

**Observations in relation to the advisory opinion on
“the content and scope of the right to care and its
relationship to other rights”**

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The division of care work according to gender, race and class, and the intersection between these social factors, underpins the inequality that affects women and girls most.

Oxfam in LAC, 2022. Los cuidados en Latinoamérica y el Caribe. Entre las crisis y las redes comunitarias. (Care in Latin America and the Caribbean: Between crises and community networks)

Expression of interest

Oxfam is a global confederation of 21 organizations working in more than 70 countries together with partners and allies, as well as local communities. Our vision is a just world without poverty. A world where people can influence decisions affecting their lives, enjoy their rights and assume their responsibilities, as full citizens of a world in which all human beings are valued and treated equally.

Oxfam’s work is therefore based on a commitment to universally applicable human rights. Thus, with a view to contributing to the call for observations by the Inter-American Court of Human Rights (IACHR) concerning Argentina’s request of 20 January 2023 for an advisory opinion,¹ Oxfam supports and advocates the effective implementation of international human rights instruments. The aim of this approach is to establish human rights standards that, when interpreted progressively and from an intersectional perspective, enable States

¹ Ministerio de Relaciones Exteriores, Comercio Internacional y Culto de la República Argentina. (January 20, 2023). *El contenido y el alcance del derecho al cuidado y su interrelación con otros derechos* (The content and scope of the right to care and its relationship with other rights). https://www.corteidh.or.cr/docs/opiniones/soc_2_2023_es.pdf

party to adopt domestic measures promoting respect for and fully guaranteeing the exercise of the right to care.

Oxfam takes the right to care to cover everything from receiving care “in any circumstance and at any stage of life” to providing care and self-care.² Care, in turn, is understood as the material and intangible, public and private, and physical and emotional needs inherent to sustaining life. The normalization of a gendered division of labour has resulted in today’s caring activities being carried out mainly by women, children and feminized bodies. For the purposes of this opinion, and drawing from current debates and conceptual positions of leading female authors and subject-matter experts,³ care can be summarized as support and protection activities that take place on the whole, but not exclusively, in the domestic sphere,⁴ and that seek to maintain, restore, and sustain the world through and for the well-being of its inhabitants and the environment.

It is worth noting that, even if no single instrument exists integrating all the standards and dimensions of the right to care, authors such as Laura Pautassi have shown how many different dimensions of this right are found in different international human rights instruments.⁵ Addressing this situation is crucial, since the fragmentation of the right to care across several instruments can lead to the kind of lack of protection we are currently witnessing as a result of states’ blatant and persistent failure to fulfil their obligations. The 2015 Inter-American Convention on Protecting the Human rights of Older Persons –a legally binding instrument that explicitly recognizes the right to care– is one of the international instruments Pautassi mentions. Regarding people who depend on the care of others, she highlights the United Nations Convention on the Rights of the Child of 1989, the United Nations Convention on the Rights of Persons with Disabilities of 2006, and the International Labour Organization (ILO) Social Protection Floors Recommendation (No. 202) of 2012. Regarding the caregiving dimension on the other hand, she refers to ILO Conventions 183 on Maternity Protection of 2000, 156 on Workers with Family Responsibilities of 1981 and 189 on Domestic Workers of 2011, the ILO Decent Work for Domestic Workers Recommendation No. 201 of 2011, and the Convention on the Elimination of All Forms of Discrimination against Women of 1979 which recognizes care as a “public good and shared responsibility between the sexes”.⁶

In this vein, we take the rights that follow, which have been endorsed by the Inter-American System of Human Rights, to enable the effective guarantee of the right to care, throughout

² Laura Pautassi. (2007). *El cuidado como cuestión social desde el enfoque de derechos*. Serie Mujer y desarrollo, no. 87. ECLAC. <https://repositorio.cepal.org/server/api/core/bitstreams/7bb982b7-abf7-47ac-bd5f-8672b98ae40d/content>

³ See Tronto, Batthyány, Molinier, Aguirre, Genta, Perrotta and Fraser, and others.

⁴ Currently, women caregivers’ organizations more or less emphatically welcome or oppose the use of the term “domestic” to describe their activities, given its different connotations in each political and social context.

⁵ L. Pautassi. (2018). *El cuidado: de cuestión problematizada a derecho. Un recorrido estratégico, una agenda en construcción*, in *El trabajo de cuidados: una cuestión de derechos humanos y políticas públicas*. UN Women

Mexico. https://mexico.unwomen.org/sites/default/files/Field%20Office%20Mexico/Documentos/Publicaciones/2018/05/LIBRO%20DE%20CUIDADOS_Web_2Mayo_final.pdf. Pp 178-191

⁶ Ibid.

all stages of life, and in all its three interdependent dimensions of receiving care, providing care, and self-care:

- The American Convention on Human Rights: the right to the prohibition of slavery and involuntary servitude (Art. 6), the rights of the child (Art. 19), the right to well-being (Art. 26) and the right to equal treatment and non-discrimination (Arts. 1 and 24).
- The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights: the right to non-discrimination (Art. 3); the right to work (Art. 6); the right to just, equitable and satisfactory conditions of work (Art. 7); trade union rights (Art. 8); the right to social security (Art. 9); the right to health (Art. 10); the right to education (Art. 13); the right to a healthy environment (Art. 11); and the right to food (Art. 12);
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará): the right of a woman to have the inherent dignity of her person respected and her family protected (Art. 4e); the right to equal protection before the law and of the law (Art. 4f); the right to associate freely (Art. 4h); the right to a life free from violence (Art. 6); the right to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination (Art. 6b).

For the purposes of this opinion, Oxfam affirms the need to apply an intersectional approach (as a concept and basic tool for understanding, expanding and problematising the scope of the general obligations of states).⁷ In this regard, action must stem from an understanding of the multiple dimensions of inequality, which is produced by failed systems that grant privileges to a few people and were established to perpetuate the dominance of some people and groups over the majority. From this perspective, we take inequality to have differentiated effects with complex intersections that depend on gender, race, social class, sexual orientation and gender identity, age, ethnicity, migrant status, geographic location and political orientation, among many other factors. The IACHR itself describes inequality in this way in the Case of *Gonzáles Lluy et al. v. Ecuador*,⁸ in which it highlights the intersection of multiple factors that underlie a unique situation of discrimination, which would not have manifested in the same way in the absence of any one of these factors. However, the Court had previously conducted an analysis in the Case of *Rosendo Cantú et al. v. Mexico*⁹ in which it found that the victim experienced a situation of particular vulnerability due to her being an indigenous child living in poverty. Later, in cases such as

⁷ CEDAW. (2010). *GENERAL RECOMMENDATION NO. 28 ON THE CORE OBLIGATIONS OF STATES PARTIES UNDER ARTICLE 2 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*. <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf>. P. 5

⁸ Inter-American Court of Human Rights. (2015). *Case of Gonzáles Lluy et al. v. Ecuador. Judgement of September 1, 2015 (Preliminary objections, merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_298_ing.pdf

⁹ Inter-American Court of Human Rights. (2010). *Case of Rosendo Cantú et al. v. Mexico. Judgement of August 31, 2010 (Preliminary objections, merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf

Oxfam in LAC. Observations in relation to the advisory opinion on “the content and scope of the right to care and its relationship to other rights”

the *Hacienda Brasil Verde Workers v. Brazil*¹⁰ and *Vicky Hernández et al. v. Honduras* (2021),¹¹ the Court develops this position further.

Like the Court, Oxfam reiterates its commitment to upholding human rights, as principles that allow for comprehensive discussion on the need to reduce inequalities and gaps based on gender, race and social status. In this regard, the Court will be aware that “Latin American and the Caribbean has become a more unequal, poorer and much more socially and politically polarized region,”¹² and that, in the wake of multiple crises (such as the crisis triggered by COVID-19 but also the climate, food and migrant crises) which have had affected different people in different ways, the living conditions of the majority of the region’s population have deteriorated.

In the case of *Cuscul Pivaral et al. v. Guatemala* in 2018,¹³ the Court analysed both the social context and the measures necessary to effectively guarantee human rights, as outlined below:

[...]forty years after the entry into force of the American Convention, it is the first time that the Court has addressed both dimensions of an ESCER (immediate enforceability and progressivity) and established measures of reparation in relation to both dimensions. This will be the path to follow in the future and, even though it involves both normative and methodological challenges, the Court cannot stand on the sidelines in the face of the serious problems of inequality, inequity, and social exclusion that subsist in the region together with the lack of protection of the ESCER, especially for the most vulnerable groups [...] It cannot be overlooked that poverty and extreme poverty continue to be factors of special concern in the region, “that affect children, adolescents and young people more than other age groups” together with, especially, the increase in the “feminization of poverty” in the youth and adult population.¹⁴

Against this backdrop, Oxfam’s report *La ley del más rico: Gravar la riqueza extrema para afrontar las desigualdades en América Latina y el Caribe* (Survival of the Richest: How we must tax the super-rich to tackle inequality in Latin America and the Caribbean),¹⁵ shows how, from March 2020 to the end of 2022, inequality, poverty and social divides in Latin

¹⁰ Inter-American Court of Human Rights. (2016). *Case of the Hacienda Brasil Verde Workers v. Brazil. Judgement of October 20, 2016 (Preliminary objections, merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf

¹¹ Inter-American Court of Human Rights. (2021). *Vicky Hernández et al. v. Honduras. Judgement of March 26, 2021 (Preliminary objections, merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_422_ing.pdf

¹² Oxfam. (2023). *La ley del más rico. Gravar la riqueza extrema para afrontar las desigualdades en América Latina y el Caribe*. <https://is.gd/9CJSIr>

¹³ Inter-American Court of Human Rights. (2018). *Case of Cuscul Pivaral et al. v. Guatemala. Judgement of August 23, 2018 (Preliminary objections, merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_359_ing.pdf

¹⁴ Inter-American Court of Human Rights. (2018). *Case of Cuscul Pivaral et al. v. Guatemala. Separate opinion of Judge Eduardo Ferrer Mac-Gregor Poisot*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_359_ing.pdf. Paras 45-46.

¹⁵ Oxfam. (2023). *La ley del más rico*, op. cit.

America and the Caribbean deepened significantly, making living conditions tougher for the vast majority of the population. In the same period, billionaire wealth grew by 21%, while the real wages of the majority dropped in value by 10% and 201 million people (32.1% of the region’s total population) were living in poverty, with 82 million (13.1%) living in extreme poverty. By the end of 2022, four in ten people in the region were experiencing food insecurity.¹⁶

The indirect consequence of an economic model based on extraction is “a high degree of [...] uncertainty, which depresses investment [...] and has a drastic effect on tax revenues. This decrease in revenues constrains public investment and policy initiatives in such areas as care work aimed at promoting greater equality.”¹⁷ As such, this contribution focuses on fiscal justice as a means of guaranteeing rights, in that it advocates for tax systems shaped by principles of progressivity, transparency, and equity, as well as rights-based public financing which puts people’s lives at the centre of public decision-making. In this regard, this document repeatedly highlights that in order to respect and guarantee the full exercise of the right to care, measures in favour of progressive taxation must be adopted. These should be accompanied by public policies focused on social protection which reduce inequality and increase equality of opportunity and which, in turn, offer alternatives to the cycles of austerity to which governments in Latin American and the Caribbean have succumbed for more than three decades.

Background

Latin American civil society organizations and academic institutions alike have documented the marked democratic decline in the region, with the dissolution, disruption or overthrow of democratically elected governments, consolidation of authoritarian regimes, shutting down of civic space, criminalization of dissent, and systematic attacks on defenders of human, land and environmental rights. In this regard, political inequality has an impact on economic and social inequality (and vice versa), which worsens as decision-making elites fail to respond to citizens’ demands.

State capture refers to the abuse by economic and political elites of their influencing power to make legislation and governments work for their own interests and priorities, to the detriment of the public interest. These actions serve to widen the inequality gap and weaken democracy.¹⁸

The lack of political, institutional, social and economic conditions enabling the exercise of universal citizenship deprives this right of content and potential. The absence of these conditions in some societies, enabling only privileged groups to be recognized as citizens,

¹⁶ Oxfam. (2023). *La ley del más rico*, op. cit, p.7.

¹⁷ United Nations Economic Commission for Latin America and the Caribbean.(2022). *The Care Society: A Horizon for sustainable recovery with gender equality*. ECLAC.
<https://repositorio.cepal.org/server/api/core/bitstreams/016d2a56-09fe-475e-bcfa-8f35bc41ced2/content>. P. 38

¹⁸ Oxfam. (n.d.). *La captura del Estado y el aumento de la desigualdad en Latinoamérica y el Caribe*.
<https://www.oxfam.org/es/la-captura-del-estado-y-el-aumento-de-la-desigualdad-en-latinoamerica-y-el-caribe>

undermines democratic coexistence, aggravates differences with regard to the exercise of rights and turns the guarantee of those rights into a private matter. In an unequal society where care is not organized fairly, people in need of care and those who provide it are relegated to the private, intimate, or personal spheres, receiving little attention in the public arena, unless there was lawsuit.

The current situation requires that the issue of care be placed at the top of the agenda. As Nancy Fraser notes: “Without it there could be no culture, no economy, no political organization. No society that systematically undermines social reproduction can endure for long.”¹⁹ Care activities take place throughout each person’s life and are an essential pillar of social well-being, with women historically assuming an unequal share of these tasks. The “gender contract” has established women’s and men’s mandates based on mere gender-based subjectivities with the mandate of femininity pushing “women to assume responsibility for care, while that of masculinity drives men into defence and government.”²⁰

In this regard, time-use surveys have been crucial in illustrating the unequal distribution of responsibilities resulting from gender socialization beginning in childhood. They have also provided measurements to establish the “shadow prices” of these activities, revealing their importance in supporting the market and the national accounts. Some case studies from the Latin American region have shown that women spent as much as 34.5 more hours a week on care work than men.²¹

Factors directly influencing the social organization of care include demographic change and a deficit in care services, challenges resulting from the effects of the climate crisis, the weakening of public health and education systems, a shrinking labour market and unemployment among women, the precarious nature of paid care work and the weakening of social security systems. The invisibility of these factors, as well as of the fundamental role of care in social reproduction, has led to a region-wide crisis in care that can be characterised as “a gap between the interdependent care needs people have and society’s capacity to provide for them.”²² This crisis has differentiated effects both among people who receive care and among those who provide it. Taking into account the scope of the social organization of care is key to a comprehensive understanding of the situation.

The social organization of care refers to the (interconnected) way in which families, the state, the market, and community organizations produce and distribute care. In

¹⁹ N. Fraser. (2016). *Contradictions of Capital and Care*. *New Left Review*, Issue 100, pp.11-112. <https://newleftreview.org/issues/ii100/articles/nancy-fraser-contradictions-of-capital-and-care>

²⁰ M. Lamas. (2018). *División del trabajo, igualdad de género y calidad de vida*. In *El trabajo de cuidados: una cuestión de derechos humanos y políticas públicas*. UN Women Mexico. https://mexico.unwomen.org/sites/default/files/Field%20Office%20Mexico/Documentos/Publicaciones/2018/05/LIBRO%20DE%20CUIDADOS_Web_2Mayo_final.pdf P. 13.

²¹ L. Scuro and I. Vaca-Trigo. (2017). *La distribución del tiempo en el análisis de las desigualdades en las ciudades de América Latina*. In M.N. Rico and O. Segovia (eds), *¿Quién cuida en la ciudad? Aportes para políticas urbanas de igualdad*. ECLAC. <https://www.un-ilibrary.org/content/books/9789210586085s005-c007/read>. Pp. 117-148

²² Oxfam. (2023). *Los cuidados en Latinoamérica y El Caribe: Entre las crisis y las redes comunitarias*. <https://lac.oxfam.org/lo-%C3%BAltimo/publicaciones/los-cuidados-en-latinoamerica-y-el-caribe-entre-las-crisis-y-las-redes>

this sense, care is not provided in isolation but rather in a dynamic relationship between these players. [...] This is why some authors prefer to talk about “care networks” rather than “organization,” so as to account for the multiple dynamic linkages of responsibilities and tasks between different types of actors in providing care.²³

The health crisis brought about by COVID-19 exacerbated structural inequality in the region and exposed the burdens of the social organization of care. It is thus essential to recognize that the current organization of care relies on a family-based, feminized and stratified approach, and that transforming it will enable the transition to a society that enshrines care as a universal right, with the state taking a lead role in any action. Families and women should not be made to assume primary responsibility for care, since this puts women and their families at a disadvantage when trying to exercise their right to work and to just, equitable and satisfactory working conditions, as well as to social security, education, health, and other rights.

Response to the question about the obligation of states to adopt measures to the maximum of their available resources [...]

The feminist economy has given rise to claims focused on changing “the profit motive to a life motive.”²⁴ At a regional level, these claims concern the recognition of the right to care in national laws, which would support a move away from a family-based, feminized model of care. However, in many states where benefits-based welfare policies are the norm, political and social crises threaten emerging policies around care and make it difficult, as part of states’ obligations to adopt measures to respect and guarantee human rights, to create comprehensive care systems.

Maximum resources available

Firstly, it is necessary to recognize the autonomous nature of the right to care as an essential component of well-being and as a fundamental pillar for a life of dignity and development throughout the life cycle of individuals. This is evident in Articles 1 and 2 of the American Convention on Human Rights, which describe the obligations of States party to respect all the rights and freedoms recognized therein, as well as to ensure their free and full exercise, without any discrimination, and to adopt measures to that end. However, it must be noted that no differential treatment is applied in the Convention to the obligations assumed by states in part 1 to guarantee the rights in parts 2 (civil and political rights) and 3 (economic, social, cultural and environmental rights). Obligations relating to the right to care, as well as being highlighted in the instruments already mentioned and being intricately linked to the conditions necessary for a life of dignity, are also taken up in the Buenos Aires

²³ Ibid.

²⁴ C. Carrasco. (2013). *El cuidado como eje vertebrador de una nueva economía. Cuadernos de Relaciones Laborales*, Vol. 31, Issue 1, pp. 39-56, http://dx.doi.org/10.5209/rev_CRLA.2013.v31.n1.41627

Protocol (referred to in Article 26 of the American Convention on Human Rights), in its Article IX covering the right to well-being: “a) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security.”²⁵

Article 26 of the American Convention on Human Rights points to the obligation to apply the principle of the maximum resources available, which relates to the minimum essential content of the right in question.²⁶ Thus, in its General Comment No. 3, the Committee on Economic, Social and Cultural Rights noted that: “In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”²⁷ And those efforts (which include both the use of available resources and the generation of resources to ensure their availability, i.e., increasing fiscal space by means of a just tax structure that enables the state to collect enough to fund the fulfilment of its obligations) must include tax and fiscal policies that ensure both the availability of funds in the national accounts and their appropriate distribution in accordance with principles of good faith, universalism, equality and non-discrimination, and that are pro-person and not regressive, among other factors. This emphasis is also illustrated in the following articles of the American Convention on Human Rights:

- Article 26 referring to the adoption of measures that enable “progressively [...] the full realization of the rights” to be achieved and its link to the norms in the Charter of the Organization of American States, specifically the reference in Article 34 to devoting the utmost efforts to achieving the substantial and self-sustained increase of per capita national product, equitable distribution of national income and adequate and equitable systems of taxation;²⁸
- Articles 1 and 2 of the Protocol of San Salvador regarding the obligation to adopt measures “to the extent allowed by their available resources [...] for the purpose of

²⁵ Organization of American States. (1967). *Protocol of Amendment to the Charter of the Organization of American States (B-31) "Protocol of Buenos Aires"*. <https://www.oas.org/sap/peacefund/VirtualLibrary/ProtocolBsAs/ProtocolBuenosAires.pdf>

²⁶ “The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”
https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf

²⁷ Committee on Economic, social and Cultural Rights. (1990). *General Comment No. 3: The Nature of States Parties' Obligations* (Fifth Session),
https://conahcylt.mx/cibiogem/images/cibiogem/normatividad/estandares_dh/docs_estandares_dh/Comit_DESC_OG03_Obligaciones_de_los_Estados_1990.pdf

²⁸ Organization of American States (1948). *Charter of the Organization of American States*
<https://www.oas.org/en/iachr/mandate/Basics/charterOAS.asp>

achieving progressively [...] the full observance of [...] rights”, as well as “other measures as may be necessary,” and Article 3 on non-discrimination;²⁹

- Article 4 of the Inter-American Convention on Protecting the Human Rights of Older Persons, which specifically refers to the strengthening of “legislative, administrative, judicial, budgetary, and other measures [...] in order to ensure differentiated and preferential treatment for older persons in all areas”, as well as the adoption of necessary measures “to the full extent of their available resources and commensurate with their level of development, [...] to progressively achieve in accordance with domestic law the full realization of economic, social, and cultural rights, without prejudice to such obligations as may be immediately applicable under international law.”³⁰

It is important to note that, when referring to “the full extent of their available resources” and the “extent allowed by their available resources,” both the American Convention on Human Rights and the Protocol of San Salvador establish benchmarks for the commitment required by states to create sufficient, non-transferable and sustainable financial, technical and human resources to meet their obligations. For its part, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities goes even further. In Article III, it does not limit the types of measures proposed to States party to those of a “legislative, social, education, labour-related” nature, but also permits “any other measures”, such as the minimum fiscal and tax measures necessary for states to fulfil their obligations.³¹

As such, to address this question, the analysis here will focus on defining, from a perspective of economic justice, the obligation described in Article 26 of the American Convention on Human Rights, in particular as it relates to the concept of maximum available resources. This will be done on the basis of an analysis exploring whether states are currently complying with the “maximum” requirement and whether resources are indeed available. Furthermore, determining whether measures guaranteeing a life of dignity have been adopted requires an assessment of whether all possible types of measures, including fiscal ones, have indeed been taken, and finally, if conditions for a life of dignity (in accordance with Article 4 of the American Convention on Human Rights) have been guaranteed.

Are they the maximum resources?

In its General Comment No. 3, the Committee on Economic, Social and Cultural Rights highlighted that “even in times of severe resources constraints whether caused by a process

²⁹ Organization of American States. (1988). Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador. November 17, 1988. <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>

³⁰ Organization of American States. (2015). *Inter-American Convention on Protecting the Human Rights of Older Persons*. https://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp

³¹ Organization of American States. (2001). *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*. https://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp

of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected” (para. 12). In this regard, “there is not only a minimum essential level of protection in relation to each right, but a sector of the population that represents the minimum number of citizens who should receive state protection of their economic and social rights, even during crises.”³² In its General Comment No. 6, the Committee noted that “even in times of severe resource constraints, States parties have the duty to protect the vulnerable members of society” (para. 17).³³ For this reason, it is crucial to consider whether states are actually meeting these minimum requirements by making fair tax collection part of their fiscal policies.

Given that Latin America and the Caribbean is the world’s most unequal region, it is clear that states have not been engaged in fair, sustainable and equitable revenue collection that might guarantee the realization of rights. The fact that between 2020 and 2022 “the wealth of the region’s billionaires increased by 21%, a growth five times greater than that of regional GDP in the same period (+3.9%)” is a symptom of the same problem.³⁴ As such, the issue does not appear to be a lack of resources so much as a lack of political will to collect the “maximum resources available”.

This is corroborated by the recommendations of the Buenos Aires Commitment resulting from the XV Regional Conference on Women in Latin America and the Caribbean,³⁵ which also highlight the need to “implement specific financing mechanisms to ensure sufficient, non-transferable, sustainable resources that cover all levels and areas of public policy aimed at reversing gender inequalities and guaranteeing the rights of women, adolescents and girls, including the right to care.”

Fiscal policies are often not counter-cyclical, that is, they are not “gender-sensitive [...] in order to mitigate the impact of economic crises and recessions on women's lives.” This impact is closely linked to the disproportionate distribution of unpaid care work and widens the inequality gap. Addressing the issue requires the promotion of “regulatory frameworks and policies to galvanize the economy in sectors key to the sustainability of life, including the care economy,”³⁶ which also aim to increase fiscal space enabling more revenue to be collected in order for states to meet their human rights obligations.

The matter of fiscal policy is key to defining what is meant by maximum resources. The fact that states do not collect sufficient revenue, when it has already been shown that they could

³² L. Pautassi. (2010). *Indicadores en materia de derechos económicos, sociales y culturales. Más allá de la medición*. In V. Abramovich and L. Pautassi, *La medición de derechos en las políticas sociales*. Editores del Puerto. <https://biblioteca.corteidh.or.cr/documento/65047>. Pp 1-87.

³³ Committee on Economic, Social and Cultural Rights. (1995). *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*. <https://www.refworld.org/legal/general/cescr/1995/en/27839>

³⁴ Oxfam. (2023). *La ley del más rico*, op. cit, p. 3.

³⁵ Economic Commission for Latin American and the Caribbean. (2022). *Buenos Aires Commitment. XV Regional Conference on Women in Latin America and the Caribbean*. <https://repositorio.cepal.org/server/api/core/bitstreams/5d94a78a-b8ac-487e-bfba-214ed496c68b/content>

³⁶ Economic Commission for Latin American and the Caribbean. (2022). *Buenos Aires Commitment*, op. cit., p. 6.

do so if they implemented fair, sustainable and equitable taxation measures, is a clear rejoinder to the usual argument put forward by states invoking “situations of fiscal crisis in order to withdraw from obligations relating to economic, social and cultural rights, obligations that, if they fail to guarantee at least the minimum content of the right in question, deprive it of its essence.”³⁷ The lack of action by states in meeting their obligations is sustained by regressive fiscal policies which do not necessarily require those with the most resources to contribute the most in taxes to public revenue.

Are there available resources?

Article 34 of the Charter of the Organization of American States, which is enacted in Article 26 of the American Convention on Human Rights, establishes that:

Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals:

- a) Substantial and self-sustained increase of per capita national product;
- b) Equitable distribution of national income;
- c) Adequate and equitable systems of taxation;

While billionaire wealth grows even in times of crisis without a corresponding redistributive tax to guarantee the “maximum resources available”, states continue to fail to adopt or ensure progressive fiscal policies that include fair and equitable taxation measures. They have also failed to target social spending at inequality reduction or funding the realization of rights, such as those relating to care and climate action, or health or social protection. Tax injustice precedes distributive injustice.

Similarly, as observed by specialist mechanisms such as treaty bodies and committees, states have not succeeded in creating sufficient, non-transferable and sustainable budgets with a gender focus. This is noted in general comments, such as Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women (CEDAW)/General Comment 18 of the Committee on the Rights of the Child (CRC) of 2019 on harmful practices, which states that “the implementation of any holistic strategy necessarily requires the provision of adequate organizational, human, technical and financial resources that are supplemented with appropriate measures and tools, such as regulations, policies, plans and budgets.”³⁸

This is supported by the Buenos Aires Commitment, which notes the need to ensure that “fiscal adjustment measures or budget cuts aimed at addressing economic slowdowns are in line with the principles of human rights and non-discrimination, avoiding in particular cuts

³⁷ L. Pautassi. (2010). *Indicadores en materia de derechos económicos, sociales y culturales*, op. cit.

³⁸ Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child. (2019). *Joint General Recommendation No. 31 CEDAW/General Comment No. 18 CRC* (72nd session).

<https://documents.un.org/doc/undoc/gen/g19/134/42/pdf/g1913442.pdf?token=i1ag22dGsTlh0N8scz&fe=true>

to programmes and support that would increase poverty rates among women and their burden of unpaid and care work.”³⁹ It has been observed that, even when resources are insufficient, they are directed towards protecting the rights of some citizens over others, without any justification.⁴⁰

Are measures, including fiscal measures, really of all types?

- Excess of regulations vs. insufficient fiscal space to fulfil these regulations

In several of its concluding observations on the periodic reports of different states, the Committee on Economic, Social and Cultural Rights (CESCR) interpreted the obligation to use the maximum resources available through the lens of fiscal justice:

Indeed, the Committee on ESCR has repeatedly urged States party “to allot a large share of the national budget surplus to the [...]struggle against poverty” (Concluding Observations: Algeria, 2001), and recommended that “assistance to those who live in poverty be increased, and that adequate financial resources be made available to them so that they can live in dignity” (Concluding Observations: Russia, 1997). The Committee has also assessed poverty levels from the perspective of wealth distribution, given the obligation of States party to adopt both fiscal and social measures to address the inequitable distribution of wealth (Concluding Observations: Dominican Republic, 1997). In the case of Bolivia, the Committee urged the state to “provide the necessary financial resources needed for children’s education and the eradication of child malnutrition” and “give priority to education in its budget, establish literacy programmes for adults, in particular in the rural areas, and make efforts to increase the school attendance levels of children under the age of 9” (Concluding Observations: Bolivia, 2001). When considering the reports of Sweden, Germany and Japan, the Committee encouraged each State party “as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant.”⁴¹

Do these measures guarantee a life of dignity?

- Care and the right to a life of dignity

The right to life should be based on the following premise: “every right...in order to be realized, entails positive and negative obligations.”⁴² Negative obligations are linked to respecting, refraining from and not hindering the full exercise of rights. Positive obligations, on the other hand, require states to take measures and action to guarantee rights. In this

³⁹Economic Commission for Latin American and the Caribbean. (2022). *Buenos Aires Commitment*, op cit.

⁴⁰ N. Arno. (2012). Review of *The Cost of Rights: Why liberty depends on taxes*. *Revista SAAP: Sociedad Argentina de Análisis Político*. Pp. 200-201.

⁴¹ See concluding remarks of the Committee on Economic, Social and Cultural Rights to the reports of Germany (2001), Japan (2001) and Sweden (2001). Available from the United Nations Treaty Body database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Home.aspx?lang=En.

⁴² V. Abramovich and C. Courtis. (2003). *Apuntes sobre la exigibilidad judicial de los derechos sociales*. *Jura Gentium. Journal of Philosophy of International Law and Global Politics*, Vol. 1, pp. 1-14. <https://www.juragentium.org/topics/latina/index.htm>

regard, care policies are crucial to guaranteeing individuals’ well-being and development throughout their lifetime.

Article 4 of the American Convention on Human Rights not only establishes the right to life as a fundamental right of every individual, it also regards it as a precondition for the exercise of other rights. When considering dignified conditions for life, the Inter-American Court of Human Rights has stated that the right to life is not only violated through action, but also through failure to act or insufficient action. This compels states to adopt measures based on their obligations in the area of care as part of the shared social responsibility implied by a fair social organization of care, since the right to care is essential to sustaining life.

In this regard, in the Case of Xákmok Kásek Indigenous Community v. Paraguay⁴³ the Court noted that:

The observance of Article 4, in relation to Article 1(1) of the Convention, not only presumes that no one be deprived of their life arbitrarily (negative obligation), but also requires the States to take all appropriate measures to protect and preserve the right to life (positive obligation), in keeping with the obligation to ensure the full and free exercise, without discrimination, of the rights of all persons under their jurisdiction.

Thus, in the Case of the “Street Children” (Villagran-Morales et al.) v. Guatemala,⁴⁴ the Court establishes the scope of the right to life and highlights a “double aggression” in this regard, since the state does not prevent the children in the case in question “from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the ‘full and harmonious development of their personality’,” violating their integrity and their lives as a result.

“Latin American and Caribbean countries [...] are experiencing a care crisis,⁴⁵ understood as a gap between the interdependent care needs⁴⁶ people have and society’s capacity to provide for them.”⁴⁷ “The lack of publicly provided care solutions undermines opportunities to lead full lives, both for people who require care and those who provide it. “This disproportionately affects the financing of care systems and policies for a sustainable recovery with gender equality for women in lower-income households, who dedicate an average of 45 hours per week to unpaid work (quintile 1). [...] In turn, as more care work is demanded by household members, overcoming poverty becomes more challenging

⁴³ Inter-American Court of Human Rights. (2010). *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Judgement of August 24, 2010 (merits, reparations and costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf

⁴⁴ Inter-American Court of Human Rights. (1990). *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Judgement of November 19, 1999 (merits)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_esp.pdf

⁴⁵ A. Pérez Orozco. (2022). *The Feminist Subversion of the Economy: Contributions for life against capital*. Common Notions.

⁴⁶ Oxfam. (2021). *Organización social de los cuidados a la luz del covid 19*.

⁴⁷ Oxfam. (2023). *Los cuidados en Latinoamérica y El Caribe*, op. cit.

because time poverty limits opportunities to enter the labour market, a particularly serious situation for women who head single-parent households.”⁴⁸

The region's countries are experiencing the care crisis in different ways due to intersecting variables that exacerbate the situation faced by their populations. Several of its democracies are in crisis, with civic space shrinking, civil and political freedoms being violated, growing power imbalances, the weakening of democratic institutions, and more. Other countries are experiencing economic downturns, pressures to extract natural resources, and the growing impact of the climate crisis on the local environment, including droughts, floods, and other events, alongside an unprecedented increase in illicit economies. As a geographical region facing multiple crises, Latin America and the Caribbean not only needs to overcome the care gap, it must do so as a matter of urgency.

Furthermore, care work helps sustain human and natural life, through and for people's well-being and the welfare of their environment, since health, education and social security – classic components of well-being – “are now being complemented by a “fourth pillar”, which recognizes the right to receive care in situations of dependency.”⁴⁹ At a time when the Intergovernmental Panel on Climate Change (IPCC) has warned of the irreversible consequences of the climate crisis, being able to talk about the environment and natural life is critical, since the patriarchal, colonial model that has exacerbated the gendered division of labour has also created a binary and oppressive view of nature, framing it as an object of merely instrumental worth. People across different territories are now calling for a recognition of nature's intrinsic value. Respecting this call means including the voices and worldviews of indigenous and Afro-descendent people and nations within the paradigm of care and social and community well-being.

In the Case of the Indigenous Communities of the Lhaka Honhat (our land) association v. Argentina, the Inter-American Court of Human Rights refers to the right to a healthy environment, stating that it:

[...] “constitutes a universal value”; it “is a fundamental right for the existence of humankind,” and that “as an autonomous right [...] it protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that nature must be protected, not only because of its benefits or effects for humanity, “but because of its importance for the other living organisms with which we share the planet.”⁵⁰

⁴⁸ Economic Commission for Latin America and the Caribbean. (2021). *Financing care systems and policies in Latin America and the Caribbean*, op. cit.

⁴⁹ S. Montañó (2010), cited in K. Batthyány (2015). *Policies and care provision in Latin America. A view of regional experiences*. ECLAC.
<https://repositorio.cepal.org/server/api/core/bitstreams/b2e903d7-5992-402e-8df4-ed30ccd7b92d/content>

⁵⁰ Inter-American Court of Human Rights. (2020). *Case of the Indigenous Communities of the Lhaka Honhat (our land) association v. Argentina. Judgement of February 6, 2020 (merits, reparations and costs)*, para. 203. https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf

- Care work and its links with discrimination and violence against women

Despite care work becoming more visible due to the pandemic, and despite it affecting all people at some stage of their lives, it continues not to be adequately valued, is usually carried out in precarious circumstances and goes unrecognized. In this regard, the Montevideo Strategy, adopted by the Regional Conference on Women in Latin America and the Caribbean in 2016, recognized the gendered division of labour and the current unequal social organization of care as structural obstacles to achieving gender equality.

Time-use surveys conducted in the region provide data on the feminization of care. They show, for example, how in many cases women spend more than twice as much time on unpaid care and domestic work as their male counterparts do on the same activities. This unequal distribution of care responsibilities among caregivers, built upon a gendered division of labour, is deeply embedded and sustained in the subjective dimension through social, familial and gender-related pressures and mandates, and often through violent means where “physical violence has symbolic value, indicating that women are seen not to possess the right to freedom, respect and decision-making power.”⁵¹

The relationship between gender and care work is passed down through generations of women and people identifying or seen as female. It has numerous consequences, including exposure to myriad forms of violence and obstacles accessing economic, social, cultural and environmental, as well as civil and political, rights. In this regard, the finding of the Inter-American Court of Human Rights in the Case of González et al. (“Cotton Field”) v. Mexico (2009) is key:

gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. [...] the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities, as in this case. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.⁵²

For its part, in paragraph 8 of General Comment No. 16, the Committee on Economic, Social and Cultural Rights notes that:

Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral. In implementing article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men

⁵¹ M. J. Izquierdo. (2007). *Estructura y acción en la violencia de género*. In M.D. Molas Font (ed.), *Violencia deliberada. Las raíces de la violencia patriarcal*. Icaria. Pp. 223-234. Available at: <https://creandopueblo.files.wordpress.com/2011/09/izquierdo-maricc81a-jesucc81s-estructura-y-accion-en-la-violencia-de-genero-izquierdo.pdf>

⁵² Inter-American Court of Human Rights. (2009). *Case of González et al. (“Cotton Field”) v. Mexico. Judgement of November 16, 2009 (Preliminary objection, merits, reparations and costs)*, para. 401. https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

Oxfam in LAC. Observations in relation to the advisory opinion on “the content and scope of the right to care and its relationship to other rights”

and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.⁵³

As such, and as previously noted, the unequal distribution of care does not just subject women to the so-called “double day”, but also to the loss of economic independence and to myriad forms of violence, among other effects linked to the gendered “public-private” space and the feminization of poverty. In order to combat gender inequality, which is sustained by the gendered division of labour and reinforced by multiple intersections—ethnicity, class, nationality and age, to name a few—, it is essential to adopt, guarantee and comply with measures relating to care (both the receipt and provision of care, as well as self-care). These should be underpinned by the right to equality before the law, the principle of non-discrimination and the best interests of the child, enshrined in Articles 1.1, 24 and 19 respectively of the American Convention on Human Rights. In addition, obligations regarding due diligence reinforced in Articles 7 and 8 of the Inter-American Convention on Violence against Women must be taken into account, with the aim of preventing, punishing and eradicating such violence, in line with the differentiated approach described in Article 9 of the same convention.

⁵³ Committee on Economic, Social and Cultural Rights. (2005). *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*. <https://www.refworld.org/legal/general/cescr/2005/en/33346>