action measures include the Inter-American Convention against all Forms of Discrimination and Intolerance, Article 5; the Convention on the Elimination of Discrimination against Women, Article 4(1); the Convention on the Elimination of all Forms of Racial Discrimination, Article 1(4).

⁷⁸³ Inter-American Court. *Case of Yean and Bosico Children v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005, Series C No. 130, para. 141.

⁷⁸⁴ Inter-American Commission of Women (CIM), "Plan of Action of the CIM on Women's Participation in Power and Decision-Making Structures," CIM/Ser.L/II.8.1 (1999), pgs. 27-30; Inter-American Commission of Women (CIM), CIM/DEC. 10 (XXXV-O/10): Declaration of the Inter-American Year of Women, "Women in Power: For a World of Equality," adopted at the fifth plenary session, held on November 4, 2010.

⁷⁸⁵ CESCR, General Comment 20, para. 8(b).

⁷⁸⁶ Human Rights Committee, General Comment No. 18, para. 10.

⁷⁸⁷ CEDAW Committee, General Comment 25, para. 12.

⁷⁸⁸ CERD, General Recommendation 32, para. 11.

⁷⁸⁹ OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objectives I(a)(2)(7); II(b)(1)(1); and II(b)(1)(2).

⁷⁹⁰ OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objectives II(b)(1)(2); II(b)(2)(1).

⁷⁹¹ OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objective III(a)(1)(2).

to education and the right to work.⁷⁹² The Commission also views it as pertinent to recall it has already indicated that when setting public policy, States are required to conduct an exhaustive and continual analysis of their human rights obligations in order to arrive at the policies needed to comply with its duty to promote, protect, and guarantee human rights. This State duty means prioritizing populations that have historically faced discrimination and exclusion not only in identifying the problems to be solved but also in making them visible during the design, implementation, and evaluation processes. This means adopting affirmative action measures, but it also means including measures with differentiated approaches in policies that are universal in scope.⁷⁹³

419. Lastly, the IACHR underscores good practices for providing reparations for structural violence committed against trans and gender-diverse persons. It highlights Uruguay's Comprehensive Trans Persons Act, which establishes a reparations regime for trans persons born before December 31, 1975, who can demonstrate that they were victims of institutional violence or deprived of liberty because of their gender identities, having suffered moral or physical damages and been prevented from fully exercising their rights to movement, work, and education under discriminatory practices carried out by State agents or by those who, while not State agents, acted with their authorization, support, or acquiescence.⁷⁹⁴ Likewise, in Argentina, judgments have been issued recognizing trans persons as victims of structural violence by awarding them "extraordinary and reparatory subsidies."⁷⁹⁵
420. Along these lines, in the framework of the historical exclusion that States must reverse, clear forums must be established for recognition of State responsibility with regard to trans and gender-diverse persons who, as in the above-cited law, can prove having been the victims of institutional violence, deprived of liberty, or subjected to torture, punishment, or cruel, inhuman, or degrading treatment as a result of their gender identities or expression.
421. Acts of recognition of responsibility can involve a variety of different measures, including symbolic acts of reparation, such as official declarations, asking forgiveness, and historical recognition. They can also take the form of State support for initiatives aimed at documenting and disseminating the recollections and testimony of trans and gender-diverse persons who were able to survive in the context of exclusion and violence that were forced upon them, especially during military dictatorships. These policies must be designed and implemented with the final goal raising awareness on the history surrounding this issue.
422. Reparations can also be implemented through pecuniary compensation in the form of *ex gratia* pensions, subsidies, or specific financial support for older trans persons who lived their lives almost entirely in this framework of systematic oppression,

⁷⁹² In particular, see chapters 4 and 5 of this report.

⁷⁹³ IACHR. [Public Policies with a Human Rights Focus.](#), September 15, 2018, paras. 85 and 158.

⁷⁹⁴ [Law No. Law 19,684](#) (Uruguay), "Comprehensive Trans Persons Act," October 26, 2018, Article 10.

⁷⁹⁵ *Página 12*, "Reparación por tantos daños," October 3, 2013. Also see *Diario Popular*, "Ordenan al Gobierno porteño que otorgue subsidio a una trans," October 3, 2013.

encroachment of their rights, pathologization, criminalization, and lack of recognition of their gender identities.

423. In any case, the Commission recalls that a comprehensive reparations policy cannot be limited to investigating, restoring, rehabilitating, and compensating direct victims. Rather, pursuant to the jurisprudence of the Inter-American system, the end goal must also be to promote justice and strengthen the democratic rule of law in the region as a collective matter, including all juridical, political, administrative, and cultural measures to promote the protection of human rights of—in this particular case—trans and gender-diverse persons.⁷⁹⁶

RECOMMENDATIONS

424. Under the provisions of Article 41, subparagraph b of the American Convention on Human Rights, the Commission has the authority to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive human rights measures within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights.
425. In the exercise of this authority, in this section, the IACHR will make recommendations to States on matters that affect trans and gender-diverse persons' enjoyment of their ESCER, along with general recommendations on respecting and guaranteeing these rights. Lastly, it will make specific recommendations on the rights to education, culture, and health that were addressed in the body of this report. These recommendations are made with the aim of providing States with guidelines on effectively guaranteeing these rights and securing the social inclusion of trans and gender-diverse persons.
426. However, prior to making these recommendations, the Commission views it as important to reiterate the recommendations issued to States in its report on "Violence against LGBTI Persons in the Americas"⁷⁹⁷ and its report on "Progress on and challenges to recognizing the rights of LGBTI persons in the Americas"⁷⁹⁸ where they are applicable to the protection of the economic, social, cultural, and environmental rights of trans and gender-diverse persons. It does so because compliance with the recommendations made in those reports remains essential for the comprehensive enjoyment of rights by trans and gender-diverse persons. While some of them are repeated in this report, the Commission emphasizes the importance of States taking them into account simultaneously, complementarily,

⁷⁹⁶ IACHR. Public Policies with a Human Rights Focus. OEA/SER.L/V/II. Doc. 191, September 15, 2018, para. 199.

⁷⁹⁷ IACHR. Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas, November 12, 2015.

⁷⁹⁸ IACHR. Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas, December 7, 2018.

and comprehensively as they comply with their international obligations in this area.

427. Along with this, the IACHR deems it necessary to reiterate the recommendations set forth in its Resolution 1/2020 and its press release issued on April 20, 2020, as the impacts of the global COVID-19 pandemic continue to affect trans and gender-diverse persons' access to their ESCER. Therefore, the IACHR makes the following recommendations to States:

A. Recommendations on Matters that Impact Trans and Gender-Diverse Persons' Enjoyment of ESCER

1. Adopt all measures necessary to guarantee due diligence in preventing, investigating, punishing, and providing reparations for discrimination and violence against trans persons.
2. Adjust the legal framework so as to:
 - a) Avoid directly or indirectly criminalizing persons' conduct in exercising their gender identities or expression. Also, work to ensure domestic laws and regulations do not make distinctions based on stereotypes of these persons that are baseless or disproportional.
 - b) Include protections from discrimination based on gender identity, in both the public and private sectors.
 - c) Adopt a gender identity law that recognizes the right of trans and gender diverse persons to change the name and sex or gender marker on birth certificates, identity documents, and other legal documents. These procedures must be quick; they must guarantee the right of children and adolescents to recognition of their gender identities based on their emerging autonomy and best interest; they must not require the submission of medical or psychological/psychiatric evaluations or certifications or other unnecessary, pathologizing, or humiliating requirements; and they also must not require trans and gender-diverse persons to renounce vested rights or deprive them of the conditions for a life with dignity.
3. Devise and implement policies and programs to promote respect for the rights of trans and gender diverse persons and their social acceptance and inclusion. These policies and programs must be integrated, crosscutting, and based on a human rights approach, and they must specifically include a gender perspective.
4. Guarantee the establishment and operation of national human rights mechanisms, entities, or structures with a specific mandate to tackle and eradicate the causes of discrimination, including discrimination based on gender identity and expression. These structures must also have the capacity to make legislative and public policy recommendations against discrimination, carry out awareness-raising campaigns,

and take other de facto measures to prevent and eradicate the causes of discrimination.

5. Devise and execute sensitization and awareness raising campaigns in public and private media on body diversity, sexual diversity, and the gender approach. These campaigns must be aimed at promoting respect, tolerance, and comprehensive social inclusion for trans persons; at combating stigmas and stereotypes; and at highlighting the main causes and consequences of exclusion, discrimination, and violence against trans persons.
6. Promote informational campaigns targeting trans and gender-diverse persons on their human rights and existing protective mechanisms.
7. Combat hate speech and discriminatory speech, particularly by ensuring that public statements and messages from authorities, especially the most senior authorities, are not stigmatizing or discriminatory toward trans and gender-diverse persons.
8. Ensure that the private sector respects the human rights of trans and gender diverse persons, particularly that companies operate with due diligence with regard to human rights within their operations, and that they are held accountable for actions with negative impacts on certain groups, taking into account the standards set forth in the report "Business and Human Rights: Inter-American Standards," prepared by the IACHR's REDESCA.
9. Implement policies for collecting, generating, and analyzing statistical data on the realization of ESCER for trans persons with the aim of designing appropriate and timely action plans and policies targeting this population. Specifically:
 - a) Allocate sufficient resources to collect data and work in coordination with the various State entities in charge of access to economic, social, cultural, environmental rights.
 - b) Include the indicators pertinent to monitoring the level of access that trans and gender diverse persons have to their economic, social, cultural, and environmental rights, and identify the main obstacles they face. In particular, for collecting data, States should take into account and incorporate the "Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective," mentioned in this report.
 - c) Develop indicators to measure the degree to which trans and gender diverse persons' right to development is guaranteed, in keeping with national programs on development and monitoring of the SDGs.
 - d) The data generated and analyzed by the State must be public and easy to access. Also, States must ensure it is accessible to civil society organizations and trans rights defenders, including in rural areas.
 - e) The information must be compiled to include indicators for identifying conditions causing vulnerability—for example, ethnic and racial origin, age,

education, economic status, human rights defender, person deprived of liberty, etc.

10. Guarantee that personal information regarding gender identity is not stored or used without the consent of its owner, except where necessary to take specific actions that are legal and whose aims are legitimate and proportional. The information must be kept as confidential as possible.
11. Sign and ratify the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted by the OAS General Assembly on June 5, 2013.
12. Adopt all the measures necessary to implement the standards set forth in the framework of Advisory Opinion 24/2018 of the Inter-American Court of Human Rights.
13. Adopt comprehensive reparations measures or programs for trans and gender-diverse persons who were the victims of historic violations due to their gender identities or expression.

B. General Recommendations on Respecting and Guaranteeing the ESCER of Trans and Gender-Diverse Persons

14. Develop objective and reasonable distinction criteria to guarantee substantive conditions of equality for trans and gender-diverse persons and increased access to and guarantee of their ESCER. Specifically, adopt the affirmative actions and measures necessary depending on context to overcome the historic and structural barriers preventing them from enjoying their ESCER, including the right to development.
15. Guarantee that civil society organizations and trans and gender-diverse persons are consulted and involved in designing and implementing these public policies. The planning, implementation, monitoring, and evaluation of these policies will not be successful without provisions for the specific needs and modalities under which these beneficiaries could take advantage of them.
16. Conduct regular and ongoing training activities for public officials on gender identity and expression, on the main causes of violence and discrimination, and on the ways in which these individuals experience it. Such activities should especially target those working in human resources, culture, education, and health.
17. Design, disseminate, and implement specialized protocols to facilitate trans and gender-diverse persons' access to their ESCER without any kind of violence or discrimination. Any cisnormative regulations, protocols, or directives that pose obstacles to trans persons' access to economic, social, cultural, and environmental rights must therefore be revised and/or repealed.

18. Prohibit the illegitimate use of “conscientious objection” by public officials and professionals to discriminate against trans and gender-diverse persons, particularly in denying public or vital services. The objective is to prevent discriminatory acts and guarantee that trans and gender-diverse persons are able to fully exercise their ESCER on an equal footing and without any discrimination. Processes also must be established to sanction public servants and professionals who illegitimately use conscientious objections to discriminate against trans persons and deny them their ESCER.

C. Right to Education

19. Inclusion and respect for the rights of trans and gender-diverse persons in education must include both formal and informal education, education provided by public, private, or public-private institutions; and it should not be limited to primary school but rather permeate all levels of education. Specifically, it must ensure the following:
 - a) Nondiscrimination and access to a good quality education for trans and gender-diverse persons, including affirmative measures and coexistence plans to promote an inclusive educational environment: for example, by offering tutoring, psychosocial support, and advisory services, and establishing reserve spots or quotas, scholarships, and subsidies.
 - b) Systematic monitoring of incidents of harassment, violence, and discrimination based on gender identity and/or expression in educational spaces, as well as analysis of the data and production of statistics with an aim to eradicating school discrimination and violence.
 - c) Creation of educational materials that promote the acceptance and inclusion of trans and gender-diverse persons in society, specifically including issues related to equality and nondiscrimination, sexual diversity and gender identity, comprehensive sex education, and human rights education, all age-appropriate and objective, while taking into account the gender perspective.
 - d) Provision to teachers of guides addressing issues of inclusion, acceptance, and respect for diversity and persons with diverse sexual orientations and gender identities.
20. Guarantee that experts are able to participate in this area, and that students themselves—particularly those who are part of these groups—can take part in the educational processes that affect them. Thus, the opinions of diverse families should especially be taken into account, and the issue should be addressed from a real and impartial perspective, not stereotypes.
21. Educational institutions at all levels must review their regulations, protocols, and directives and repeal those that draw unwarranted distinctions based on gender identity. Thus, students should be permitted to use clothing or school uniforms in

accordance with their gender identities, and bathroom use should be facilitated from a gender perspective.

D. Right to Culture

22. Move forward in promoting public policies, legislation, and affirmative measures intended to foster access to culture, such as participation in cultural life without discrimination against trans or gender-diverse persons. Specifically, sufficient financial resources must be provided within educational and cultural programs to support the production of cultural content by trans and gender-diverse persons.
23. Urge the media and the private sector in general to offer trans and gender-diverse persons specific opportunities to make their own local and regional contributions to culture.
24. Take the affirmative actions necessary to enable trans and gender-diverse persons to participate actively in knowledge production, research, and cultural and scientific documentation.

E. Right to Health

25. Design and implement a legal and public policy framework aimed at guaranteeing trans and gender-diverse persons the greatest access possible to physical and mental health. Specifically, it must do the following:
 - a) Promote training of specialized medical personnel in areas that specifically meet the needs of trans persons; a lack of trained medical personnel cannot be used to justify denying these persons access to health services.
 - b) Combat masculine and feminine binary prejudices and stereotypes at all levels of health services.
 - c) Implement care directives and protocols for trans-patients that provide for their accommodation or hospitalization with full respect for their gender identities.
 - d) Guarantee health protocols that address the specific needs of trans persons, including gender affirmation treatments that are based on the free, prior, and informed consent of persons. These treatments must include psychological, endocrinological, and surgical care within the public health system, and they must be moving toward being free of charge. The requirements for accessing these treatments must be reasonable, objective, and free from prejudice and stigma.

- e) Move seriously toward banning activities claiming to offer "therapies" to "modify," "reorient," or "cure" gender identities, prosecuting and sanctioning them, as applicable.
26. Ensure that legal and policy frameworks on health prohibit discrimination against these persons regardless of whether the health services are private or public.

F. Right to Work

27. Respect and guarantee the right of trans or gender-diverse persons to freely choose a profession or job, and guarantee workplace conditions are just and equitable. Specifically:
- a) Monitor the effective enjoyment of decent salaries, time off, and vacation time, as well as workplace health and safety.
 - b) Take adequate measures to prohibit unjustified dismissals based on gender identity or based on a trans person's transition, body modification, or gender expression.
 - c) Design public policies focused on the employability of trans persons that include access to promotion and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.
28. Adjust domestic legislation and take the measures necessary to guarantee effective protection from workplace discrimination based on identity and/or gender expression, in both the public and private sectors; also, establish adequate mechanisms to prevent, report, pursue, and sanction workplace harassment. Specifically:
- a) Repeal laws restricting the legal rights of trans persons to job access and eliminate measures that indirectly have a disproportionately negative effect on their access to work.
 - b) Promulgate an anti-discriminatory labor law framework that takes into account the specific needs of trans persons in, prior to, during, and after their transition (if there is one) in the workplace.
 - c) Combat workplace harassment against trans persons and guarantee safe spaces for reporting.
 - d) Amend laws on paid maternity and/or paternity leave to fully guarantee the principles of equality and nondiscrimination with regard to the enjoyment of these rights by pregnant trans persons and those who are becoming mothers and/or fathers by, for example, adoption. In the same regard, States must review their domestic legislation to ensure it is not based on stereotypes regarding child care and who plays the primary role in raising children.

29. Foster equal hiring opportunities for trans and gender-diverse persons, including by implementing job fairs or campaigns jointly with private entities to facilitate trans persons' access to work.
30. Take action to ensure trans and gender-diverse persons can join labor unions and workers associations and groups, as well as take part in other spaces for political participation.