

Submission to the Inter-American Court of Human Rights by ESCR-Net allied and member human right organizations and individuals on Argentina's request for an advisory opinion on the right to care (November 7, 2023)



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WOMEN'S LEGAL CENTRE

I. Introduction and Description of Signatory Organizations and Individuals

This brief responds to the call for comments on Argentina's request for an advisory opinion to the Inter-American Court of Human Rights on the right to care.

This brief is submitted by:

- **Asociación Interamericana para la Defensa del Ambiente (AIDA)** is a regional non-governmental environmental law and human rights organization (registered in Mexico as a civil association) that has been working since 1998 to protect threatened ecosystems and the communities that depend on them in the American hemisphere. We accompany dozens of traditional communities and indigenous peoples in their defense of territory and the environment, and in the promotion of social, environmental and climate justice.
- **Asociación de Mujeres Meretrices de Argentina (AMMAR)** was born to respond to ongoing police harassment and violence. Coming together we discovered that our organization is the strength and the engine to achieve objectives that benefit sex workers and society in general. AMMAR defends the human and labor rights of sex workers in Argentina.
- **Centro de Estudios Legales y Sociales (CELS)** is an Argentine human rights organization created in 1979, during the last military dictatorship, which promotes the protection of rights and their effective exercise, justice and social inclusion, both nationally and internationally.
- **Habitat International Coalition**, here represented by its **Latin America Office (HIC-AL)**, is the global network for habitat and housing rights, fighting for social justice, gender equality and environmental sustainability.
- **Fundeps** is a non-governmental organization based in Córdoba, Argentina, which since 2009 has been working with the mission of promoting the development of public policies and private sector practices that guarantee the fundamental rights of all people, at the local, national and international levels. Its objective is to promote a just, equitable and sustainable society, organized through participatory, transparent and collaborative governance. From a human rights perspective, Fundeps conducts research, capacity building, advocacy, strategic litigation, networking and awareness campaigns.
- **Global Initiative for Economic, Social and Cultural Rights (GI ESCR)** is a human rights organization that has as its mission the transformation of power relations so that every person and community can enjoy their ESC rights and all other human rights now and in the future.
- **Instituto de Liderazgo Simone de Beauvoir (ILSB)** is a feminist civil society organization and training center. Since 2000, we have contributed to the strengthening of social leadership and citizen participation from a gender and rights perspective as a strategy for advancing gender equality and social justice.
- **Maru Meléndez Margarida**, human rights lawyer, juris doctor at City University of New York.
- **Observatori DESCA**, a center for the defense of economic, social, cultural and environmental rights, combines political advocacy with research, advice and the organization of courses, conferences and strategic litigation. Accordingly, research and publications are promoted, and seminars and trainings are organized, supporting popular demands and struggles, without losing sight of the importance of networking, both locally and globally, and participation in social campaigns.
- **Sindicato Obreros Curtidores de la República Argentina (SOCRA)** is an Argentine trade union organization, whose objectives are the defense of the trade union, social, mutual, cultural and political interests of leather industry workers, contributing simultaneously to their

comprehensive training on trade union, social and scientific contents and the creation of training schools, as well as the dissemination and promotion for the conquest of new rights for the working class as a whole. It is worth mentioning that the trade union organization employs workers, such as cooperative or social economy workers.

- **Viviana Osorio Pérez**, AFSEE Senior Fellow for Social and Economic Equity, London School of Economics (LSE).
- **Women's Legal Center (WLC)** was founded in 1999 in Cape Town by a small group of women lawyers as a non-profit, independently funded legal center that would focus exclusively on women's rights. Since then, the Women's Legal Centre has built a strong reputation in South Africa and internationally for its advocacy for women's rights, and several precedents have been set that will have a profound impact on the lives of many women. The Women's Legal Centre takes legal action free of cost on behalf of women to challenge established principles and overturn discriminatory laws.

The Secretariat of the ESCR-Net, International Network for Economic, Social and Cultural Rights, contributed to the coordination and drafting of this brief.

The signatories are human rights organizations and defenders, including experts in using an intersectional feminist analysis, devoted to the full realization of human rights guarantees, including through their due incorporation into laws, interpretation, application and enforcement in the Americas and around the world. The signatories provide information derived from their experience based on research, litigation, capacity building and advocacy work on human rights law and, in particular, the right to care and the right to equality and non-discrimination.

II. Summary of Arguments

Recognition of care as a universal human right by the Inter-American Court of Human Rights would duly appreciate the work that sustains life in all its facets as well as the proper functioning of society. As we will explain below, care serves as the structure of society; without it, children cannot grow up, people are not enabled to work and contribute to the economy--although unpaid care work also represents a substantial contribution to economies, and it is not possible to ensure the well-being of people at different stages of their life cycle (e.g., in childhood or old age) or when they are ill or disabled.

The insufficiency of public care services and the lack of public policies and care systems that correct the pressure on families--and especially on women and girls--to meet unmet social care needs, has resulted in a feminization of unpaid care work, in a profound precariousness when it is performed in the labor market, and in a growing commodification that has turned access to quality care services into a privilege. Women and girls are the main caregivers in our societies--a fact that remains strongly imbued in society despite the advances that various feminist movements have made in overcoming the gender roles and limits assigned by patriarchy. Due to the fact that the patriarchal system understands this work as women's "duty" and not as their own work which should be remunerated and valued, women and girl caregivers suffer labor exploitation that, in turn, limits many of their fundamental rights, including the right to education, health, participation, and leisure. In addition, women and girls whose (racial, geographic, migratory, socioeconomic, gender, etc.) identities intersect are disproportionately affected by the lack of recognition of their work.

The right to care is grounded in the right to equality, labor rights and all the human rights that care work guarantees--that is, the rights of all people, particularly historically marginalized groups such as the rights of the elderly, children, women and people with disabilities--as detailed in this brief. These rights, interdependent and indivisible, are built and strengthened on the basis of care and cannot be understood or fully realized without the due guarantee of the right to care itself, as an autonomous, justiciable and enforceable right emanating, among others, from Article 26 of the American Convention on Human Rights

If we want just, equitable and sustainable societies, we have to care for caregivers and those who require care to enable the fulfillment of already recognized human rights. Moreover, this obligation has to be met in line with an anti-patriarchal commitment, acknowledging and striving to advance and protect non-discrimination and substantive equality.

III. Discussion

The right to care--which implies the recognition of care work--is essential to upholding and guaranteeing multiple human rights, supporting the express recognition and broad application of human rights within the framework of international human rights law, including in the corresponding Inter-American *corpus iuris*.

Care work is defined as unpaid domestic work and paid domestic work. This includes domestic work (meal preparation, cleaning, washing clothes, water and fuel collection) and direct care of persons (including children, older persons and persons with disabilities, as well as able-bodied adults) carried out in homes and communities.”¹ In short, care refers to “all paid and unpaid activities that make social reproduction possible and include both direct and indirect activities (e.g., cooking, cleaning, collecting water and/or firewood), as well as community work.”²

In other words, care refers to "the indispensable elements for satisfying people's basic needs for existence and reproduction, providing them with the physical and symbolic elements that enable them to live in society, including- -from a material and a symbolic dimension- self-care, direct care of other people (the interpersonal activity of care), the provision of the preconditions in which care is performed and the management of care (in particular, when care is referred to other persons or institutions).”³ Therefore, we understand care as a need, as a job and as a right. As such, it is a shared social responsibility.

However, unpaid domestic work is made invisible, despite the fact that this work is essential for social reproduction. In general, paid domestic work (albeit usually precarious and informal) is included in Gross Domestic Product (GDP) calculations, National Accounts Systems and increasingly in the programming of development and food security initiatives. However, unpaid care work has remained invisible in policies, statistics, economic calculations and political discourse, and is generally undervalued by society.⁴ For example, in June 2021, the Central Bank in Chile estimated that the value

¹ UN General Assembly, “Extreme poverty and human rights”, (9 August 2013), A/68/293, available at <http://cedoc.inmujeres.gob.mx/Seminarios/utitempo/2014/MagdalenaSepulveda.pdf>, pp. 3. ² Red DESC, “Social Pact on Care: Towards a feminist and human-rights based social pact on care,” (2021) available at https://www.escr-net.org/sites/default/files/2-pager_socialpactoncare_en.pdf

³ Corina Rodríguez Enríquez, Gabriela Marzonetto y Virginia Alonso, “Organización social del cuidado en la Argentina: Brechas persistentes e impacto de las recientes reformas económicas” Estudios de Trabajo, (2019), http://www.scielo.org.ar/scielo.php?script=sci_arttext&pid=S2545-77562019000200003

⁴ ESCR-Net, “Social Pact on Care: Towards a feminist and human-rights based social pact on care,” (2021).

of unpaid domestic work accounts for 26% of the country's GDP.⁵ In 2019, a survey by Comunidad Mujer had valued it at 22%.⁶

Care work should be approached by differentiating the various settings of care; to do so, it is necessary to describe the current reality of care work and household management. The settings of female care workers are: 1) workers who provide domestic services (i.e., who provide care services in the market); 2) housewives (women who only work in their homes); 3) workers in popular or neighborhood organizations; 4) workers registered in other labor activities part of the care economy.

In addition, when we talk about care, we must emphasize that it is an obligation assumed by States when ratifying or signing various international human rights treaties. In fact, we can identify four actors involved in the social organization of care: (1) the State, through public policies; (2) the market, which offers commercialized care services; (3) households, where these tasks are performed without pay; and (4) communities, where care is provided, for example, through the organization of community kitchens and other neighborhood spaces.⁷ The State is the main guarantor of the right to care and is responsible for promoting a social reorganization of its provision that reduces the pressure on families and guarantees universal access to quality care services. We use the term "care economy" to give visibility to the economic contribution of care work through its politicization, i.e., by moving the domestic space to the public political space to show its contribution and demand economic support.

The lack of recognition of (both paid and unpaid) domestic work is largely due to discriminatory and patriarchal structures prevailing in our society. It is important to place caregiving tasks within the framework of the "sexual division of labor," that is, the historical process by which tasks were unequally assigned between men and women. It is important to think of the division between the public and private spheres, between productive and reproductive work, and within the latter, care work, as a changing reality according to different social, political and economic contexts. Thinking about care tasks as part of the broader definition of social reproduction allows us to address other

⁵ Rodrigo Cárdenas, "El Banco Central calcula que el valor del trabajo no remunerado en el hogar llega a 26% del PIB" La Tercera, (9 June 2021), <https://www.latercera.com/pulso/noticia/valor-del-trabajo-no-remunerado-en-el-hogar-llega-a-26-del-pib/A322SA6ZM5H5POY4QDXGONIJTQ/#:~:text=Empleo-.El%20Banco%20Central%20calcula%20que%20el%20valor%20del%20trabajo%20no.llega%20a%2026%25%20del%20PIB&text=El%20Banco%20Central%20subi%C3%B3%20en.labores%20que%20provoc%C3%B3%20la%20pandemia>.

⁶ Comunidad Mujer, "¿Cuánto aportamos al PIB? Primer Estudio Nacional de Valoración Económica del Trabajo Doméstico y de Cuidado No Remunerado en Chile", (2019), <https://comunidadmujer.cl/wp-content/uploads/2022/04/Cuanto-Aportamos-al-PIB.pdf>.

⁷ Corina Rodríguez Enríquez, Gabriela Marzonetto y Virginia Alonso, "Organización social del cuidado en la Argentina: Brechas persistentes e impacto de las recientes reformas económicas" Estudios de Trabajo, (2019),

dimensions making up the quality of life of women and the LGTBI+ population, such as access to housing, land and public services. Indeed, the "unequal distribution of unpaid domestic work reflects to a high degree and determines the power relations between men and women."⁸

The effect of this patriarchal distribution of care work limits caregivers' enjoyment of their rights. As recognized by the UN, "[t]he intensive burdens of unpaid domestic work create chronic time deficits, which limit women's and girls' opportunities to access and advance in education, participate in paid activities, and accumulate income and savings for retirement, constraints that contribute to their increased vulnerability to poverty."⁹ This situation is exacerbated under an intersectional analysis, particularly on the basis of ethnicity, race, color, health or marital status.¹⁰ The same happens when we see that it is the grandmothers, aunts and older girls who often strive to cover care deficits once they arise.¹¹

For all these reasons, it is essential to promote the visualization of care as a right, understanding that providing care is a right and so is receiving care and having time for self-care and leisure, and that caregivers must have social protection and rights as in any other job. A more egalitarian distribution of care tasks within families, but also involving the State, companies and the entire community, is a necessary condition for a fairer society that does not reproduce the feminization and precariousness of care work.

Care work must be approached from an intersectional perspective that takes into account that the inequalities experienced by girls, women, lesbians, transgender people, Afro-descendants, migrants, slum dwellers, and indigenous women include overlaps that are not just a list of accumulated inequalities, but intersect as a simultaneous and concrete structure of the various forms of oppression, injustice and exploitation.

Therefore, the issue must be addressed with a rights-based approach under a feminist and intersectional perspective, paying particular attention to how these intersections operate both in relation to those who need care and those who provide it.

Care has a relational dimension. "Caregiving is based on a relationship between two parties; in many respects the rights of caregivers are symbiotically intertwined with the rights of those receiving care: overburdening caregivers with unpaid domestic work affects the quality of care they are able to provide. Thus, when unpaid domestic work is not adequately recognized, valued or supported by the State, the rights of those who depend on caregiving for their health, life and well-being may also be

⁸ UN General Assembly, "Extreme poverty and human rights", (9 August 2013), A/68/293, available at <http://cedoc.inmujeres.gob.mx/Seminarios/utiempo/2014/MagdalenaSepulveda.pdf>, pp. 6.

⁹ *Id.* pp. 7.

¹⁰ *Id.*

¹¹ *Id.* pp. 18.

violated, particularly in low-income households.”¹²

Among many others, the human rights implications of unpaid domestic work are identified as "tensions between care giving and unwanted dependency, abuses against persons with disabilities or (...) [older adults], and the right of children to quality care.”¹³

A. Guarantees relating to care work in several international legal instruments

Several international instruments and declarations (important for the implementation of, among others, Art. 29 of the American Convention) provide guidance and normative frameworks that support the importance of guaranteeing and protecting the right to care as part of human rights in the area of care work:

1. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** This convention recognizes the need to eliminate discrimination against women and ensure gender equality in various areas, including care work. It establishes that States must take measures to ensure that women have access to adequate and affordable care services, as well as to promote co-responsibility in care work.
2. **General Comment No. 16 of the UN Committee on Economic, Social and Cultural Rights:** The Committee addresses the right to the highest attainable standard of health. It recognizes the importance of care work for the attainment of health and stresses the need to address gender inequalities in the distribution of care work.
3. **Report of the Special Rapporteur on extreme poverty and human rights:** In this report, the Special Rapporteur highlights the importance of recognizing and valuing unpaid care work, as well as the need for policies that promote co-responsibility and the equitable redistribution of care responsibilities.¹⁴
4. **The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)** guarantees the exercise by everyone of their economic, social and cultural rights, which are aimed at ensuring a life of dignity. In terms of social security, care services, equitable and satisfactory working conditions, paternity or maternity leave, and equal responsibilities between women and men in the upbringing of their children.

¹² *Id.* pp. 5.

¹³ *Id.*

¹⁴ Report of the Special Rapporteur on extreme poverty and human rights, Report, 9 August 2013, A/68/293.

5. **General Recommendation No. 17 by CEDAW “Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the**

Gross National Product” (CEDAW/RG/17, 1991). The Committee recommended States: a) to encourage and support research and studies aimed at measuring and valuing unremunerated domestic work; b) to adopt measures aimed at quantifying the unremunerated domestic work of women and to include it in the gross national product; c) to include in their reports the experimental studies carried out, as well as the progress made in incorporating such work into national accounts.

6. **General Recommendation No. 21 by CEDAW "Equality in Marriage and Family Relations"** (CEDAW/RG/21, 1994) The CEDAW, with respect to the sharing of parental responsibilities for the care, protection and maintenance of children (from Art. 5(b)), recognized that some countries do not respect the principle of equality of mothers and fathers, especially when they are not married. Their children do not always enjoy the same legal status as those born in wedlock and, when mothers are divorced or living apart, fathers often do not share the obligations of care, protection and maintenance of their children; therefore CEDAW stated that States should ensure that, under their laws, both mothers and fathers share equal rights and obligations with respect to their children, regardless of their marital status or whether they live with their children.
7. **C100 - Convention on Equal Remuneration, 1951 (No. 100)**. It establishes the obligation of States to ensure in practice the principle of "equal pay for work of equal value," a principle that is vital in the case of care as an activity that contributes substantially to economies, but is still invisible and economically and socially devalued. "Equal pay for work of equal value" must be applied without distinction of any kind, which necessarily implies overcoming the exclusion of caregiving as a productive activity and of those who perform it as workers with rights.
8. **ESCR General Comment No. 23 on the right to just and favourable working conditions**. The **Committee, evoking the principle of equality and non-discrimination, pointed out that** "the right to just and favourable conditions of work is a right of everyone,¹⁵ without distinction of any kind,"¹⁶ including, among others, persons performing unpaid work. It specifically recognizes unpaid workers as *workers*

¹⁵ The reference to "everyone" reinforces the general prohibition on discrimination in article 2 (2) and the equality provision in article 3 of the Covenant, and is supplemented by the various references to equality and freedom from distinctions of any kind in sub-articles 7 (a) (i) and (c).

¹⁶ Committee on Economic, Social and Cultural Rights. General Comment No. 23 (2016) on the right to just and favourable conditions of work (Art. 7 International Covenant on Economic, Social and Cultural Rights) para. 5.

as such and, consequently, pointed out that those carrying out unpaid work, including, care workers, “They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security.”¹⁷ The Committee recognized that “discrimination, inequality and a lack of assured rest and leisure conditions plague many of the world’s workers,”¹⁸ and that social redistribution of care chores, day-care services in the workplace and flexible working arrangements can promote equal conditions of work in practice. The Committee further pointed out that “intersectional discrimination and the absence of a life-cycle approach regarding the needs of women lead to accumulated disadvantages that have a negative impact on the right to just and favourable conditions of work and other rights.”¹⁹

9. **ESCR Committee General Comment No. 6 on the economic, social and cultural rights of older persons.** According to the principle of equality and non discrimination, the Committee considered that “States parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow’s pension, are often in critical situations.”²⁰ The Committee stated that “maintaining health into old age requires investments during the entire life span, basically through the adoption of healthy lifestyles”²¹ and access to care infrastructure and services free of discrimination. **International Labour Organization (ILO) Maternity Protection Convention (No. 183).** This Convention urges States to take measures to: prohibit employers from requiring a woman applying for employment to provide a pregnancy test or from dismissing a pregnant woman who is on maternity leave or after having returned to work for a period to be determined by national legislation; and to guarantee women the right to return to the same job or an equivalent job with the same remuneration at the end of maternity leave.
10. **ILO Convention 189 on Domestic Workers.** This Convention seeks to promote fair and decent conditions for domestic workers who undoubtedly also perform care work.

¹⁷ Ibid. para. 47 Lit. j.

¹⁸ Ibid. para 3.

¹⁹ Ibid. para 47. Lit. a.

²⁰ CESCR General Comment No. 6 on economic, social and cultural rights of older persons. para. 20

²¹ Ibid. para. 35.

Convention 189 requires States to guarantee the labor rights of this sector of national economies in relation to working hours, rest periods, minimum wage, overtime, social security and other labor rights, as well as protection and prevention of discrimination based on sex.

11. **ILO Convention 156 on Workers with Family Responsibilities** This Convention seeks to reconcile family and professional responsibilities, emphasizing the importance of: enabling persons with family responsibilities who are or wish to be employed to exercise their right to do so without being discriminated against and, as far as possible, without conflict between their family and professional responsibilities. The Convention further establishes that States must develop community services, public or private, to assist children and families.²² **General Recomendación No. 165 to Convention 156** issues concrete recommendations on employment policies in relation to parental leave, reduction of working hours, flexible working hours, and leave due to illness of children or direct relatives.
12. **Convention on the Rights of the Child.** This Convention establishes the principle of equality and non-discrimination, as well as the the principle of the best interests of the child and the duty of States to “ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her.”²³
13. **Convention on the Rights of Persons with Disabilities.** This Convention reaffirms the principle of equality and non-discrimination, emphasizing the greater vulnerability of women and children with disabilities. It establishes the right of persons with disabilities to have access to “a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community”²⁴ and, in general, urges States to develop the necessary care infrastructure and services, to ensure equal access by persons with disabilities, and to create all conditions enabling them to fully develop their human potential. Furthermore, the Convention establishes the duty of States to guarantee full enjoyment of economic, social and cultural rights of persons with disabilities, especially education, work, health, adequate standard of living and social protection, and participation in cultural life. The Convention also urges States to ensure access to training, counseling, financial

²² ILO Convention No. 156 on Workers with Family Responsibilities, (1981), Art. 5 b.

²³ Convention on the Rights of the Child (1990). Art. 3.2.

²⁴ Convention on the Rights of Persons with Disabilities. Art. 19.b.

assistance and temporary care services by persons with disabilities and their families living in poverty.

14. **Inter-American Convention on Protecting the Human Rights of Older Persons.**

This Convention highlights the recognition of care as a right from an integral perspective, where food, health promotion, access to social services, housing, among others, are considered as part of the components of a care system that the State must consolidate, promoting that the elderly can decide to remain at home and maintain their independence and autonomy. This Convention makes an interesting distinction between palliative care and long-term care, recognizing the former as: The active, comprehensive and interdisciplinary care and attention of patients whose illness does not respond to curative treatment or who suffer avoidable pain, in order to improve their quality of life until the end of their days. It involves primary attention to the control of pain, other symptoms and the social, psychological and spiritual problems of elderly persons. It encompasses the patient, his or her environment and family. Long-term care for the elderly is provided in regulated establishments, whether public, private or mixed, in which they receive quality, full social and health services, including long-stay residences, which provide these long-term care services to the elderly with moderate or severe dependency who cannot be cared for at home.

15. **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará), 1994**, provides that “the right of every woman to be free from violence includes, among others: the right of women to be free from all forms of discrimination, and the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”²⁵ Furthermore, the Convention establishes the duty of States to modify sociocultural patterns to enable women to pursue their life projects.²⁶

B. The right to care and its growing recognition in constitutions, legal frameworks and agendas in the region

In addition to the substantial integration of the right to care in the *corpus iuris* of international human rights law, some States in the Latin American and Caribbean region have expressly recognized care. While the obligation to ensure the right to care

²⁵ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará), 1994. Art. 6.

²⁶ Ibid. Art. 8.

exists for all the countries of the region, some have expressly incorporated it into their constitutions, providing it with greater guarantees and broadening its interpretation through jurisprudence, together with the recognition of unpaid domestic work as productive work, gender co-responsibility and, in some cases, the creation of care systems.²⁷ It is important to reiterate that **the express recognition of the right to care in the constitutions of some of the countries of the region does not exclude or deny the existence of the right to care in other countries that do not expressly mention it, given that it is enshrined in the *corpus iuris* of international human rights law.**

The Political Constitution of Ecuador (2008) recognizes as productive work the unpaid work of self-support and human care performed in households and consequently determines the extension of social security for people who perform it.⁸ Addressing the right to care includes an intersectional approach that pays special attention to women, children, the elderly and people with special care needs due to illness and disability, and determines that public policies and programs should consider differential aspects according to geographic area, ethnic group and culture, gender identity, among other factors.²⁹ It also determines actions to strengthen social co-responsibility for care, as well as maternal and paternal co-responsibility, and establishes the State as the guarantor of this right.³⁰

Article 338 of the Political Constitution of the Plurinational State of Bolivia (2008) establishes that the economic value of household work should be recognized as a source of wealth and should be quantified in public accounts. It also establishes the co-responsibility of care between women and men,³¹ under equal conditions, and determines the implementation of public policies and affirmative action measures regarding care for children, the elderly³² and persons with disabilities.³³

Ecuador and Bolivia recognize good living as a guiding principle that alludes to the harmonious relationship between nature, people and social organization.

Similarly, the Constitution of the Bolivarian Republic of Venezuela (1999)³⁴ and the Constitution of the Dominican Republic (2009),³⁵ recognize the productive value of domestic work as a source of wealth and social welfare.

²⁷ A. Guézmés García y M. N. Vaeza (coords.), “Avances en materia de normativa del cuidado en América Latina y el Caribe: hacia una sociedad del cuidado con igualdad de género,” Project Documents (LC/TS.2022/175/Rev.1), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC)/United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2023. Available at: https://lac.unwomen.org/sites/default/files/2023-03/S2201160_es.pdf

²⁸ Political Constitution of Ecuador (2008). Arts. 46, 325, 333, 369.

²⁹ Ibid. Arts. 38, 43, 46.

³⁰ Ibid. Arts. 69, 333, 363.

³¹ Political Constitution of the Plurinational State of Bolivia (2008). Art. 64.

³² Ibid. Arts. 67, 68.

³³ Ibid. Arts. 70-72.

³⁴ Constitución of the Bolivarian Republic of Venezuela (1999). Art. 88.

³⁵ Constitution of the Dominican Republic (2009). Art. 55. No. 11. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2010/7328.pdf>.

The Constitution of Venezuela also established the right to social security as a public service, as well as social security coverage for people who perform unpaid care work.³⁶

The Political Constitution of Mexico (2017) specifically establishes the right to care, as well as the organization of a care system:

“Every person has the right to care that sustains his or her life and provides the material and symbolic elements to live in society throughout his or her life. The authorities shall establish a care system which provides universal, accessible, relevant, sufficient and quality public services, and which develops public policies. The system shall give priority attention to persons in a situation of dependency due to illness, disability, life cycle, especially childhood and old age, and to those who, in an unpaid manner, are in charge of their care.”³⁷

The said Constitution also recognizes the effective protection of the rights of domestic workers, as well as the labor rights of caregivers of persons with special care needs due to illness or disability.³⁸ It also recognizes homes and care work as “sources of goods and services for social reproduction.”³⁹ Furthermore, it highlights the enshrinement of the right to “have time for coexistence, recreation, personal care, rest, enjoyment of leisure and a reasonable amount of working hours.”⁴⁰ Consequently, it was determined, in accordance with the principle of substantive equality, that “the authorities shall promote social, economic and territorial policies that free up time and allow people to achieve wellbeing.”⁴¹

As regards Chile, within the framework of the 2021-2022 conventional process, the proposed Political Constitution incorporated the right to care for all people, as well as the creation of a comprehensive care system from a gender perspective⁴² (but it was not approved in the plebiscite of September 4, 2022).

³⁶ Ibid. Art. 86

³⁷ Political Constitution of Mexico (2017). Art. 9, lit b. Available at: https://www.infocdmx.org.mx/documentospdf/constitucion_cdmx/Constitucion_%20Politica_CDMX.pdf.

³⁸ Ibid. Art. 10, lit b.5.d.

³⁹ Ibid. Art. 10, lit b.5.f.

⁴⁰ Ibid. Art. 13, lit f.

⁴¹ Ibid.

⁴² “All persons have the right to care, to be cared for and to take care of themselves from birth to death. The State is obliged to provide the means to ensure that care is dignified and carried out under conditions of equality and co-responsibility. The State will guarantee this right through a Comprehensive Care System and other regulations and public policies that incorporate an approach based on human rights, gender and the promotion of personal autonomy. The System will be state-run, based on social principles and solidarity, universal, with cultural relevance and a gender and intersectional perspective. Its financing will be progressive, sufficient and permanent. The system will pay special attention to infants, children and adolescents, the elderly, people with disabilities, people in a situation of dependency and people with serious or terminal illnesses. It shall also ensure that the rights of those who perform care work are safeguarded” (Art. 50).

Access to and effective exercise of care as a right are incorporated through legislative reforms or through the provision of services by the Executive Branch, mainly aimed at children, persons in situations of disability or dependency and the elderly. The nature of this right is not defined, but it is close to the group of economic, social and cultural rights. In this sense, care can be linked to the right to work, to the common duties of parents with respect to the upbringing and development of children⁴³ as they appear in the international covenants and treaties already signed by the States, especially in the area of economic, social and cultural rights.

In Latin America, in terms of legislative development, comprehensive care systems have been gaining ground, with Uruguay being the pioneer country. At present, countries such as Argentina, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru and the Dominican Republic, with varying degrees of development, are making progress in their implementation. In Argentina, Ecuador, Mexico, Paraguay and Peru, bills are being debated which propose the creation of these care systems.⁴⁴ With regard to the measurement of paid and unpaid care work, so far 23 countries in the region have carried out at least one measurement of the time devoted to domestic and care work. Countries such as Argentina, Colombia, Mexico and Peru have institutionalized this mandate through a law that ensures its periodicity.⁴⁵ Other aspects of care that have been regulated in the region through legislation correspond to regulations on paid domestic work, maternity and paternity leave, breastfeeding leave, parental leave that protects employment to allow parents to care for their child after maternity and/or paternity leave expires, paternity or maternity leave and benefits for students, leave for the care of elderly and dependent persons, child care services in the workplace, among others.⁴⁶

In terms of regional parliaments, it is worth highlighting some advances. The Latin American and Caribbean Parliament drafted a Draft Framework Law on Comprehensive Care System⁴⁷ and a Framework Law on the Care Economy⁴⁸ seeking to promote legislative harmonization in the area of care in the region. This legislation recognizes care work as productive labor, includes unpaid care work in the national accounts to make its contribution to the economy visible, recognizes the rights of caregivers and establishes integrated care systems, among other aspects.

⁴³ Pautassi, L. (2018), “El cuidado: de cuestión problematizada a derecho. Un recorrido estratégico, una agenda en construcción”, *El trabajo de cuidado: una cuestión de derechos humanos y políticas públicas*, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women).

⁴⁴ A. Güezmes García y M. N. Vaeza (coords.), “Avances en materia de normativa del cuidado en América Latina y el Caribe: hacia una sociedad del cuidado con igualdad de género,” *Project Documents (LC/TS.2022/175/Rev.1)*, Santiago, Economic Commission for Latin America and the Caribbean (ECLAC)/United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2023. Available At: https://lac.unwomen.org/sites/default/files/2023-03/S2201160_es.pdf

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Latin American and Caribbean Parliament, 2012. Available at:

https://parlatino.org/pdf/leyes_marcos/leyes/proyecto-sistema-integral-pma-30-nov-2012.pdf.

⁴⁸ Latin American and Caribbean Parliament, 2013. Available at:

https://parlatino.org/pdf/leyes_marcos/leyes/ley-economia-cuidado-pma-19-oct-2013.pdf.

At the regional level, in 2007, during the X Regional Conference on Women organized by ECLAC, the States of the region approved the Quito Consensus in which they committed to “formulate and implement State policies that favor the equal sharing of responsibility between women and men in the family sphere, overcoming gender stereotypes and recognizing the importance of care and domestic work for economic reproduction and the well-being of society as one of the ways to overcome the sexual division of labor.”⁴⁹

More recently, during the XV ECLAC Conference, ECLAC member States agreed to:

*“Recognize care as a right to provide and receive care and to exercise self-care based on the principles of equality, universality and social and gender co-responsibility, and therefore, as a responsibility that must be shared by people of all sectors of society, families, communities, businesses and the State, adopting regulatory frameworks and comprehensive care policies, programmes and systems with an intersectional and intercultural perspective that respect, protect and fulfil the rights of those who receive and provide paid and unpaid care, that prevent all forms of violence and workplace and sexual harassment in formal and informal work, and that free up time for women, so that they can engage in employment, education, public and political life and the economy, and enjoy their autonomy to the full.”*⁵⁰

The Buenos Aires Commitment includes, among others, the State’s willingness to:

- *“Adopt regulatory frameworks that ensure the right to care through the implementation of comprehensive care policies and systems from a gender, intersectional, intercultural and human rights perspective[.]”*⁵¹
- *“Actively support the participation of women’s and feminist organizations and movements [...], caregivers’ and dependent persons’ organizations, as well as trade unions,*

⁴⁹ United Nations. 2007. Quito Consensus, Tenth Regional Conference on Women in Latin America and the Caribbean, Quito, Ecuador, 6-9 August 2007, DSC/1. Available at: <https://www.cepal.org/sites/default/files/events/files/consensodequito.pdf>.

⁵⁰ Economic Commission for Latin America and the Caribbean (ECLAC), Buenos Aires Commitment (LC/CRM.15/6/Rev.1), Santiago, 2023. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/6ef02df9-68a1-4d75-a707-f753a31405ae/content> ⁵¹ Ibid. No. 9.

organizations of paid domestic workers and community care organizations and cooperatives, in the design, implementation and monitoring of care policies;”⁵²

“*Design*, implement and evaluate macroeconomic policies, particularly fiscal policies (income, spending and investment), [...]to safeguard the progress made and mobilize the maximum available resources with a view to increasing sustainable public investment over time in care policies and infrastructure, in order to guarantee universal access to affordable and quality care services;”⁵³

C. Care as an autonomous right in light of the corpus iuris of international human rights law, especially economic, social, cultural and environmental rights

The Court can and should recognize that Article 26 of the American Convention contains an autonomous right to care. Under Article 26, the Court should apply the Human Rights Committee's recent recognition that several international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, establish legally binding obligations that should guide States in addressing the issue of care.

According to the Court, Article 26 contains autonomous, justiciable and enforceable rights as “[t]he Court notes that a literal, systematic and teleological interpretation leads to the conclusion that Article 26 of the Convention protects the rights derived from the economic, social, educational, scientific and cultural standards set forth in the OAS [Organization of American States] Charter.”⁵⁴

Given that Art. 26 of the Convention refers to the relevant standards in the OAS Charter (the Charter), it is necessary to “derive” human rights from them.⁵⁵ In order to derive the rights contained in Art. 26, the Court has referred to three interrelated factors:

⁵² Ibid. No. 22.

⁵³ Ibid. No. 26.

⁵⁴ Cuscul Pivaral et al. vs. Guatemala, Judgment, Inter-American Court of Human Rights, 23 August 2018, para. 97.

⁵⁵ cf. Antkowiak, Thomas, Social, Economic, and Cultural Rights. The Inter-American Court at a Crossroads. In: Haeck, Y., Ruiz-Chiriboga, O. y Burbano-Herrera, C. (eds.), The Inter-American Court of Human Rights: Theory and practice: Present and Future, Intersentia Press, Cambridge, 2015, p. 264; Courtis, Christian, La protección de los derechos económicos, sociales y culturales a través del artículo 26 de la Convención Americana sobre Derechos Humanos. In: Courtis, C., Hauser, D. y Rodríguez-Huerta, G. (eds.), Protección internacional de derechos humanos: nuevos desafíos, Porrúa, México, 2005, pp. 10-29.

1. the provisions included in the OAS Charter;⁵⁶
2. the American Declaration on the Rights and Duties of Man (Declaration);⁵⁷ and
3. relevant international and national standards.⁵⁸

In addition, according to the Court, “it will be necessary, in each specific case requiring an analysis of [economic, social, cultural and environmental rights (ESCER)], to determine whether a human right protected by Article 26 of the American Convention is explicitly or implicitly derivable from the OAS Charter, as well as the scope of such protection.”⁵⁹

Applying the Court’s criterion, it becomes clear that Article 26 of the Convention contains the autonomous right to care. It is up to the Court to recognize such autonomous rights and the resulting positive and negative obligations of States to: 1) “adopt effective measures,” (that are “adequate, deliberate and concrete”) “in order to guarantee without discrimination the benefits recognized for each right⁶⁰ and 2) “move forward in a concrete [and] constant manner, as expeditiously and efficiently as possible towards the full realization of ESCR,” without retrogression or inactivity.⁶¹

Regarding the third factor, Inter-American jurisprudence has made use of other international and domestic norms to define the content and scope of the rights enshrined in the Convention, in accordance with the *pro persona* principle, the evolutive interpretation of the treaty and Article 29(b)-(d),⁶² which prohibits interpretations that restrict other sources of human rights. Consequently, in order to inform its derivation of rights in Article 26, the Court must take particular account of the Protocol of San Salvador, since this instrument complements the Convention, the interpretation of

⁵⁶ E.g., Cuscul Pivaral, para. 99.

⁵⁷ This factor is considered to be in accordance with: 1) the requirements of Article 29(d) of the Convention, which determines that the treaty must not be interpreted in a way that restricts the effect of the Declaration, and 2) the jurisprudence of the Court which recognizes that “the Declaration contains and defines those essential human rights referred to in the Charter.”

Cuscul Pivaral, para. 101 (citing Interpretation of the American Declaration of the Rights and Duties of Man under Article 64 of the American Convention on Human Rights, Advisory Opinion, OC-10/89, Inter-American Court of Human Rights, July 14, 1989, para. 43).

⁵⁸ This factor is considered to be in accordance with: (1) the *pro persona* principle, (2) an evolutive interpretation of the Convention, and (3) the terms of Article 29 (b) - (d) of the treaty, which require that its interpretation not be restrictive of other sources of human rights. Lagos del Campo vs. Peru, Judgment, Inter-American Court of Human Rights, 31 August 2017, para. 145; Trabajadores de Cesped de Petroperú et al. vs. Peru Judgment, Inter-American Court of Human Rights, 23 November 2017, para. 192; San Miguel Sosa et al. vs. Venezuela, Judgment, Inter-American Court of Human Rights, 8 February 2018, para. 220; Poblete Vilches et al. vs. Chile, Judgment, Inter-American Court of Human Rights, 8 March 2018, para. 111-117; Cuscul Pivaral, para. 100-102. See also, The right to information on consular assistance in the framework of the guarantees of the due process of law, Advisory Opinion OC-16/99, Inter-American Court of Human Rights, 1 October 1999, para. 113-114 (international human rights law “has made great headway thanks to an evolutive interpretation of international instruments of protection. That evolutive interpretation is consistent with the general rules of treaty interpretation established in the 1969 Vienna Convention”).

⁵⁹ Cuscul Pivaral, para. 97.

⁶⁰ Poblete Vilches, para. 104.

⁶¹ Cuscul Pivaral, para. 144, 147- 8.

⁶² cf. Suárez Peralta vs. Ecuador, Judgment, Inter-American Court of Human Rights, 21 May 2013, para. 56, para. 56, concurring decision by Justice Eduardo Ferrer Mac-Gregor Poisot; Lagos del Campo, para. 145; Trabajadores Cesados de Petroperú, para. 192; San Miguel Sosa, para. 220; Poblete Vilches, para. 111-117; Cuscul Pivaral, para. 100-102. See also OC 16/99, para. 113-114.

which the Protocol cannot limit, in accordance with Article 29(b) of the Convention.⁶³

The Court has already referred to the Protocol, among other sources, when interpreting the content of Article 26 of the Convention. In *Lagos del Campo*⁶⁴, the Court relies on the OAS Charter, the American Declaration and the Protocol of San Salvador, among other sources, to derive the right to work within Article 26. More recently, the Court has established that Article 26⁶⁵ incorporates a catalog of rights, considering, among other factors, all relevant *corpus juris*, in which the Protocol figures prominently.⁶⁶

Having said this, we will highlight how the elements present in the three sources mentioned above make it possible to derive an autonomous right to care in its three dimensions of caring, being cared for and self-care.

Two of the essential purposes of the OAS Charter are in line with the role of States in care: the promotion of social and cultural development⁶⁷ (since care plays a vital role for economies and in consideration of the fact that overcoming gender stereotypes that perpetuate the subordinate role of women is part of the promotion of development based on the principle of equality and non-discrimination) and the eradication of critical poverty as a pillar of democracy,⁶⁸ since care burdens that are generally concentrated mostly on women and girls are one of the most relevant factors in the feminization of poverty, time poverty, and persistent obstacles to equal participation in employment, as well as to the development of their agency and participation in public life.

Furthermore, both the Charter⁶⁹ and the Declaration⁷⁰ reaffirm the principle of equality and non-discrimination. The rights enshrined in the Declaration that constitute the legal substrate of the right to care in its three dimensions are the right to the protection of the family (Art. 6), the right to protection of maternity and childhood (Art. 7), the right to the preservation of health and well-being (Art. 11), the right to work and fair remuneration (Art. 14), the right to rest and its use (Art. 15), the right to social security (Art. 16), and the right to justice (Art. 18).

⁶³ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador," 1988, <http://www.oas.org/juridico/english/signs/a-52.html>

⁶⁴ This case is very important because, as stated by Justice Eduardo Ferrer Mac-Gregor Poisot, "it declares for the first time the violation of Article 26 of the American Convention" and "sets an important precedent for the justiciability of social rights in the Inter-American System." *Lagos de Campo vs. Peru*, para. 8.

⁶⁵ *Lagos del Campo*, para. 145.

⁶⁶ *Poblete Vilches*, para. 103.

⁶⁷ Charter of the Organization of American States (1967), Art. 2.f

⁶⁸ *Ibid.* Art. 2.g; 3.f

⁶⁹ *Ibid.* Art. 2.l

⁷⁰ American Declaration on the Rights and Duties of Man Art. 2.

In many decisions, “the Court has identified, recognized, shed light on and rejected gender stereotyping. It is incompatible with international human rights law and States should take measures to eliminate it in circumstances in which it has been used to justify violence against women or its impunity, the violation of a woman’s judicial guarantees, or the differentiated impact of State actions and decisions.”⁷¹ With respect to gender stereotypes related to care, the Court has noted that “stereotyping regarding the role of mother implied the use of a 'traditional' conception of the social role of women as mothers, according to which it is socially expected that they bear the main responsibility for their children’s upbringing,”⁷² recognizing it as a form of gender discrimination.⁷³ The Court has also noted that caregivers of persons with disabilities, especially women, should be supported as they traditionally bear the burden of care.⁷⁴

Regarding the third source for the derivation of law, i.e., relevant international and national norms, it has already been shown in the previous sections how, although unnamed, the right to care is already part of the human rights recognized in the corpus of international law.

In this regard, it is also important to consider the principle of interdependence enshrined in the Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in June 1993, which establishes in its fifth article that:

“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same weight. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Based on the principle of interdependence, it is possible to extrapolate the right to care as enshrined in the various international human rights instruments even though it has not been specifically named as such. The right to care is a right that must be approached in three dimensions “the right to care, to be cared for, and to self-care,”⁷⁵ a definition which places the right to care in relation with those

⁷¹ IAHR Court. *Ramírez Escobar et al. vs. Guatemala*. Merits, reparations and costs. Judgment, 9 March 2018. para. 295.

⁷² *Ibid.* para. 297.

⁷³ *Ibid.* para. 299. *See also* *Fornerón e Hija vs. Argentina*. Merits, reparations and costs. Judgment, 27 April 2012

⁷⁴ IAHR Court. *Vera Rojas et al. vs. Chile*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment, 1 October 2021. para. 111.

⁷⁵ Pautassi, L. (2007), “El cuidado como cuestión social desde un enfoque de derechos”, series *Mujer y Desarrollo*, No 87 (LC/L.2800-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).

giving, receiving or holding care, and which recognizes its universal and interdependent character. The realization of the right to care in these three dimensions implies negative and positive obligations. Negative obligations, in the sense of not hindering childcare services, not preventing access of an elderly person to the health system. However, it mainly includes positive obligations, which are related to providing the means and developing the infrastructure to provide care with rights and for the provision of quality care, ensuring that the enabling conditions to perform care in a framework of rights are not limited to formal salaried work, among other requirements. In turn, the positive obligation of the State implies the imposition of certain obligations on third parties, as in this case, the obligation of private employers to provide care infrastructure or legally contemplated leaves.⁷⁶

The realization of the right to care in its three dimensions implies State action for the social and economic recognition of the value of care work, the guarantee of the rights of caregivers, the reduction of time poverty, the development of care as a pillar of social protection and progress in institutional co-responsibility among the actors involved in the provision of care (State, market, private sector, families) so as to achieve an architecture of the social organization of care that defeminizes, defamiliarizes and demercantilizes care in order to enable its guarantee as a universal right. As stated by Pautassi,⁷⁷ as a right, care imposes obligations that must be fulfilled within the framework of the definition of universal, cross-cutting policies, with regular budgets and implemented with a gender perspective, in interdependence with the whole set of economic, social and cultural rights (ESCR), and civil and political rights (CPR).

Thus, the right to care, considered as a universal right of every human being, extends its enforceability to the state and private spheres, and overcomes the division of the productive and reproductive worlds, which has historically maintained the greatest care burdens on women and girls with unfair and insufficient social arrangements in terms of the social needs for care and the types and quality of care required at different times of life or in situations of illness or disability. The right to care is therefore based on the principles of universality, interdependence, equality and non-discrimination, and social and gender co-responsibility.

D. The obligation of States to guarantee the right to care includes specific and tangible policies that correct the invisibility of care work

⁷⁶ Ibid.

⁷⁷ Pautassi, L. (2021), “El derecho humano al cuidado. Su relevancia constitucional”, Las tramas del cuidado en la nueva Constitución, Santiago, Juntas en Acción y Centro de Estudios de la Mujer, August.

Public decisions in this area ultimately determine who has access to quality care services and who bears the cost of providing them. When "public services do not exist or are inaccessible, of low quality or do not adequately respond to the needs of caregivers (e.g., school hours incompatible with work hours), unpaid domestic work by families and communities intensifies. When the State does not adequately regulate, fund or provide care, the burden falls on families to make their own arrangements,"⁷⁸ This, coupled with the gender stereotypes often present in societies, results in a disproportionate burden of care work on women's shoulders.

The effects of austerity policies initiated by some States during economic crises (which withdraw women from the social welfare system and force them to seek employment in an uncertain context) mean that women have less time available and their unpaid work increases. In addition, they undermine the timid advances in public policies or aid for care. Here the implicit purpose of the measures is to serve as an unlimited and free option to public services and as a buffer against the crisis.⁷⁹

In Argentina, the policy of Recognition of Contributions for Care Tasks, created by Decree 475/2021, granted the right to retirement to Argentine mothers for the time they dedicated to the care and upbringing of their children Mothers of retirement age (60 or older) lacking the necessary years of contributions may access this scheme, provided that they do not have retirement benefits already granted or in process. The recognition of contributions for caregiving tasks considers: 1 year of contributions per biological child and 2 years of contributions per adopted child. Likewise, an additional year is recognized per disabled child and 2 years in case she/he has been a beneficiary of the Universal Child Allowance for at least 12 months. In addition, the periods of maternity leave and expanded maternity leave are recognized for women who have made use of these leaves when their children were born. This inclusion measure is compatible, and, if necessary, may be supplemented with the moratorium in force (Law 24476) and Pension Debt Payment Plan.

This recognition of care work makes visible and repairs a historical structural inequality in the distribution of care tasks, recognizing and valuing the time that women have spent and continue to spend raising their children. This measure equalizes opportunities and generates the necessary conditions for thousands of women to be able to access the right to retire.

Among the specific policies aimed at correcting the chronic invisibilization of care work and redistributing this responsibility to the States and other sectors, while correcting the inequality that women currently suffer, the Court should consider the following measures already contemplated in different applicable international human rights instruments:

⁷⁸ *Id.*

⁷⁹ *Id.* pp. 20.

- To generate the same rights and responsibilities as parents in matters related to the care of their children, regardless of their marital status or whether they live with their children.
- To generate reconciliation measures that allow fathers and mothers to balance work, family and public life through a network of care services in addition to maternity leave, access to social benefits, special protection for women during pregnancy. To extend maternity leave over the minimum of 14 weeks with a salary no less than two-thirds of the previous one, ensuring that employers are not solely responsible for providing the funds for maternity leave, but that these are mostly guaranteed by social security or public funds, as an important measure to mitigate discrimination in the workplace. To also extend paternity leave so that men also have the opportunity to be involved in care tasks.
- To advance in the creation of comprehensive care systems that, in addition to guaranteeing care infrastructure and a set of programs that redistribute the burden of care currently carried out by women in their homes, include health protection and promotion, coverage of social services, food security, water, clothing and housing. These public care systems should guarantee dignified conditions for caregivers, which are currently highly precarious, as well as limit the commercialization and profit-making through these services by the private sector. In the case of the elderly or persons with disabilities, efforts should be made to ensure that they can decide to remain in their homes and maintain their independence and autonomy.
- To include gender, interculturality and intersectionality approaches in comprehensive care systems, considering the needs of diverse groups of women caregivers and the various groups that require care, as well as the adoption of intercultural measures in accordance with their customs, cosmogony and traditions.
- To recognize the specific problems faced by women in rural areas and in the informal work sector in accessing public care services, providing for their inclusion in public care programs and highlighting their work in non-monetary sectors of the economy.
- To promote and adopt progressive fiscal policies, allocate gender-responsive budgets and mobilize the maximum available resources to guarantee access to affordable and quality care services and increase investment in public care services. Furthermore, to ensure that counter-cyclical fiscal adjustment measures or budget cuts are in line with the principle of equality and non-discrimination and human rights, so that they do not end up increasing women's care burdens and increasing the feminization of poverty.

E. The right to care with a necessarily feminist, intersectional, substantive equality and non-discrimination approach

1. Feminist Approach

Historically, the burden of care work has fallen upon women and girls.⁸⁰ Structural inequalities within our various societies have meant that it is women and girls from particularly disadvantaged groups who do the care work. Due to the sexist division of care work and entrenched patriarchal gender roles and stereotypes, such as those related to "male breadwinners" and "women as natural caregivers," care work has historically been associated with women and distributed under structural conditions of discrimination and inequality, especially among women and girls from disadvantaged groups.⁸¹ *“Across the world, without exception, women perform three-quarters of unpaid care work, or 76.2 percent of the total of hours provided. In no country in the world do men and women provide an equal share of unpaid care work.”*⁸²

This heavy and unequal burden is a “barrier to women’s greater involvement in the labour market, affecting productivity, economic growth and poverty reduction.” Domestic responsibilities also constitute a barrier to women's association or active participation in trade unions.”⁸⁴ Because of this "structural discrimination, women's work in the home is considered unskilled and less valuable to society, which means that men not only receive higher incomes, but also more recognition for their contribution. This situation places many women in a relationship of social and financial dependence on men, which, in turn, restricts their capacity for action and autonomy.”⁸⁵

It is essential to address the gender inequalities surrounding care work and the provision of care, inequalities that are rooted in the patriarchal system. In the context of care work, the patriarchal system establishes and reinforces traditional gender roles that assign the primary responsibility for care to women. To achieve a transformation in care work, we must dismantle the macho culture rooted in patriarchy, which permeates the domestic life of households and grants power and privileges to men, while subordinating and oppressing women.

⁸⁰ *Id.* pp. 13.

⁸¹ Amaia Pérez Orozco, “Global perspectives on the social organization of care in times of crisis: Assessing the situation,” United Nations International Research and Training Institute for the Advancement of Women, (2009).

⁸² International Labor Organization, “*Care work and care jobs for the future of decent work*”, Executive Summary, pp. 4, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports---dcomm---publ/documents/publication/wcms_633168.pdf.

⁸³ UN General Assembly, “Extreme poverty and human rights”, (9 August 2013), A/68/293, pp. 5.

⁸⁴ *Id.* pp. 12.

⁸⁵ *Id.* pp 6.

As established by feminist economics and following its guidelines, domestic and care work must be recognized and made visible on a par with the economy. In addition, the care economy makes it possible to show that, despite the fact that care practices are made invisible in the public imagination as "help" in the home, these very practices are the ones sustaining the reproduction of the labor force, both male and female.

Likewise, the feminist approach in the context of care questions traditional gender roles that assign women the main responsibility for unpaid care work and promotes the valuation and equitable redistribution of care work, as well as the recognition of its economic and social value.

2. **Intersectional Approach**

An intersectional approach is critical to the principle of non-discrimination, since discrimination against women is often multidimensional. Multiple and compounding forms of discrimination based on gender, ethnic origin, disability, poverty, migrant status, marital and family status, literacy and other grounds position women and their experiences differently. This implies addressing the specific needs of different groups of women and girls, taking into account their diverse realities and experiences.

Intersectionality allows us to understand the ways in which care, unpaid care work and the right to care are experienced differently and disproportionately by women, and by specific women, given their interconnected forms of oppression and exploitation:

1. ***Poverty and Social Exclusion:*** “Women and girls spend more time in this type of work in poor households than in affluent households, in all countries and at all levels of development.”⁸⁶
2. ***Territory and Rurality:*** Limited access to public services and the lack of adequate infrastructure in the regions and communities where caregivers reside cause an imbalance in the burden of caregiving.⁸⁷
3. ***Technology and Time Efficiency:*** The lack of time-saving technology can be a factor of imbalance for caregivers.⁸⁸

“For example, inadequate State provision of services such as electricity, water and sanitation disproportionately affects poor rural women and girls in developing countries, who spend long hours carrying water and fuel for the household.”⁸⁹

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

4. ***Illiteracy:*** Methods of collecting information and measuring care work must be adapted to illiterate people.

Ultimately, substantive equality and intersectionality are inseparable and crucial to advancing gender-transformative care systems. Ensuring both access to justice and the inclusion of substantive equality through an intersectional approach is vital to realizing human rights in the context of paid and unpaid care work.

In most cases, the obligation to care falls on women who are already marginalized and subject to multiple and intersectional forms of discrimination (e.g., poor households spend more time on unpaid work than wealthier households). In its unpaid form, care work not only makes women and girls more likely to be economically and financially dependent on men, but also creates chronic time poverty, which severely restricts opportunities for the enjoyment of basic human rights. Women trapped in these cycles of discrimination are often unable to participate in decision-making, which, in turn, exacerbates their vulnerability to poverty and marginalization within their households and communities. When paid, we find that care workers tend to be employed in frontline services in the health, education and community sectors, and are often underpaid, performing their duties in extremely precarious working conditions.⁹⁰ Of all paid care workers and domestic workers face the highest levels of exploitation, with some 3.4 million domestic workers in these care chains working under forced labor conditions.⁹¹

The intersection of care work with diverse identities, such as gender, ethnicity, socioeconomic and migration status, characterizes the global care crisis worldwide.⁹² Globally, unpaid care work is “most intensive for girls and women living in middle-income countries, married and of age, with lower educational level, residing in rural areas and with children under school age.”⁹³ The cycle begins at an early age, when many girls are recruited to help care for family members or fetch water for the household, at the expense of their own education or leisure time.⁹⁴ The heavy and unequal care burdens that women carry, especially those living in poverty, mean that women are essentially sacrificing their own human rights enjoyment to help realize the rights of others, filling the gaps where the State has failed to meet its obligations.

⁹⁰ International Labor Organization, “*Care work and care jobs for the future of decent work*,” Executive Summary, pp. 14.

⁹¹ International Labor Organization, “Profits and poverty: the economics of forced labour,” (2014), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm---declaration/documents/publication/wcms_243391.pdf

⁹² Amaia Pérez Orozco, *Global perspectives on the social organization of care in times of crisis: Assessing the situation*, United Nations International Research and Training Institute for the Advancement of Women, (2009), available at: https://www.flacsoandes.edu.ec/web/imagesFTP/1271692373.Amaia_Perez_Orozco_Working_Paper_5_ingles.pdf

⁹³ Colleen Lowe Morna, Kubi Rama, Shamiso Chigorimbo, “Voice and Choice”, Southern African Development Community Gender Protocol (2019).

⁹⁴ UN General Assembly, “Extreme poverty and human rights”, (9 August 2013), A/68/293.

3. Substantive Equality and Non-Discrimination Approach

For substantive equality to become a reality, intersecting forms of discrimination must be addressed. In order to ensure comprehensive implementation of non-discrimination principles and standards, the realization of women's substantive equality requires an understanding of the subordination, stereotyping, and structural disadvantages that women experience. A substantive equality approach requires States to acknowledge the actual impact of unfair distribution of care on women, considering specific circumstances and taking positive measures to ensure equal access to quality care services, fulfillment of rights of paid and unpaid care workers, and women's participation and representation in the governance of care. Article 4 of CEDAW makes it clear that States have an obligation to implement "temporary special measures aimed at accelerating de facto equality between men and women." States must play an active role in developing and facilitating the implementation of comprehensive economic and social policies and programs that take into account the different needs and circumstances of women.

The disproportionate sharing of unpaid care work poses a major obstacle to women's enjoyment of their rights under substantive equality with their male counterparts. Chronic time poverty created by unpaid care work impacts women's ability to access education and training, decent paid work and even health care. When women can't earn a sufficient income because of their unpaid care responsibilities, they are less likely to be able to afford adequate housing and nutritious food or to escape domestic violence.

Worldwide, just 10% of domestic workers have equal protection in labor law compared with other workers, around half of them lack minimum wage protection, and an estimated 90% of domestic workers have no access to social protection.⁹⁵

In Argentina, there are around 1.4 million workers in private homes, 76.8% of whom work informally. In turn, 99.3% of the employees in this field are women, being the most feminized sector in the labor world, and also one of the most precarious, with salaries that are around or below the minimum wage. Since the enactment of the law on domestic workers (Law 26844), some of the benefits that domestic workers have are: a Social Tariff for the public transportation travel card (SUBE), Paid Holidays (whether registered or not), Maternity Leave among other leaves,

⁹⁵ International Labor Organization, "*Care work and care jobs for the future of decent work*," Executive Summary, pp. 14., 17, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm---publ/documents/publication/wcms_737394.pdf.

Paid Vacations, Christmas Bonus, and Seniority Bonus, and the right to retirement (social security). The work in private homes is divided into 5 categories and 2 modalities.

In order to promote the registration of female workers, the Argentine government implemented a program called “Registradas.” The objective of this program is to reduce informality in the sector of female domestic workers, guaranteeing access to legal employment and banking, while promoting financial inclusion with a gender and diversity perspective.

All unregistered domestic workers who work 12 or more hours per week in the same household are eligible; their tasks must fall under the categories of personnel for specific tasks, housekeepers/housekeepers or personnel for general tasks. Enrollment in the Registradas Program must be made by the employer. The State contributes up to 50% of the worker's salary for 6 months.

F. The right to care should include the environmental care work carried out by Indigenous People in the protection and conservation of territories

The basic premise of the human right to care, which recognizes that nothing can function and no one can live without care,⁹⁶ takes on special relevance when analyzed in terms of the relationship between human beings and nature and the environment. In addition, human relationships with nature are not gender-neutral. In this chapter we will analyze this relevance by explaining: (1) the relationship between gender and environment; (2) how unpaid care work is used to facilitate and guarantee the extractive economy that degrades the environment, aggravates the climate crisis and deepens gender inequalities; and (3) how environmental and climate degradation aggravates the demand for care, disproportionately affecting women. Additionally, (4) we will present elements based on an analysis of the enhanced responsibility of the State in the face of the specific vulnerability of women due to environmental degradation, unequal participation in decision making, and the demand for care resulting from environmental and climate impacts. Finally, (5) we will make recommendations on measures that should be taken by States to respond to the structural gender inequality that crosscuts environmental and climate policies, and consequently undermines women's right to self-care, to care and to be cared for.

The work that many people, including women, Indigenous peoples and forest communities carry out in the protection and conservation of the territory must be recognized as care work. Many of the dynamics that affect caregivers in general (discrimination, invisibilization, public policies that further marginalize them, etc.) are also present in this context.

Indigenous people engage at great risk to their own physical well-being to protect the environment in the midst of rampant pollution and damage committed by fossil fuel, coal and natural gas companies. Many face serious threats to their lives in a context where States do not adequately protect them,

⁹⁶ Laura Patussi, “El derecho al cuidado: de la conquista a su ejercicio efectivo” (March 2023), pp. 3, available at: <https://library.fes.de/pdf-files/bueros/mexiko/20144.pdf>.

much less remunerate them for this work. On the contrary, most States adopt coercive conservation models that are structurally racist, restrict their access to ancestral lands often violently, and capture donor conservation funds and benefits derived from carbon credits and REDD+ projects at the expense of their conservation work without their free, prior and informed consent (FPIC) or sharing any of the benefits.

In the case of a study carried out in Bolivia, variables were established regarding territorial care chains of rural women who travel during the harvest period from the Andean zone to the east of the country, and how they organize themselves to provide care for their children, the elderly, etc. This also showed the care strategies deeply linked to socio-cultural practices, which establish significant particularities between territories. Such systems, which are indispensable for the care of people and local ecosystems, are subject to the impacts of climate emergencies. Extreme and slow-evolving climatic events such as hurricanes, droughts and floods caused by disruptions in the climate system produce, among other things, changes in water cycles, loss of territories and the possibility of producing food in the region. In this context, environmental degradation significantly increases the pressure already suffered by care systems due to the lack of recognition, remuneration and equitable redistribution of care work.

1. The relationship between gender and environment

Our relationship with nature responds to a cultural construction. Our vision of what nature means, our ways of relating to and finding ourselves in it, respond to temporal and spatial constructions rather than to immovable, pre-existing, timeless, or historical concepts. As Astrid Ulloa points out:

“Nature is felt, conceptualized and constructed differently according to social processes based on particular material contexts, social institutions, moral notions, cultural practices and ideologies. These practices, conceptions, and notions establish ways of perceiving, representing, interpreting, using, and interrelating with nonhuman entities. Gender, class, race, age, social prestige, and ethnicity are concepts that also cut across constructions about nature resulting in diverse meanings about nature.”⁹⁷

At the same time, the construction of gender and the relationships woven around it are also cultural constructions. Thus, the relationship between groups of women and the environment/nature is different according to the complex intersection of factors that make up their identity, including "lifestyle, spatial location, economic situation, social structure, interconnection of gender, class and ethnicity systems, moment in the life cycle of the women themselves;"⁹⁸; it also varies according to the practices of **access, use, ownership and control of resources**, all situated in the specific **context**

⁹⁷ Astrid Ulloa, "Transformaciones en las investigaciones antropológicas sobre naturaleza, ecología y medio ambiente. Revista Colombiana de Antropología," (January-December 2001). pps. 199-332, available at <https://www.redalyc.org/pdf/1050/105015287008.pdf>.

⁹⁸ María Nieves Rico "Género, Medio Ambiente y Sustentabilidad del Desarrollo", Series Mujer y Desarrollo No. 25. Economic Commission for Latin America and the Caribbean, (October 1998), available at: https://repositorio.cepal.org/bitstream/handle/11362/5867/1/S9800082_es.pdf

of countries and regions, taking into account the political economy of development.⁹⁹

However, the singularity of these relations is not limited to the generalized and measurable gender gaps¹⁰⁰ present in the different variants that make up an effective enjoyment of the right to a healthy environment, such as access to land and natural resources, water, well-being, protection against climate change, sustainable consumption and production, and participation in environmental decision-making.¹⁰¹ Each of these approaches encompasses various elements that expose the distinct, structural gender gap in access to and management of natural resources, vulnerability to environmental degradation and the climate crisis, and in the care of the environment.

In fact, historically, women have played a notable role in conservation and in the struggle for the defense of ecosystems.¹⁰² In different scenarios, women have been fundamental to the care of biological diversity, and in Latin America they have been invisible, daily stewards of the environment.¹⁰³ Women often play a key role in the provision of care and management of natural resources in many communities, devoting themselves to the conservation of ecosystems from a perspective of the enjoyment of resources by current and future generations. For this reason, when ecosystems are damaged or resources become scarce, women face a greater burden of care as they have to compensate for the loss of natural resources and the decrease in ecosystem services.

In addition, women are generally the ones who face the greatest impacts from environmental degradation and climate change. The impacts suffered by women in these contexts are often a reflection of the conditions of inequality, marginalization or exclusion in which they find themselves

⁹⁹ María Nieves Rico “Género, Medio Ambiente y Sustentabilidad del Desarrollo”, Series Mujer y Desarrollo No. 25. Economic Commission for Latin America and the Caribbean, (October 1998).

¹⁰⁰ According to data collected by the Regional Working Group on Gender and Environment of the Forum of Ministers of Environment of Latin America and the Caribbean: “In the LAC region, less than 18% of landholders are women therefore the gap is extremely wide. Moreover, women who do own land are more likely to not have legal documents proving their ownership,” “Women represent 20% of the agricultural workforce in LAC, yet fewer than 12% benefit from state agrarian reform processes and subsidies (Oxfam, 2000) and receive 14.5% of agricultural extension services (FAO, 2018). In addition to receiving fewer extension services and their yields are on average 25% lower than that of men, in part due to lower quality lands (FAO, 2011),” and “In the region, 8.4% of women find themselves in food insecurity in comparison with 6.9% of men. This translates to some 19.2 million women versus 15.1 million men (FAO, 2018).” UN, Environment Program, “Gender and the environment: a preliminary analysis of gaps and opportunities in Latin America and the Caribbean,” XXII Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean (February 2021), available at https://wedocs.unep.org/bitstream/handle/20.500.11822/34929/GEN_EN.pdf?sequence=1&isAllowed=y

¹⁰¹ UN, Environment Program, “Gender and the environment: a preliminary analysis of gaps and opportunities in Latin America and the Caribbean. XXII Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean (February 2021), pp. 51, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/34929/GEN_EN.pdf?sequence=1&isAllowed=y

¹⁰² UN Women, “Mujeres que cuidan la naturaleza”, (2019), available at: <https://www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2019/12/mujeres%20que%20cuidan%20la%20natural%20eza.pdf?la=es&vts=1554>

¹⁰³ United Nations Development Program, “La mujer y su importancia en el cuidado del medio ambiente”, (9 May 2019), available at: <https://www.undp.org/es/honduras/historias/la-mujer-y-su-importancia-en-el-cuidado-del-medio-ambiente>

in respect of an effective and fully equal enjoyment of their rights. Women do not have equal rights of access to land and resources, enjoy less protection under the law, and have less access to education and employment opportunities.¹⁰⁴ There is also a deficit in women's political participation, as well as a notable disparity between men and women in the exercise of power.

At the global level, according to a recent study that evaluates the current situation of women in the world, the female population is in greater conditions of poverty than the male population, since for every 100 men in extreme poverty, there are 122 women in the same condition.¹⁰⁵ In fields such as food security, access to education or land, inequalities between women and men are also quantifiable. “Women are up to 11 percentage points more likely than men to be food insecure”¹⁰⁶ and “much less likely to own agricultural land.”¹⁰⁷

Given the above scenario of structural inequalities, there is an urgent need for international human rights law to respond to women's specific vulnerabilities and increased burdens arising from environmental degradation and climate emergency. This need becomes evident when we analyze contexts specifically impacted by large-scale natural resource exploration.

2. The care structure behind development: the overburdening and use of women's unpaid care work in extractive project contexts.

Endosomic energy, that is, energy produced by the work of bodies, is also an indispensable element for the development of the world. However, capitalistic economies solely recognize and value tasks performed in exchange for wages,¹⁰⁸ while ignoring all the activities performed in the domestic sphere, even though they are essential for social and economic reproduction. The work of many women, despite being considered outside the productive environment, produces a fundamental commodity for the economic system: the labor force.¹⁰⁹ This labor force is involved in carrying out care work

¹⁰⁴ Laura Castro-Diaz, et al., “Gender-differentiated impacts of the Belo Monte Hydroelectric Dam on Downstream Fishers in the Brazilian Amazon”, *Human Ecology* 46:3. (June 2018) pp. 411-422, available at: <https://link.springer.com/article/10.1007/s10745-018-9992-z>

¹⁰⁵ UN Women. Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development. 2018. p. 76.

<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Gender-equality-in-the-2030-Agenda-for-Sustainable-Development-2018-es.pdf>

¹⁰⁶ UN Women. Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development. 2018. p.20.

<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Gender-equality-in-the-2030-Agenda-for-Sustainable-Development-2018-es.pdf>

¹⁰⁷ UN Women. Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development. 2018. P.101.

<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Gender-equality-in-the-2030-Agenda-for-Sustainable-Development-2018-es.pdf>

¹⁰⁸ Silvia Federici, *El patriarcado del salario: Críticas feministas al marxismo*, (2018), https://traficantes.net/sites/default/files/pdfs/TDS_map49_federici_web_0.pdf.

without which today's world could not exist: motherhood, care of children, the elderly or the sick, food production, emotional care and a long list of invisible tasks are carried out, in a large proportion, by women.

Thus, it is essential to recognize the role of women-centered care structures in the contexts of nature exploration and exploitation. Large development projects precede long and complex care structures. This care work is mostly unpaid,¹¹⁰ despite being an integral part of all links in high-value economic chains.¹¹¹

Gender-based social roles generally mean that, in rural contexts, it is mostly women who are responsible for taking care of the house and family. With the arrival of extractive projects, these types of activities are undervalued and little recognized, even though there is a redistribution of burdens that imposes on women the additional responsibility of maintaining productive territories and traditional activities while men are captured as labor for the projects.

In addition, the development of extractive projects, which can also generate environmental impacts and aggravate climate change, generally leads to an increase in the presence of men from outside the communities in the territories where these projects are developed, given that the works required for implementation essentially occupy male labor. Women who do manage to get jobs in these projects generally receive lower salaries than men, and do not have access or opportunities to acquire technical skills, and as assigned to jobs related to care, such as cooking and cleaning, which have a lower social value.¹¹² Thus, care work continues to be feminized and undervalued, aggravating existing gender inequalities.

The case of the Belo Monte hydroelectric plant, built in the Brazilian Amazon, illustrates this situation. In October 2013 the construction work reached its peak, with 25,000 workers, 87% of them men and

¹⁰⁹ Marta Pascual Rodríguez y Yayo Herrero López, López, “Ecofeminismo, una propuesta para repensar el presente y construir el futuro”, ECOS, (January 2010), available at:

https://base.socioeco.org/docs/ecofeminismo_propuesta_repensar_presente.pdf.

¹¹⁰ According to ECLAC data, women in Latin America devote 19.6% of their time to unpaid care work. Economic Commission for Latin America and the Caribbean, “Breaking the statistical silence to achieve gender equality by 2030: Application of the information systems pillar of the Montevideo Strategy for Implementation of the Regional Gender Agenda within the Sustainable Development Framework by 2030,” LC/CRM.15/4, (2022). pp. 15.

¹¹¹ Juliana Martínez Franzoni, “Los cuidados antes y durante la pandemia en América Latina. ¿Una emergencia con oportunidad?” en Laura Pautassi y Flavia Marco Navarro (Coords.), “Feminismos, cuidados e institucionalidad. Homenaje a Nieves Rico” Fundación Medife Edita, (2022), pp. 130,142.

¹¹² Oxfam International, “Position Paper on Gender Justice and the Extractive Industries”, Oxfam International, (March 2017), available at:

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620766/bn-gender-justice-extractives-300317-en.pdf?sequence=1>.

more than 2/3 coming from other cities.¹¹³ The labor force of this set of workers needed to build the Belo Monte hydroelectric power plant was able to exist based on the caring roles assumed by women. In addition, women were involved in public policy discussions and struggles for minimum living conditions, such as access to water and sanitation, in the resettlements and neighborhoods built to accommodate more than 5,000 evicted people.¹¹⁴

On the other hand, in addition to being exploited as a social and economic gear that enables the implementation of large development projects in the territories, care also emerges as a demand resulting from the impacts of the operation of extractive activities. The implementation and operation of development projects can generate permanent and serious impacts on the well-being of women in at least two cases: when (i) they hinder access to basic resources for their survival and that of their families, imposing a greater burden to respond to the scarcity or lack caused by extractivism; and (ii) when it requires a care response to cope with environmental degradation and subsequent impacts on the lives of communities resulting from the activities.

In addition, the arrival of megaprojects can also ignite new forms of discrimination that generate new inequalities or aggravate existing conditions, especially if they do not take into account the differentiated impacts they may have on the exercise of women's rights. Pollution and degradation caused by extractive activities can result in such an intense individual and collective impact on health and the environment that it hinders the exercise of a series of women's rights, including those to education, work, reproductive rights, etc., as well as the physical and mental exhaustion of women due to the overload of care demands, directly affecting their quality of life.

This was the case of women in the micro-region of Ixquisis, in Guatemala, who were directly impacted by the lack of access to water due to the construction of a dam complex in their territory; they bore the extra burden of care generated by the illnesses of children and adults due to the consumption of unsuitable water once access to the river had been blocked for energy exploration.¹¹⁵ In its report on Guatemala, the IACHR recognized the differentiated impact of dams on women in traditional communities, mainly because it recognized that they are the ones who manage and collect water.¹¹⁶

¹¹³ Marcelo Leite, Dimmi Amora, Morris Kachani, Lalo de Almeida, Rodrigo Machado, “Folha de São Paulo. Tudo sobre a batalha de Belo Monte”, (December 2013), available at: <http://arte.folha.uol.com.br/especiais/2013/12/16/belo-monte/>

¹¹⁴ Vandrê Fonseca, “O rastro de destruição de Belo Monte: Amazonia Real, (2019), available at: <https://amazoniareal.com.br/o-rastro-de-destruicao-de-belo-monte/>

¹¹⁵ AIDA, “Denuncia Pública de La Resistencia Pacífica de la Microrregión de Ixquisis”, (2019) available at: <https://aida-americas.org/es/recurso/denuncia-publica-de-la-resistencia-pacifica-de-la-microrregion-de-ixquisis>

¹¹⁶ Inter-American Commission on Human Rights, “Indigenous Women and Their Human Rights in the Americas,” (2017), available at <http://www.oas.org/en/iachr/reports/pdfs/indigenouswomen.pdf>.

When water sources are contaminated, there is a greater risk of exposure and it is the women who have to travel longer distances to look for safer sources.¹¹⁷

In view of the above, it is clear that the overexploitation of resources and depletion of nature typical of extractive industries has had a disproportionate impact on women.¹¹⁸ Therefore, lack of sustainability in the exploration of natural resources results in new forms of discrimination, aggravation of inequalities between men and women, and harm to these same women, including an increased burden of care.

3. Environmental degradation and its impacts exacerbate the demand for care, disproportionately affecting women

The impacts derived from environmental and climatic violations occur in a differentiated manner when analyzing the variables of gender, race and class. Regarding gender analysis, a wide range of literature has described how in these scenarios it is women who often suffer the worst consequences.¹¹⁹ For example, the United Nations Human Rights Council has pointed out that “[w]omen are especially exposed to climate change-related risks due to existing gender

discrimination, inequality and inhibiting gender roles.”¹²⁰ For example, in terms of data, women and children are 14 times more likely than men to die during a climate catastrophe¹²¹ and account for 80% of all climate migrants.¹²²

Environmental pollution, climate change and the context in which they occur promote accelerated social, economic and cultural transformations in the territories where they take place. Along with the new and abrupt dynamics imposed on the territories, there are also serious environmental impacts and transformations in ecosystems that affect women in a differentiated manner. One of the most notable impacts is the increased complexity of care work and the ways in which women are overburdened by the historical care roles they have assumed. Thus, one of the main negative impacts that environmental

¹¹⁷ Human Rights Council, “Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation,” A/HRC/33/49, (27 July 2016), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/167/00/PDF/G1616700.pdf?OpenElement>.

¹¹⁸ UN Women. The Beijing Platform for Action Turns 20: Women and the Environment”, available at: <https://beijing20.unwomen.org/es/in-focus/environment>.

¹¹⁹ Corporate Justice Coalition, “Land Intensive Corporate Activity: The Impact on Women’s Rights” (2017), available at: https://corporatejusticecoalition.org/wp-content/uploads/2017/11/Core_WomensRights_Final1.pdf.

¹²⁰ United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/HRC/10/61, (15 January 2009), pp. 17, available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7033.pdf>.

¹²¹ UN Women, “SDG 13: Take urgent action to combat climate change and its impacts”, available at: <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-13-climate-action>

¹²² UN Development Programme, “Gender and climate change: Overview of linkages between gender and climate change”, (19 April 2017), pp. 5, available at: [https://reliefweb.int/report/world/gender-and-climate-change-overview-linkages-between-gender-and-climate-change?](https://reliefweb.int/report/world/gender-and-climate-change-overview-linkages-between-gender-and-climate-change?gclid=CjwKCAjw_aemBhBLEiwAT98FMqznKumukFPPFND6PF-lj9H598lu7ETlJxjkPgvUCkw38GM7VJMLRRoCNI_EOAvD_BwE)

[gclid=CjwKCAjw_aemBhBLEiwAT98FMqznKumukFPPFND6PF-lj9H598lu7ETlJxjkPgvUCkw38GM7VJMLRRoCNI_EOAvD_BwE](https://reliefweb.int/report/world/gender-and-climate-change-overview-linkages-between-gender-and-climate-change?gclid=CjwKCAjw_aemBhBLEiwAT98FMqznKumukFPPFND6PF-lj9H598lu7ETlJxjkPgvUCkw38GM7VJMLRRoCNI_EOAvD_BwE)

impacts and climate change have on women is that they exacerbate the burden of domestic and unpaid care work,¹²³ deepening existing structural inequalities. Indeed, environmental pollution and climate change translate into greater difficulties in the affordability and accessibility of water sources and other resources. Given the roles historically entrusted to women, in many contexts they are the ones who have to provide and manage these resources. In turn, these resources are essential for care, and their reduction or loss aggravates the situation of women and, in general, the contexts in which care takes place. The pollution of land, air and water has a drastic impact on the loss of biodiversity and consequently affects the communities' sources of food. In rural settings, women represent between 70% and 80% of the world's small farmers and are mainly responsible for providing care, food and water to their families,¹²⁴ so access to land, water and other natural resources is essential for their survival. As a consequence, women are also “particularly vulnerable to the effects of drought and erratic rainfall, which can exacerbate inequalities in access to and control over resources,”¹²⁵ and are thus severely impacted by the loss of food sovereignty.¹²⁶

In addition to these impacts, the effects on the health conditions of women and their families, which can result from environmental pollution and the climate crisis, generate an overload in the care work performed by women, who are generally in charge of the sick, and who perform this work without receiving any remuneration and without being freed from their other usual workloads.¹²⁷ Women may be more exposed to pesticide residues, which can cause long-term effects on their health and that of their community. Health harms due to these substances also impact women's reproductive health and increase complications during pregnancy and cognitive development of fetuses, and in turn, increase feminized care burdens, exacerbating inequalities.

¹²³ UN News, “El cambio climático exagera la desigualdad de la mujer,” (2020), available at: <https://news.un.org/es/story/2020/04/1473642>.

¹²⁴ University of Essex/ Human Rights Centre, “Business and Human Rights: Engendering Human Rights Due Diligence – A Legal Analysis, (2016), available at: <https://corporatejusticecoalition.org/wp-content/uploads/2017/11/Essex-Human-Rights-Clinic-Report-Business-and-Human-Rights-Engendering-Human-Rights-Due-Diligence-A-Legal-Analysis.pdf>.

¹²⁵ World Bank/Food and Agriculture Organization of the United Nations (FAO)/International Fund for Agricultural Development (IFAD), “Gender in Agriculture,” (2009), available at: <https://www.fao.org/3/aj288s/aj288s.pdf>.

¹²⁶ Fondo de Acción Urgente, “Extractivismo en América Latina. Impactos en la vida de las mujeres y propuestas de defensa del territorio”, (2016), available at: https://fondoaccionurgente.org.co/site/assets/files/1175/extractivismo_en_america_latina.pdf.

¹²⁷ Fondo de Acción Urgente, “Extractivismo en América Latina. Impactos en la vida de las mujeres y propuestas de defensa del territorio”, (2016).

The case of La Oroya exemplifies the special vulnerability of women to contamination and how this affects their health, their ability to work and their economic autonomy, as well as imposing exacerbated care burdens on them.

"Far from opposing health and economy, the people affected often understand the problem as an articulation of these two dimensions, intimately linked to each other: without health, one cannot work to survive economically. This is true for the populations affected by environmental pollution in general, but it is even more accurate in the case of women. [...] Being more constantly present in the communities than men, women are more constantly exposed to the pollutants present in their environment. [...] they have less access to health services, to the point of not wanting to seek care if they are sick. [...] the women did not mention their family ailments "so as not to worry them." [...] Apart from these psychological considerations, this prioritization of the health of "others" before that of women also has a very concrete aspect. According to the director of the old Oroya Health Center, husbands are reluctant to pay for their wives' treatment. [...] In addition to access to the money needed for treatment, a limiting factor for women's access to medical care is the work of caring for their children [...] The greater exposure and vulnerability of women's bodies to health problems related to environmental pollution, at the same time, leads to a greater workload for women, as they are generally responsible for ensuring the health and education of their families. They have to devote more time and effort to caring for sick people in their environment. This care work becomes particularly heavy in the case of children with disabilities-- especially girls, who face a higher risk of sexual abuse. [...] thus, we see a drastic increase in women's workload at the same time that their work is being devalued (because it is unpaid)."¹²⁸

Likewise, the case of Lady Pech and the Chenes Mayan Peoples Collective in Holpechén clearly demonstrates how the global climate crisis, loss of biodiversity and persistent gender inequality are intrinsically connected. The Mayan communities of the Chenes are mostly farmers and beekeepers, which is their main source of income. Massive transgenic soy crops and use of pesticides in purchased or invaded territories in the Holpechén region has led to the death of thousands of bees and the exposure of communities to contaminated food, water and soil.¹²⁹ This context of environmental degradation and contamination has been aggravated by the impacts of the climate crisis in this region of Mexico.

¹²⁸ Weill, Caroline. Impactos diferenciados en hombres y mujeres de la contaminación ambiental por actividades extractivas en el Perú. Peritaje ante la Corte Interamericana de Derechos Humanos – Caso La Oroya. October, 2022

¹²⁹ Asociación Interamericana de Defensa Ambiental, "Leydy Pech, la guardiana de las abejas," (2018), available at: <https://aida-americanas.org/es/blog/leydy-pech-la-guardiana-de-las-abejas>; see also: Carmen Morán Breña, Leydy Pech: "La industria ha ganado la conciencia de la gente", El País (8 May 2022), available at <https://elpais.com/mexico/2022-05-09/leydy-pech-la-industria-ha-ganado-la-conciencia-de-la-gente.html>

The brutal increase in temperature¹³⁰ and lack of rainfall has led to food insecurity, economic instability and increased disease. According to the community, there are already indications of increased cases of cancer and children with disabilities and cognitive developmental problems, but there is no adequate health policy response to the aggravated context of environmental degradation. This generates, once again, extra care burdens on women, who, in addition to facing the obstacles to continue with their typical economic activities that give them autonomy, must respond to health emergencies of the elderly and children connected with both exposure to toxic pollutants and high temperatures.¹³¹

Solving the climate and biodiversity crisis and achieving gender equality must go hand in hand. It is the responsibility of States to comply with their environmental obligations and with the necessary mitigation and adaptation plans in order to prevent deepening gender inequality and disproportionately increasing the burden on women, as well as to ensure adequate reparations for possible losses and damages incurred by women.

4. State responsibility for the special vulnerability of women to environmental degradation and the climate crisis, and guaranteeing the right to care, to provide care, and to self-care

Today, international human rights law has recognized the link between gender, environment and climate. Principle 20 of the Rio Declaration on Environment and Development states that "women play a central role in environmental management and development. Their full participation is therefore essential to achieve sustainable development."¹³²

In the same vein, the 4th UN Environment Assembly adopted Resolution 17/2019,¹³³ which promotes gender equality, human rights and the empowerment of women and girls in environmental governance, recognizing their role as managers of natural resources and agents of change in environmental protection. Likewise, the Beijing Platform for Action highlights the importance of gender equality and women's empowerment in environmental protection and natural resource management, and the Sustainable Development Goals (SDGs) include gender equality and the sustainable use of natural resources in their agenda.

¹³⁰ Comisión Nacional de Agua, Gobierno de México, "Debido a la tercera onda de calor, se prevé que 22 estados del país tengan hoy, temperaturas superiores a 40 grados Celsius", (12 June 2023), available at: <https://www.gob.mx/conagua/prensa/debido-a-la-tercera-onda-de-calor-se-preve-que-22-estados-del-pais-tengan-hoy-t-temperaturas-superiores-a-40-grados-celsius>

¹³¹ Asociación Interamericana de Defensa Ambiental, information collected during a visit to the territory in July 2023. For more information about the case, see P-1447-16 - Angélica María Ek Canché and others, in admissibility stage before the IACHR.

¹³² United Nations Conference on Environment and Development, Agenda 21, (1992), available at <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

¹³³ Environment Assembly of the United Nations Environment Programme, "Promoting gender equality and the human rights and empowerment of women and girls in environmental governance: resolution, UNEP/EA.4/Res.17 (2019).

For its part, in its decision n. 18/CP.20, the Conference of the Parties to the United Nations Framework Convention on Climate Change stressed “the need to incorporate a gender perspective into all relevant goals and objectives of activities under the Convention as an important contribution to enhancing its effectiveness.”¹³⁴

In turn, the Paris Agreement affirms not only that States Parties must comply with the principles of “gender equality, women's empowerment and intergenerational equity,”¹³⁵ but also highlights the importance of adaptation action ensuring a gender approach, which must be participatory and fully transparent.¹³⁶ Furthermore, the Copenhagen Declaration on Social Development states that “sustainable social and economic development cannot be achieved without the full participation of women, and that equality and equity between women and men is a priority for the international community and, as such, must be a fundamental element of economic and social development.”¹³⁷

Providing for the well-being of all is a role of the State, not of women. The States have the obligation, which stems from the aforementioned framework and from the interpretation of the rights in the American Convention, to adapt their policies to reduce the structural inequalities that keep women in a place that is supplementary to the State's own lack of reach.

First of all, it is a priority that States incorporate sustainable development models and that all energy transition efforts be based on a gender perspective and with the consultation and participation of the most affected women. Sustainable development is the only model that recognizes the role of women as subjects and the gender differences in access to and control of resources. States should encourage sustainable environmental management models and the construction of social processes of sustainability.¹³⁸

The improvement of the political, social, economic and health status of women, and thus the reduction of their vulnerabilities, must be addressed from the perspective of the right to care.

In the words of David Engster:

"When care is redefined as a way to mitigate vulnerability, the conceptual difficulty in framing protection as a form of care is resolved. Protection is clearly a form of care under this new definition, because care involves more than attending and responding to

¹³⁴ UN, Framework Convention on Climate Change, Decision 18/CP.20 “Lima Work Program on Gender,” (2015), available at: <https://unfccc.int/resource/docs/2014/cop20/spa/10a03s.pdf>.

¹³⁵ UN, Paris Agreement under the United Nations Framework Convention on Climate Change. (2015), available at: <https://www.refworld.org/es/docid/602021b64.html>.

¹³⁶ Ibid. Art. 7(5).

¹³⁷ UN, Copenhagen Declaration on Social Development and Programme of Action of the World Summit on Social Development, A/CONF.166/9, (19 April 1995), ¶ 7, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/116/54/PDF/N9511654.pdf?OpenElement>

¹³⁸ Instituto Nacional de las Mujeres, “Mujer y Medio Ambiente A.C. Género y Sustentabilidad: Reporte de la Situación Actual” (2008), available at: <https://biblat.unam.mx/hevila/Sociedadesruralesproduccionymedioambiente/2009/vol9/no18/8.pdf>

situations of dependency. It involves reducing vulnerability in all its forms.¹³⁹

It is through a transformative understanding of care that States should guide their climate and environmental action and, in this way, recognize the specific vulnerabilities of women in the face of the planetary crisis as a place of power and knowledge that should reverberate in public policy. Women have been efficient stewards of the environment, and it is on the basis of this technique, which has been passed down through generations and their proximity to the territory, that States must create their socio-environmental and climate policies and mechanisms.

For many women, cultivating the land means cultivating life. It is essential that States provide strong support and strengthen women's leadership in the protection, restoration and sustainable management of ecosystems, thus promoting resilience, adaptation and sustainability. For the same reason, maintaining the exclusion of women and their traditional knowledge from politics constitutes a perpetuation of the structural inequalities that oppress women and make them more vulnerable.

G. Interpretation principles for the right to care and contributions to determine its scope and State obligations

As mentioned above, the right to care as an autonomous right has three dimensions: *to care* within a framework of rights, *to be cared* for or receive quality care that is adjusted to the needs and stage of the relevant life cycle, and to have time and enabling conditions for *self-care* and the enjoyment of leisure. This implies carrying out a social reorganization of care that redistributes its provision among the different social agents, develops care as a pillar of social protection, promotes its economic and social valuation, and generates multiplier effects for the reduction of the feminization of poverty, time poverty and gender stereotypes and social roles within families and in society in general. This implies that the State should be the guarantor of care as a universal right.

The following are some contributions to the interpretation of the scope of this right and the obligations of the State.

Frameworks: “The 3 Rs”

1. Diane Elson and the 3 Rs: Recognition, Reduction and Redistribution

Recognizing unpaid care and domestic work means understanding how this work underpins all economies and valuing it accordingly. These activities are usually seen as a private matter, reducible to individual private choices, rather than being shaped by social and economic structures, and having

¹³⁹ Jorge Gracia Ibáñez, “Derecho al cuidado: un abordaje desde los derechos humanos,” *Oñati Socio-Legal Series*, 12(1), pp. 179–210, available at: <https://opo.iisj.net/index.php/osls/article/view/1330>

implications for society at large, not just for those who provide and receive care.¹⁴⁰ Full visibility of the type, extent and distribution of this unpaid work contributes to better sharing of responsibilities.¹⁴¹

Reduction requires the application of a gender approach in social infrastructure investment, so that women benefit equally with men from such investment. Thus, for example, while investment in the care sector would reduce the gender gap in employment, investment in the construction sector would increase the gender gap in employment.¹⁴²

Redistribution¹⁴³ aims at ensuring a more equitable distribution of unpaid domestic work in three modalities.¹⁴⁴

- Redistribution among men and women
 - This requires public and private solutions:
 - The State should facilitate, encourage and support the participation of men in these tasks (equal rights to work leave; education and training for men, women and employers).¹⁴⁵
 - Develop educational programs (for school and community-based delivery) aimed at combating traditional stereotypes of men's and women's roles and promoting the concept of shared family responsibilities for unpaid domestic work in the household.
 - Redistribution from households to the State
 - Creation of national care systems with public structures for the care of dependent persons. This should, on the one hand, prevent care from falling primarily on women and girls in their homes, and on the other hand, ensure that services are provided under safe and dignified conditions.
 - Redistribution of time and resources to poor families and households
 - Through the provision of services and infrastructure, States can reduce the time spent on unpaid domestic work and make it less burdensome.

¹⁴⁰ Diane Elson, “Recognize, Reduce, and Redistribute Unpaid Care Work” (2017), available at <https://newlaborforum.cuny.edu/2017/03/03/recognize-reduce-redis-tribute-unpaid-care-work-how-to-close-the-gender-gap/>.

¹⁴¹ UN Women, “Empoderamiento económico de las mujeres y sistemas de cuidados: un marco de conocimiento geoespacial”, (2021), available at <https://mexico.unwomen.org/sites/default/files/2022-04/Empoderamiento%20econ%C3%B3mico.pdf>.

¹⁴² Diane Elson, “Recognize, Reduce, and Redistribute Unpaid Care Work” (2017).

¹⁴³ Diane Elson, “Recognize, Reduce, and Redistribute Unpaid Care Work” (2017).

¹⁴⁴ Diane Elson, “Recognize, Reduce, and Redistribute Unpaid Care Work” (2017).

¹⁴⁵ UN-Women, “Beijing Declaration and Platform for Action,” (2014), pp. 269 available at https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/BPA_S_Final_WEB.pdf

■ **Public Services**¹⁴⁶

- Provision of accessible and gender-sensitive public services.
- Provision of services free of charge where they are used or at an affordable cost.
- Public services must meet conditions of availability, accessibility, acceptability, adaptability and quality, and expand their coverage.¹⁴⁷
- General measures (elimination of primary school tuition fees and fees for basic health services, including sexual and reproductive health,¹⁴⁸ and progressive implementation of universal health care).¹⁴⁹
- Specific measures (free school meals; extended school day programs; improving palliative care services; and assessing home or community care-giving capacity as a guide to patient discharge).
- Increased investment in childcare and the provision of primary health care and assistance to the elderly, giving priority to the most disadvantaged and marginalized areas.
- Regulation of private service providers, ensuring that they are not violating the human rights of the population they serve (rights to equality and non-discrimination and principles of availability, accessibility, acceptability and adaptability, and quality).
- Progressively decommodify the provision of services to establish a public care system.

■ **Infrastructure:**

- Improving availability, access and use of essential infrastructure, giving priority to disadvantaged areas, such as remote rural communities and slums.
- Producing and distributing affordable, time- and labor-saving household technology.

¹⁴⁶ *Id.* pp. 80.

¹⁴⁷ *Id.* pp. 287.

¹⁴⁸ *Id.* pp. 276.

¹⁴⁹ *Id.* pp. 277, 306.

2. "People over Profit" and the 5Rs: Recognize, Reduce, Redistribute, Reward and Reclaim:

Complementing the above scheme, international organizations call for the "creation of a global movement to rebuild the social organization of care"¹⁵⁰ around the 5 Rs:

- **Recognize** the social and economic value of care work (paid or unpaid) and the human right to care.
- **Reduce** the burden of women's unpaid care work.
- **Redistribute** care work within households, among all workers, eliminating the gendered division of work and between households and the State.
- **Reward** and remunerate care work with equal pay for work of equal value, decent pensions, dignified working conditions and comprehensive social protection.
- **Reclaim the public nature of care services** and restore the State's primary duty and responsibility to provide public care services and to develop care systems that transform gender relations and women's lives, including by financing the State's investment capacity through fair and progressive taxation and ensuring equal taxation rights at the international level for nation States.

3. ESCR-Net Organization and Individual Members and the 6 Rs: Recognition, Reduction, Redistribution, Rights, Representation and Reframing the Economy

Recognition includes:

- Measure and make visible the role of women and girls in the provision of unpaid care and its social and economic value.
- Transform normalized stereotypes that feminize and undervalue care.
- Reconceptualize care via a political vision that elevates life-sustaining actions.

Reduction includes:

- Decrease the drudgery and time burden of unpaid care, especially for women living in poverty.
- Invest in time-saving technologies, care infrastructure and quality public services.

Redistribution includes:

- Boost the capacity of the State to provide care.

¹⁵⁰ People Over Profit, "Care Manifesto: Rebuilding the social organization of care," (2022), available at <https://peopleoverprof.it/resources/campaigns/manifiesto-reconstruir-la-organizacin-social-del-cuidado?lang=es&id=11655&showLogin=true>.

- Ensure that the private sector’s policies and practices are conducive to quality, rights-respecting care, e.g. through leaves, flexible work arrangements, childcare services, among others.
- Redistribute care among women and men.
- Facilitate conditions for the provision of care by other social actors, such as cooperatives and community-led care networks.

Rights include:

- Recognize, respect, protect and fulfill care as a universal right, creating enabling conditions for equal and non-discriminatory access.
- Realize substantive equality, addressing intersecting forms of discrimination in the design and implementation of care policies and systems.
- Expand, respect, protect and fulfill the rights of all care workers, both paid and unpaid, including the right to social security.
- Strengthen access to justice for paid and unpaid caregivers.

Representation includes:

- Ensure meaningful representation of paid and unpaid caregivers and community care networks in the governance of care.
- Strengthen transparency and accountability in public and private care provision.

Reframing the economy as a caring economy includes:

- Transition to a regenerative economy that ensures care and substantive equality, prioritizing human rights and sustainability.
- Invest in social reproduction, expanding provision of and access to quality public services while countering privatization.

Given the aforementioned, and in accordance with the sources given below, we call on the Court to consider the following principles in recognizing and describing the right to care and relevant State obligations, including an effective regulation of private third parties, private employment agencies and digital platforms:

- **General Principles**
 - Without further delay, public policies should position care as a universal right and a social and collective responsibility, and treat unpaid caregivers and those they care for as rights holders.¹⁵¹

¹⁵¹ UN General Assembly, “Extreme poverty and human rights”, (9 August 2013), A/68/293, pp. 4 (in Spanish version).

- o Modify the social and cultural patterns of conduct of men and women which foster the stereotype that men are the main breadwinners, while women are primarily responsible for caregiving, including child rearing and housework.¹⁵²
- o Take all appropriate measures to ensure that the responsibilities of domestic work are shared equitably among all persons responsible for the family without distinction as to gender.¹⁵³
- o To ensure the recognition of the common responsibility of men and women in the upbringing and development of their children.
- o Take immediate actions to alleviate the intensity of unpaid domestic work, which disproportionately affects women and girls, through the provision of the necessary supporting social services to enable heads of families to combine family obligations with work responsibilities and participation in public life.¹⁵⁴
- o Recognize the value and impact of unpaid care and adopt the necessary measures to ensure that its difficulty or intensity is more equitably distributed in both social and family spheres, particularly through the mobilization of resources and the provision of accessible public services for the achievement of these goals.¹⁵⁵
- o Maintain and increase investments in public services, social security and infrastructure, particularly in times of economic crisis, when inequalities are more pronounced.¹⁵⁶ Ensure sufficient funding for the development of necessary infrastructure and services.
- o Caregivers, care recipients and other stakeholders should be proactively supported to participate in the design, implementation and monitoring of public care services and other relevant policies.¹⁵⁷
- o Empower unpaid female caregivers to participate in decision-making processes, including by providing them with accessible and up-to-date information on their rights and the services and benefits they can claim.¹⁵⁸
- o Design participation mechanisms accessible to women living in poverty and with unpaid care responsibilities.¹⁵⁹

¹⁵² *Id.* pp. 8.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* pp. 9.

¹⁵⁶ *Id.* pp. 26.

¹⁵⁷ *Id.* pp. 28.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

- o Provide support, including financial support, to the work of women's organizations and groups working with masculinities that work against gender stereotypes and roles.¹⁶⁰
- o Include the issue of unpaid domestic work in research, policy, advocacy and programming, and apply a gender equality perspective to the work of national human rights institutions.¹⁶¹

- **Right to Work**

- o Adopt all appropriate measures to ensure that people of all genders have equal access in law and in practice to employment and all occupations. Necessary measures range from the adoption of appropriate labor regulations to the provision of quality support services for caregivers.¹⁶²
- o Formulate a gender-sensitive national policy or strategy to remove a wide range of obstacles faced by women caregivers in exercising their right to work.¹⁶³
- o Adopt measures to prevent third parties (including companies or individuals) from interfering with the enjoyment of the right to work, such as ensuring that employers do not discriminate against women based on assumptions of the primacy of their care-giving duties or the belief that a woman's place is in the home.¹⁶⁴

Prohibit discrimination or dismissal on the grounds of pregnancy or maternity and ensure that all persons, without distinction as to gender, have equal opportunities to choose their profession or occupation.¹⁶⁵

- o Adopt positive measures to enable and assist people to enjoy their right to work and implement technical and vocational education plans to facilitate access to employment.¹⁶⁶
- o Actively consider the constraints faced by unpaid women caregivers in the design and implementation of plans, programs and other measures.¹⁶⁷
- o Adopt measures to progressively ensure access to affordable public services such as child and dependent care services that enable women caregivers to engage in paid work.¹⁶⁸

¹⁶⁰ *Id.*

¹⁶¹ *Id.* pp. 29.

¹⁶² *Id.* pp. 11.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

- **Just and Favourable Conditions of Work**

- Identify and eliminate the underlying causes of inequality and discrimination in working conditions, including the causes of the pay gap, and reduce the constraints faced by men and women in harmonizing their family and professional obligations.¹⁶⁹
- Reduce the number of workers outside the formal economy to the greatest extent possible, apply labor legislation to all workers, and ensure that domestic and agricultural work is properly regulated so that domestic and agricultural workers enjoy the same degree of protection as other jobs.¹⁷⁰

- **Education**

- Adopt all appropriate measures to ensure women's equal rights with men in the field of education and, in particular, to ensure equal opportunities and access to quality education and training.¹⁷¹
- Ensure that women and girls can enjoy their right to all types and levels of education on an equal basis with men and boys. This obligation may require specific measures to ensure that unpaid work in the home does not impede their schooling, such as the provision of accessible public services and appropriate infrastructure to support unpaid work in the home and communities and reduce the time it requires.¹⁷²
- Ensure that families and communities do not depend on child labor, and that third parties, including parents and employers, do not prevent girls from attending school.¹⁷³
- Closely monitor education--including all relevant policies, institutions, programs, spending patterns and other practices--so as to identify and take measures to redress any de facto discrimination.¹⁷⁴
- Eliminate any stereotyped concept of male and female roles at all levels and in all

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* pp. 12.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* pp. 13.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

forms of education, through the implementation of Law No. 26150 on Comprehensive Sexual Education and of the relevant National Program in all jurisdictions of the country.¹⁷⁵

- **Highest attainable standard of health**

- Provide quality and accessible health care and take measures to ensure the underlying determinants of health (access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, and also healthy occupational and

environmental conditions).

- Remove all barriers to access for women living in poverty with unpaid care responsibilities, and provide services that are sensitive to gender and life-cycle requirements, including the demands and constraints of unpaid care work, for example by providing childcare facilities and services in the community).¹⁷⁶
- Ensure, as a matter of priority, access to reproductive, prenatal, postnatal and child health care services.¹⁷⁷
- Provide physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons, and attention and care for chronically and terminally ill persons, thus benefiting their women caregivers.¹⁷⁸

- **Healthy environment**

- Incorporate consultations with women to replicate and institutionalize sustainable environmental management methods used by women in their conservation and ecosystem restoration experiences.
- Strengthen institutional and regulatory frameworks as well as enforcement mechanisms vis-à-vis legal entities that carry out business and investment activities, such as companies in charge of large hydroelectric projects, regarding their obligation to respect human rights and due diligence in the framework of their operations.
- Exclude development or extractivist megaprojects from development policies, given their negative environmental, climate and social impacts, and specifically their differentiated impacts on women.
- Ensure that the conceptualization and operation of environmental management

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* pp. 14.

¹⁷⁷ *Id.* pp. 15.

¹⁷⁸ *Id.*

instruments and public policies take into account the differentiated burdens faced by women, with special attention to the right to care.

- o Issue regulations requiring all projects to conduct comprehensive impact assessments with a gender perspective, including:
 - i. A comprehensive diagnosis of the particular situation of women which addresses the following:
 1. Access to and control of resources
 2. The roles of men and women in the community
 3. Asymmetries in decision-making processes
 4. Access to education
 5. Documentation of the use of time by men and women and of the activities that are recognized and remunerated and those that are not
 6. Land titling
- o Adopt adequate measures to prevent and reduce disproportionate impacts on women, including them in compensation and benefit-sharing agreements, resettlement plans, community development plans involving women's empowerment, among others.¹⁷⁹
- o Produce reports on the implementation of measures to prevent and address the differentiated impacts on women.¹⁸⁰
- o Promote financial, governmental and institutional arrangements to address and redress the losses and damages caused by environmental degradation and the climate crisis on women.
- o “Ensure that indigenous and rural women have equal and equitable access to land ownership and tenure rights, productive resources, financial services, information

¹⁷⁹ Christina Hill, Chris Madden, Nina Collins, *A Guide to Gender Impact Assessment for the Extractive Industries*. Oxfam: Melbourne (2017), available at

<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620782/gt-gender-impact-assessment-extractives-010117-en.pdf;jsessionid=0182B001C8C1D797B2D7CF8BC6D931A4?sequence=1>; For more parameters on EIAs and gender perspective, visit: Zo Randriamaro and Samantha Hargreaves, “Women stand their ground against BIG coal: The AfDB Sendou power plant impacts on women in a time of climate crisis” WoMin (October 2019), disponible en:

https://womin.africa/wp-content/uploads/2021/05/Women-Stand-Their-Ground_Senegal-Coal-Report_English.pdf

¹⁸⁰ Christina Hill, Chris Madden, Nina Collins, *A Guide to Gender Impact Assessment for the Extractive Industries*. Oxfam: Melbourne (2017).

and technical assistance, employment and social protection, highlighting their economic contribution and preservation through domestic and unpaid care work.”¹⁸¹

- o Adopt policies that reabsorb the economic gap and promote education, work, health and social assistance to women, especially those who are suffering or at risk of suffering loss and damage, or who are particularly vulnerable to the impacts of the global crisis—such as women in poverty, rural, indigenous, tribal women, women in coastal areas, fisherwomen, etc.
- o Prioritize the strengthening of health and social protection systems for women in situations of special climate vulnerability, reducing vulnerability, avoiding an overload of care work and allowing these women to dedicate time to carry out adaptation and resilience-building measures.
- o “Undertake economic reconversion processes in areas where climate change mitigation and adaptation measures have an impact on the employment of the local population.”¹⁸²
- o “Promote care infrastructure, maternity labor policies and paternity leave, among others, to reduce and redistribute the use of time between women and men in an equitable manner.”¹⁸³
- o “Recognize and value the fundamental role that women play in the care and conservation of ecosystems and biological diversity, as well as their valuable contribution to environmental defense and in undertaking solutions to the climate crisis itself.
- o Design and implement measures to mitigate and adapt to climate change, with the participation of women, men and communities, in accordance with their own proposals, and in compliance with the rights to self-determination, autonomy, and free, prior and informed consultation and consent.
- o Recognize and include the knowledge, know-how, experience and expectations of indigenous women and men, Afro-descendants and peasant and rural populations as a fundamental element in solving the climate crisis, particularly in relation to

¹⁸¹ AIDA, Derechos humanos y perspectiva de género en las contribuciones nacionalmente determinadas (NDC) en América Latina, (November 2020), available at:

<https://aida-americas.org/es/derechos-humanos-y-perspectiva-de-genero-en-las-ndc-en-america-latina>

¹⁸² AIDA, Derechos humanos y perspectiva de género en las contribuciones nacionalmente determinadas (NDC) en América Latina, (November 2020).

¹⁸³ AIDA, Derechos humanos y perspectiva de género en las contribuciones nacionalmente determinadas (NDC) en América Latina, (November 2020).

nature-based solutions that seek to protect, sustainably manage and restore natural or modified ecosystems.

- o Define, in consultation with women and men of indigenous groups, Afro-descendants and rural and peasant populations, mitigation measures regarding the effects of the climate crisis on their lands, territories and resources in order to protect their traditional ways of life and livelihood.
- o Provide or distribute resources equitably and in a differentiated manner for indigenous women and men, Afro-descendants and peasant populations who have been historically discriminated against and who are particularly affected by the impacts of climate change or the actions taken to address it within their territories, so that men and women in regions vulnerable to climate change participate on an equal footing, in pursuit of true climate justice.

- **Social Security**

- o Establish non-contributory plans to maintain the right to social security for the most disadvantaged and disadvantaged groups, such as elderly women.¹⁸⁴
- o Adopt measures to ensure that social security schemes are designed to take into account factors (including child-rearing periods) that prevent women from making the same contributions as men.¹⁸⁵
- o Ensure that men and women are equally entitled to family benefits and that these are granted taking into account the family's resources and circumstances.¹⁸⁶
- o Grant all women, including those working in the informal sector or performing atypical work, benefits and paid maternity leave for a sufficient period of time.¹⁸⁷
- o Adopt measures, to the maximum of available resources, to ensure that social security systems include people working in the informal economy¹⁸⁸ and people engaged in unpaid care work.

- **Enjoying the benefits of scientific progress**

¹⁸⁴ UN General Assembly, “Extreme poverty and human rights”, (9 August 2013), A/68/293. pp. 15, 16 (in Spanish version).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

- o Ensure that unpaid women caregivers, particularly in remote and marginalized areas, enjoy the right to enjoy the benefits of scientific progress and its applications without discrimination.¹⁸⁹
- o Ensure the physical availability and economic affordability of inexpensive technologies (such as grain mills and fuel-efficient stoves) as well as basic infrastructure (such as electricity) that can significantly reduce women's workload in the household.¹⁹⁰
- o Facilitate improved and sustainable access to water, particularly in rural and deprived urban areas.¹⁹¹
- o Ensure that women are not disproportionately bearing the burden of water collection.¹⁹²

- **Participation**

- o Ensure that women's unpaid domestic work responsibilities are not an obstacle to their participation in political and public life on an equal basis with men, at the national, regional and local levels.¹⁹³
- o Achieve an equitable distribution of unpaid domestic work, including addressing prejudices and customary practices based on stereotyped roles for men and women.¹⁹⁴
- o Adopt all necessary normative measures to achieve the recognition, reduction and redistribution of unpaid domestic work, under a human rights approach.¹⁹⁵
- o Without further delay, public policies should position care as a universal right and a social and collective responsibility, and treat unpaid caregivers and those they care for as rights holders.¹⁹⁶
- o Combat prejudices and customary practices based on stereotyped roles for men and women.¹⁹⁷
- o Recognize and value the importance of unpaid domestic work, but without reaffirming it as the exclusive responsibility of women, or supporting certain family models to the exclusion of others.¹⁹⁸

¹⁸⁹ *Id.* pp. 17.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* pp. 18.

¹⁹⁵ *Id.* pp. 20.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* pp. 20, 21.

- o Provide accessible and high quality infrastructure and public services, particularly in the most disadvantaged areas.¹⁹⁹
- o All policies should be participatory in design and implementation, provide for accountability and redress mechanisms, and seek the social, political and economic empowerment of women.²⁰⁰
- o Develop mechanisms to ensure that laws and policies do not adversely affect these workers or perpetuate gender stereotypes.²⁰¹
- **Legislation**
 - o Ensure comprehensive equality and anti-discrimination legislation (explicit prohibition of discrimination on the grounds of maternity and family or care responsibilities in all areas of public life; right to equal pay for equal work; coverage of part-time, atypical and informal workers; reproductive rights; prohibition of child marriage; and elimination of all other existing family laws, such as those relating to divorce, inheritance and division of marital property).²⁰²
 - o Labor rights should also be enshrined in law (length of the working day, minimum wage and right to social security; informal sector workers, domestic workers and community care workers; right to parental and maternity leave; right to request flexible working conditions, with recourse to an independent appeal system).²⁰³ The rights of domestic workers should be explicitly recognized in legislation (social security and adequate standard of living, if necessary through financial support), through national domestic work standards or legislation recognizing domestic work, with enforceable obligations, based on human rights principles.²⁰⁴
 - o Measuring unpaid care work:
 - Conduct regular time-use surveys, with a view to recognizing, reducing and redistributing unpaid care work.²⁰⁵
 - The data must be sufficiently detailed to inform gender-sensitive policies (disaggregated by sex and age, measuring simultaneous activities).²⁰⁶

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* pp. 21.

²⁰² *Id.* pp. 22.

²⁰³ *Id.* pp. 22.

²⁰⁴ *Id.* pp. 22.

²⁰⁵ *Id.* pp. 23.

- Data collection methods must be inclusive of socially excluded persons and/or people living in extreme poverty.²⁰⁷
 - Consider adopting a multidimensional measure of poverty that includes time poverty and the distribution of time spent on unpaid work.²⁰⁸
 - Ensure the affordability and accessibility of the data collected, and inform and make public officials and the general public understand the distribution, importance and impact of such work.²⁰⁹
 - The data collected should be used to assess the impact of economic and social policies on the intensity and distribution of unpaid domestic work in the household.²¹⁰
 - They should be used proactively in gender-sensitive policy formulation, including budgeting.²¹¹
- Ensure that policy formulation in all relevant sectors, including macroeconomic policies, systematically incorporates a domestic work perspective (and its effects and distribution by gender).²¹²
 - Adopt a comprehensive and holistic approach that takes into account the needs and well-being of both caregivers and care recipients when formulating policies and addressing the enjoyment of rights by both groups.²¹³
 - Design fiscal systems that dynamically promote the equitable distribution of work, both paid and unpaid, between men and women, and implement policies to stabilize food and fuel prices.²¹⁴
 - Analyze and design macroeconomic policies that take into consideration this labor modality.²¹⁵
 - Spending cuts should not be made in a way that increases women's workload

²⁰⁶ *Id.* pp. 23.

²⁰⁷ *Id.* pp. 23.

²⁰⁸ *Id.* pp. 23.

²⁰⁹ *Id.* pp. 23.

²¹⁰ *Id.* pp. 23.

²¹¹ *Id.* pp. 23.

²¹² *Id.* pp. 23.

²¹³ *Id.* pp. 23.

²¹⁴ *Id.* pp. 24.

²¹⁵ *Id.* pp. 24.

in the home and community.²¹⁶

- o Job creation programs must not forget the reality of unpaid domestic work.²¹⁷
- o All policies and programs in all sectors should combat gender stereotypes regarding unpaid domestic work and promote a more equitable distribution of these tasks.²¹⁸
- o Ensure that social protection services do not create considerable inequalities between those who have interrupted their participation in the labor force--for example, due to the need to care for children, the elderly or people with disabilities--and those who have not.²¹⁹
- o All social protection programs, including employment guarantee programs, should be participatory, gender-sensitive and accessible to women with domestic work responsibilities.²²⁰
- o Incorporate a paid domestic work perspective in labor market policies.²²¹
- o Pay particular attention to migration policy issues, from protecting migrant domestic workers to providing support to meet the needs of those they leave behind.²²²
- o Take unpaid domestic work into consideration in development planning and programming, with special emphasis on guaranteeing equal access to public services.²²³
- o Guarantee and promote safe channels for women to report violations and seek justice and reparations.

²¹⁶ *Id.* pp. 24.

²¹⁷ *Id.* pp. 24.

²¹⁸ *Id.* pp. 24.

²¹⁹ *Id.* pp. 24.

²²⁰ *Id.* pp. 24.

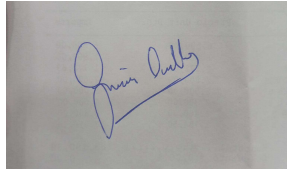
²²¹ *Id.* pp. 25.

²²² *Id.* pp. 25.

²²³ *Id.* pp. 25.

Sincerely,

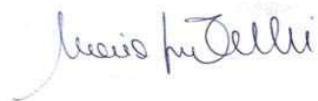

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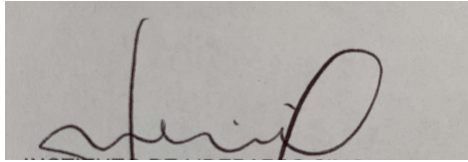
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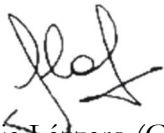
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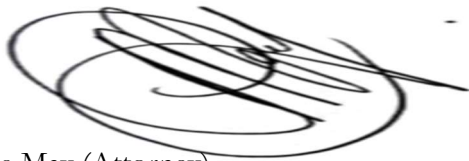
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