



WIEGO (Women in Informal Employment: Globalizing and Organizing)

WRITTEN OBSERVATIONS

ON THE REQUEST FOR AN ADVISORY OPINION ON THE CONTENT AND SCOPE OF CARE AS A HUMAN RIGHT AND ITS INTERRELATION WITH OTHER RIGHTS

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I. Introduction and context

In accordance with Article 73.3 of the Rules of Procedure of the Inter-American Court of Human Rights (IACtHR), and in response to the open call to participate in this process, WIEGO (Women in Informal Employment: Globalizing and Organizing) hereby submits its written observations.¹

The request for an Advisory Opinion presented by the Republic of Argentina to the IACtHR regarding "*the content and scope of the right to care and its interrelation with other rights, in light of the aforementioned Convention and other international human rights instruments,*" indicates that the considerations motivating the request respond to the opportunity to address the foundations of gender inequality and move towards fairer and more equitable standards regarding care. Therefore, the request asks the IACtHR to more precisely determine the scope of care as a human right, as well as the obligations that States are required to fulfill in this regard.

As a preliminary matter, it should be noted that the IACtHR has not, up to this point, evaluated cases specifically related to care, recognizing it as a human right. Therefore, the Inter-American System of human rights protection lacks specific standards in this regard, particularly derived from the jurisprudence of the IACtHR. However, the Inter-American Commission of Women² has delineated some specific approaches to the topic, and there are other approaches of great importance in the universal system of human rights protection. Thus, this Advisory Opinion is a significant opportunity for the IACtHR to address this important right outside of the context of contentious case proceedings. It also has the potential to generate a broad regional impact, particularly through the application of the doctrine of "control for conformity with the Convention" (*control de convencionalidad*), according to which domestic authorities must apply the standards developed in the Advisory Opinion in their domestic legal system, as well as an impact on human rights at an international, comparative level.

It is also important to note that, while the American Convention on Human Rights (ACHR) does not explicitly contemplate this right, the IACtHR has been marked by its broad, systematic, and evolutive interpretations of its legal framework. It has defined the content of the treaty's precepts by taking the corpus juris into account, thereby achieving significant advances in the protection of human rights, particularly economic, social,

¹ These observations were prepared by WIEGO with the collaboration of *Jorge F. Calderón Gamboa*, UN Independent Expert on human rights and ESCER.

² Inter-American Model Law on Care. Link: <https://www.oas.org/es/cim/docs/LeyModeloCuidados-EN.pdf>

cultural, and environmental rights (ESCER), as may be the case in this particular instance.

Therefore, at WIEGO, we are convinced that the IACtHR has advanced and sophisticated argumentative tools in the human rights field to provide precise responses to the questions presented in this request for an advisory opinion, and to generate robust standards that provide comprehensive protection for the issue of care across its various dimensions.

II. Importance and specification of WIEGO's contribution to the Advisory Opinion

Women in Informal Employment: Globalizing and Organizing (WIEGO) is a global network dedicated to improving the working conditions of the working poor – especially women – in the informal economy. We strive for equal economic opportunities, rights, protection and voice for all workers. WIEGO promotes change by improving statistics and expanding knowledge on the informal economy, building networks and capacity among worker organizations and offering support to workers as they fight to influence local, national and international policies. Learn more at: wiego.org.

The informal economy includes workers who lack social protections through employment and businesses that are not formally established or registered. Global statistics on informal employment (ILO 2018) show that 61% of all workers worldwide, or about 2 billion people, are engaged in informal employment.³

In Latin America and the Caribbean, 54% of the population is engaged in informal employment. Among this group, 55% are women and 53% are men. This gender gap widens in informal employment outside of agriculture (52% vs. 47%).⁴

WIEGO has been working directly to improve the conditions of informal workers in domestic employment, including care personnel, and to procure quality childcare services for workers in the informal economy. We have also issued various publications on the subject, which we will highlight in these observations.

³ Worldwide, 76.2% of the time dedicated to unpaid care work is carried out by women (ILO, 2019).

⁴ Bonnet, Florence, Joann Vanek and Martha Chen. 2019. Women and Men in the Informal Economy – A Statistical Brief. Manchester, UK: WIEGO, pp. 10 to 15.

Thus, while the request for an Advisory Opinion raised four main issues, which in turn are subdivided into 19 questions, our contribution to this proceeding will focus on three specific points, namely:

a. Issue A. Conceptualization, development, and scope of the right to care as an autonomous human right;⁵

b. Issue D. The interrelation of care with other ESCER.

On this point, there is a specific question on the rights of paid care workers (domestic workers) and the obligations of States.⁶

c. Complementary Issue. *Access of informal workers to care systems.*

Although the request does not explicitly address the matter of informal employment, we believe that this issue should be addressed by the IACtHR, as it is crucial that the American region has a specific standard regarding the *access of informal workers to care systems*. Generally, informal workers lack social guarantees and are unable to access comprehensive care services, with various implications. Therefore, since informal employment is closely related to the need for care, the failure to incorporate this perspective would make this Advisory Opinion incomplete.

III. Observations by topic

A) Conceptualization, development, and scope of the right to care as an autonomous human right

On this issue, the request for an Advisory Opinion poses the following questions:

Is care an autonomous right enshrined in Article 26 of the American Convention on Human Rights? If so, how does the Court understand the right of people to provide and receive care and to exercise self-care? What obligations do States have in relation to this human right from a gender, intersectional and intercultural perspective and what is its scope?

⁵ *Is care an autonomous right enshrined in Article 26 of the American Convention on Human Rights? If so, how does the Court understand the right of people to provide and receive care and to exercise self-care? What obligations do States have in relation to this human right from a gender, intersectional and intercultural perspective and what is its scope?*

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

Next, we will set out some reflections on the right to care so as to contribute to these discussions.

In order to conceptualize care work, first it is necessary to define what activities it encompasses.

According to the *International Labour Organization (ILO)*⁷ **care activities** are comprised of two broad kinds: *direct, face-to-face, personal care activities*, such as feeding a baby or nursing a sick partner, and *indirect care activities*, such as cooking and cleaning.

Unpaid care work is caring for persons or undertaking housework without any explicit monetary compensation. Unpaid care is considered as work and is thus a crucial dimension of the world of work⁸.

Paid care work is performed for pay or profit by care workers. They comprise a wide range of personal service workers, such as nurses, teachers, doctors and personal care workers. Domestic workers, who provide both direct and indirect care in households, are also part of the care workforce.

The *Inter-American Model Law on Care (IAMLC)* understands care as a wide array of everyday activities for managing and sustaining life that take place inside and outside the home, and that allow the physical, biological and emotional well-being of people, particularly those who lack the autonomy to perform these activities on their own. Caregiving includes *self-care, providing direct care for others, establishing the pre-conditions for care, and managing care*.⁹

According to the *Implementation Guide* for the IAMLC¹⁰, the redefinition of care has three basic premises:

- First, care activities are an indicator of our vulnerability: they are part of our human condition.
- Second, care is the response to our dependencies. Being dependent is part of human nature: it is not an exceptional situation or the result of individual decisions or actions. It is an intrinsic characteristic of persons, one that changes throughout the life cycle.

⁷ Care Work and Care Jobs for the Future of Decent Work, Geneva, International Labour Office, 2019

⁸ ILO, 2018.

⁹ Inter-American Model Law on Care. Inter-American Commission of Women and EuroSocial. (OAS. Official Records; OEA/Ser.L/II.6.34). Art. 4.

¹⁰ Implementation Guide for the Inter-American Model Law on Care, Inter-American Commission of Women, (OAS. Official Records; OEA/Ser.L/II.6.36).

- This leads to the third premise: Care work sustains the economic system. Care work, in addition to sustaining daily and generational life, contributes significantly to the reproduction of the workforce, which is absolutely necessary for production and the continuity of the economic system.

With respect to ***care as a human right***, the IAMLC states that everyone, in line with their dependence status, has the right to receive quality care that guarantees their full development throughout their life cycle, and to provide care under the same conditions and with dignity, co-responsibility and self-care.¹¹

Thus, because care is a right, the State has a role as a guarantor. The redistribution, reduction, regulation, and provision of caregiving are set out as an integral part of the welfare state and the social protection system, and it should thus be regarded as an essential service. As a promoter of collective well-being and guarantor of human rights, the State must work towards eradicating reproductive discrimination that results in women assuming a disproportionate amount of caregiving, as well as the structural gender inequalities that perpetuate the cycle of poverty, marginalization, and inequality.¹²

Consequently, from a human rights perspective, the ***right to care*** has at least for dimensions:

1. The right to exercise the direct and indirect care of other dependent individuals such as children, adolescents, older adults, and persons with disabilities;
2. Self-care, related to the right to comprehensive health;
3. Social guarantees for care workers;
4. The management of care services under conditions of equality and without discrimination.

Below, we briefly outline some aspects that should be considered when defining the dimensions of the right to care within the framework of the American Convention on Human Rights (ACHR).

¹¹ IAMLC. Art. 5

¹² IAMLC. Art. 6.

1) *The right to exercise the direct and indirect care of other dependent individuals*

As a human right, the right to exercise care activities clearly emanates from the *rights of children and adolescents*. The *Universal Declaration of Human Rights* establishes that children and adolescents have the right to special care and assistance.¹³

Additionally, the *Convention on the Rights of the Child* affirms that States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. They shall also render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children and support for their families. States should promote awareness among parents and caregivers of the need to respect the human rights of children and the right of all children to live within their family and community.¹⁴

Likewise, Article 19 of the ACHR establishes that “*Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.*”

Thus, this first dimension of the right to care, related to the rights of children, is clearly anchored in Article 19 of the ACHR itself and in the international corpus juris on the subject.

Articles 15.3 and 16 of the *Additional Protocol on ESCR* (Protocol of San Salvador) recognize the rights to the establishment and protection of the family, as well as the rights of children, incorporating various provisions in which States are called to protect children as their guarantors.¹⁵

With respect to *older persons*, the *Inter-American Convention on Protecting the Human Rights of Older Persons*¹⁶ (Convention on older persons) states in its Article 6 that “*States Parties shall take steps to ensure that public and private institutions offer older persons*

¹³ UN. Universal Declaration of Human Rights. Adopted by the UN General Assembly by its resolution 217 A (III) of 10 December 1948. Art. 25.2.

¹⁴ Convention on the Rights of the Child (1981), Articles 3, 4, 18, 23, 30, and 24.2.

¹⁵ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: “Protocol of San Salvador.” Signed at San Salvador, El Salvador, on 17 November 1988, at the Eighteenth Regular Session of the General Assembly. See Art. 15.3, sections a), b), c), and d).

¹⁶ Inter-American Convention on Protecting the Human Rights of Older Persons. 06/15/2015; Forty-Fifth Regular Session of the General Assembly. Entry into force: 11 January 2017. Art. 6.

access without discrimination to comprehensive care, including palliative care; avoid isolation; appropriately manage problems related to the fear of death of the terminally ill and pain; and prevent unnecessary suffering, and futile and useless procedures, in accordance with the right of older persons to express their informed consent.”

Additionally, in its Article 12, this treaty sets out the rights of older persons receiving long-term care, emphasizing that: *“Older persons have the right to a comprehensive system of care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing, and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy, should they so decide.”*

Article 17 of the *Protocol of San Salvador* establishes that every person has the right to special protection in old age. Thus, the States Parties agree to progressively take the steps necessary to make this right a reality.

The *Resolution adopted by the Human Rights Council on the Centrality of care and support from a human rights perspective*¹⁷ (UN Resolution on care), recognizes that:

“older persons face a number of particular barriers to their enjoyment of human rights, including lack of access to quality health support, long-term care and support and palliative care, accessibility and unpaid care work, and emphasizing the importance of promoting inclusive, age-sensitive communities and environments and of providing a range of support services that promote the dignity, autonomy and independence of older persons to enable them to remain in their homes as they age, respecting their individual preferences.”

Regarding the rights of older persons, the IACtHR has already issued significant rulings in the case of *Poblete Vilches v. Chile*, particularly regarding the right to health as an autonomous right, enshrined in Article 26 of the ACHR.¹⁸

In that regard, the dimension of the right to care for older persons is expressly encompassed in Articles 6 and 12 of the *Convention on older persons* and, in relation to their right to health, in accordance with Article 26 of the ACHR.

¹⁷ UN. Human Rights Council Resolution on the Centrality of care and support from a human rights perspective, adopted on 11 October 2023. A/HRC/54/6

¹⁸ IACtHR. Case of *Poblete Vilches et al. v. Chile*. Merits, Reparations and Costs. Judgment of 8 March 2018. Series C No. 349.

Regarding *persons with disabilities*, the *Convention on the Rights of Persons with Disabilities* also establishes in its Article 28.2 c) that States shall take measures to “ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care.”¹⁹

For its part, the *Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities*, establishes the obligation of States to ensure the integration of these individuals into society on equal terms through the provision of services, programs, transportation, housing, recreation, education, and sports, among others.²⁰

Additionally, the UN Resolution on care states that:

Taking into account the fact that support and care systems, comprising disability-inclusive policies and services, are essential for persons with disabilities to fully and effectively participate in society, with choices equal to others, to live with dignity, autonomy and independence, and to live independently in the community, as recognized in the Convention on the Rights of Persons with Disabilities,

Finally, within the legal framework of the ACHR, the right to care could be guaranteed through an interpretation of Article 32 of the ACHR, which has received scant attention up to this point,²¹ but which highlights the correlation between duties and rights, and establishes that “[e]very person has responsibilities to [their] family, [their] community, and [hu]mankind.” These duties could well include the exercise of care for dependent persons, which could provide a novel interpretation anchored in an article of the Convention.

2) The Right to self-care

This dimension of care is primarily related to the right to comprehensive health, protected in Article 26 of the ACHR.

¹⁹ The Convention on the Rights of Persons with Disabilities was adopted in December 2006. See also Art. 16.2

²⁰ Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities. Adopted in Guatemala City, Guatemala. Date: 06/07/99. Article III.

²¹ IACtHR. Case of *Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Judgment of 28 November 2018. Series C No. 370.

In this regard, the IACtHR itself has indicated that health should be understood "*not merely as the absence of disease or infirmity, but also as a complete state of physical, mental, and social well-being derived from a lifestyle that allows the individual to achieve an overall balance.*"²²

From this perspective of *comprehensive balance*, it is possible to understand the dimension of self-care, which is also related to other aspects such as leisure, recreation, rest, and vacation, among others.

3) Social guarantees for care workers

Within this dimension, one can find the conditions under which caregivers are required to provide care.

Social rights are crucial for providing dignified conditions for care workers, whether they are paid or not. These rights stem from Article 26 of the ACHR, through the norms derived from the OAS Charter, particularly in its Articles 34, 45, and 46.

In order to harmonize this interpretation in light of the standards set out in the new jurisprudence of the IACtHR regarding ESCER, the following related articles are highlighted below.

Article 26 of the ACHR states:

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. Progressive Development

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.

In August 2017, the IACtHR issued its ruling in the case of *Lagos del Campo v. Peru*.²³ For the first time, it ushered in a new paradigm in its jurisprudence through the full recognition of the direct justiciability of ESCER, through its interpretation of Article 26 of the ACHR,

²² Cf. *Poblete Vilches v. Chile*, para. 118.

²³ IACtHR. *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of 31 August 2017. Series C No. 340.*

which protects such rights. In Article 26, the States commit to achieving the full realization of the rights that derive from the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States.

In light of the interpretive principles established in Article 29 of the ACHR,²⁴ the IACtHR has referred to the Charter in several subsequent cases to determine, on a case-by-case basis, the catalogue of rights protected by Article 26.²⁵ Thus, the scope of Article 26 remained open to interpretation, as did the possibility of protecting rights that are not expressly named in the treaty.²⁶ In the words of the IACtHR:

Thus, it can clearly be interpreted that the American Convention incorporated into its list of protected rights the so-called economic, social, cultural and environmental rights (ESCER),²⁷ by derivation from the norms recognized in the Charter of the Organization of American States (OAS), and also the rules of interpretation established in Article 29 of the Convention itself; particularly, insofar as they prevent excluding or limiting the enjoyment of the rights established in the American Declaration and even those recognized by domestic law [...]. Furthermore, based on a systematic, teleological and evolutive interpretation,²⁸

²⁴ Article 29. Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as:
a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

²⁵ Calderón Gamboa, Jorge. *“La Puerta de la justiciabilidad de los derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano: relevancia de la sentencia Lagos del Campo”* in Ferrer Mac-Gregor, Eduardo; Morales Antoniazzi, Mariela; and Flores Pantoja, Rogelio (coords.), *Inclusión, lus commune y justiciabilidad de los de ESCER en la jurisprudencia interamericana. El caso Lagos del Campo y los nuevos desafíos* (Institute of Constitutional Studies of Quertaro-MPI, 2018), pp. 333-380.

²⁶ Article 26 explicitly refers to the rights enshrined in the OAS Charter and must be read in accordance with the principles of interpretation established in Article 29 of the ACHR and consistently applied by the IACtHR, which uphold the treaty as a living document whose content can undoubtedly evolve over time in light of the current corpus juris.

²⁷ Gradually, the Inter-American system has been consolidating this concept (ESCER). In 2014, the Inter-American Commission on Human Rights adopted the decision to create a “Special Rapporteurship on Economic, Social, Cultural and Environmental Rights” which became fully operational in August 2017. See also: Inter-American Commission on Human Rights, Report on poverty and human rights in the Americas, OAS/Ser.L/V/II.164, September 7, 2017, para. 112, and “Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 57.

²⁸ Cf. *Vienna Convention on the Law of Treaties, 1969*, UN Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331. Entry into force on January 27, 1980. See also: the general rules of interpretation established in the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights (prior to General Comment No. 3 of the Committee on Economic, Social and Cultural Rights on the

the Court has resorted to the national and international *corpus iuris* on the matter to give specific content to the scope of the rights protected by the Convention²⁹ [...], in order to derive the scope of the specific obligations relating to each right.³⁰

Thus, according to the IACtHR's own interpretation, in order to derive norms pertaining to the *right to care*, it must resort to the norms of the OAS Charter to give content to the rights at stake protected in Article 26 of the ACHR.

For this purpose, the relevant norms of the OAS Charter that allow for this interpretation are presented below.

Article 34

The 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:

[...]

- b) Equitable distribution of national income;
- c) Adequate and equitable systems of taxation;

[...]

- g) Fair wages, employment opportunities, and acceptable working conditions for all;

[...]

- k) Adequate housing for all sectors of the population;

nature of States parties' obligations) which in Principle 4 establish that: "[t]he International Covenant on Economic, Social and Cultural Rights [...] should, in accordance with the Vienna Convention on the Law of Treaties [...] should be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice".

²⁹ *Inter alia*, Cf. *The Right to Information on Consular Assistance within the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 115; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, paras. 32, 43 and 59; *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 83; and *"Other Treaties" Subject to the Advisory Jurisdiction of the Court (art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82, September 24, 1982. Series A No. 1, para. 41.

³⁰ Cf. IACtHR. *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of 8 March 2018. Series C No. 349, para. 103.

l) Urban conditions that offer the opportunity for a healthful, productive, and full [dignified] life;

m) Promotion of private initiative and investment in harmony with action in the public sector; and [...]

Article 45

The Member States, convinced that [human beings] can only achieve the full realization of [their] aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

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;

b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and [their] family, both during [their] working years and in [their] old age, or when any circumstance deprives [them] of the possibility of working;

c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws;

d) Fair and efficient systems and procedures for consultation and collaboration among the sectors of production, with due regard for safeguarding the interests of the entire society;

e) The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, in harmony with the private sector, as to meet the requirements and interests of the community;

f) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community;

- g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;
- h) Development of an efficient social security policy; and
- i) Adequate provision for all persons to have due legal aid in order to secure their rights.

Article 46

The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

It is clear that the *labor rights* of workers, as well as the *rights of social security*, are derived from these articles.

Additionally, the *Protocol of San Salvador*, in its Article 6, stipulates that States commit to implementing programs aimed at enabling women to exercise the right to work, which is part of the general obligation of non-discrimination contained in Article 1.1 of the ACHR. Furthermore, in Article 9, the Protocol of San Salvador establishes the right of every person to social security.

The IACtHR has also referred to such rights in its jurisprudence.³¹ Thus, the protection of this dimension, that is, of the social guarantees due to care workers, fits within the IACtHR's new ESCER jurisprudence through Article 26 of the ACHR.

For WIEGO, this dimension of the *right to care* related to *labor and social security* is essential for assessing the guarantees due to domestic care workers, as well as the aspect of access to *social security in care for workers in informal employment*. Therefore, in line with the objectives set forth in these observations, this paper will primarily focus on this dimension.

³¹ IACtHR. Case of *Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 6 March 2019. Series C No. 375. See, *Cuadernillo de Jurisprudencia N° 22: Derechos Económicos, Sociales, Culturales y Ambientales*.

4) *The management of care services under conditions of equality and without discrimination*

The management of care services comprises both direct and indirect actions, and should therefore include the participation of parents or guardians on equal terms.

However, the *Economic Commission for Latin America and the Caribbean* (ECLAC)³², has documented that in Latin America, women dedicate 19.6% of their time to unpaid care work (*infra*), unlike men, who dedicate only 7.3% of their time. 60% of Latin American women who have children and adolescents under 15 in their households do not work for pay.³³ Likewise, the ILO has documented that women perform 76.2% of all hours dedicated to care work, which is more than three times the hours contributed by men.³⁴

In its Resolution on care, the UN³⁵:

“Expresses deep concern at the unequal distribution and organization of care and support work and their impact on the rights of all women and girls, in society and in the economy;

Recognizes that the equal distribution of care and support work and resulting distribution of time is a fundamental basis to achieve gender equality;”

Furthermore, the 2013 Report of the *Special Rapporteur on extreme poverty and human rights*³⁶ considers unpaid domestic and care work as an important human rights issue.

³² Other advances in regional consensus include: the Regional Conference held in 2010, where the Brasilia Consensus was adopted. There it was stated that the right to care for all persons should be recognized and that it was necessary to promote “co-responsibility” among the States, the private sector, civil society, households, men, and women. See. ECLAC, Brasilia Consensus, 2010, commitment 1. In 2020, the Santiago Commitment was adopted at the XIV Regional Conference on Women in Latin America and the Caribbean. This document recognized the commitment of States to design comprehensive care systems with a gender, intersectional, intercultural, and human rights perspective. ECLAC, Santiago Commitment, LC/CRM.14/6, 2020, commitment 26.

³³ Cf. ECLAC, *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, p. 15 and ECLAC, *Social Panorama of Latin America 2020*, LC/PUB.2021/2-P/Rev.1, 2021, p. 200.

³⁴ Cf. International Labour Organization, *Care work and care jobs for the future of decent work*, 2019, p. 29, cited in OAS, Inter-American Commission of Women, *COVID-19 in Women’s Lives: Reasons to Recognize the Differential Impacts*, p. 13.

³⁵ See Preamble, pp. 3 and 4.

³⁶ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, submitted in accordance with Human Rights Council Resolution 17/13.

Focused on women responsible for caring for others, particularly those living in poverty, the report maintains that heavy and unequal responsibilities are a significant barrier to gender equality and women's equal enjoyment of human rights, often condemning women to poverty. Therefore, the lack of regulation of domestic work violates States' human rights obligations, as it institutes and exacerbates inequalities and threatens women's enjoyment of their rights.

In light of this brief diagnosis of *women's condition in care work*, it is necessary to revisit various international standards that aid in interpreting in this area.

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), establishes, *inter alia*, that States shall take all measures, including legislative measures, to ensure the advancement of women and the enjoyment of their human rights. It also specifies the obligation to institute measures to modify social and cultural patterns of conduct based on the idea of the inferiority or superiority of sexes or on stereotyped roles of men and women; and to ensure that family education includes a proper understanding of maternity as a social function and recognition of the common responsibility of men and women in the upbringing and development of their children. It prohibits discrimination against women due to marriage or maternity and ensures their right to work: States shall take measures such as encouraging the provision of supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular, through promoting the establishment and development of a network of childcare services.³⁷

The CEDAW Committee has issued various General Recommendations related to domestic work and its interrelation with care activities that are of great importance, including, *inter alia*, numbers 17, 23, 27, and 35.³⁸

For its part, the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (Belém do Pará Convention) establishes States' obligation to modify social and cultural patterns of conduct based on the idea of the

³⁷ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, articles 3, 5, and 11, sections 2 and 2.c.

³⁸ CEDAW, General Recommendation No. 17, Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product; CEDAW General Recommendation No. 23: Political and Public Life; CEDAW General Recommendation No. 27 on older women and the protection of their human rights, paragraphs 43 and 44; CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, paragraph 30 a).

inferiority or superiority of either of the sexes or on stereotyped roles for men and women.³⁹

In that regard, the IAMLC recognizes that social co-responsibility for caregiving requires that caregiving tasks be equally distributed. It regulates this principle in Article 25, which establishes that spouses and partners must, under the same conditions and with shared effort, care for household responsibilities and maintenance, raising and educating children who are minors or have a disability, as well as any other dependents under their care in the shared home or in a different home.

Article 26 of the IAMLC states that men share responsibility for caregiving on equal terms and conditions as women, except for physical and biological aspects linked to maternity. Thus, it affirms the inalienable nature of the rights that enable them to balance their work and family duties. The inalienability of paternity rights enables the dedication to, promotion of, respect for, and protection of active fatherhood and family co-responsibility in unpaid care work; it also promotes cultural change for the social transformation of the gendered division of labor.⁴⁰

For its part, the *Convention on the Rights of the Child* establishes that children and adolescents require care, which is a shared responsibility between fathers and mothers, to ensure their survival, progressive autonomy, and exercise of their rights, with an emphasis on the situation of children with disabilities and Indigenous Peoples. Both parents have common obligations for the upbringing and development of children and adolescents. States shall ensure the development of institutions, facilities, and services for the care of children.⁴¹

Furthermore, within the IACtHR's binding jurisdiction, Article 17.4 of the ACHR states that *"[t]he States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.*

⁴⁰ Inter-American Commission of Women. Implementation Guide for the Inter-American Model Law on Care, *supra*, pp. 42 and 43.

⁴¹ Convention on the Rights of the Child, Articles 3, 4, 18, 23, 30, and 24.2.

Additionally, Articles 1.1 and 24 also set out specific provisions for non-discrimination, including gender equality, and equality before the law.⁴²

In view of the above, the dimension of care management in equal terms is duly protected by Articles 19, 17.4, 1.1., and 24 of the ACHR, in light of the cited international provisions.

*

* *

In sum, as part of the conceptualization mentioned above, the right to care has four dimensions, previously addressed, which can be derived from an interpretation of the legal framework of the ACHR and other binding treaties, over which the IACtHR has direct jurisdiction, namely, Articles 19, 17.4, 26, 32, 1.1, and 24 of the American Convention; Articles 34, 45, and 46 of the OAS Charter; Articles 6 and 12 of the Inter-American Convention on the Rights of Older Persons; and Article 8 of the Belém do Pará Convention.

B) The interrelation of care with other ESCER

In the request for an Advisory Opinion (*topic D*), there is a specific question on the rights of paid care workers (domestic workers) and the obligations of States.

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

To address this question, it is first worth noting that both paid and unpaid care work should be regarded as labor. In some jurisdictions, this has also been referred to as domestic or household work, which entails specific rights.⁴³ In this regard, the IAMLC establishes the rights corresponding to unpaid care work in its Articles 22 and 23.⁴⁴

⁴² See, IACtHR. *Cuadernillo de Jurisprudencia N° 14: Igualdad y no Discriminación*. Cf. IACtHR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No. 205.

⁴³ Cf. Report of the Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda Carmona, *supra*.

⁴⁴ Article 22. *Unpaid caregiving*. By recognizing unpaid caregiving of dependents as work, the State dignifies and ensures that this work is done free from gender-based and other types of discrimination, respecting and promoting human rights, autonomy and well-being of caregivers, in compliance with the social co-responsibility and interdependence of care.

Article 23. *Rights of unpaid caregivers*. Unpaid caregivers have the right to provide care under the same conditions and with dignity and co-responsibility. Particularly, they will have the right to: 1. Universal access

Now, addressing the specific question on the rights of *paid care workers*, it is necessary to start from the basis of labor rights and social protection, while also taking into account other particularities of their role.

The IAMLC states in its Article 24 that “[p]aid caregivers will have the same rights, under the same conditions and free from discrimination, as those established for all work[er]s by general labor legislation.”

Likewise, under Article 14 of *ILO Convention No. 189*, States shall guarantee that domestic workers enjoy “conditions that are not less favourable than those applicable to workers generally in respect of social security protection, [...]”. This means that domestic workers should have access to the same services and benefits as other workers.

1) *Diagnosis of domestic care work*

As a diagnostic tool, one may consult the ILO Report on *Care work and care jobs for the future of decent work*,⁴⁵ which highlights the following, *inter alia*:

The global care workforce includes care workers in care sectors (education, health and social work), care workers in non-care sectors and domestic workers (employed by households). It also includes non-care workers in care sectors, as they support the provision of care services. Combining these various categories, the global care workforce amounts to 381 million workers, or 11.5 per cent of total global employment.

The global care workforce comprises 248.9 million women and 132.1 million men. In most places, the larger the care workforce as a proportion of total employment, the more feminized it is. Approximately two-thirds of the global care workforce are women and this proportion rises to over three-quarters in the Americas and in Europe and Central Asia.

[...]

to the services, benefits and programs of the National Care System for the dependents under their care, access to employment opportunities and decent work under the same conditions and free from discrimination, and access to free time and rest, to reasonable limits on caregiving hours, and to personal development. 2. Become progressive recipients of the social security system, thereby compensating the unpaid caregiving work performed throughout their life and guaranteeing access to decent and sufficient retirement pensions. 3. Receive protection from violence and harassment linked to or resulting from their caregiving work. 4. Be heard and participate within the framework of consultation and participation mechanisms established by the National Care System to contribute towards improving its quality and coverage.

⁴⁵ ILO. *Care work and care jobs for the future of decent work*, Geneva, International Labour Office, 2019, pp. 165 and 166.

Certain characteristics of paid care work weaken care workers' bargaining position, further contributing to their low pay and providing incentives for high turnover.

Many care workers experience a "care pay penalty", ranging from 4 to 40 per cent of their hourly wages.

[...]

There are 70.1 million domestic workers employed by households in the world – 49.2 million women and 20.9 million men, representing 2.1 per cent of total global employment and 3.8 of total female employment.

Domestic workers experience some of the worst working conditions across the care workforce and are particularly vulnerable to exploitation. Jobs in this sector are notoriously unpredictable and casual and are affected by low labour and social protection coverage. Violence at work is ubiquitous in the domestic work sector.

Focusing particularly on *domestic work*, it is worth noting that, according to recent estimates by the ILO:

"90 per cent of domestic workers do not have access to social security. This lack of coverage disproportionately affects women, as more than one third of domestic workers are excluded from maternity protection laws, and pregnancy frequently results in income loss or even termination of employment (see box 4.5). Many domestic workers are explicitly excluded from labour protections. For instance, only 10 per cent of domestic workers have access to labour protections equal to those enjoyed by other workers.

More than half of all domestic workers have no limitation on their normal weekly hours of work under national law, and approximately 45 per cent have no entitlement to weekly rest periods, resulting in widespread violations of the right to rest. Moreover, only about half of all domestic workers enjoy minimum wage protection on an equal basis with other workers. Even where domestic workers are covered by labour protections, difficulties in monitoring and enforcement of the labour law have led to a norm of non-compliance in many countries. As a result, few households employ domestic workers under formal contracts."⁴⁶

At WIEGO, we have also documented *domestic work* statistically, finding that there are nearly 76 million domestic workers worldwide, and 76% of these are women.⁴⁷ The great majority (82%) live in developing and emerging countries, while 13.4 million live in developed countries. Of the worldwide total, more than half (55%) live in two regions:

⁴⁶ *Ibid.*, pp. 193 to 195.

⁴⁷The reference or baseline year for all estimates and data in this note is 2019.

East and Southeast Asia, where the majority (36%) live, followed by Latin America and the Caribbean, with 19%.⁴⁸

Although the numbers of domestic workers vary considerably from one region to another, they constitute between 1% and 2% of total employment in almost all regions. The exceptions are the developed countries of the Middle East and the regions of Southern Africa and Latin America and the Caribbean, where domestic workers represent 20%, 9%, and 5% of total employment, respectively.⁴⁹

Furthermore, we have documented that about 80% of domestic workers labor in the informal sector. Within that figure, 79% of women and 87% of men work in the informal sector. Resident or in-house domestic workers are twice as likely as non-resident workers to labor for more than 48 hours per week. Additionally, about 27% of domestic workers worldwide were hired directly or through a service provider.

2) Labor rights of care workers

At this point, we can identify certain substantive rights pertaining to care work.

Domestic work is work. Therefore, domestic workers, like other workers, have the right to decent work.

*ILO Convention No. 189*⁵⁰ establishes specific protections for domestic workers, setting out rights and basic principles, *inter alia*: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation (Articles 3, 4, and 11). Effective protection against all forms of abuse, harassment, and violence (Article 5). Fair terms of employment, including decent living conditions. Terms and conditions of employment, hours of work, payment, health, safety, and social security. It also requires that States take a series of measures in order to make decent working conditions a reality for domestic workers.

For its part, *Domestic Workers Recommendation No. 201*, also adopted by the International Labour Conference, complements ILO Convention No. 189. The Recommendation provides practical guidelines on possible legal measures to effectively

⁴⁸ WIEGO. Home-based Workers in the World: A Statistical Profile. Florence Bonnet, Françoise Carré, and Joann Vanek. Statistical Brief No. 32. 2022. WIEGO and ILO (INWORK).

⁴⁹ *Ibid.*

⁵⁰ ILO. Domestic Workers Convention (No. 189). 16 June 2011. International Labour Conference.

implement the rights and principles set out in the Convention. It also contains guidance on various issues not addressed in the Convention, such as policies and programs for the professional development of domestic workers, balancing work and private life, provisions regarding statistical data, and international cooperation in various fields.⁵¹

3) *Social security for care workers*

The *right to social security* is particularly important because it can enable or promote better access to other rights. Access to this right starts with the recognition of an employment relationship that links workers to institutions that can monitor compliance therewith.

By formalizing social security, key aspects of the employment relationship, such as salary and working hours, are documented, permitting verification that they comply with legal requirements.⁵²

Additionally, *labor rights* such as *salary* and *written or registered contracts* can generate better conditions for accessing social security. Higher salaries facilitate contributions, and written contracts or registered employment relationships allow for better oversight to ensure coverage.⁵³

The 2013 Report of the *Special Rapporteur on extreme poverty and human rights* states that the right to social security includes the right of all persons to equal and sufficient protection against social risks, through contributive plans (social security) or non-contributive plans (social assistance), without discrimination. Social security benefits such as those for old age, dependent children, and unemployment, while not directly providing care, can play an important role in helping families acquire essential supplies (food, school materials, and healthcare services) or pay for healthcare services when necessary.⁵⁴

The *International Domestic Workers Federation* (IDWF) and WIEGO have documented that in the American region, few domestic workers have effective access to social security. Rather than an explicit exclusion of domestic workers under the relevant regulations, this is the result of regulations that fail to provide them with appropriate coverage and a high level of non-compliance with the law. According to available figures,

⁵¹ ILO. Domestic Workers Recommendation (No. 201), 2011.

⁵² Lexartza Artza, L., IDEF and WIEGO, 2022. Imagining Social Security for Domestic Workers: Analysis of the Status of Social Security Coverage for Domestic Workers in 15 Latin American Countries.

⁵³ *Ibid.*

⁵⁴ Report of the Special Rapporteur on extreme poverty and human rights, *supra*, para. 48.

in 2019, 7 out of 10 domestic workers in the region (72.3%) were informally employed. This means that they lacked effective social security coverage derived from an employment relationship. This is particularly the case with paid domestic workers, since in the case of other employees, the rate of informal employment is less than half, 35.3% according to the ILO (2021).⁵⁵

The ILO has identified some of the main barriers to coverage, which have been interpreted and adapted to the regional context.⁵⁶ With respect to the benefits recognized for paid domestic workers, *ILO Convention No. 102 on Social Security (Minimum Standards)* establishes nine minimum social security branches. Each branch comprises services and benefits that cover any contingencies faced by workers throughout their life. For example, sickness is understood as a risk, since lack of access to medical care services is a threat to workers' health and life. In addition, the lack of monetary benefits prevents workers from receiving earnings during the sickness period and is a threat to the economic security of workers and their families. Therefore, in the face of these risks, social security covers medical care and monetary benefits.⁵⁷

In that regard, *Convention No. 102* establishes the following 9 minimum branches:⁵⁸

- **Medical care:** seeks to provide care in the case of sickness, regardless of its cause, as well as preventive medical care. It is aimed at maintaining, restoring or improving workers' health (Humblet and Silva 2002). It comprises benefits such as general practitioner care, specialist care, pharmaceutical supplies and hospitalization, among others (Humblet and Silva 2002).
- **Sickness benefits:** must be available upon incapacity for work resulting from sickness. Pursuant to Convention No. 102, the amount of the benefit should be equal to at least 45% of reference wages. In addition, Convention No. 130 increases this percentage to 60% (Humblet and Silva 2002).
- **Employment injury benefits:** includes sickness, incapacity or a loss of faculty due to an industrial accident or an occupational disease. It also includes loss of support suffered by families as a result of the death of a worker due to an industrial accident or

⁵⁵ Cf. IDWF and WIEGO. *Imagining Social Security for Domestic Workers: Analysis of the Status of Social Security Coverage for Domestic Workers in 15 Latin American Countries*, *supra*, p. 10

⁵⁶ *Ibid.* pp 12 and 13.

⁵⁷ *Ibid.*

⁵⁸ ILO Social Security (Minimum Standards) Convention (No. 102), 1952, Articles 10, 13, 19, 25, 46, and 53. Cited in IDWF and WIEGO. *Imagining Social Security for Domestic Workers: Analysis of the Status of Social Security Coverage for Domestic Workers in 15 Latin American Countries*, *supra*, pp. 21 to 23.

an occupational disease (Humblet and Silva 2002). These monetary benefits cover the specified situations.

- *Maternity benefits*: must cover a period of pregnancy, confinement and a post-natal period. The Maternity Protection Convention (No. 183) provides for a period of maternity leave of not less than 14 weeks and cash benefits equal to at least two-thirds of previous earnings (articles 4 and 6(3)). In addition, Recommendation No. 191 proposes extending coverage so that periods of maternity are at least 18 weeks (paragraph 1 (1)) and cash benefits are equal to the full amount of previous earnings (paragraph 2).
- *Old-age benefits*: seek to protect persons over a prescribed age, which is normally no more than 65 years. In other words, these benefits provide protection to elderly persons. In practice, the purpose of old-age benefits is to provide persons with sufficient support after the prescribed age. Pursuant to *Convention No. 102*, the amount of benefit should be equal to at least 40% of previous earnings. *Convention 128* increases this percentage to 45% of previous earnings and *Recommendation No. 131*, to 55% (Humblet and Silva 2002).
- *Invalidity benefits*: cover permanent physical conditions that prevent workers from working. They also cover situations in which the physical conditions that prevent workers from working are not permanent but persist after the exhaustion of sickness benefit (Humblet and Silva 2002). In this case, the amount of the benefit should be equal to at least 40% under *Convention No. 102*. In addition, *Convention 128* increases this percentage to 50% and *Recommendation No. 131*, to 60% (Humblet and Silva 2002).
- *Survivors' benefits*: seek to protect the dependents of workers, usually their partners and children, upon their death. As in the case of old-age benefits, the amount of the survivors' benefit should be equal to at least 40% under *Convention No. 102*, 45% under *Convention No. 128*, and 55% under *Recommendation No. 131* (Humblet and Silva 2002).
- *Unemployment benefits*: these are aimed at providing protection to workers who cannot obtain earnings because they are unable to find a job. *Convention No. 102* provides that the amount of the benefit should be equal to at least 45% of reference wages, and *Convention No. 168* increases this percentage to 50% (Humblet and Silva 2002).

- **Family benefits:** seek to protect, under certain conditions, workers who have children under 15 years of age. They may include benefits in cash or in kind such as food, clothing, housing, etc. (Humblet and Silva 2002).

In sum, domestic workers may have limited social security rights either because fewer benefits are granted to them by law or because social security systems in their countries are more limited compared to international standards.

To illustrate, a 2022 study conducted by IDWF and WIEGO on social security for domestic workers in Latin America⁵⁹ demonstrates that among 15 countries analyzed in Latin America, only 3 – Brazil, Chile, and Colombia – recognize the right to all branches of social security for domestic workers.⁶⁰ The following graph shows the branches of social security provided in the countries examined:

Table 3. Social Security Branches Recognized for Domestic Workers (15 countries)

	Medical care	Sickness benefit	Employment injury benefit	Maternity benefit	Old-age benefit	Survivors' benefit	Invalidity benefit	Unemployment benefit	Family benefit
Argentina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes
Brazil	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bolivia	Yes	Yes	Yes	Yes	No	No	No	No	No
Chile	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colombia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Costa Rica	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Ecuador	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
El Salvador	Yes	No	No	Yes	No	No	No	No	No
Guatemala	No	No	Yes	Yes	No	No	No	No	No
Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Nicaragua	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Panama	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No
Paraguay	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Peru	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Dominican Republic	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

Source: Prepared by the author of this report on the basis of the regulations in force in the countries: ISSA (International Social Security Association) and Argentina (Argentina.gov.ar n.d. and ILO 2021), Brazil (eSocial 2015), Bolivia (Executive Order No. 4589 and Mogrovejo and Mendizabal 2015); Chile (Chile, Social Security Institute (IPS) n.d. and Chile, Directorate for Labour (DT) 2021); Colombia (Colombia, Ministry of Labour 2012); Dominican Republic (Dominican Republic, Ministry of Labour 2022); El Salvador (Schwarzer, et al. 2020); Guatemala (Guatemala, IGSS 2022); Mexico (IMSS, n.d.); Nicaragua (PAHO 2022); Panama (PAHO-Domestic and Similar Workers' Union (SINGRETRADS), 2021 and Panama, Social Security Fund (CSS) n.d.); Paraguay (Paraguay, Ministry of Labour, Employment and Social Security, n.d.).

⁵⁹ Lexartzta Artza, L., IDWF and WIEGO. 2022. *Imagining Social Security for Domestic Workers: Analysis of the Status of Social Security Coverage for Domestic Workers in 15 Latin American Countries*, *supra*.

⁶⁰ *Ibid.*, p. 24.

From the information gathered in the report, unemployment benefits are the least commonly recognized by countries for domestic workers. This situation is not unexpected since, out of the 15 countries under analysis, only a few provide this benefit generally: Argentina, Brazil, Chile, Colombia, and Ecuador. Mexico City also offers this protection (Casalí, Cetrángolo and Pino 2020). In this regard, at least 4 out of the 5 countries that do grant this right (Brazil, Chile, Colombia and Ecuador) also grant it to domestic workers. In the case of Chile, a law passed in September 2020 granted this right to domestic workers, who were excluded until then (Chile, Directorate for Labour 2021).

After unemployment benefits, family benefits are the least commonly recognized. In this case, seven countries do not offer these benefits: Ecuador, Guatemala, Peru, Paraguay, Panama, El Salvador, and Bolivia.

In three other countries, Bolivia, El Salvador, and Guatemala, domestic workers do not enjoy long-term benefits or pensions (old-age benefits, benefits due to invalidity, and survivors' benefits). In this case, domestic workers are excluded, since the benefits are granted to other groups of workers. In Bolivia and El Salvador, domestic workers are not explicitly excluded from this right by law. However, the lack of mechanisms for their actual inclusion results in this discriminatory situation. In the case of Bolivia, the regulations governing pensions do not require registration of domestic workers.

This is evidenced by available figures for 2013. At that time, only 1.6% of domestic workers in Bolivia were registered with Pension Administrations (AFPs). In addition, most of the domestic workers who did enjoy this protection were likely to be registered "as independent workers, since there are currently no regulations that require the registration of domestic workers as dependent workers" (Mogrovejo and Mendizabal 2015, p. 63). Therefore, achieving recognition of the right to pensions is one of the current priorities of Bolivia's National Federation of Domestic Employees (FENATRAHOB).⁶¹

As regards *pensions*, it should be noted that domestic workers' long-term exclusion from social security rights, together with their limited capacity to make contributions due to low wages, precludes any real possibility of their having pension coverage. This situation is more serious in the countries with funded systems, since pensions depend largely on each worker's contributory capacity.

Since domestic workers do not have sufficient contributions, they do not have pension rights, or the amount received does not cover their basic needs. Thus, organized

⁶¹ Testimony: *Now we have to fight for pensions for old age, to be able to retire. María Pariqui, Zenobia Chura and Eusebia Guarachi, National Federation of Domestic Employees of Bolivia (FENATRAHOB).*

domestic workers have expressed the need for pension systems to recognize and compensate that disadvantage.⁶²

In addition, over the last years, some countries have introduced reforms to pension systems that may hinder access to pensions for paid domestic workers even more. In general, the reforms affect all workers, but they may have a greater impact on domestic workers if, for example, the contribution period required to receive a pension is extended. Taking into account the limitations historically faced by domestic workers to have social security coverage, an extension of the contribution period may be an exclusionary factor, as stated by the Federação Nacional das Trabalhadoras Domésticas (FENATRAD), in Brazil.⁶³

As regards *employment injury and occupational disease benefits*, two countries, El Salvador and Panama, do not grant this right to domestic workers. In both countries, this benefit is granted to other workers.

In Guatemala, benefits are limited to only the few contingencies covered by the Special Program for the Protection of Domestic Workers (PRECAPI). This is the only country that does not provide medical care to domestic workers. It should be noted that, in Bolivia, the possibility of having *healthcare benefits* has been offered recently. Although the 2003 law governing domestic work provided for mandatory registration with the National Healthcare Fund, the lack of regulations prevented domestic workers from enjoying this right. Finally, after almost two decades of organized domestic workers' struggle, the regulations were approved in 2021. In addition to healthcare, these regulations provided other so-called short-term benefits, such as maternity, sickness and occupational risks benefits.

Guatemala and El Salvador did not grant the right to sickness benefits either. That is, unlike other workers, domestic workers did not have the right to be paid when they suffered from a sickness that prevented them from working.

⁶² Testimony: *We retire under this system managed by pension administrations. We can't possibly retire from our jobs if we are to get that pension. We can't survive on it, not even a week. We are forced to work until we die because we can't survive. What do we want from this government? We want to be compensated, because the old law has a lot to do with our precarious pensions, which are way below the poverty line.* María Cotal, National Federation of Domestic Workers' Unions (FESINTRACAP), Chile.

⁶³ Testimony: *The reform of the social security system made the situation even worse (...) The number of years during which domestic workers must make contributions before requesting a pension was increased. Given the difficulties faced by domestic workers to make contributions, they will certainly need to work much longer, for many more years to complete the required period (...) the reform of the social security system only penalized the working class and made its work more precarious.* Luiza Batista, Federação Nacional das Trabalhadoras Domésticas (FENATRAD).

Finally, it should be noted that all of the countries under analysis grant *maternity benefits* to domestic workers. However, in Argentina, Bolivia, Ecuador, Guatemala, Mexico, and Nicaragua, the periods of maternity leave established are less than the minimum 14-week leave set forth in *Convention No. 183*. In Argentina and Bolivia, maternity leave is 13 weeks, whereas, in the other countries, it is 12 weeks (ILO 2022).⁶⁴

An important point to highlight as a good practice is *the case of Uruguay*, which was a regional trailblazer in equalizing the rights of domestic workers with the rights of other workers. In 2006, Uruguay approved Law No. 18.065 in order to regulate domestic work, and a year later, the relevant regulation was approved (Decree No. 224/007). This new legal framework allowed domestic workers access to all social security-related rights.⁶⁵

As an example, in Uruguay in 2006, 67% of domestic workers did not have contributions to social security (Uruguay, General Advice on Social Security Matters 2021). In turn, in Argentina, in the fourth trimester of 2012—a few months before Law No. 26.844 was passed—the rate of unregistered domestic work was 84% (Argentina, Ministry of Labor, Employment and Social Security n.d.).

The available data for Uruguay shows that, while in 2006, 67% of domestic workers were not making social security contributions, this percentage decreased to 53.8% by 2013 and to 45.5% by 2019 (Uruguay, General Advice on Social Security Matters 2021). In the case of Argentina, figures show that in 2003 the percentage of registered domestic workers was barely 5%, with an increase to around 25% in 2016 (Pereyra 2017).⁶⁶

In this report, IDWF and WIEGO also analyze a series of topics of great importance to the matter at hand, such as: requirements and conditions for coverage; procedures for affiliation; proper oversight; mechanisms to ensure compliance; incentives and institutional campaigns; social security for migrant women; analysis of some efforts made in the region to guarantee domestic workers' right to social security; access to social security during the pandemic, and domestic workers' fight for access to social protection.

Thus, in our final reflections, we highlight some key points to address the issue and makes some recommendations in this regard.

The information gathered shows that although significant legislative progress has been made in the region in recent decades, there is still legislation that discriminates against

⁶⁴ IDWF and WIEGO. *Imagining Social Security for Domestic Workers: Analysis of the Status of Social Security Coverage for Domestic Workers in 15 Latin American Countries*, *supra.*, p. 27.

⁶⁵ *Ibid.* Cf. Uruguay, General Advice on Social Security Matters 2021.

⁶⁶ *Ibid.*, p. 59.

paid domestic workers. The situation varies among countries, and while some have achieved equal rights (at least formally) compared to other groups of workers, in other countries, gaps persist, for example, with respect to the recognition of working hours or the minimum wage. Therefore, certain barriers to access to social security are highlighted below:

Figure 6. Formal Barriers to Social Security Access



The information and figures presented in the document demonstrate that, in addition to limitations in the scope of legislation, there is a significant compliance gap. In 14 out of the 15 countries considered, social security affiliation is mandatory; however, low affiliation rates indicate that this obligation is not realized in practice.

Part of the non-compliance can be explained by objective formal conditions. That is, by the obstacles that constitute the third level of exclusion in the regulations. However, these obstacles alone do not fully explain the lack of compliance. Employers may resist registering domestic workers to avoid paying their social security contributions and respecting their labor rights through an enforceable employment contract.

Thus, the lack of adequate monitoring and sanction mechanisms is also a significant barrier. Legislation loses its substance when effective enforcement mechanisms are lacking.

In general, the social security systems in the region have not yet managed to formulate approaches suitable for the conditions of paid domestic work. This is particularly clear considering that the majority of countries still require minimum periods of work for contributions, have a minimum contributory base equivalent to the minimum wage, and lack mechanisms allowing for multi-employer affiliation.

In many cases, the efforts made to relax affiliation requirements are partial; elevated contribution thresholds remain high or cut benefits and entitlements. Consequently, they do not have a significant impact on increasing registration.

In this scenario, the need for broader reforms that encompass all the aspects mentioned becomes evident. The new approaches should also consider alternative sources of financing, taking into account the low contributory capacity in the sector and allowing entry for domestic workers who work short hours, without entailing a deterioration of recognized standards or the creation of “solidarity” or “voluntary” regimes that have lower coverage and quality.

Undoubtedly, the inclusion of online access to coverage and the simplification of procedures are a success. However, in some countries, procedures are still complicated, require a significant amount of time, and create uncertainty for employers. The emergence of processing companies in some countries in the region highlights the gravity of this situation.

Ensuring simple and swift procedures is a responsibility of the States that could be guaranteed without the need for significant resource investments.

Certainly, social security coverage for paid domestic workers must be comprehensive. It should include legal reforms at the three levels mentioned, intensive information and awareness campaigns, and robust and adequate enforcement strategies.

It is necessary to promote regulations that protect workers hired by intermediary agencies and enable proper oversight of these companies.

The progress made in the region regarding the recognition of domestic workers' rights is the result of efforts driven by organized workers. This underscores that to ensure that the measures adopted meet the needs of those working in this sector, and are therefore successful, active involvement of workers' organizations in the design and implementation processes must be encouraged. Likewise, the right to freedom of association and effective recognition of the right to collective bargaining (ILO Conventions 87 and 98) must be respected.

Finally, we conclude in the report that international experiences in developing good practices and successful experiences of countries in the region can guide and inspire governments that have not yet implemented actions in this area. Additionally, these experiences demonstrate that: a) it is neither difficult nor impossible to find the appropriate mechanism to ensure the effective implementation of social security coverage for the domestic sector; and b) in most cases, the most important factors are political will and

effective consultation with the true experts, which are the organizations and unions of domestic workers.⁶⁷

4) ESCER obligations applicable to the right to care, in light of the ACHR

From the perspective of ESCER, the IACtHR has derived two types of obligations, those of a progressive and those of an immediate nature.⁶⁸ That is:

[...] *progressive realization* means that the States Parties have the specific and constant obligation to make the most expeditious and effective progress possible towards the full effectiveness of the ESCER; and this should not be interpreted in the sense that, while implementation is underway, these obligations are deprived of specific content; moreover, this does not mean that the States may postpone indefinitely the adoption of measures to give effect to the rights in question, especially nearly forty years after the entry into force of the inter-American treaty. Therefore, there is also an obligation of non-[retrogression] in relation to rights that have been realized.

Regarding the *obligations of an immediate nature*, these consist in adopting effective measures in order to guarantee access, without discrimination, to the benefits recognized for each right. Such measures must be adequate, deliberate and specific in order to achieve the full realization of such rights. Consequently, the Convention-based obligations of respect and guarantee, as well as the adoption of domestic legal provisions (Articles 1(1) and 2), are fundamental to achieve their effectiveness.⁶⁹

These dual obligations are fundamental for the analysis of States' duties with respect to the development of social rights for the benefit of domestic workers.

⁶⁷ *Ibid.*, p. 74.

⁶⁸ Cf. Calderón Gamboa, Jorge. *5 perspectivas cruciales frente a la emergencia climática y los derechos humanos: ESCER, derechos de la naturaleza, género, deberes individuales y la justicia climática. Observaciones escritas en el marco de la solicitud de Opinión Consultiva sobre emergencia climática y derechos humanos ante la Corte IDH.*

⁶⁹ Case of *Poblete Vilches et al. v. Chile*, para. 104.

On one hand, many of the duties of guarantee, prevention, non-regression⁷⁰ and the prohibition of inactivity⁷¹ in the procurement of such rights can fall under the category of **progressive obligations**⁷²

In this sense, State authorities, within the scope of their functions, must advance in their public policies to guarantee social security and the labor rights mentioned for all domestic workers.

For this, it will also be important to establish and monitor progress indicators, which are in turn divided into the following indicators:⁷³

- **Structural:** Reflect the ratification or approval of basic international legal instruments to facilitate the realization of a fundamental human right; and provide information for evaluating how the State organizes its institutional machinery and legal system to meets its obligations.
- **Process:** Measure the quality and extent of the state's efforts to implement rights.
- **Outcome:** Capture attainments, individual and collective, that reflect the status of realization of human rights in a given context.

As an example, with respect to the process indicator related to the scope, coverage, and jurisdiction of mechanisms for the inclusion of those engaged in domestic care work, according to the Working Group of the San Salvador Protocol,⁷⁴ States should report on:

⁷⁰ States should not allow the existing protection of economic, social, and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. *Ibid.* p. 21, Committee on ESCR.

⁷¹ IACtHR. Case of *Cuscul Pivaral et al. v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of 23 August 2018. Series C No. 359.

⁷² According to the UN Committee on ESCR, the basic obligation is to take measures to the maximum extent of available resources. The reference to the "availability of resources" is a way of acknowledging that the effectiveness of such rights may be hindered by the lack of resources and that it can only be achieved over a certain period of time. At the same time, it means that the compliance by a State with its obligations to take appropriate measures is assessed taking into account the resources - economic and otherwise - at its disposal. Furthermore, many national constitutions provide for the progressive achievement of the effectiveness of certain economic, social, and cultural rights. *Cf.* Office of the High Commissioner for Human Rights, Fact Sheet No. 33, Frequently Asked Questions on Economic, Social and Cultural Rights, p. 16.

⁷³ See infographic The Rights in the San Salvador Protocol. OAS.

⁷⁴ Guidelines for preparation of progress indicators in the area of Economic Social and Cultural Rights, Working Group of the Protocol of San Salvador.

Description: The indicator refers to the availability in the country of mechanisms for the inclusion of unpaid domestic care workers in social security protection. It is necessary to include a brief summary of the scope of these mechanisms, coverage, and jurisdiction. Coverage refers to the percentage of the population engaged in domestic care activities who receive social security protection, while jurisdiction refers to the geographical area within the country where these benefits apply.

For their part, **immediate obligations** will be crucial in situations resulting from clear breaches of the duty to respect or guarantee social rights for care workers, where states must act *appropriately, deliberately, and specifically*, without discrimination. The measures taken should be directed towards objectives that are as clear as possible, utilizing all appropriate means, particularly, though not exclusively, through the adoption of legislative measures.⁷⁵

Thus, for example, in cases where discrimination in employment of an individual or group within this sector is alleged, and it can be demonstrated that the labor and/or social security conditions are not optimal according to conventional standards, immediate obligations are triggered. This is also the case regarding factors of discrimination in relation to Article 1.1 of the ACHR.

As has been observed, one of the key struggles of domestic workers in the region is that they face discrimination based on gender, class, race, ethnicity, and migratory status. Many domestic workers are Afro-descendant or Indigenous women of migrant working-class origin.⁷⁶ The intersection of these identities contributes to the multiple human rights violations they experience.

Cases of this type, among others, are most likely to appear in litigation before the Inter-American Human Rights System. In such cases, the specific situation alleged can be verified, not only in light of the country's public policy.

Thus, immediate obligations are triggered with respect to each of these social rights. In the guarantee of each right, standards of *quality, accessibility, availability, and acceptability* applicable to ESCER can also be analyzed, and concerning which the IACtHR has already applied this method of analysis.⁷⁷

⁷⁵ OHCHR. Fact sheet No. 33, ESCER. p. 21.

⁷⁶ See also, IACtHR. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of 17 September 2003. Series A No.18.

⁷⁷ *Poblete Vilches v. Chile, Cuscul Piraval v. Guatemala, supra.*

From the perspective of the *UN Committee on ESCER*, there are also elements that can be useful for the interpretative analysis of State obligations in this matter, which are often divided into obligations of respect, protection, and fulfillment. Thus, as an example, the following can be observed regarding the right to work.⁷⁸

Respect: the State must not use forced labor or deny political opponents work opportunities.

Protect: the State must ensure that employers, both in the public and in the private sectors, pay the minimum wage.

Fulfill: the State must promote the enjoyment of the right to work by, for instance, undertaking educational and informational programs to instill public awareness thereof.

The Committee on ESCR has also developed standards regarding minimum core obligations. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), there is an immediate obligation to satisfy the minimum essential levels of each right. If a State fails to meet such obligations due to lack of resources, it must demonstrate that it has made every effort to use all available resources to satisfy, as a matter of priority, these core obligations. Even if a State has clearly inadequate resources at its disposal, the Government must still introduce low-cost and targeted programs to assist those most in need, so that its limited resources are used efficiently and effectively.⁷⁹

As an example of minimum core obligations highlighted by the Committee on ESCR in its general comments, States must ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, enabling them to live a life of dignity.⁸⁰

Now, with respect to *state obligations focused on this matter*, ILO *Convention No. 189* has established, *inter alia*, that states must adopt measures to ensure the effective promotion and protection of the human rights of domestic workers.

Respect and promote: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c)

⁷⁸OHCHR. Fact Sheet No. 33, ESCER, p. 17.

⁷⁹ *Ibid.*, p. 21

⁸⁰ *Ibid.*, p. 21

the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.⁸¹

Additionally, with respect to **State obligations**, the recent *Human Rights Council Resolution on the Centrality of care and support from a human rights perspective* urges States:

(a) To implement all measures necessary to recognize and redistribute care work among individuals, as well as families, communities, the private sector and States, in a manner that promotes gender equality and the enjoyment of human rights by all;

(b) To increase investment in care and support policies and infrastructure to ensure universal access to affordable and quality services for all, including childcare, and health and support services for persons with disabilities and older persons, and to ensure universal access to paid maternity, paternity and parental leave and social protection for all workers, including for both informal workers and those in non-standard forms of employment;

(c) To encourage and support research and surveys aimed at producing data disaggregated by income, sex, age, race, ethnicity, migratory status, civil status, disability, geographic location and other characteristics relevant in national contexts, and statistics on the extent and distribution of time use and care work and its providers and recipients, through regular time-use surveys and the establishment of satellite accounts to assess the contribution of such work to national income, and to quantify unpaid care work, and to include it in the gross national product for the purpose of designing, financing and assessing policies in this area;

(d) To adopt all measures necessary to enable the full, equal, meaningful and inclusive participation of women, persons with disabilities and older persons, as well as children, in decision-making relevant to care and support, in both private and public life, including social dialogue and collective bargaining by paid care workers;

(e) To raise awareness about the negative impact of gender, disability and age stereotypes in providing care and receiving care and support, and to develop programmes and policies to eliminate such stereotypes.

The IAMLIC also establishes a series of **state responsibilities** for the protection of the right to care:

⁸¹ ILO Domestic Workers Convention No. 189, 2011, Articles 2 and 3.

Article 50. *Caregiver State*. The State must ensure that public bodies and institutions, and the companies they own or control, comply with the principles of co-responsibility for caregiving and promote the adoption of these policies with their counterparts.

Article 51. *Quality regulations*. The State must promote the creation and adoption of certification norms around co-responsibility for caregiving in national public contracts and foreign trade.

Article 52. *Training and awareness*. The State, through the National Care System and with advice from the National Machinery, must promote continuing education for public officials in the areas of co-responsibility, gender and human rights. It must also support research on the topic of caregiving and implement awareness campaigns on the principle of equal opportunities and treatment, and social and family co-responsibility for caregiving for the population.

Furthermore, the IAMLC also establishes a series of *responsibilities for the private sector* for the protection of the right to care:

Article 53. *Duty to protect*. Employers must abstain from violating the right to care and instead implement the co-responsibility and job flexibility measures specified in Chapter IV of this law.

Article 54. *Support for caregiving services*. Businesses must support the existence of a quality caregiving infrastructure for their employees and the expansion of available caregiving services in collaboration with the National Care System.

Article 55. *Productive sector collaboration*. Productive sectors may work together to collectively offer caregiving services for employees with family responsibilities.

Article 56. *Promoting co-responsibility*. Companies, and specifically transnational corporations, should use their positions of influence to promote co-responsibility among their business partners, and ensure their vendors throughout the supply chain comply with their social co-responsibility on the topic of caregiving, provide caregiving services for employees with family responsibilities and promote the concept of family co-responsibility between men and women.

Additionally, Article 45 of the law establishes rules regarding the oversight and supervision of the National Care System (SNC), aimed at fulfilling the principles outlined in Chapter I concerning state coordination and effectiveness. In this sense, the article stipulates that the public entities that comprise the system should inform the National Care Secretariat of the results of the caregiving matters they monitor to help design policies that improve any weaknesses identified in audits. All services and programs designed to provide care services to dependent individuals and their caregivers must be

effectively supervised by independent authorities, who should have a wide range of competencies including oversight and sanctioning powers proportionate to the task.⁸²

In the realm of public policy, the ILO report titled “*Care work and care jobs for the future of decent work*” examined care policies in 99 countries and concluded that the inadequate provision of care services is often closely linked with the widespread employment of domestic workers (ILO, 2018a). The report proposes that:

A high road to care work means achieving decent work for care workers, including domestic and migrant workers. Caring for care workers requires reversing these trends by extending labour and social protection to all care workers, promoting professionalization while avoiding de-skilling, ensuring workers’ representation and collective bargaining and avoiding cost-saving strategies in both the private and the public care sectors that depress wages or shorten direct care time.

*

* *

In light of the foregoing, it is clear that the right to care includes, among other things, the provision of preconditions and guarantees under which care is provided. Therefore, care workers have various rights, particularly in the realm of ESCER, including the rights to decent work, social security (pensions), access to healthcare, and rest, among others. To guarantee these rights, states must fulfill their progressive and immediate obligations in accordance with Article 26 of the ACHR, interpreted in conjunction with other applicable provisions (*supra*). This does not exempt private parties from fulfilling their legal duties; private parties must be regulated, supervised, and monitored by state authorities as well.

C) *The right of workers in informal employment to access care*

As previously mentioned regarding this point, even though the request for an advisory opinion does not explicitly address the issue of informal employment, we believe that this perspective should be addressed by the IACtHR in its opinion as a crucial and interconnected issue, as it is essential for the American region to have a specific standard on the access of informal workers to care systems. Generally, these individuals lack social guarantees and are unable to access care services comprehensively, with various implications.

⁸² Cf. Implementation Guide for the IAMLC, *supra*, p. 70.

We reiterate that in Latin America and the Caribbean, 54% of the population is engaged in informal employment. Among this group, 55% are women and 53% are men. At the regional level, women earn only 83.9% of the wages earned by men. Additionally, women are overrepresented in informal, low-skilled jobs, and also in households living in poverty. (CEPAL, 2016). In the region, out of 14.8 million domestic workers, 91.1% are women. (ILO, 2021).

1) Informal employment: concepts, diagnosis, and public policies

Firstly, it is necessary to conceptualize what *informal employment* refers to, as well as to provide a brief diagnosis of the situation. Through various studies, the ILO, the international Expert Group on Informal Sector Statistics (called the “Delhi Group”), and WIEGO have worked together to broaden the concept and definition to incorporate certain types of informal employment that had not been included in the earlier concept and definition of the “informal sector.” These studies will be cited extensively.⁸³

Today, *informal employment* is widely recognized to include a range of self-employed persons, who mainly work in unincorporated small or unregistered enterprises, as well as a range of wage workers who are employed without employer contributions to social protection.

There are three related official statistical terms and definitions which are often used imprecisely and interchangeably: the *informal sector* refers to the production and employment that takes place in unincorporated small or unregistered enterprises (1993 ICLS); *informal employment* refers to employment without legal and social protection—both inside and outside the informal sector (2003 ICLS); and the *informal economy* refers to all units, activities, and workers so defined and the output from them. Together, they form the broad base of the workforce and economy, both nationally and globally.

The concept of *employment relationship* has always excluded those workers who are self-employed. Increasingly, some categories of wage workers have found themselves to be, in effect, without legal recognition or protection because their employment relationship is either:

⁸³ WIEGO. The Informal Economy: Definitions, Theories and Policies. WIEGO Working Paper No. 1, August 2012, Martha Alter Chen, pp. 6 and 7.

See, also, other related documents: WIEGO. Women and Men in the Informal Economy: A Statistical Brief. Florence Bonnet, Joann Vanek and Martha Chen. ILO.

- *Disguised*: The employment relationship is deliberately disguised by giving it the appearance of a relationship of a different legal nature. For example, the lead firm in a subcontracting chain may claim that it has a “sales-purchase”—or commercial—relationship with those who produce goods for it, rather than a subcontracted employment relationship.
- *Ambiguous*: The employment relationship is objectively ambiguous so there is doubt about whether or not an employment relationship really exists. This is the case, for instance, with street vendors who depend on a single supplier for goods or sell goods on commission for a distributor.
- *Not clearly defined*: The employment relationship clearly exists but it is not clear who the employer is, what rights the worker has, and who is responsible for securing these rights. For example, in value chain production, it is not clear who the real employer is: the lead firm, the supply firm, or the subcontractor. Similarly, in the case of temporary work, it is not clear who the real employer is: the agency that supplies temporary workers or the firms that hire them on a temporary basis.

Under each of these employment relationships, workers tend not to be protected under labor law or covered by collective bargaining agreements: in brief, they are informally employed. It is important to note that, in many such cases, the employer seeks to disguise the employment relationship or avoid definition of who is responsible; and that the employer in question may well represent a formal firm, not an informal enterprise.⁸⁴

Thus, informal employment is defined by workers’ exclusion or insufficient coverage, in law or in practice, from labor and social protection regimes. Compared to workers with open-ended, full-time employment, workers in the informal economy tend to be more frequently in non-standard forms of employment and are exposed to pervasive decent work deficits. Within the informal economy, employer-employee relationships may be non-existent, blurred, or deliberately concealed. Though not all workers in the informal economy are poor, informal employment is characterized by low earnings and unregulated hours of work.⁸⁵

In total, 2 billion people are in **informal employment**, representing 61.2 per cent of global employment (ILO, 2018b). Informal employment is a greater source of employment for men than for women globally (63 vs 58 per cent), in high- (19 vs 18 per cent) and middle-income (69 vs 64 per cent) countries due to women’s lower labor force participation rates.

⁸⁴ Ibid, pp. 12 and 13.

⁸⁵ WIEGO. Quality child-care services for workers in the informal economy, p. 3. ILO and WIEGO Policy Brief No. 1.

The share of women in informal employment (92 per cent), however, exceeds the share of men (87 per cent) in low- and lower-middle income countries. In addition, in a majority of countries (56 per cent), the percentage of women workers in informal employment exceeds the percentage of men workers (Bonnet *et al.*, 2019).⁸⁶

The majority of workers in the informal economy are self-employed, own-account workers (45 per cent), contributing family workers (16.1 per cent), and employers (2.7 per cent) (ILO, 2018b). Within the informal economy, women are concentrated at the base of the economic pyramid as industrial outworkers, homeworkers, and contributing family workers (Bonnet *et al.*, 2019). Women and men who are contributing family workers are considered as dependent workers (ILO, 2018c). They work in an establishment operated by a relative, with too little degree of authority over its operation to be considered a partner. They do not receive regular payments, such as a wage or salary, in return for the work performed. They may benefit, however, from in-kind payments or receive irregular cash payments as a result of the outputs of their work through family or intra-household transfers, derived from the profits of the enterprise or from the income of another person.

In 2018, women were more than twice as likely to be contributing family workers compared to men, accounting for 16.6 per cent of female employment and only 6.4 of male employment out of total global employment (ILO, 2018d). The share of contributing family workers out of total employment is as high as 42.8 per cent and 16.8 per cent for women and men in low-income countries, respectively.

Own-account workers refers to those who hold a self-employed job and do not engage “employees” on a continuous basis. Most own-account workers are in the informal economy and are involved in subsistence activities such as street vending or waste picking (ILO, 2019). Though women own-account workers tend to earn more than contributing family workers, research shows that own-account work for women is not a stepping stone to better employment opportunities. Fewer women own-account workers in the informal economy can expand their activities to become employers – representing only 1.7 per cent of total female employment, as compared to 3.8 per cent among men (ILO, 2018d).⁸⁷

In low- and middle-income countries, most women are employed as own-account or contributing family workers, representing 82 per cent of all women in informal employment (Bonnet *et al.*, 2019). This share is expected to decline with rising income levels. The pace of progress, however, is advancing too slowly in low-income countries to lead to a

⁸⁶ *Ibid.*, p. 3.

⁸⁷ *Ibid.*, p. 3

significant reduction in the shares of these two vulnerable groups. It is projected that by 2023 as many as 80 per cent of workers in such countries will still be own-account or contributing family workers (ILO, 2019). This suggests that the current tensions between women workers' income-generating activities and their responsibilities for childcare will remain a barrier to gender and income equality unless actions are taken to extend labor and social protections to workers in the informal economy.⁸⁸

With respect to *care responsibilities* and their *impact on income security*, WIEGO has documented that there are many reasons women have been pushed into the informal labor market: decreasing participation of men in employment; limited skills; insufficient creation of formal jobs; and erosion of labor protections. Globally, changing family structures due to urbanization and migration mean that most of the working age population lives in nuclear family households with little access to care services (ILO, 2018a). Some women may still receive support from extended family members living nearby. Older women may be able to provide some childcare, but many are themselves working in the informal economy to earn a living – particularly if they do not have access to a pension (ILO, 2017). A nuclear family structure in which extended family members are not present to care for children may translate to a greater strain on women to care for their children while earning an income. This is especially the case in the absence of quality, public childcare services and persistent gender norms that continue to see women as the main or sole caregiver (ILO, 2018a).⁸⁹

It is not surprising that women with care responsibilities are more likely to be contributing family workers and own-account workers as compared with women and men without care responsibilities. These forms of self-employment allow for more flexible working hours and for women to keep their young children with them while they work. According to ILO global estimates, 14 per cent of all women in informal employment work fewer than 20 hours per week for pay or profit, compared with 7.3 per cent of men in informal employment. The proportion reaches 20 per cent of women informally employed in Africa, the Americas and the Arab States (ILO, 2018b). This allows them to have some time to care for their children, even though work in the informal economy comes with lower earnings and little to no job security.

2) Universal childcare services

The lack of access to childcare services negatively impacts the ability of informal economy workers to earn income. During the COVID-19 pandemic, WIEGO documented

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p. 4.

how women with caregiving responsibilities, particularly childcare responsibilities, worked fewer hours and earned less than women and men without caregiving responsibilities.⁹⁰ This affects entire households that rely on these incomes to acquire basic necessities. Gender poverty gaps are most pronounced during prime reproductive years (between 25 and 34 years old), with 60 million women worldwide living in extreme poverty on less than \$1.90 a day, compared to 53 million men.⁹¹

Furthermore, WIEGO has also documented the principal obstacles to accessing childcare services for women workers in the informal economy,⁹² highlighting factors relating to their *affordability*, derived from the cost of services; *accessibility*, derived from their distance in relation to workplaces, as well as their hours of operation; and *quality*, which requires not only that the services be good, enabling women to work and as a means of escape from poverty for their children, but also that they generate trust.⁹³

In proposing a typology of childcare services available to informal workers, what is depicted is a scattered and, at times, ad hoc approach to the provision of childcare for the children of informal economy workers. Therefore, universal childcare service is needed to address the needs of all caregivers - including women and men in informal employment - whose children are more likely to live in poverty and be among the most vulnerable.

Investing in universal childcare services can yield a triple dividend by facilitating women's participation in the labor market, improving education and health outcomes among young children, and creating new decent work opportunities for women and men (UN Women, 2015a). More extensive childcare services can lead to new jobs in sectors supplying childcare provision and can also support job creation in other sectors due to increased consumption stemming from the earnings of those now in employment (De Henau et al., 2018).

Therefore, *universal childcare services* form part of the “high road to care work” that can open new pathways for workers’ transition from the informal to the formal economy.⁹⁴ While the drivers of informality are complex, a “high road to care work” can be one strategy to address persistent levels of informality, gender inequality and inter-generational poverty. The potential immediate and long-term gains of investing in

⁹⁰ Ogando, Rogan, Moussie. Impacts of the COVID-19 pandemic and unpaid care work on informal workers' livelihoods. Volume 161, Issue 2. Special Issue: COVID-19 and the world of work (Part II). June 2022. Pages 171-194.

⁹¹ From Insights to action. Gender equality in the wake of Covid-19. UN Women 2020.

⁹² WIEGO. Extending childcare services to workers in the informal economy: Policy lessons from country experiences. ILO and WIEGO Policy Brief No. 3.

⁹³ *Ibid.*, p. 3.

⁹⁴ *Ibid.*, p. 8.

childcare will not only benefit women informal workers, but society at large, including children from disadvantaged backgrounds. Care policies aimed at redistributing childcare responsibilities amongst women workers, the community, and the State, must focus on affordable options, especially considering that childcare can quickly become unaffordable for informal workers whose earnings tend to be low and irregular.⁹⁵

Though achieving universal childcare is initially a costly investment, it can promote job growth, strengthen tax revenues, social security savings, and act as a stimulus in times of underemployment and recession (Ilkcaracan, Kim and Kaya, 2015). Finally, women workers in the informal economy – including childcare workers and domestic workers – must be represented through social dialogue structures where childcare policies and investments are debated. Their needs and rights to decent working conditions must be adequately addressed as workers and unpaid carers seeking support with childcare.⁹⁶

The foregoing, additionally, is clearly framed within the idea that the protection of these workers is not wholly incompatible with capital or productivity-driven ideas, by emphasizing the economic contributions of informal workers.⁹⁷

The magnitude of the required investment, while not negligible, is necessary for states to harness the potential triple benefit of: i) decent job opportunities for childcare workers; ii) improved outcomes in nutrition, health, and education for young children; and iii) increased income security for women informal economy workers. An integrated approach is needed that considers the benefits for children, workers, and childcare workers. The formal representation of informal economy workers who require and provide childcare services is essential for establishing sustainable quality childcare systems.⁹⁸

3) Legal framework: toward regulations ensuring care provisions for informal employment

In addition to the norms that have been previously cited regarding the rights of care for girls, boys, and adolescents (*supra*), the following are other international instruments on the subject to be considered.⁹⁹

⁹⁵ *Ibid.*, p. 10.

⁹⁶ *Ibid.*, pp. 10 and 11.

⁹⁷ Alfes, Lund and Moussié. *Approaches to social protection for informal workers: Aligning productivist and human rights-based approaches*. International Social Security Review, Vol. 70, 4/2017.

⁹⁸ *Ibid.*, p. 17.

⁹⁹ WIEGO. Labour and human rights frameworks promoting childcare for all workers. ILO and WIEGO Policy Brief No. 2, p. 4.

Table 1. ILO Conventions and Recommendations related to maternity protections and childcare

Document	Title	Year	No. of Ratifications
Convention 102	C102 – Social Security (Minimum Standards)	1952	58
Convention 156	C156 – Workers with Family Responsibilities Convention	1981	45
Convention 183	C183 – Maternity Protection Convention	2000	38
Recommendation 202	R202 – Social Protection Floors Recommendation	2012	-
Recommendation 204	R204 – Transition from the Informal to the Formal Economy Recommendation	2015	-

Source: ILO Normlex, as of September 2019.

It is important to highlight *ILO Social Protection Floors Recommendation No. 202*.¹⁰⁰

Box 1. The ILO Social Protection Floors Recommendation, 2012 (No. 202)

Paragraph 5: The social protection floors referred to in Paragraph 4 should comprise at least the following basic social security guarantees:

- (a) *access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality;*
- (b) *basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services;*
- (c) *basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and*
- (d) *basic income security, at least at a nationally defined minimum level, for older persons.*

WIEGO has documented the human rights and labor framework promoting childcare services for all workers,¹⁰¹ concluding that these frameworks and the international labor standards developed by the ILO establish *the right to childcare services for all – including workers and children*.

¹⁰⁰ *Ibid.*, p. 6.

¹⁰¹ *Ibid.*, p. 9.

Despite the lack of adequate childcare services in low-income countries and gaps in social security coverage, there are legal frameworks to support the demands of childcare workers. These frameworks can also guide the formulation of childcare policies and early childhood education and development policies that are sensitive to the rights of both children and their caregivers.

However, it is of vital importance to understand that in order for quality childcare services to reach disadvantaged and marginalized children, the working conditions and incomes of informal sector workers must be considered. Moreover, extending social protection coverage to informal economy workers during maternity, and while providing care to their children and other dependents, will be more effective if accessible quality childcare services exist. This points towards a path of collaboration and collective bargaining for all workers - both women and men employed in the formal and informal economy.

For its part, in line with this same spirit of seeking a comprehensive solution, in the Inter-American system, the IAMLIC promotes a *National Care System*, setting out the following:

Article 36. National Care System. The National Care System is the universal and publicly accessible system with solidarity-based funding that brings together various types of public, national, local, private and community benefits for caregiving services, to comply with the right to care, strengthen and expand comprehensive caregiving alternatives and to guarantee those rights to caregivers.

The National Care System should ensure the full coverage, sufficiency, equity, continuity, sustainability and accessibility of caregiving services and benefits, along with their comprehensiveness, suitability and effectiveness, and the extensive application of gender in all areas and levels.

The National Care System must be action and results-oriented, establishing goals, indicators and deadlines.

Article 37. Goals of the National Care System. The National Care System has the following objectives:

1. To guarantee the right to care for dependents, working toward their comprehensive development and promoting their autonomy based on their needs and different types of care required.
2. To promote, facilitate and improve job placement opportunities as well as access to the economy and education for caregivers.
3. To promote and strengthen the economic rights of unpaid women caregivers, and to drive change in how work is currently divided by gender.

4. To support strategic initiatives for creating formal opportunities for women in the caregiving economy.
5. To promote social co-responsibility, work-life balance and redefined caregiving as a pillar of the social welfare state.
6. To optimize public resources (national and local) as well as private resources for caregiving, and to promote the creation of alliances between all the system's actors.

[...]

Article 42. *Caregiving services.* The State recognizes and guarantees that dependents and caregivers have access to a variety of home care, nursing home and other types of support services, including personal assistance, ensuring that State, private and community services and facilities address their needs.

Article 43. *National Availability.* The National Care Secretariat will keep track of the public and private caregiving services available throughout the country to ensure it has information to create public policies; identify priority caregiving areas; track and make forecasts for the short, medium and long term; proactively connect users with the available services; and deliver the benefits and services to the population efficiently and effectively.

According to the Implementation Guide for the IAMLC, national care systems pursue two main objectives: first, ensuring and guaranteeing the right to care for all individuals in situations of dependency, and second, overcoming the gendered division of labor and the disproportionate burden of unpaid care work on women by establishing social care co-responsibility.¹⁰²

As an example, in countries such as Uruguay and Costa Rica, care systems established by law have been implemented to coordinate services provided to various groups of the dependent population. "In Uruguay, the *Comprehensive Care System* (SNIC) has been designed and implemented and is currently under review. In Costa Rica, the *Childcare and Development Network* (RedCUDI) is a policy that reaffirms the right to care for children under 7 years old and articulates existing private, public, and NGO initiatives, policies, and services."¹⁰³

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¹⁰² Implementation Guide for the IAMLC, p. 61.

¹⁰³ *Ibid.*, p. 60.

In view of the foregoing, it must be concluded that informal workers face serious limitations and obstacles to the guarantee of their right to access care for dependents, especially children, as well as for elderly or disabled persons. Therefore, it is of vital importance that States establish a *comprehensive care system or similar service* that can provide quality, accessible care that is available to the entire population, including informal workers. Even though they may not have a formal contract or contributions to the formal social security system, the system should permit their inclusion in order to guarantee their right as workers to access care and support for their dependents.

These obligations can be derived primarily from Article 26 of the ACHR and the provisions of the OAS Charter, and from the binding treaties protecting the groups mentioned above who may find themselves in situations of dependence.

Just as the IACtHR has ordered public policy measures as part of comprehensive reparations in various cases, through guarantees of non-repetition,¹⁰⁴ the establishment of a universal care system is in line with obligations deriving from the American Convention, particularly its Articles 2 and 26.

IV. Final Reflection

We believe that this is an historic opportunity for the IACtHR to integrally address the right to care. To achieve this, we consider it essential that the Court include the situation and perspective of informal workers' rights, even though this aspect may not have been explicitly raised in the initial request. The main approaches in this matter have focused on understanding this interrelation, so omitting it would risk limiting this opinion with respect to one of the central points in the analysis of the subject.

We are convinced that the new ESCER jurisprudence developed by the IACtHR based on the justiciability of Article 26 of the ACHR is the key legal framework for addressing these rights in their social dimension. Particularly, it allows for the development of progressive and immediate obligations regarding the right to care, thus making a fundamental contribution to international law.

¹⁰⁴ See, for example, Case of *Poblete Vilches et al. v. Chile*. As measures of comprehensive reparation: (vi) reinforce the National Institute of Geriatrics and its impact on the hospital network; (vii) design a publication or leaflet on the rights of the older person in health-related matters; y (viii) take the necessary measures to design a *general policy for the comprehensive protection of the older person*.

In this regard, we offer these reflections and inputs with the intention of contributing to the development of standards in this field, hoping that they may be taken into account in the corresponding Advisory Opinion to be issued by this honorable IACtHR.

At WIEGO, we have confidence in the significant work that this IACtHR can generate on this topic, and we remain at your disposal should you need further input on the matter.

Sincerely,



Bertha Isidore on Companies House.pdf - Search (bing.com)

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V. Annexes WIEGO

Links to documents:

- Lexartza Artza, L., FITH and WIEGO. 2022. Imagining Social Security for Domestic Workers.
- ILO and WIEGO. 2020. Labour and human rights frameworks promoting childcare for all workers.
- Ogando, A. M. Rogan and R. Moussié. 2021. “Impacts of the COVID-19 pandemic and unpaid care work on informal workers' livelihoods.” *International Labour Review* 141 (2) pp. 171-194.
- WIEGO, ILO and UNICEF. 2021. Family-Friendly Policies for Workers in the Informal Economy.



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