

Request for an Advisory Opinion to the Inter-American Court of Human Rights

The content and scope of care as a human right, and its interrelationship with other rights

I. Introduction

The Republic of Argentina, member State of the Organization of American States and State Party to the American Convention on Human Rights (hereinafter, "American Convention" or "ACHR"), submits to the Inter-American Court of Human Rights (hereinafter, "I/A Court H.R." or "Court") the present request for an advisory opinion, in accordance with the provisions of Articles 64(1) of the ACHR and 70 and 71 of the Rules of Procedure of the I/A Court H.R.

The purpose of this request is for the Honorable Court to define the content and scope of the right to care and the corresponding state obligations, in accordance with the ACHR and other international human rights instruments.

In order to formulate this presentation, consultations were held with experts and civil society organizations. At the same time, various sources of domestic and international law, studies and research that can support the interpretative work of the I/A Court H.R. were gathered. On this basis, the central aspects that the Argentine State considers should be included in the Court's analysis when addressing the issue of care were defined.

Next, the considerations that motivate the request will be specified (section II) and the specific questions posed to the I/A Court HR will be outlined (section III). Finally, admissibility aspects will be briefly analyzed (section IV).

This document includes an **appendix** that includes standards, commitments and national and regional policies on the subject.

II. Considerations motivating the request

Care work comprises tasks aimed at people's daily well-being, whether physically, economically and morally, as well as emotionally.¹ They range from the provision of essential goods for life -such as food, cleanliness and health- to the support and transmission of knowledge, social values, customs, habits and practices through processes related to upbringing. In other words, they are the tasks necessary for the existence of societies and for the general well-being of every individual.²

Care is a necessity, a job and a right.³ A need insofar as it makes human existence possible, given that all people require care for their well-being and development. A job in terms of its socioeconomic value. A right that must be guaranteed in its three essential dimensions: providing care, receiving care and self-care.

Care policies can be defined as those public policies that allocate resources to recognizing, reducing and redistributing⁴ unpaid care in the form of money, services and time.⁵ They include, among

¹ Over time they have also been referred to as care task(s), care work(s), domestic chores, reproductive and non-reproductive work, paid and unpaid care work(s)/task(s), care economy, among others.

² ILO, "Care work and care jobs for the future of decent work" 2019, p. 6, available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf

³ Care Policies Interministerial Table (Argentina), "Hablemos de cuidados. Nociones básicas hacia una política integral de cuidados con perspectiva de géneros", 2020, p. 6, available at <https://www.argentina.gob.ar/sites/default/files/mesa-interministerial-de-politicas-de-cuidado.pdf>.

⁴ The concept of "Recognize, Redistribute and Reduce" has been widely addressed. For example in: UN Women, "Recognition, Redistribution and Reduction of Care Work. Inspiring Practices in Latin America and the Caribbean", 2018, available at <https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/2018/11/Estudio%20Cuidados/2b%20UNW%20Care%20Mapping-compressed.pdf>

others, the direct provision of care services, care-related social protection transfers and subsidies, and care infrastructure. They also include policies and labor regulations that promote co-responsibility for care, including paternity and maternity leave, other family-friendly working arrangements enabling a better balance between work and care, as well as those that hierarchize paid care work.

According to the International Labor Organization (ILO), throughout the world without exception, women perform the majority of unpaid care work. Women spend, on average, 3.2 times more hours than men on unpaid care work: 4 hours and 25 minutes (265 minutes) per day compared to 1 hour and 23 minutes for men (83 minutes). Over the course of a year, this represents a total of 201 working days (based on an 8-hour workday) for women and 63 working days for men.⁶

The Gender Equality Observatory of the Economic Commission for Latin America and the Caribbean (ECLAC) indicates that since before the crisis caused by the HIV/AIDS pandemic, in the region, women spend more than three times as much time on unpaid work as men. Along the same lines, data from the Inter-American Development Bank show that in Latin American countries, the percentage of unpaid work time in households that is performed by women is between 69% and 86%.⁷

These data are compelling and reflect how inequalities in the area of care precede and explain gender differences in the exercise and enjoyment of human rights: the traditional social role of women as caregivers and domestic workers has limited their ability to enter the formal labor market and curtailed their economic autonomy,⁸ while restricting their time devoted to leisure, education, political participation and self-care.⁹

It should be noted that this unequal distribution of care work not only reinforces socioeconomic and gender inequalities, but also has a strong negative impact on economic growth, the functioning of the labor market, and companies' productivity¹⁰. In this sense, it is necessary to highlight the value of care work for economic recovery. According to ECLAC data, the economic contribution of these jobs ranges between 15.9% and 25.3% of the gross domestic product (GDP)¹¹. For its part, the ILO has pointed out that unpaid care work would be equivalent to 9.0% of world GDP if a monetary value were given to the hours devoted to its provision¹². For example, in Argentina, it represents 15.9% of GDP, being the sector with the highest contribution in the entire economy¹³.

⁵ ILO, Op. cit. 2, p. 113.

⁶ ILO, Op. cit. 2, p. 53.

⁷ Inter-American Commission of Women (CIM), "COVID-19 in Women's Lives: The Global Care Emergency", 2020, p. 15. Available at: <https://www.oas.org/es/cim/docs/CuidadosCOVID19-EN.pdf>

Likewise, in households with children, women are more overburdened with care work. In fact, around 60% of women in households with children under 15 years of age do not participate in the labor market due to family responsibilities, while in households without children in the same age group, this figure is close to 18%. For more information, see: ECLAC - UN Women, "Towards the construction of comprehensive care systems in Latin America and the Caribbean: Elements for their implementation", 2021, p. 12. Available at: https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/2021/11/TowardsConstructionCareSystems_Nov15-21%20v04.pdf

⁸ United Nations General Assembly (UNGA), "Note by the Secretary-General transmitting the report of the Special Rapporteur on extreme poverty and human rights", A/68/293, 2013, paras. 12-14; IACHR, "Women's Work, Education and Resources: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights", 2011, paras. 133-135, available at: <http://www.oas.org/es/cidh/mujeres/docs/pdf/MujeresDESC2011.pdf> (english version not available)

⁹ ECLAC, "Desigualdad, crisis de los cuidados y migración del trabajo doméstico remunerado en América Latina", 2020, p. 13. Available at: https://repositorio.cepal.org/bitstream/handle/11362/46537/1/S2000799_es.pdf.

¹⁰ ILO - UNDP, "Work and Family: Towards new forms of reconciliation with social co-responsibility", 2009, p. 11 Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_111375.pdf

¹¹ ECLAC - UN Women, Op. cit. 7, p. 13.

¹² ILO, Op. cit. 2, p. 49.

Therefore, investing in care policies would not only help achieve gender equality, but would also contribute to ending poverty, promoting sustained, inclusive and sustainable economic growth, achieving full employment and decent work, and reducing inequality between countries.¹⁴

Although care as a right derives from various international commitments embodied in legally binding instruments, the topic has not been exhaustively addressed. Developments on the subject of care have been elaborated by different human rights protection bodies of the inter-american and universal system as part of instruments that address other major issues and, also, in declarations adopted by the international community in political forums. However, so far no detailed standard has been established on what is implied by the human right to care (the right to provide and receive care and to exercise self-care).

Consequently, the current international legal framework lacks a clear definition of the content and scope of this right, since the general and specific state obligations, their minimum essential contents and the budgetary resources that should be considered sufficient for its guarantee have not been specified. Nor have progress indicators been defined to monitor its effective fulfillment, among other issues. This is essential because the construction of a clear legal standard is what makes it possible to translate the international norm into a public policy that can be designed, implemented, evaluated and monitored.

In view of this, the Honorable I/A Court H.R. is hereby requested to determine with greater precision the scope of care as a human right (the right to provide and receive care and to exercise self-care), as well as the obligations of the States in this regard. This, in light of the authorized interpretation of articles 1.1, 2, 4, 17, 19, 24, 26 and 29 of the American Convention on Human Rights; articles 34 and 45 of the Charter of the Organization of American States (hereinafter "OAS Charter"); articles I, II, VI, XI, XII, XIV, XV, XVI, XXX and XXXV of the American Declaration of the Rights and Duties of Man; articles 7, 8 and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; articles 1, 2, 3, 6, 7, 9, 10, 11, 13, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter, "Protocol of San Salvador"); articles 6, 9, 12 and 19 of the Inter-American Convention on Protecting the Human Rights of Older Persons; and Article III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

In examining the standards applicable to the issues under consideration, the Court is requested to take special account of the following principles of international human rights law:

- The pro personae principle, which requires recourse to the interpretation most favorable to the individual.
- The principle of equality and non-discrimination, which cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority nor with that notion to characterize a group as inferior and treat it with hostility or

Along the same lines, the CIM estimated that, if immediate measures for gender equality in employment and the labor market were taken, \$13 trillion dollars would be added to global GDP in 2030. Conversely, in the absence of such actions, as well as measures to counteract the negative effects of the COVID-19 pandemic on women's participation in the economy, global GDP growth could be \$1 trillion lower in 2030. See more in: CIM, Op. cit. 7, p. 3.

¹³Ministerio de Economía de la Nación de Argentina, "Los cuidados, un sector económico estratégico. Medición del aporte del Trabajo doméstico y de cuidados no remunerado al Producto Interno Bruto", 2020, p. 10. Available at: https://www.argentina.gob.ar/sites/default/files/los_cuidados_-_un_sector_economico_estrategico_0.pdf (english version is not available)

¹⁴ILO, Op. cit. 2, p. 113.

otherwise subject it to discrimination in the enjoyment of rights¹⁵. Discrimination factors must be taken into consideration, including gender, sexual orientation and gender identity.¹⁶

- The principle of progressive interpretation of human rights, which implies interpreting the norms in such a way as to meet the present challenges in order to ensure that the rights of all persons are guaranteed.
- The gender perspective, which raises awareness of women's and girls' position of inequality and structural subordination to men, as a result of their gender, and serves as a key tool to combat discrimination and violence against women, as well as against persons with sexual and gender diversity.¹⁷
- The intersectionality perspective, which exposes one or several forms of overlapping layers of discrimination that leads to a form of deepened discrimination which manifests itself in substantively different experiences among women,¹⁸ considering the circumstances of special vulnerability.
- The principle of special protection, whereby a differentiated approach must be applied in regulations and policies to take into account the situation of structural inequality in which certain groups find themselves, particularly children and adolescents¹⁹, the elderly and people with disabilities.

In this order of ideas, the Honorable I/A Court H.R. is requested to rule on the issues detailed below.

III. Specific questions on which the opinion of the I/A Court H.R. is requested

III.a. The human right to provide and receive care and to exercise self-care

The I/A Court H.R. has repeatedly affirmed that Article 26 of the American Convention enshrines those rights that derive from the economic, social, educational, scientific, and cultural standards contained in the Charter of the Organization of American States.²⁰

To derive rights contained in the aforementioned article, the I/A Court H.R. has not only referred to the OAS Charter,²¹ but also to the American Declaration of the Rights and Duties of Man²² and to relevant international and national norms.²³

In this framework, the OAS Charter establishes in Article 45.a. that all human beings "(...) without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security". What's more, paragraphs b and h of the same article recognize work as a right and a social duty, which gives dignity to those who perform it; they emphasize that it must be performed under fair conditions and provide for the development of an efficient social security

¹⁵ I/A Court H.R., "Case of Ramírez Escobar et al. v. Guatemala", Merits, Reparations and Costs, Judgment of March 9, 2018, para. 270; I/A Court H.R., "Case of Atala Riffo and Girls v. Chile", Merits, Reparations and Costs, Judgment of February 24, 2012, para. 79.

¹⁶ I/A Court H.R., "Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples", Advisory Opinion OC-24/17, November 24, 2017, para. 68.

¹⁷ IACHR, "Violence and Discrimination against Women, Girls and Adolescents: Good practices and challenges in Latin America and the Caribbean", 2019. para. 8.

¹⁸ Ibid.

¹⁹ I/A Court H.R., "Juridical Condition and Human Rights of the Child", Advisory Opinion OC-17/02, August 28, 2002, para. 57.

²⁰ I/A Court H.R., "Case of Cuscul Pivaral et al. v. Guatemala", Preliminary Objection, Merits, Reparations and Costs, Judgment of August 23, 2018, para. 96.

²¹ Ibid, para. 99.

²² Ibid., para. 101.

²³ Ibid., para. 102.

policy. Article 34.a stipulates, among the objectives of integral development, the substantial and self-sustained increase of per capita national product.

Article VII of the American Declaration of the Rights and Duties of Man states that "[a]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid". The Declaration also recognizes the right to equality before the law, to a family and to protection thereof, to the preservation of health and to well-being, to education, to work and to fair remuneration, to leisure time and to the use thereof, and to social security, as well as the duties toward children and parents, and duties with respect to social security and welfare in articles II, VI, XI, XII, XIV, XV, XVI, XXX and XXXV, respectively.

On the other hand, care as a right also arises from other international commitments, embodied in legally binding instruments and declarations adopted by the international community in the context of various political forums.

At the regional level, the American Convention on Human Rights enshrines the rights of the family, which implies that States must take appropriate measures to ensure equal rights and adequate balancing of responsibilities within the couple,²⁴ the rights of children and adolescents²⁵ and the right to equality before the law²⁶. In addition, the Convention establishes that the rights recognized therein must be respected and ensured to all persons without discrimination²⁷ and that the necessary measures must be adopted to give effect to them²⁸. In turn, the Protocol of San Salvador determines that the States must "implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work"²⁹ and to take measures for the protection and care of families,³⁰ of children,³¹ of the elderly³² and of the handicapped³³. In addition, the Inter-American Convention on the Protection of the Human Rights of Older Persons provides for the right to a comprehensive care system with a gender perspective and the duty of States to design support measures for families and caregivers.³⁴ Finally, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities obliges to take measures to promote the integration of persons with disabilities in the provision of goods, services, facilities, programs, and activities, as well as to work on the detection, treatment, rehabilitation and provision of comprehensive services to ensure an optimal level of independence and quality of life for persons with disabilities.³⁵

Within the universal system, both articles 5.b and 11.2.c of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and article 18 of the Convention on the Rights of the Child stipulate the obligation of States to ensure the recognition of common responsibilities of mothers and fathers in the upbringing and development of their children, as well as the creation of institutions, facilities and social services for their care.³⁶

²⁴ American Convention on Human Rights, art. 17.

²⁵ Ibid, art. 19.

²⁶ Ibid, art. 24.

²⁷ Ibid, art. 1.1.

²⁸ Ibid, art. 2.

²⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, art. 6.2.

³⁰ Ibid, art. 15.

³¹ Ibid, art. 16.

³² Ibid, art. 17.

³³ Ibid, art. 18.

³⁴ Inter-American Convention on the Protection of the Human Rights of Older Persons, art. 12.

³⁵ Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, art. III.

³⁶ Convention on the Elimination of All Forms of Discrimination against Women, arts. 5.b) and 11.2.c); Convention on the Rights of the Child, art. 18.

Developments in the framework of international labor law are also key. In particular, Convention 156 of the International Labor Organization establishes that States should include among the objectives of national policy that persons with family responsibilities should be able to exercise their right to engage in employment without being subject of discrimination and without conflict between such responsibilities and their employment responsibilities.³⁷

It should be noted that various human rights treaty bodies and special procedures, at the regional and universal levels, have made specific pronouncements on the subject of care.

Thus, in OC-27/21, the I/A Court H.R. has affirmed that gender stereotypes in domestic and care work constitute a barrier to the exercise of women's rights, particularly their labor and trade union rights³⁸. Likewise, the Honorable Court has indicated that the States must adopt measures to balance domestic and care work between men and women, which implies adopting policies designed to have men take an active, equal role in organizing the home and raising the children³⁹. Within these measures, the Court strongly encouraged the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life.⁴⁰

Recently, in OC-29/22, the I/A Court H.R. has referred to the differentiated approaches that apply to pregnant women, women in childbirth, postpartum, and breastfeeding and primary caregivers who are in detention. In this regard, it indicated the need to adopt special measures to make their rights effective, to prioritize them in the use of alternative measures in the application and execution of the sentence, to establish appropriate facilities for them and to guarantee an adequate environment for them to develop ties with their children who are outside⁴¹. This pronouncement also highlighted the pattern of women deprived of liberty in the region: women living in poverty, with few years of schooling, responsible for the care of their children and other dependent family members, exposed to abuse and violence.⁴²

For its part, the Inter-American Commission on Human Rights (IACHR) considered that the right to care is being progressively shaped, that it is a right whose recognition and protection must be strengthened, and that although it is not explicitly established in the inter-American instruments,⁴³ it is derived from the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and the Inter-American Convention on the Protection of the Human Rights of Older Persons.⁴⁴ In turn, the IACHR emphasized that in the context of COVID-19, care is affirmed as a human right of vital importance for people, especially for those who are ill, people with disabilities, the elderly, and children and adolescents. Consequently, it called for the recognition and protection of care as a human right, the valuation of care work and the labor rights of domestic workers, as well as the creation of national care systems with a focus on rights, gender and intersectionality.⁴⁵

³⁷ Convention 156 of the International Labor Organization on workers with family responsibilities, art. 3.

³⁸ I/A Court H.R., "Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective", Advisory Opinion OC-27/21, May 5, 2021, para. 176.

³⁹ *Ibid*, para. 178

⁴⁰ *Ibid*, 2021, para. 178.

⁴¹ I/A Court H.R., "Differentiated approaches with respect to certain groups of persons in detention", Advisory Opinion OC-29/22, May 30, 2022, para. 121 et seq.

⁴² *Ibid*, para. 121.

⁴³ IACHR, "Compendium on Economic, Social, Cultural and Environmental Rights: Inter-American Standards", 2022, paras. 67-69.

⁴⁴ I/A Court H.R., "Case Vera Rojas et al. v. Chile", public hearing of February 2, 2021, time 4:19:00, available at: <https://www.youtube.com/watch?v=Jl9vbg-3F0k>.

⁴⁵ IACHR, "IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA). Working for the indivisibility, interdependence and effective protection of all human rights for all people in the Americas. Human and Planetary Health Face an Unprecedented Crisis", 2021, para. 1158; IACHR, Press Release 124/20,

Furthermore, the IACHR's Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights stated that the "right to care" should be addressed as "the right to receive care at the different stages of the life cycle, as well as the right to care in conditions of dignity and social protection, ensuring that the caregiver can continue to exercise his or her social rights when performing the work of care".⁴⁶

In addition, the Working Group of the Protocol of San Salvador included among the progress indicators of this international instrument the extension, coverage and jurisdiction of inclusion mechanisms for those who do reproductive or domestic care work, as well as the existence of programs aimed at reconciling work and family life and recognizing unpaid care work.⁴⁷

The Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Committee on Economic, Social, and Cultural Rights (CESCR Committee) and the United Nations Working Group on the issue of discrimination against women and girls emphasized the need to recognize the social and economic value of care work and to adopt appropriate measures to ensure its equitable distribution among men, women, families and society⁴⁸. They also stressed the importance of adopting measures to measure care work, value it and incorporate it into the GDP,⁴⁹ as well as to ensure that social security plans take into account care responsibilities.⁵⁰ Furthermore, within the framework of the United Nations Human Rights Council, 49 States supported the "International Declaration on the Importance of Care in the Field of Human Rights" promoted by Argentina and Mexico, which recognizes that "it is imperative to adopt the necessary legal, institutional and policy measures to eliminate barriers to the personal, social and economic development of women and girls who are victims of violence, exploitation and abuse, social and economic development of women and girls that result from an unequal allocation of care duties" and that "equality of care arises from the international obligations enshrined in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child".⁵¹

"IACHR and its REDESCA Urge States to Effectively Protect People Living in Poverty and Extreme Poverty in the Americas in the Face of the COVID-19 Pandemic", 2020.

⁴⁶ CIDH, "V Informe Anual de la Relatoría Especial sobre Derechos Económicos, Sociales, Culturales y Ambientales (REDESCA)", 2021, párr. 1641. (Spanish version with self-translation)

IACHR, "V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA)", 2021, para. 1641.

⁴⁷ OAS, Working Group of the Protocol of San Salvador, "Progress indicators for measuring rights contemplated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador"", p. 48 and p. 95. Available at: <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/pssv-indicators-en.pdf>

⁴⁸ CEDAW Committee, "Concluding observations on the 6th periodic report of Samoa", CEDAW/C/WSM/CO/6, para. 36; "Concluding observations on the ninth periodic report of Colombia", CEDAW/C/COL/CO/9, para. 40; "Concluding observations on the ninth periodic report of Cabo Verde", CEDAW/C/CPV/CO/9, para. 41; Committee on ESC rights, General Comment No. 16: "The equal right of men and women to the enjoyment of economic, social and cultural rights", 2005, para. 24; Human Rights Council, "Women's human rights in the changing world of work. Report of the Working Group on the issue of discrimination against women and girls", 2020, para. 46. Available at: <https://undocs.org/es/A/HRC/44/51>.

⁴⁹ CEDAW Committee, General Recommendation N° 17: "Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product", 1991, paras. (a) and (b).

⁵⁰ CESCR, General Comment N° 19: "The right to social security (article 9)", 2008, para. 32.

⁵¹ Human Rights Council - UN, "International Declaration on the Importance of Care in the Field of Human Rights", 2021, pp. 1 and 2. Available at: https://www.argentina.gob.ar/sites/default/files/2021/09/declaracion_internacional_sobre_la_importancia_del_cuidado_en_el_ambito_de_los_derechos_humanos.pdf / <https://www.gob.mx/sre/documentos/declaracion-internacional-sobre-la-importancia-del-cuidado-en-el-ambito-de-los-derechos-humanos>

It is also worth noting that in the context of the ECLAC Regional Conference on Women in Latin America and the Caribbean, the States of the region recognized care as a human right⁵². On this basis, they undertook to design comprehensive care systems from a gender, intersectional, intercultural and human rights perspective that promote co-responsibility between women and men and between the State, the market, families and the community.⁵³

ECLAC and UN Women upheld the existence of the right to provide and receive care under conditions of quality and equality⁵⁴ and developed standards to guide the construction of comprehensive care systems, which are defined as "the set of policies aimed at implementing a new social organization of care with the purpose of caring for, assisting and supporting people who require it, as well as recognizing, reducing and redistributing care work -which today is mostly performed by women-, from a human rights, gender, intersectional and intercultural perspective". In this context, they argued that one of the principles that should guide its creation is care as a right, as well as universality, social and gender co-responsibility, promotion of autonomy and solidarity in financing.⁵⁵

The joint document postulates five components that comprehensive care systems should have: the creation and expansion of services, regulation of services and working conditions for workers, training for paid caregivers, information and knowledge management, and communication to promote cultural change. Regarding training for caregivers, it is emphasized that it must enable them to guarantee quality care and at the same time exercise their right to self-care.⁵⁶

There are also relevant normative precedents at the national level. Thus, the national constitutions of Ecuador,⁵⁷ Venezuela,⁵⁸ Bolivia⁵⁹ and the Dominican Republic⁶⁰ recognize the value of unpaid domestic work. Likewise, according to ECLAC, Latin American countries have made energetic progress in the implementation of comprehensive care systems, with Uruguay being the pioneer country. Argentina, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru and the Dominican Republic, with different degrees of development, are advancing in their implementation.⁶¹ In Argentina, there is currently a bill under debate in the National Congress for the creation of the Integral System of Care Policies of Argentina.⁶²

By virtue of the foregoing, **the first question posed to the Honorable Inter-American Court of Human Rights is the following:**

Is care an autonomous human right enshrined in Article 26 of the American Convention on Human Rights? If so, how does the Court understand the right of people to provide and receive care and to

⁵² XI Regional Conference on Women in Latin America and the Caribbean, Brasilia Consensus, para. op. 1.b; XII Regional Conference on Women in Latin America and the Caribbean, Santo Domingo Consensus, para. 57; XV Regional Conference on Women in Latin America and the Caribbean, Buenos Aires Commitment, para. 8.

⁵³ XIV Regional Conference on Women in Latin America and the Caribbean, Santiago Commitment, para. 26; XV Regional Conference on Women in Latin America and the Caribbean, Buenos Aires Commitment, paras. 8, 9 and 10.

⁵⁴ ECLAC - UN Women, Op. cit. 11, p. 12.

⁵⁵ ECLAC - UN Women, Op. cit. 11, pp. 23 ff.

⁵⁶ Ibid.

⁵⁷ Constitution of the Republic of Ecuador (2008), art. 333. Available at: https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf.

⁵⁸ Constitution of the Bolivarian Republic of Venezuela, article 88. Available at: https://www.oas.org/dil/esp/constitucion_venezuela.pdf.

⁵⁹ Political Constitution of the Plurinational State of Bolivia, art. 338. Available at: https://www.oas.org/dil/esp/constitucion_bolivia.pdf.

⁶⁰ Constitution of the Dominican Republic, art. 55, inc. 11. Available at: <https://www.cijc.org/es/NuestrasConstituciones/REP%C3%9ABLICA-DOMINICANA-Constitucion.pdf>.

⁶¹ ECLAC - UN Women, "Avances en materia de normativa del cuidado en América Latina y el Caribe", 2022, p. 15.

⁶² Bill available at: <https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2022/PDF2022/TP2022/0008-PE-2022.pdf>

exercise self-care? What obligations do States have in relation to this human right from a gender, intersectional and intercultural perspective and what is its scope? What are the minimum essential contents of the right that the State must guarantee, the budgetary resources that can be considered sufficient and the progress indicators that allow monitoring the effective fulfillment of this right? What public policies must States implement in the area of care to ensure the effective enjoyment of this right and what role do comprehensive care systems specifically play in it?

III.b. Equality and non-discrimination in care

The principle of equality and non-discrimination is enshrined in numerous international instruments⁶³ and is essential for safeguarding human rights both domestically and internationally.⁶⁴ States must not only refrain from actions that create *de jure* or *de facto* discriminatory situations, but must also take affirmative action measures to reverse or change situations of discrimination rooted in society to the detriment of a certain group of people.⁶⁵ In this sense, the State incurs in international responsibility in those cases in which, aware of the existence of structural discrimination, it does not adopt concrete measures with respect to the particular situation of victimization of a group of individualized persons in a situation of vulnerability.⁶⁶

In relation to women's rights, CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".⁶⁷

In the Inter-American sphere, the Belém do Pará Convention establishes in its preamble that the right of every woman to a life free of violence includes the right to be free from all forms of discrimination⁶⁸ and in its Article 8.b it contemplates the progressive adoption of measures and programs to counteract prejudices and customs and practices that are based on the premise of the inferiority or superiority of either gender.⁶⁹

In turn, the rights of the family, provided for in Article 17 of the ACHR, entails equal rights and equal responsibilities between spouses. In interpreting this provision in light of the principle of equality and non-discrimination, the I/A Court H.R. has understood that stereotypes about the social role of women as mothers, by virtue of which they are expected to bear the main responsibility for raising their children, are discriminatory.⁷⁰

On the other hand, the Latin American and Caribbean States have reaffirmed in numerous political commitments since 2007, the relevance and fundamental nature of care policies to overcome gender stereotypes and their nature as a human right.⁷¹ The United Nations has established as a goal within the framework of Sustainable Development Goal 5 -achieve gender equality and empower women- to recognize and give value to care and unpaid domestic work through public services,

⁶³ International Covenant on Civil and Political Rights, arts. 2.1, 3 and 26; International Covenant on Economic, Social and Cultural Rights, arts. 2.2 and 3; ACHR, arts. 1.1 and 24; among others.

⁶⁴ I/A Court H.R., "Juridical Condition and Rights of Undocumented Migrants", Advisory Opinion OC-18/03, September 17, 2003, para. 88.

⁶⁵ I/A Court H.R., "Case of Workers of the Brasil Verde Farm v. Brazil", Preliminary Objections, Merits, Reparations and Costs, Judgment of October 20, 2016, para. 336.

⁶⁶ I/A Court H.R., *ibid*, cit.

⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

⁶⁸ I/A Court H.R., "Case of Espinoza Gonzales v. Peru", Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2014, para. 222.

⁶⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, art. 8.b.

⁷⁰ I/A Court H.R., "Case of Ramírez Escobar et al. v. Guatemala", Op. cit. 15, paras. 294-299.

⁷¹ X, XI, XII, XIII, XIV Regional Conferences on Women in Latin America and the Caribbean (ECLAC): Consensus of Quito (2007), Brasilia (2010), Santo Domingo (2013), Montevideo (2016) and Santiago (2020).

infrastructures and protective policies that promote co-responsibility within the households and the families.⁷²

In this context, it is worth highlighting how intersectional discrimination cuts across care. ECLAC and UN Women have emphasized that the feminization of the social organization of care affects women in general, and even more so, it has a disproportionate impact on women living in poverty. They highlight the vicious circle that exists between care and gender, due to the social organization of care and its overburden on women. The circle between care, poverty, inequality and precariousness can also be highlighted, since people (mostly women) who are in a worse economic situation are less likely to hire paid care services in the market, having to do this work themselves.⁷³ In turn, the more care work is performed, the more difficulties are faced in overcoming poverty due to the lack of time to enter the labor market.⁷⁴ This once again disproportionately affects women and girls. In addition, the precariousness of care services not only diminishes its quality towards the cared-for persons but also harms the living conditions of the caregivers (paid and unpaid).

On the other hand, race, ethnicity, sexual orientation, gender identity, disability, HIV status and migration⁷⁵ are also determinants that intersect with gender and influence time allocation and inequalities in the labor market.⁷⁶

Particularly with respect to migration, there is a phenomenon known as global care chains. Women migrate to take on tasks that derive from the externalization of reproductive work in the countries of destination, while at the same time they assume the burden of economic provision for their households and the care tasks from a distance (transnational care). This is considered as an "agreement between women" to perform care tasks, reinforcing the traditional gender assignment.⁷⁷

In relation to LGBTI+ elderly people, they are more vulnerable to not receiving the care they require because their support networks are reduced or they live alone without being in contact with their biological families due to the rejection of their sexual orientation and/or gender identity.⁷⁸ In particular, trans people who depend on the assistance of caregivers face specific problems due to lack of knowledge and awareness of gender diversity. In this context, the IACHR documented experiences of trans persons in geriatric institutions who have suffered mistreatment and humiliation and who are afraid to demand respect for fear of expulsion from their place of care.⁷⁹ The Commission also noted the difficulties they face when they wish to access care that is "tabulated" as gender specific. For this reason, in many cases they decide not to access the health system, which can delay preventive examinations necessary for the early identification of illnesses, constituting an obstacle to their own health care.⁸⁰

There are also other relevant factors that explain and amplify the unequal distribution of time, e.g., place of residence, age, level of education and marital status.

⁷² Sustainable Development Goals (SDGs), Goal 5, Target 5.4.

⁷³ ECLAC - UN Women, Op. cit. 11, pp. 17-18.

⁷⁴ Ibid.

⁷⁵ The insertion of migrant women in global care chains is a factor in the reproduction of gender stereotypes, by continuing to assign women traditional roles that tend to perpetuate the vision of women as caregivers, housewives and those responsible for the domestic sphere (Cf. IACHR, "Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System", 2015, para. 31. Available at: <http://www.oas.org/es/cidh/informes/pdfs/movilidadhumana.pdf>).

⁷⁶ ILO, Op. cit. 2, p. 59.

⁷⁷ ECLAC, Op. cit. 9, pp. 53-54.

⁷⁸ Oxfam, "Time for Care. Care Work and the Global Crisis of Inequality", 2020, p. 47. Available at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620928/bp-time-to-care-inequality-200120-es.pdf>

⁷⁹ IACHR, "Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights", 2020, para. 109. Available at: <https://www.oas.org/es/cidh/informes/pdfs/PersonasTransDESCA-es.pdf>.

⁸⁰ Ibid, cit., para. 336.

With respect to residence, the rural environment increases the demand for unpaid care work, as a large amount of time and physical effort is usually devoted to the production of goods for self-consumption, compared to residence in urban areas where there is usually better access to basic infrastructure, time-saving devices and processed food.⁸¹

In relation to age, women tend to devote most of their time to caregiving in middle age.⁸² However, inequality in the distribution of care affects women throughout their lives, from the time they are children and assist or replace their mothers in caregiving tasks -which reduces time for education, play, leisure and learning and can affect their aspirations and undermine their future earnings- until they are older and care for their grandchildren and spouses at a time when they themselves need to be cared for.⁸³

On the other hand, generally, the lower the level of education attained, the more time women devote to unpaid care work and the less time they spend in paid work, and vice versa.⁸⁴

Marital status and the presence of children are also determining factors in the increase in unpaid care work. Married women experience an increase in the volume of unpaid care work and this volume increases with the presence of children in the household, particularly when children are under 5 years of age.⁸⁵

Despite the legal and political commitments assumed by the States, there has been no substantial change in terms of equality and non-discrimination based on gender and care in the Americas. Even with the arrival of the COVID-19 pandemic, inequality has deepened.⁸⁶ Therefore, it is extremely important to develop legal standards and principles on human rights that guide the conduct of States and serve as a basis for their incorporation into the design of public policies and the design and implementation of national care systems.

By virtue of the foregoing, the **second question posed to the Honorable Inter-American Court of Human Rights is the following:**

What are the obligations of States in the area of care (giving care, receiving care and self-care) in terms of gender inequality in light of the right to equality before the law and the principle of non-discrimination enshrined in Articles 24 and 1.1 of the American Convention on Human Rights ? What are the obligations of States, in light of these articles, considering the intersection of vulnerability factors, especially socioeconomic status, disability, age, migratory status, sexual orientation, gender identity, among others?

What measures should States adopt to address the unequal distribution of care responsibilities based on gender stereotypes in accordance with Article 17 of the ACHR?

What obligations do States have in relation to care in light of Article 8.b of the Belém Do Pará Convention regarding the modification of socio-cultural patterns of behavior of men and women?

What equality criteria should be taken into account when adopting domestic law provisions on care in light of Art. 2 of the ACHR?

⁸¹ ILO, Op. cit. 2, p. 59.

⁸² ILO, Op. cit. 2, pp. 60-64.

⁸³ Oxfam, Op. cit. 78, pp. 38 and 47.

⁸⁴ ILO, Op. cit. 2, p. 65.

⁸⁵ Ibid, p. 65.

⁸⁶ CIM, Op. cit. 7, p. 20.

III.c. Care and the right to life

The right to life⁸⁷ is a fundamental human right and a prerequisite for the enjoyment of all other human rights.⁸⁸ Indeed, States are obliged to create the necessary conditions to prevent violations of this right.⁸⁹

However, this right includes not only the prohibition of arbitrary deprivation of life, but also that people should not be prevented from having access to a life in dignity.⁹⁰ In this sense, States have a positive obligation to adopt all appropriate measures for the protection and preservation of the right to life by virtue of their duty to guarantee the full and free exercise of the human rights of all persons.⁹¹ These measures must involve the generation of minimum living conditions, in line with the dignity of human beings, without obstacles that prevent or hinder such existence, and especially for people in vulnerable situations for whom the attention of the State becomes a priority.⁹²

Care work is necessary for the existence and reproduction of societies and for the general well-being of each person⁹³ and lays the very foundations of human life and society.⁹⁴ Care work is a guarantee of physical survival⁹⁵ and implies the reduction of vulnerability in all its forms.⁹⁶ Indeed, through the unequal distribution of care, the right to an adequate standard of living, the right to be free from hunger, as well as the right to the highest attainable standard of physical and mental health are violated.⁹⁷

On the other hand, care accompanies the entire life cycle of people and is a key factor in personal development.⁹⁸ Thus, the overload of care for women generates negative consequences in the adequate care of those who receive care, especially children, the elderly and people with disabilities, undermining their integral development.⁹⁹

Additionally, the social organization of care affects all areas of life. For example, the time spent on caregiving severely restricts women's opportunities to participate in the labor market to earn their own income, as well as to advance in their educational careers and to participate fully in society and politics.¹⁰⁰

⁸⁷ American Convention on Human Rights (Art. 4); Inter-American Convention on the Protection of the Human Rights of Older Persons (Art. 6).

⁸⁸ I/A Court H.R., "Case of Montero Aranguren et al (Retén de Catia) v. Venezuela", Preliminary Objections, Merits, Reparations and Costs, Judgment of July 5, 2006, para. 63.

⁸⁹ I/A Court H.R., "Case of Zambrano Vélez et al. v. Ecuador", Merits, Reparations and Costs, Judgment of July 4, 2007, para. 79.

⁹⁰ I/A Court H.R., "Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala", Merits, Judgment of November 19, 1999, para. 144.

⁹¹ I/A Court H.R., "Case of García Ibarra et al. v. Ecuador", Preliminary Objections, Merits, Reparations and Costs, Judgment of November 17, 2015, para. 97.

⁹² I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment of June 17, 2005, para. 162.

⁹³ ILO, Op. cit. 2, p. 6.

⁹⁴ HRC, "Report of the Working Group on the issue of discrimination against women in law and in practice", A/HRC/26/39, para. 81.

⁹⁵ Gracias Ibáñez, J. (2022), "Derecho al cuidado: un abordaje desde los derechos (humanos)", Oñati Socio-Legal Series, Volume 12 Issue 1, 179-210: Vulnerabilidad y Cuidado, Oñati International Institute for the Sociology of Law. Available at: <https://opo.iisj.net/index.php/osls/article/view/1330/1539>

⁹⁶ Engster, D. (2019), "Care Ethics, Dependency, and Vulnerability", in *Ethics and Social Welfare*, p. 100-114. Available at: <https://doi.org/10.1080/17496535.2018.1533029>

⁹⁷ HRC, Op. cit. 94, para. 82.

⁹⁸ ECLAC, UN Women, Op. cit 7, p. 16.

⁹⁹ ILO - UNDP, Op. cit. 10, p. 15-16.

¹⁰⁰ IACHR, Op. cit. 17, para. 280.

Thus, considering that sustaining a dignified life necessarily requires care work and that States must guarantee its provision from a gender and human rights perspective, the **third question posed to the Honorable Inter-American Court of Human Rights is the following:**

What are the State's care obligations in relation to the right to life in light of Art. 4 of the American Convention on Human Rights and Art. 6 of the Inter-American Convention on the Protection of the Human Rights of Older Persons? What measures must States take in light of the said article in the area of care to guarantee dignified living conditions?

III.d. Care and its link with other economic, social, cultural, and environmental rights.

Economic, social, cultural and environmental rights (ESCR) are enshrined in multiple international instruments¹⁰¹ and include rights such as health and welfare, work, education, social security, housing, food, among others.

In this regard, although States undertake to adopt the necessary measures to the maximum of their available resources and in a progressive manner, there are immediate obligations aimed at ensuring the full realization of ESCR, which may involve legislative reforms as well as economic, educational, social and financial measures, among others.¹⁰²

As developed, care is transversal to the lives of all people, and therefore has a clear impact on the enjoyment and exercise of multiple ESCR of those who give and receive care.

III.d.1 Right to work and social security

First, **care has a direct link to the right to work and to social security.** Article 6 of the Protocol of San Salvador stipulates that States undertake to implement programs aimed at enabling women to exercise their right to work,¹⁰³ and Article 9, the right to social security.

Likewise, ILO Convention 156 stipulates that the national policy objectives of States should include that persons with family responsibilities should be able to exercise the right to work without discrimination and without conflict between such responsibilities and their work responsibilities, a position that was shared by the Committee on ESC rights.¹⁰⁴

On the one hand, care is understood as work by the ILO,¹⁰⁵ taking into account the definition of Resolution I adopted by the 19th International Conference of Labor Statisticians (ICLS).¹⁰⁶ Thus, a distinction can be made between paid and unpaid care work. Both care as a job in itself and the impact of care on the world of work should be analyzed.

On the other hand, the overload of caregiving tasks affects the possibilities of insertion in other jobs. Those who have a paid job and also perform unpaid care work have a double burden or experience a "double workday", one at home and the other in paid work.¹⁰⁷ The unequal burden of care responsibilities on women limits their possibilities of generating income, their time and therefore

¹⁰¹ Inter-American System: Charter of the Organization of American States (arts. 30 to 52), American Declaration of the Rights and Duties of Man (arts. VII, XI, XIII, XIV, XV, XVI), American Convention on Human Rights (art. 26), Protocol of San Salvador additional to the ACHR; Universal System: Universal Declaration of Human Rights (arts. 22, 23, 24, 25 and 26), International Covenant on Economic, Social and Cultural Rights.

¹⁰² Committee on ESC rights, General Comment No. 3: "The Nature of States Parties' Obligations", 1990, paras. 2-5; I/A Court H.R., "Case of Acevedo Buendía et al ("Cesantes y Jubilados de la Contraloría") v. Peru", Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009, para. 105.

¹⁰³ It should be noted that the I/A Court H.R. has recognized that the right to work is, in turn, contemplated in Article 26 of the ACHR. See: I/A Court H.R., Case of Guevara Díaz v. Costa Rica, Judgment of June 22, 2022, Merits, Reparations and Costs, para. 58.

¹⁰⁴ Committee on ESC rights, General Comment No. 3, Op. cit. 102, para. 24.

¹⁰⁵ ILO, Op. cit. 2, p. 8.

¹⁰⁶ ICLS, Resolution I: "Resolution concerning statistics of labor, occupation and underutilization of the labor force", adopted by the 19th International Conference of Labor Statisticians, October 2013 (Geneva).

¹⁰⁷ ILO, Op. cit. 2, p. 39.

their possibility of entering the labor market or holding leadership positions in social, economic or political spaces,¹⁰⁸ which generates more difficulties in overcoming poverty¹⁰⁹ and restricts their autonomy. In fact, the increase in women's participation in the labor market has not been reflected in their access to quality jobs,¹¹⁰ being one of the main factors that prevents it the absence of public care infrastructure, such as day care centers and nurseries,¹¹¹ as well as paternity and parental leave.¹¹² The aforementioned promotes that women work fewer hours and therefore receive lower incomes, have access to low positions, work informally or independently, and without any social security benefits.¹¹³

The incorporation of men and women into the labor market often requires the commoditization of household care work, so that the work previously performed on an unpaid basis by women is replaced by the paid work of other women.¹¹⁴ In other words, while some households are in a position to hire care services, others depend on this source of income for their survival.¹¹⁵

Regarding paid caregivers, it is worth noting that these jobs are perceived as an extension of unpaid care work within households and communities, which leads to this sector being considered low status, lacking recognition and social protection and with low incomes. In particular, domestic workers have some of the worst working conditions, being especially vulnerable to exploitation, informality and violence.¹¹⁶ This is evidenced by the fact that 76% of women in these jobs do not have social security coverage.¹¹⁷ This situation of informality and exclusion from social security deepens poverty, inequality and social protection gaps between men and women throughout their lives.¹¹⁸

Indeed, the lack of insertion in the formal labor market due to caregiving responsibilities has a notorious impact on women's receipt of pensions, retirement and other social assistance schemes. Social security schemes that make benefits conditional on labor contributions may impede women's access to this right, due to intermittent participation in the labor force as a consequence of care work that could include child rearing and care of elderly dependent family members.¹¹⁹

In turn, the absence of economic resources due to the lack of a pension or retirement generates an undermining of the dignity of the person, implying anguish, insecurity and uncertainty, which impacts on the advancement and development of their quality of life and personal integrity.¹²⁰ In this regard, the IACHR has concluded that among the immediate priority obligations of States in the area of ESCR is to formally recognize the unpaid work of women and grant them benefits similar to those in the paid sphere, in particular social security benefits.¹²¹

III.d.2 Right to health

On the other hand, the IACHR has highlighted the **interrelationship between the right to care and the right to health**, insofar as the weakness of care systems affects the exercise and enjoyment of

¹⁰⁸ IACHR, Op. cit. 8, para. 135.

¹⁰⁹ ECLAC - UN Women, Op. cit. 11, p. 16.

¹¹⁰ ILO, Op. cit. 2, p. 14.

¹¹¹ IACHR, Op. cit. 108, cit., paras. 81-83; ILO, Op. cit. 2, pp. 10-11.

¹¹² IACHR, Op. cit. 108, cit.

¹¹³ ILO, Op. cit. 2, pp. xxxiv-xxxv.

¹¹⁴ ECLAC - UN Women, Op. cit. 11, p. 13.

¹¹⁵ ECLAC, Op. cit. 9, p. 25.

¹¹⁶ ILO, Op. cit. 2, pp. 165-166.

¹¹⁷ ECLAC - UN Women, Op. cit. 11, p. 13.

¹¹⁸ CIM, Op. cit. 7, p. 17.

¹¹⁹ Committee on ESC rights, General Comment No. 19: "The right to social security", 2008, para. 32.

¹²⁰ I/A Court H.R., "Case of Muelle Flores v. Peru", Preliminary Objections, Merits, Reparations and Costs, Judgment of March 6, 2019, paras. 205-206.

¹²¹ IACHR, Op. cit. 108, cit.

the right to health.¹²² The working conditions in which care is provided affect its quality and, therefore, the well-being of those who receive it. Hence, the unfair distribution of care and the lack of attention from States has a direct impact on the well-being, physical and mental health, and personal development of those who receive care.

In general, high-quality care is extremely intensive and it is not possible to increase the productivity of care without compromising its quality. Thus, excessive work by caregivers, both paid and unpaid, can undermine the quality of care, but can also lead to situations of impatience, irritation, or rejection of the demands of children, the elderly, the disabled and the sick. However, a higher quality of care implies a higher cost for remuneration, which States are often not willing to cover, nor are individuals willing to pay in the private sphere. This, on the one hand, feeds back the burden on unpaid caregivers and their access to employment; and, on the other hand, it encourages informality and low salaries for paid caregivers.¹²³

In this context, state investment in care has multiple benefits for the enjoyment of ESCR by those who receive it, since it has a positive impact on children, their educational and labor performance and future productivity. Likewise, with respect to the elderly and people with disabilities in a situation of dependency, it reduces hospitalizations, optimizing health services.¹²⁴

III.d.3 Right to education

In relation to the **link between care and the right to education**, it has been pointed out that the educational system is key in the provision of care for children and adolescents, since, in addition to training, it usually provides food and medical care services and emotional and affective support. Thus, educational spaces are an important pillar of social co-responsibility for care.¹²⁵

On the other hand, the overload of care work restricts the education and training of women and girls and, therefore, their job opportunities.¹²⁶ In this sense, the overload of care work on women and girls in the schooling stage can lead to their dropping out of school to a greater extent than boys, limiting their possibilities for personal development and life plan opportunities in general.

III.d.4 Right to a healthy environment

It is important to mention **the link between care and the right to a healthy environment**. This is because, in order to ensure the life of present and future generations, it is necessary to halt environmental degradation, and care work includes care for the planet.¹²⁷ In turn, the sustainability of the planet requires a style of development that places care as a priority and recognizes the interdependence between people and between people and the environment.¹²⁸ Environmental disasters - increasingly frequent - raise the demand for care work, for example due to the interruption and/or overloading of the functioning of medical services and facilities, the incidence of diseases resulting from sanitation problems, among others.¹²⁹

¹²² I/A Court H.R., Op. cit. 44, time 4:19:00

¹²³ ILO, Op. cit. 2, pp. 12-13.

¹²⁴ ECLAC - UN Women, "Care in Latin America and the Caribbean in Times of Covid-19. Towards Comprehensive Systems to Strengthen Response and Recovery", 2020, pp. 14.

¹²⁵ ECLAC, "The care society: horizon for a sustainable recovery with gender equality", 2022, p. 122.

¹²⁶ CSW, Agreed Conclusions "Achieving gender equality and empowering all women and girls in the context of climate change, environment and disaster risk reduction policies and programs", 2022, para. 47.

¹²⁷ ECLAC, Op. cit. 125, p. 23.

¹²⁸ ECLAC, Op. cit. 125, p. 24.

¹²⁹ ECLAC, Op. cit. 125, pp. 41 and 42.

III.d.5 Other ESCER

In addition to the above, there are other ESCER linked to care, which make up what is known as "care infrastructure". Issues such as day care centers and nurseries,¹³⁰ paternity and parental leave,¹³¹ as well as access to drinking water, sanitation services and energy systems¹³² are essential to reduce the burden of unpaid care work that weighs on households, and mainly on women, as they free up time and create conditions for their incorporation into the labor market.¹³³

In this regard, **the fourth question posed to the Honorable Inter-American Court of Human Rights is the following:**

What obligations do States have in terms of care in light of Art. 26 of the ACHR, Arts. 1, 2 and 3 of the Protocol of San Salvador, Art. 4 of the Inter-American Convention on the Protection of the Human Rights of Older Persons and Art. III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities?

Is unpaid care work, work in the light of art. 26 of the ACHR and arts. 6 and 7 of the Protocol of San Salvador? What rights do people who perform unpaid care work have in the light of these regulations and what are the State's obligations towards them in relation to the right to work? How should unpaid care work be considered in social security benefits in the light of art. 26 of the ACHR and art. 9 of the Protocol of San Salvador?

What measures should States take in light of Article 26 of the ACHR and Articles 6, 7 and 15 of the Protocol of San Salvador to guarantee the right to work of those who must provide unpaid care, including maternity and paternity leave and care infrastructure?

What are the rights of paid care workers and what are the State's obligations towards them in light of Article 26 of the ACHR and Articles 3, 6, 7 and 9 of the Protocol of San Salvador?

What are the obligations of States regarding the right to health in relation to caregivers, care recipients and self-care in light of Art. 26 of the ACHR, Arts. 10, 16, 17 and 18 of the Protocol of San Salvador, Arts. 12 and 19 of the Inter-American Convention on the Protection of the Human Rights of Older Persons and Art. III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities?

What are the obligations of States regarding the right to education in relation to care in light of articles 19 and 26 of the ACHR and articles 13 and 16 of the Protocol of San Salvador?

What are the obligations of States in terms of care infrastructure in general, including but not limited to day care centers, nurseries, residences for the elderly, as well as access to water, sanitation, public services, food and housing, and regarding climate change, in light of arts. 19 and 26 of the ACHR, arts. 11, 12, 16, 17 and 18 of the Protocol of San Salvador, arts. 12 and 19 of the Inter-American Convention on the Protection of the Human Rights of Older Persons and art. III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities?

IV. Admissibility.

This application meets the admissibility requirements set forth in Article 64(1) of the American Convention on Human Rights and in Articles 70 and 71 of the Rules of Procedure of the Inter-American Court of Human Rights, since Argentina is a member State of the Organization of American States and a State Party to the American Convention on Human Rights, and the application poses

¹³⁰ IACHR, Op. cit. 108, cit., paras. 81-83; ILO, Op. cit. 2, pp. 10-11.

¹³¹ IACHR, Op. cit. 108, cit.

¹³² Oxfam, "Time for Care. Care Work and the Global Inequality Crisis", 2020, p. 20. Available at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620928/bp-time-to-care-inequality-200120-es.pdf>

¹³³ ECLAC - UN Women, Op. cit. 124, p. 14.

specific questions, indicates the provisions on which interpretation is sought and explains the considerations giving rise to the request.

Likewise, and in accordance with the formal communication enclosed with the advisory opinion request submitted, the contact details of the agents of the Argentine State in the present proceedings are:

- National Ministry of Women, Genders and Diversity:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- National Ministry of Justice and Human Rights:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- National Ministry of Foreign Affairs and Worship:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

V. Petition

Considering the foregoing, the Argentine State submits to the Honorable Inter-American Court of Human Rights this request for an advisory opinion in accordance with Article 64(1) of the American Convention on Human Rights and to follow the procedure set forth in its Rules of Procedure.

ANNEX. Institutional Background

Regional Conferences on Women of the Economic Commission for Latin America and the Caribbean (ECLAC)

Within the framework of the Economic Commission for Latin America and the Caribbean (ECLAC), and through the Regional Conferences on Women, the States of the region have adopted a series of commitments aimed at recognizing care as a human right. In other words, there is a consensus among the States of the region on the existence of the right to care and the obligations that derive from it. It is also important to note that the concept of the right to care has been regionally built, in response to the demands of the States, civil society and academia that actively participate in the Regional Conferences.

First, in 2007, the ECLAC States adopted the Quito Consensus, which recognized the social and economic value of care work, its importance for the economic reproduction and well-being of

society and its public nature as a matter of competence of States, organizations, companies and families.¹³⁴

In 2010, through the Brasilia Consensus, the ECLAC States stated that the right to care is universal and that it requires solid measures to achieve its materialization as well as the multi-sectoral co-responsibility of the State and the private sector. In particular, the States committed themselves to carry out all the social and economic policies necessary to advance the social and economic valorization of care.¹³⁵

Subsequently, the States adopted the Montevideo Strategy in 2016, through which they considered the harmonization of regulations at the regional level and the measurement of national legislation in transnational phenomena such as global care chains to be fundamental.¹³⁶

In 2020, in the Santiago Commitment, the States committed to design comprehensive care systems from a gender, intersectional intercultural and human rights perspective, through policies on time, resources, benefits and public services that meet the demands of care of the population and that foster the equal sharing of domestic and care work between men and women.¹³⁷

Finally, and as a corollary to the development and recognition of the right to care in the aforementioned documents, the States adopted the Buenos Aires Commitment in November 2022, whose central theme was the right to provide and receive care and to exercise self-care.¹³⁸ This agreement deepened the content, scope, regulations and public policies that the States must implement. The document explicitly establishes care as a human right of people to provide and receive care and to exercise self-care, based on the principles of equality, universality and social and gender co-responsibility of all sectors of society.

Based on this recognition, the States undertake to promote comprehensive care systems to guarantee the right to decent work and the full participation of women in leadership positions, as well as to adopt regulatory frameworks and public policies to guarantee the right to care and the human rights that depend on it, overcoming gender stereotypes.

It is also worth noting that the States stipulated that the human right to care necessarily includes the promotion of women's autonomy through the strengthening of State capacities, technology, humanitarian assistance, the provision of and investment in affordable, quality infrastructure and essential services. This includes access to safe drinking water, healthy, nutritious and sufficient food, sanitation, clean and affordable renewable energy, public transportation, housing, social protection and decent work for women. Such autonomy must also be guaranteed through universal access to comprehensive health services, including mental health, sexual and reproductive health services and the full exercise of sexual and reproductive rights, through access to comprehensive sexuality information and education and to safe and quality abortion services, in cases where abortion is legal or decriminalized in national legislation. In turn, autonomy is achieved through the promotion of

¹³⁴ XX Regional Conference on Women in Latin America and the Caribbean, Quito Consensus, preamb. para. 9 and op. para. 1.xx.

¹³⁵ XI Regional Conference on Women in Latin America and the Caribbean, Brasilia Consensus, preamb. para. 15, and op. para. 1.

¹³⁶ XIII Regional Conference on Women in Latin America and the Caribbean, Action 8.a.

¹³⁷ XIV Regional Conference on Women in Latin America and the Caribbean, Santiago Commitment, paras. 26 and 27.

¹³⁸ XV Regional Conference on Women in Latin America and the Caribbean, Buenos Aires Commitment.

access to education and comprehensive services for the prevention and care of all forms of gender-based violence against women.

To achieve this, the document emphasizes the central role of cooperation between States and with civil society organizations, women leaders and human rights defenders, encouraging their participation in decision-making at all times.

MERCOSUR

Within the framework of regional integration processes, the Argentine Republic promoted several decisions within MERCOSUR, which are worth mentioning.

First, through Decision No. 13/14 of the Common Market Council, the MERCOSUR Gender Equality Policy Guidelines were adopted, incorporating economic autonomy and equality in the labor and care sphere as one of its fundamental axes. In this sense, the States undertake the commitment to advance in the design and implementation of public policies aimed at valuing and recognizing unpaid care work and addressing the effects of the sexual division of labor, co-responsibility for care between men and women, the role of the State as guarantor of care services and equality in access and permanence in the labor sphere.¹³⁹

Likewise, through Recommendation No. 03/18, the Common Market Council recommended the States Parties to make visible the unpaid care work mostly assumed by women, as well as the socioeconomic advantages of the equitable distribution of care among families, communities and the State.¹⁴⁰

Finally, Recommendation CMC N° 04/21 recognizes the unequal distribution of care work between men and women and its impact on women's participation in the labor market and the gender wage gap, and the need to integrate the care economy into the planning, design and implementation of public policies. To this end, it is recommended that comprehensive care systems be established from a gender, intersectional, intercultural and human rights perspective to contribute to the socioeconomic recovery of the region, the generation of employment and the reduction of the feminization and infantilization of poverty.¹⁴¹

Policies in force in the Argentine Republic: regulation, programs and the "Cuidar en Igualdad" bill

In Argentina, care is currently solved on an individual or community basis and without a specific law to regulate it. Each family manages the care of children, the elderly and people with disabilities as best it can, and in many cases it is the elderly or people with disabilities themselves who take care of their relatives. The way in which each family organizes it depends on their economic possibilities, but in all cases they coincide in a greater burden for women. In this context, women from high-income families can pay for good care services, which allows them to continue working and receive

¹³⁹ MERCOSUR, Decision No. 13/14: Guidelines for the Mercosur Gender Equality Policy, Annex, para. 6.1. Available at: http://www.sice.oas.org/trade/mrcsrs/decisions/dec1314_s.pdf

¹⁴⁰ MERCOSUR, Recommendation CMC N° 03/18: Care Policies. Available at: https://normas.mercosur.int/simfiles/normativas/71430_REC_003-2018_ES_Pol%C3%ADticas%20de%20cuidado.pdf

¹⁴¹ MERCOSUR, "Recommendation CMC 04/21: Integral Systems of Care". Available at: https://normas.mercosur.int/simfiles/normativas/87485_REC_004-2021_ES_Sistemas%20Integrales%20Cuidado.pdf

quality care, while women from low-income families cannot pay for these services and have to care for themselves, limiting their time and income.

In view of this, in May 2022, a bill was introduced in the National Congress entitled "Care in Equality" for the creation of the Integral System of Care Policies of Argentina (SINCA). In particular, the bill aims to recognize care as a necessity, a job and a right for an equal development for all people. Indeed, it seeks to make visible the social and economic value of care and considers it a job, whether it is carried out within the home, in the community, in the public or private spheres.

This project creates a comprehensive care system with a gender perspective, sets the objectives of care policies in general and for particular populations, promotes the expansion of care services and infrastructure, encourages the adaptation of working hours to care needs, recognizes and promotes paid care work, recognizes and seeks to strengthen care work in the community, recognizes time to care through the modification of the work leave regime, encourages the production of data, records and information on care services and promotes the implementation of dissemination and awareness campaigns.

On the other hand, between October and December 2021, the National Institute of Statistics and Census (INDEC) -together with the provincial directorates of statistics of Argentina- carried out the first National Time Use Survey in 28,520 households in urban areas throughout the country.¹⁴² The Survey aims to make known, describe and quantify the use of time and the participation of this population in different forms of work: work as employment and unpaid work. It also aims to make visible the socioeconomic and gender inequalities in the use of time and to define the population demanding care and the access to the services that provide it through the institutions responsible for providing it.

According to the results of the survey, in "work as employment", that is, productive activities linked to the labor market in exchange for remuneration or benefits, the percentage of men who perform it (55.9%) exceeds that of their female counterparts (37.7%). On the other hand, women perform unpaid work in greater proportion: 91.7% of women are responsible for domestic, care or support work for other households, or volunteer work, while 75.1% of men do so. Thus, the fact that a greater proportion of women perform unpaid work means that their participation rate in total work is higher than that of their male counterparts. Likewise, the proportion of women who carry out productive activities, that is, work as employment or unpaid work, is 94.7%, while among men it is 90.9%.¹⁴³

It is also worth mentioning that in December 2020, Law No. 27,611, on Comprehensive Health Care and Attention during Pregnancy and Early Childhood, known as the "1000 Days Law", was enacted. The purpose of this law is to strengthen the comprehensive care of the health and life of women and other pregnant persons and children in early childhood, in compliance with the commitments undertaken by the State in terms of public health and human rights of women and people with other gender identities with gestational capacity and their children; in order to reduce mortality,

¹⁴² The final analyzed and disaggregated results are accessible to all and can be found in: INDEC, "Encuesta Nacional de Uso del Tiempo", 2021. Available at

https://www.indec.gob.ar/ftp/cuadros/sociedad/enut_2021_resultados_definitivos.pdf

¹⁴³ INDEC, National Time Use Survey, 2021.

malnutrition and desnutrition, protect and stimulate early bonds, physical and emotional development and health in a comprehensive manner and prevent violence.¹⁴⁴

At the same time, Article 179 of the Labor Contract Law was regulated, which makes it mandatory for companies with more than 100 employees (regardless of gender) to have childcare spaces for children up to 3 years of age. It also provides, as a replacement for the space, a sum of money to be used for daycare or care work.¹⁴⁵

In addition, Decree No. 475/2021 recognized women's right to retirement, considering childcare tasks as years of service.¹⁴⁶ This measure makes visible and repairs an historical and structural inequality in the distribution of care tasks.

Likewise, the "Federal Map of Care" was created, which is a tool built with the contribution of ECLAC within the framework of the program "Early Childhood and Comprehensive Care System, of the United Nations Joint Fund for Sustainable Development Goals". The map collaborates with the visibility and socialization of care, by making available to people the offer of care and training services closest to their homes in a simple and dynamic way.¹⁴⁷ This favors an improvement in the use of caregivers' time and access to services for those who require care. The map includes different types of services from the public, private and community sectors and brings together information on more than 32,000 care spaces and 1,000 care training sites, as well as educational and service institutions.

Finally, it should be noted that in January 2023, the Special Executing Unit "Strengthening Care Infrastructure" was created within the Ministry of Social Development, in order to articulate at ministerial, national and federal level social policies specially designed and implemented to strengthen the right to provide and receive care and to exercise self-care.¹⁴⁸

Public policies and comparative law at the regional level

ECLAC and UN Women have highlighted some public policies and regulations in the countries of the region related to the right to care in the document "Care in Latin America and the Caribbean in Times of Covid-19. Towards Comprehensive Systems to Strengthen Response and Recovery":¹⁴⁹

- *Uruguay*: in 2015, the National Integrated Care System was created with the aim of generating a co-responsible model of care between families, the State, the community and the market. Its conception is based on: care as a universal right; gender equality as a cross-cutting principle; children, the elderly and people with disabilities in a situation of dependency; and paid and unpaid caregivers as target populations. The System was created by law and established a governance that articulates ten public institutions in a National Care Board and institutionalized social participation in a Care Advisory Committee. Its

¹⁴⁴ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346233/norma.htm>

¹⁴⁵ <https://www.boletinoficial.gob.ar/detalleAviso/primera/259691/20220323>

¹⁴⁶ <https://www.boletinoficial.gob.ar/detalleAviso/primera/246989/20210719>

¹⁴⁷ <https://mapafederaldelcuidado.mingeneros.gob.ar/>

¹⁴⁸ For more information, see: <https://www.boletinoficial.gob.ar/detalleAviso/primera/279015/20230104>

¹⁴⁹ ECLAC - UN WOMEN, Op. cit. 124, p. 8.

actions are structured in five-year plans, which articulate the components of services, training, regulation, generation of information and knowledge, and communication.

- *Costa Rica*: since 2010, there has been a National Child Care and Development Network, with the objective of establishing a child care and development system with public, universal access and solidarity-based financing. It articulates different modalities of public and private provision of care services for children from 0 to 6 years of age. The program also seeks to promote social co-responsibility and coordinate different actors, child care alternatives and development services. It is currently working towards the creation of a National Care System that articulates three population groups (children, the elderly and people with disabilities).
- *Colombia*: the Intersectoral Commission on the Care Economy was created to work on the construction of the National Care System (SINACU). Since 2010, time use surveys have been carried out based on the inclusion of the care economy in the national accounts system. The purpose of this is to measure the contribution of women to the economic and social development of the country and as a tool for the design and implementation of public policies.
- *Mexico*: the aim is to place the issue of caregiving on the public agenda by establishing a "National Strategy for Caregiving", which articulates existing programs and actions from a rights-based approach and a co-responsibility perspective. On the other hand, the National Time Use Survey (ENUT) in Mexico is one of the most solid experiences in the region, especially due to its contribution to the estimates of the Unpaid Work Satellite Account (CSTNRHM), whose objective is to provide information on the economic value of unpaid work performed by household members in productive activities, allowing for a more accurate measurement of their contribution to the national economy.
- *Chile*: the "Chile Cuida" ("Chile cares") program is implemented to care for people in situations of dependency, their caregivers, their homes and their support network. It is also worth mentioning the role played by the "Chile Crece Contigo Program" ("Chile grows with you") in the region, an initiative that promotes parental involvement in improving the results of child development.
- *Paraguay*: in 2016, an Inter-institutional Group for the Promotion of Care Policy (GIPC) was established. The GIPC is now made up of eleven state institutions and has an initial roadmap to get the country to design, adopt and implement a national care policy.
- *Dominican Republic*: since 1998, the country has had important legislation on the rights of the elderly with the enactment of the Law for the Protection of the Elderly, which, among other aspects, enshrines the right to free and easy access to public and private services. The government is currently working on the construction of a National Comprehensive Care System, as part of the design of a basic social protection floor with a gender approach supported by UNDP, ILO and UN Women.

On the other hand, at the national level, the constitutions of Ecuador (Article 333)¹⁵⁰ and Venezuela (Article 88)¹⁵¹ contain a specific mention of unpaid care work, recognizing it as work and establishing access to social security coverage and the right to social security for those who perform it.

¹⁵⁰ Constitution of the Republic of Ecuador 2008. Art. 333. Available at: https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf

¹⁵¹ Constitution of the Bolivarian Republic of Venezuela. Article 88. Available at: https://www.oas.org/dil/esp/constitucion_venezuela.pdf

In turn, the Constitutions of Brazil,¹⁵² Bolivia,¹⁵³ El Salvador¹⁵⁴ and Mexico¹⁵⁵ enshrine maternity leave, and in some cases, the obligation of employers to provide childcare spaces for workers' children.¹⁵⁶

At the local level, the Constitution of Mexico City explicitly recognizes that everyone has the right to care and that the State must establish a care system with universal public benefits, with special emphasis on the groups most in need of care, such as children, the elderly and people with disabilities.¹⁵⁷

¹⁵² Political Constitution of the Federative Republic of Brazil. Art. 6. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2001/0507.pdf>

¹⁵³ Political Constitution of the Plurinational State of Bolivia. Art. 45 III and V; Art. 49 II. Available at: https://www.oas.org/dil/esp/constitucion_bolivia.pdf

¹⁵⁴ Constitution of the Republic of El Salvador. Art. 34. Available at: https://www.oas.org/dil/esp/constitucion_de_la_republica_del_salvador_1983.pdf

¹⁵⁵ Political Constitution of the United Mexican States. Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>

¹⁵⁶ Pautassi, L., 2018. Care as a right. A virtuous path, an immediate challenge. In: *Revista de la Facultad de Derecho de México*, Volume LXVIII, No. 272, pp. 734 et seq.

¹⁵⁷ Political Constitution of Mexico City, Art. 9.B. Available at: https://www.gob.mx/cms/uploads/attachment/file/332065/Constituci_n_CDMX.pdf