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**GUIDELINES FOR PREPARATION OF
PROGRESS INDICATORS IN THE AREA OF
ECONOMIC, SOCIAL AND CULTURAL RIGHTS¹**

¹ The preparation of these guidelines was entrusted by the IACHR to Commissioner Víctor Abramovich, who was able to count on the collaboration of Oscar Parra and Marisol Blanchard, lawyers of the Executive Secretariat of the IACHR. Laura C. Pautassi, a specialist in social policy planning and management at the University of Buenos Aires, Doctor of Law, and Researcher at the National Research Council (CONICET), also participated in the preparation of this document as expert consultant. These guidelines also took into account contributions and specific comments submitted by a number of governments in the region and by numerous nongovernmental organizations, academic centers, and experts in the framework of a public consultation process opened by the IACHR for two months, from November to January 2008. The IACHR is most grateful for all the contributions and suggestions received, the great majority of which have been included in the document.

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INTRODUCTION

1. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter "the Protocol of San Salvador" (PSS) or "the Protocol") entered into force on November 16, 1999. Article 19 of the Protocol provides that pursuant to the provisions of that article and the corresponding rules to be formulated for this purpose by the General Assembly of the OAS, states parties undertake, in accordance to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol. All reports are to be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Council for Integral Development (CIDI) and the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission"),² so that they may examine them.

2. On June 7, 2005, the General Assembly of the OAS, by resolution AG/RES. 2074 (XXXV-O/05), adopted "Standards for the Preparation of Periodic Reports pursuant to the Protocol of San Salvador" (hereinafter "the Standards")³. This resolution instructed the Permanent Council to make proposals, through the Committee on Juridical and Political Affairs, on the composition and functioning of a Working Group to examine the national reports, and requested the IACHR "to propose to the Permanent Council for possible adoption [...] the progress indicators to be used for each group of protected rights on which information is to be provided, taking into account, among other things, the contributions of the Inter-American Institute of Human Rights."

3. The Standards do not provide detailed criteria for the IACHR to follow in preparing proposals for a progress indicators model. In that regard, the Standards only mention that the system of progress indicators should make it possible "to determine, with a reasonable degree of objectivity, distances between the actual situation and the standard or desired goal."⁴

4. In order to move forward with implementation of this mandate, the IACHR convened a meeting of experts that was held on October 25, 2005, in the framework of its 123rd regular session. Among its objectives it was intended that the "Meeting of Experts on Strengthening the Activities of the Inter- American Commission on Human Rights in the Area of Economic, Social and Cultural Rights," should make it possible i) to receive input on how the work of the IACHR might best contribute to the advancement of economic, social, and cultural rights in the region without duplicating the regular efforts of other intergovernmental agencies; and, ii) to make suggestions to the Commission on how best to complete the mandate that the General Assembly assigned to it in resolution AG/RES. 2074 (XXXV-O/05)⁵.

² The Protocol originally provided that all reports should be submitted to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture. By amendment to the Charter of the OAS, those Councils were merged into the Inter-American Council for Integral Development in 1996.

³ The process for submission and evaluation of reports is as follows: States should submit progress reports every three years. Analysis of each report shall commence within 60 days after its receipt, with the participation of all the organs or agencies of the inter-American system mentioned in Article 19 of the Protocol of San Salvador. The written reports of CIDI, the IACHR, and other organs and agencies shall be conveyed to the Working Group charged with examining the reports sufficiently in advance for them to be included in its activities. The Working Group shall present its preliminary conclusions to each state party. Following receipt of those preliminary conclusions, each state party shall have 60 days to make additional comments on said preliminary conclusions. The Working Group shall adopt final conclusions on the analyzed reports by consensus. Those conclusions shall be notified to the State party in a written communication and at a meeting with the accredited permanent representative to the Organization of American States.

⁴ *Ibid*, Standard 5.2.

⁵ The subject matter of the seminar is of great interest to the users and actors of the inter-American system. Thus, at the meeting a number of ideas were presented on measurement, at the international level, of progressive observance of economic, social, and cultural rights. These ideas could be harnessed by the Commission, states, other national and

5. This document contains guidelines developed by the Commission for the evaluation and monitoring of economic, social, and cultural rights (hereinafter ESCR or social rights) provided in the Protocol of San Salvador. The aim in so doing is to provide states parties, other agencies of the Inter-American system, and civil society organizations with a tool that serves not only as a basis for the presentation of reports under the Protocol, but also for the design of a permanent internal evaluation mechanism for each state party. These are methodological guidelines that are not intended to be exhaustive but sufficiently extensive and open to permit the inclusion of adjustments and variations to cater to different local and regional contexts. The aim is to make indicators and qualitative signs of progress consistent with different realities in a context of broad participation and rigorous methodological transparency.

6. The document is divided into six parts. The first describes possible strategies to increase the effectiveness of the standards on economic, social, and cultural rights contained in the Protocol and includes a number of general observations and comments on the reporting system. The second part draws a conceptual distinction between socioeconomic indicators and indicators on rights, in order to make clear the extent to which this proposal does not seek to duplicate the efforts of other specialized agencies that already generate indicators in the region.

7. The third part sets out a methodological proposal for quantitative indicators and qualitative signs of progress. It defines and describes three types of indicators and signs: i) structural indicators; ii) process indicators; and, iii) outcome indicators. It also describes three analytical levels or categories by which to organize relevant information: i) incorporation of the right; ii) state capabilities; and, iii) financial context and budgetary commitment.

8. The fourth part, in keeping with the recommendations of the Standards, sets out crosscutting issues that make it possible to gauge if favorable conditions exist for persons to access the social rights recognized in the Protocol, as well as the effectiveness of institutional guarantees and domestic protection mechanisms for the rights enshrined in the instrument. In particular, the document develops three crosscutting issues that would be measured by means of indicators and signs of progress: i) equality; ii) access to justice; and, iii) access to information and to participation.

9. In the fifth part, the Commission presents a set of quantitative indicators and qualitative signs of progress on a number of rights recognized in the Protocol using a variety of reference sources, including the guidelines for submitting reports to the United Nations Committee on Economic, Social and Cultural Rights and other committees of the universal system of protection; as well as the work of special rapporteurs and independent experts. The proposed guidelines are applied at this first stage to the right to social security and the right to health (Arts. 9 and 10 of the Protocol). The aim is to show, using these rights as examples, how this methodology, which is clearly applicable to all the rights set forth in the Protocol, works.

10. In the sixth part of the document, the Commission offers a number of suggestions on the procedure to follow in the preparation, presentation, and evaluation of reports under the Protocol, in whose framework the indicators proposed should be applied.

11. The IACHR considers that these methodological guidelines for the evaluation and monitoring of economic, social and cultural rights are merely the first step in a gradual process that

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international agencies, and civil society organizations to create a monitoring and evaluation system that includes a range of indicators, including progress indicators, in the area of observance of social rights. Discussions centered in particular on the need to develop a procedure that meets the specific needs of the region.

should encompass all the rights protected in the Protocol. The IACHR believes it necessary to create a discussion and consensus-building forum to stimulate the reporting process, the participation of states and civil society, and, at the same time, the design of permanent domestic monitoring mechanisms in each state party, as well as encouraging them to formulate individual national strategies to ensure realization of the social rights contained in the Protocol.

GUIDELINES FOR PREPARATION OF PROGRESS INDICATORS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

I. GENERAL OBSERVATIONS ON THE REPORTING SYSTEM UNDER ARTICLE 19 OF THE PROTOCOL OF SAN SALVADOR

1. Article 19 of the Protocol of San Salvador provides that states parties shall submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol.

2. The aim of the Standards for the preparation of the periodic reports mentioned in Article 19 of the Protocol of San Salvador, adopted by the General Assembly of the OAS (resolution AG/RES. 2074 XXXV-O/05), is to draw up "guidelines and rules" for the design of reports in accordance with a system of progress indicators. The Standards mention that "particular attention has been given to the principle of progressiveness of economic, social, and cultural rights (ESCR), understood as the adoption of public policy that recognizes ESCR as human rights, whose full realization, generally speaking, cannot be rapidly achieved and which, therefore, require a process in which each country moves at a different pace toward achieving the goal. Except as warranted in extreme cases, this principle regards regressive measures as invalid and excludes inaction."⁶

3. The specific inclusion of progress indicators in the Standards represents a progression in relation to the Protocol, which did not specifically provide for them. According to the spirit of the Protocol, progress indicators should consider progress in the realization of rights and not measure advances or setbacks in terms of development (economic and social). Accordingly, a distinction should be drawn between economic and social progress and fulfillment of the Protocol of San Salvador.⁷

4. It is as well to recall at the outset that the monitoring procedure provided in the Protocol is not intended to assess the quality of the public policies of states, but to monitor compliance or otherwise with their legal obligations under the Protocol. The Protocol contains an extensive range of obligations, both positive and negative, as well as immediate and progressive. In order to oversee compliance with these obligations it will frequently be necessary to observe which strategies, measures, and public policies states have implemented in an attempt to ensure the exercise of rights. Clearly, states can meet their obligations by choosing from a broad range of courses of action and policies. It is not for international monitoring and mechanisms to judge those options that each State has selected in exercise of its sovereignty to realize the rights contained in the treaty. It will be necessary, however, to determine if those public policies violate rights recognized in the Protocol, and to examine whether or not they have managed, through those policies, to fulfill of their positive obligations -whether immediate or progressive- under the Protocol. The ultimate aim of the system of indicators and signs of progress is not, then, to review policy, but

⁶ Resolution AG/RES. 2074 (XXXV-O/05) of June 7, 2005. Annex, Context of the Proposal.

⁷ It should be noted that in recent years, efforts as regards definition of social indicators and quantitative signs of progress have centered on moving beyond indices and averages, and sought, rather, to incorporate a human-rights perspective in conjunction with the Millennium Development Goals (MDG) and, thereby, make it possible to examine the situation of specific social groups and use measurement and monitoring tools better suited to different national realities. In this regard, see Simone Cecchini (2007) *Indicadores ODM y derechos humanos en América Latina: ¿Tan lejos, tan cerca?* [MDG indicators and human rights: So near and yet so far?], ECLAC, Santiago, Chile. Available at <http://www.eclac.cl/dds/noticias/paginas/6/28106/IndODMDDDHH.pdf>.

only examine policies, aspects thereof, or the impact of certain policies, as a means to arrive at certain conclusions regarding extent of compliance with and implementation of the Protocol.⁸

5. The progress indicators mentioned by the standards would not only serve to reach conclusions of a general nature on progress or setbacks in the implementation of the Protocol by states. The principle of progressiveness in economic, social, and cultural rights permits their application in monitoring both general situations and specific situations in which there may have been reverses in the exercise of certain rights. Accordingly, the system of indicators and signs of progress should help not only to reveal developments in the overall situation of a country over a given period, but also, where possible, to identify specific serious violations of rights recognized in the Protocol, in particular problems of a collective compass, or that stem from reiterated practices or patterns, or from factors of a structural nature that may affect certain sectors of the population, such as, for example, the denial of basic social rights to an ethnic community or a particular social group.

6. By virtue of the obligation to adopt progressive measures, in principle, states are forbidden to adopt policies, measures, and laws that, without proper justification, worsen the situation of economic, social, and cultural rights that existed at the time of adoption of the Protocol or that exist subsequently in the wake of each “progressive” step forward. To the extent that the State undertakes to improve the situation of these rights, it simultaneously accepts the prohibition to reduce the levels of protection for rights in force or, as applicable, to abolish existing rights without sufficient cause. Therefore, the first instance of evaluation of progressiveness in the implementation of social rights consists of comparing the extent of the entitlement and content of rights and guarantees granted by new regulatory measures with the prior situation of recognition, extent, and scope of rights. As mentioned, the undermining or worsening by the State of those factors without just cause would constitute an unauthorized regression under the Protocol. The principle of non regression is, therefore, one of the parameters by which the measures adopted by states are judged.

7. The system of progress indicators and periodic reporting procedure provided in Article 19 of the Protocol should not only serve the purposes of international monitoring, but also enable states and civil society to evaluate implementation of the Protocol at the domestic level. In this connection, the guidelines set out in this document are intended as a tool to allow states to improve the evaluation of the measures and strategies they implement to ensure rights. The standards include the principle of reciprocity, “since the work entailed in preparing the report benefits the State in return by helping it to draw up a list of its needs and a more precise definition of its wants.”⁹ For this to occur, the IACHR considers it important for states to define, by means of open discussions that involve civil society, national strategies to bring about the realization of the rights contained in the Protocol, and for these strategies to include Protocol performance goals. In other words, goals for performance of obligations in a given timeframe. These goals would help to improve the review of reports through the use of progress indicators, making it possible to measure progress not only in a particular situation, but also in a prospective manner, in terms of proximity to the goals set by the State in keeping with the legal obligations that it has adopted.¹⁰

⁸ States may implement a policy that efficiently accomplishes its objectives but is discriminatory and, therefore, incompatible with the Protocol. They may also implement a policy that meets their minimum obligations under the Protocol, which will be sufficient for international supervisors even though a particular observer might say that other policies would be more advisable or produce better results than those achieved. See in this connection note 18.

⁹ *Ibid.*, Annex, Context of the Proposal.

¹⁰ All evaluations must be based on empirical evidence and distinguish between: goals, which are the desired ends and expressed in qualitative terms (“reduce mortality in the under fives”); targets, which are the quantitative levels we seek to attain over a specific time (“reduce mortality in under fives by two thirds between 1990 and 2015”), and, lastly, indicators, which are variables used in targets to measure progress toward goals (“mortality rate in under-fives”) (Cecchini,

8. The IACHR considers it essential that states encourage broad civil society participation with rigorous methodological transparency, both in the design and implementation of their national strategies, and in the procedures for preparation of reports under the Protocol and, as appropriate, in follow-up on recommendations from the monitoring body.

9. The Standards do not provide detailed criteria on which the IACHR should base its proposals for a progress indicators model. In that regard, the Standards only mention that the system of progress indicators should make it possible “to determine, with a reasonable degree of objectivity, distances between the actual situation and the standard or desired goal.”¹¹ To that end, it would be fair to consider “that the Protocol of San Salvador expresses a standard against which to assess, on one hand, constitutional compatibility, legal and institutional development, and governance practices of states; and, on the other hand, realization of the aspirations of different sectors of society expressed, *inter alia*, through political parties and civil society organizations.”¹² The standards provide that “information with respect to each of the protected rights should take the following into consideration: gender equity; special needs groups (children, the elderly, and persons with disabilities); ethnic and cultural diversity, in particular with respect to indigenous peoples and persons of African descent; and involvement of civil society organizations in any progress in legislative and public policy reform.”

10. The Commission also considers that **quantitative indicators** should be supplemented with **qualitative signs of progress**, so as to help put statistical information into context and provide elements of analysis for the monitoring body. Both quantitative indicators and qualitative signs of progress should be designed taking into account the various approaches suggested by the Standards. The system of indicators and signs of progress used should allow a margin of flexibility in addressing particular problems and characteristics when the situation in a given country is under review and, at the same time, make it possible to record changes and perform comparisons over time.

11. Indicators can take different forms -statistical data collected in a census or household surveys; questions put in a questionnaire or an open interview, budgets, public social spending (all disaggregated by sex, race, ethnicity and incorporating gender-specific indicators)- and may be “operationalized,” depending on the information-gathering technique that each state selects, with rigorous methodological transparency and in accordance with international agreements and standards.¹³ It should be made clear that, as with all analytical processes, margins of uncertainty are assumed; that is to say, the relationship between the indicators and what they aim to measure -

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2007 *op. cit.*). Signs of progress are also specifically included and represent quantitative dimensions that reflect the progression in changes toward the ideal desired outcome (goal). If the goal has been set taking into account real possibilities, signs of progress could be better interpreted in terms of sequential deadlines or periods of time: short-, medium-, and long-term, although this is not at an exclusive requirement. Indeed, it is precisely the purpose of signs of progress to monitor accomplishments that help to achieve the desired goal. Sarah Earl, Fred Carden, Terry Smutylo (2002) *Outcome Mapping: Building Learning and Reflection into Development Programs*, CIID_IDRC, Ottawa, Canada.

¹¹ *Ibid.*, Standard 5.2.

¹² *Ibid.*, Standard 5.2.

¹³ The operationalization process should draw a distinction between two fundamental notions: conceptualization and measurement. Conceptualization is the theoretical process whereby the content and standards of social rights are clarified in terms of both positive and negative obligations. This clarification should be made so that the definition of the right encompasses the meaning usually assigned to it. Hence the importance that each indicator be referenced in terms of the provisions contained in the Protocol of San Salvador. In second place, measurement concerns the overall process of linking concepts to empirical indicators. It entails theoretical and empirical considerations. From a theoretical standpoint, what is of interest is the concept; from an empirical perspective, the central aspect of the process is the observable response.

in this case the observance of a social right recognized in the Protocol- will always be assumed and never known for certain, which is why probability estimates are used.¹⁴ The foregoing means that any monitoring body is limited in its ability to measure the situation of rights in a given state on the basis of indicators alone. Hence, indicators cannot be the only tool for verifying compliance with the Protocol.¹⁵

12. Without question, the possibility of access to reliable and secure information sources will be critical for ensuring the effectiveness of quantitative indicators and qualitative signs of progress. The indicators and measurement units to be used in each case must realistically take into account the type and quality of information available in each state. The foregoing is without prejudice to the duty of states to ensure the production, disclosure, accessibility, exactness and transparency of information of this type as a precondition to guarantee the effectiveness of the Protocol monitoring mechanism, as well as the active participation of civil society in the process.

13. The Commission emphasizes that the reporting system in the inter-American context should function in a manner that complements the reporting procedure of the UN Committee on Economic, Social and Cultural Rights. The process for monitoring implementation of the Protocol of San Salvador should not duplicate the activities of other follow-up mechanisms in effect under the universal system of protection of human rights. That is possible if specific issues in each region and State are correctly selected, enabling the principle of accountability to be realized to the fullest possible extent. For that reason, the indicators proposed will only be indicative and would in no way replace the need for the monitoring bodies created for that purpose to devise in each case a strategy to verify implementation of the Protocol in each state.¹⁶

II. SPECIFICITY OF HUMAN RIGHTS INDICATORS

14. Defining a methodology to measure compliance by states parties with their obligations in the area of economic, social, and cultural rights is, as mentioned, a complex task that warrants particularly careful consideration.

¹⁴ A clear example of the incongruity that can exist between indicators and concept to be measured arises in monitoring observance of the right to health. Generally speaking, from a public health perspective the approach employed focuses on a population or collective analysis of "public health problems," in which the problems considered as such are those of the greatest magnitude or seriousness. In turn, from a human rights point of view, the object to be measured is the level of observance or violation of the right to health and, on that premise, the aim is to establish patterns of behavior in the State based on individual cases. In this way, the pressures on the health authorities to modify certain administrative conduct occur from a public health perspective, on the basis of data and an analysis of behavior with respect to the health of population groups; accordingly, the effects on individuals are usually lost if, for the purposes of the majority, the behavior is beneficial. As regards human rights, it is enough that the rights of individuals are violated to demand that the State amend its behavior. The challenge that this methodology faces is to combine the two approaches, by attempting to triangulate indicators with signs of progress in monitoring *continuum* to verify compliance by the State with its obligations. In this connection, see *Consortio de Investigación Económica y Social* (2004) *Vínculo entre la Salud Pública y los Derechos Humanos*. Lima, Peru.

¹⁵ Hunt says that there is no alternative to indicators, but their role should not be overstated, noting that "no matter how sophisticated they might be, indicators will never give a complete picture of the enjoyment of the right to health in a specific jurisdiction," Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Doc E/CN. 4/2006/48 of 3 March 2006, paragraphs. 29-33.

¹⁶ As mentioned in the contribution made by ECLAC to this document, "*it is essential to move beyond averages and adopt a human-rights perspective*" because human rights cannot be fully measured by statistics alone. For that it is essential to have social indicators disaggregated, *inter alia*, by sex, race, ethnicity, area of residence, social class, employment category, and gender, in order to highlight inequality, among other phenomena. Moreover, human rights indicators give particular attention to the policies and practices of legal and administrative entities as well as to the conduct of officials, which, when combined with structural indicators on fulfillment of the Millennium Development Goals, provide a general overview of development policy and the progressive realization of economic social and cultural rights.

15. While progress indicators have been used in the past in the framework of the inter-American human rights system, are expressly provided for in the Standards, and are the most suitable way to measure the provisions contained in the Protocol, a distinction should be drawn between indicators on rights and indicators on the economic and social context. The purpose of the progress indicators to which the Standards allude is to verify compliance with undertakings adopted in an international treaty on human rights. Accordingly, these rights indicators do not merely collect information on the economic and social situation in a state party but, rather, are designed to verify observance and the effective exercise of such rights.

16. The construction process for human rights indicators uses information on the social and economic situation as points of reference to analyze the progressive obligations of states vis-à-vis social rights. However, the process does not take that information separately but combines it with other data on institutional mechanisms and public policies designed progressively to ensure the effective exercise of those rights, as well as with information on the population's resources and capabilities to demand those rights with increasing effectiveness. In other words, it seeks to measure the *progressive realization* of rights and not simply the level of economic and social development of the country, even though that level of development may be a relevant factor in the determination of certain state obligations.¹⁷

17. Information on structural factors, which determine the possibility of *effective access* to social rights, is also considered relevant. Thus, for example, rights indicators assign very high importance in each country to constitutional and statutory recognition of rights; available participation, transparency and accountability mechanisms; institutional design of policies, programs, and social services organized by the State to ensure the exercise of rights; problems of accessibility, disclosure, and cultural pertinence of those services, and the operation of systems of justice, among other aspects.

18. It is also important for a system of rights indicators to measure the capability of individuals to demand the rights to which they are entitled. This point is essential because, notwithstanding positive trends in the realization of rights overall, the State is required to ensure the exercise of rights to all persons in its territory and that obligation is not discharged simply because it ensures them for a large proportion or the majority. The information collected should serve to provide a diagnosis of the situation of potential holders of the rights recognized by the Protocol and the likelihood that they can demand successfully. This likelihood does not depend merely on statutory recognition or on the legal position of each individual, but on the availability of a series of resources and capabilities. We could mention, for instance, material and financial resources; intellectual, social and cultural capabilities; language skills, information, and knowledge; access to legal advisory and representation services; and economic resources. Also significant on occasion is membership of social networks and contacts with key stakeholders, such as civil society organizations with the capability to demand rights or mobilize and negotiate with state authorities.

19. Given the uneven distribution of these resources and capabilities in our societies, there will be sectors of the population and that will also be at a disadvantage when it comes to demanding their social rights for want of certain of these resources or capabilities. There may also be cases of individuals who are not members of a group or sector that could be defined as a vulnerable for the purposes of demand their rights, but who are temporarily caught in circumstances

¹⁷ For example, to measure the use of the maximum available resources. Furthermore, some provisions in the Protocol and in the International Covenant on Economic Social and Cultural Rights directly establish a number of public policy objectives and development goals, such as the accomplishment of full employment, eradication of infectious and endemic diseases, and elimination of malnutrition.

that make it difficult to do so, such as, for example, unemployment without social benefits or severance of family or social ties; or the case of stateless persons, victims of internal displacement, refugees, and asylum seekers. A system of indicators or of qualitative signs of progress cannot be expected to provide information sufficiently detailed to examine the situation of individual persons, but it should supply enough data to enable an observer to determine if conditions favor or hamper the ability of a person or a sector of the population in a given country to demand their social rights from the State.

20. The confusion between rights indicators and development indicators usually stems from the fact that the development of countries has been quantified by means of statistical indicators and specific methodologies such as the one used in the Human Development Reports of the United Nations Development Programme (UNDP). In this particular case the aim is to show development as a process, in particular the increase in people's lifetime opportunities based on the removal of obstacles to the full use of their capacities. The reference to lifetime opportunities covers a gamut of activities that includes consumption of basic goods (food, clothing); cultural activities, human liberties, and the possibility to participate in government. The Human Development Index (HDI) was constructed in order to get around limitations in terms of information on, and comparison of, a large group of countries. The HDI measures three types of basic opportunities: the possibility for a person to enjoy a long and healthy life; the possibility of acquiring knowledge; and the possibility of access to the necessary material resources for a decent standard of living. Although the HDI is organized as a worldwide monitoring index, which is what distinguishes it from other social indicators as a whole, it is based on three indicators: life expectancy at birth, combined gross enrollment ratio in the three levels of education, and, lastly, gross domestic product (GDP) *per capita*. This methodology is regularly modified to include new dimensions of disparity in the HDI.¹⁸

21. In 2000, in the framework of the Millennium Declaration,¹⁹ states undertook to accomplish the eight Millennium Development Goals (MDGs) and promoted the creation of a follow-up process through the competent United Nations bodies with the aim of standardizing development measurement indicators and linking them to human rights observance measurements. This process has led to the emergence of agencies at the national level to assess the situation in each state and to the preparation of progress reports, all of which has increased awareness in countries about the

¹⁸ Recent years have seen the appearance of the Gender-Related Development Index (GDI), the Gender Empowerment Measure (GEM), and the Human Poverty Index (HPI). In the ranking for achievement in each index, a country's performance may rise from one year to the next. However, that would not necessarily mean that it adopted better measures since the performance of the countries ahead of it may have declined. Furthermore, each year the reports draws attention to achievements in a particular area of human development. In 2000 the theme of the report was the interrelationship between human rights and human development. The differences between the two have to do with the fact that human development indicators measure the expansion of the capacities of persons and human rights indicators evaluate if people live with dignity and liberty, as well as the degree to which key stakeholders have met their obligations to create and maintain fair social mechanisms to ensure the foregoing. Second, human development indicators basically center on outcomes and draw attention to unacceptable disparities and suffering, while human rights indicators also center on outcomes but give particular attention to policies and practices of legal and administrative entities as well as the conduct of public servants. For more information about social indicators, see S. Cecchini (2005), *Indicadores sociales en América Latina* [Social indicators in Latin America], *Serie estudios estadísticos y prospectivos* 34, ECLAC: <http://www.eclac.cl/publicaciones/xml/0/23000/lcl2383e.pdf> ; S. Cecchini (2005), *Propuesta para un compendio latinoamericano de indicadores sociales* [Proposal for a Latin American compendium of social indicators] *Serie estudios estadísticos y prospectivos* 41, ECLAC: <http://www.eclac.cl/deype/publicaciones/xml/0/27910/LCL2471e.pdf> ; and J.C. Feres y C. Vergara (2007), *Hacia un sistema de indicadores de cohesión social en América Latina* [Toward a system of indicators of social cohesion in Latin America]; in Sojo y Uthoff (eds), *Cohesión social en América Latina: una revisión perentoria de alguna de sus dimensiones* [Social cohesion in Latin America: An urgent review of some of its dimensions]: http://www.eclac.cl/publicaciones/xml/8/28198/CohesionSocial_ALC.pdf.

¹⁹ United Nations Millennium Declaration, adopted by the General Assembly of the United Nations, resolution 55/2 of 8 September 2000.

use of indicators and the treatment of information sources. In this way, the Millennium Development Goals led states to include in their policy agendas a series of problems to overcome in order to achieve sustainable development by 2015. The Millennium Declaration related development to human rights in practical and concrete terms and underscored the importance of equality as an effective way to achieve sustainable development. It also identified gender equality and strengthening the capacity of women to exercise and claim rights as specific objectives.

22. Specifically with regard to indicators on human rights, the Vienna Declaration and Programme of Action²⁰ recommended the examination of a system of indicators to measure progress in realization of the rights contained in the International Covenant on Economic, Social and Cultural Rights as an essential component of efforts to enhance enjoyment of those rights. The incorporation of human rights, including economic, social, and cultural rights, in the global set of indicators of the common evaluation system for countries, is an important component of the United Nations Development Assistance Framework (UNDAF).

23. Accordingly, the typology of indicators set out in the *“Report on Indicators for Monitoring Compliance with International Human Rights Instruments”*, approved by the chairpersons of the human rights treaty bodies of the United Nations system is particularly relevant.²¹ This document constitutes the latest effort to reach consensus on an indicator-based rights monitoring methodology,²² the aim for which is that it be implemented uniformly by all the committees of the universal system for protection of human rights. This consensus takes as a point of reference the classification originally proposed by the UN Special Rapporteur on the right to health, which includes structural indicators, process indicators, and outcome indicators.²³

24. The guidelines put forward in this document seek to contribute to the development of ways to measure and monitor compliance with the Protocol and to evaluate the *progressive realization* of social rights as well as conditions that favor or limit the possibility of *effective access* to rights. The objective and scope of these rights indicators distinguish them from traditional indicators that measure variations in level of development. However, it is important to draw attention to the fact that some of the provisions set out in the Protocol and other international instruments on social rights contain public policy goals and even guide the activities of states by indicating measures to adopt in order to accomplish those goals. In such cases it will be necessary to adopt indicators that are consistent with development indicators. As will be observed below, many development indicators can sometimes provide the underpinnings for constructing rights indicators.

25. The IACHR has considered it important to take as its point of departure the aforementioned rights indicators model prepared in the framework of the United Nations, which has

²⁰ Adopted by the World Conference on Human Rights, June 25, 1993, Vienna.

²¹ UN Doc. HRI/MC/2006/7 of 11 May 2006.

²² It should be mentioned that the debate on how to measure realization of social rights continues, as can be seen from recent fora on the issue. See, for example, the papers presented at the Conference on “Economic Rights: Conceptual, Measurement and Policy Issues,” organized by the Human Rights Institute of the University of Connecticut from October 27 to 29, 2005, in particular, David L. Cingranelli and David L. Richards, *Measuring Economic and Social Human Rights: Government effort and Achievement* and Clair Apodaca, *Measuring the Progressive Realization of Economic, Social and Cultural Rights*. See also, Areli Sandoval, “Progresividad y creación de indicadores para medir el cumplimiento de los ESCR en México. Indicadores de desarrollo e indicadores de Derechos Humanos,” in *Memorias del Seminario Internacional sobre Derechos Económicos, Sociales y Culturales*, Mexico, Cooperation Programme on Human Rights, Mexico-European Commission, 2005.

²³ The Commission on Human Rights, *Interim Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Prof. Paul Hunt, submitted in accordance with resolution 2003/45 A/58/427, paragraphs 6-35.

been adapted in accordance with certain aspects specific to the social and political context where the Protocol is applied.

III. A METHODOLOGICAL PROPOSAL FOR THE MONITORING SYSTEM

26. The monitoring process to be implemented through the system of periodic reports provided for in Article 19 of the Protocol of San Salvador is intended to evaluate “the progressive measures [states] have taken to ensure due respect for the rights set forth in the Protocol.”

27. Whatever the situation may be as regards realization of social rights, the starting point to be used is the year in which the State concerned ratified the Protocol, in order, thence, to measure progress in implementation of the rights recognized in that instrument.

28. In addition to *quantitative indicators*, the IACHR considers it important for the evaluation to include a number of qualitative dimensions, which this document refers to as *qualitative signs of progress*.²⁴ Strictly speaking, social indicators derive from the application of quantitative or qualitative research methodologies. The differences between the two are not clearly defined since, in most cases, they have to do with divergences of an empirical, not a conceptual, nature. Specifically, quantitative social indicators derive from methods that chiefly collect information in a numeric format or in pre-coded categories, whereas in qualitative research, analysis techniques and procedures are far from standardized; rather, data analysis is intrinsic to the way in which the questions are framed, locations selected, and information harvested.²⁵ Including these dimensions, which are absolutely critical for monitoring purposes would, despite their lower visibility, contribute to the evaluation process.

29. The IACHR has defined three types of indicators based on the indicators model proposed in the framework of the UN in the aforementioned “*Report on Indicators for Monitoring Compliance with International Human Rights Instruments*.” These are: i) structural; ii) process-related; and, iii) outcome-related.

30. *Structural indicators* seek to determine what measures the State would be able to adopt to implement the rights contained in the Protocol. Put another way, they collect information in order to evaluate *how* the State’s institutional apparatus and legal system are organized to perform the obligations under the Protocol: if it has in place -or has adopted- measures, legal standards, strategies, plans, programs, or policies, or created public agencies to implement those rights. Although structural indicators merely inquire about the existence or not of measures, they can sometimes include information that is relevant for understanding some of their main

²⁴ Despite taking into consideration the concept developed by Earl, Carden and Smutylo (2002) *op. cit.*, the scope of signs of progress as an analysis variable has been redefined. In first place, qualitative dimensions are included in the proposed model for reasons of description and interpretation. Unlike a quantitative indicator, qualitative signs of progress are distinct because they do not originate from a predetermined category or from a given (statistical) measurement scale, but encapsulate the social actor’s definition of the situation and the meaning that they ascribe to the phenomenon under evaluation, which is crucial for interpreting the facts.

²⁵ Cecchini (2005, *op. cit.*, pp. 13-14), notes that when an indicator seeks to express the perception that the groups and individuals that make up a society have of an objective condition (for instance, the satisfaction level of a community with its hospitals), the information it yields is perceptive in nature. Cecchini (*op. cit.*) says that there is no reason to assume that indicators of facts and perceptions that deal with the same phenomenon will necessarily shift in the same direction or to the same extent. This is because preferences, attitudes, and standards may change or be at odds, regardless of the objective condition of a phenomenon. For example, the satisfaction level with hospitals may decline as a community becomes more demanding, irrespective of the increased qualifications of the health professional responsible. Finally, however objective they may be, indicators are always approximations of reality and, therefore, not neutral, either ideologically or in terms of gender.

characteristics, such as, for example, whether or not standards are in operation, or the rank or jurisdiction of a particular government agency or institution.²⁶

31. **Process indicators** seek to measure the quality and extent of state efforts to implement rights by measuring the scope,²⁷ coverage, and content of strategies, plans, programs, or policies, or other specific activities and interventions designed to accomplish the goals necessary for the realization of a given right. These indicators help to monitor directly the application of public policies in terms of progressive realization of rights. Process indicators can also offer information on shifts in the quality or coverage of social services or programs over a given time. Whereas structural indicators do not normally need a reference base (they usually elicit a yes/no answer), process indicators depend on reference bases or goals that are usually figures or percentages, and, therefore, will have a more dynamic and evolutionary component than structural indicators.²⁸

32. **Outcome indicators** seek to measure the actual impact of government strategies, programs, and interventions. To some extent they are an indication of how those government measures impact on the aspects that determine how effective a right recognized in the Protocol is. Thus, they offer a quantitatively verifiable and comparable measurement of the performance of the State in terms of the progressive realization of rights. An improvement in outcome indicators may be a sign of the adequacy of the measures adopted and of progressive improvements towards full realization of rights. However, to form a definitive opinion in this respect, a review of the specific measures adopted is necessary; a decline in outcome indicators may be due to circumstances not attributable to the actions of the State, while an improvement may be caused by fortuitous factors. Accordingly, particular attention should be given to process indicators.

33. Since time consolidates the effects of various underlying processes (which can be measured by one or more process indicators), outcome indicators are usually slow indicators and less sensitive to momentary changes than process indicators.²⁹

²⁶ UN Doc. HRI/MC/2006/7 of May 11 2006, paragraph 17; Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, Doc. E/CN.4/2006/48 of 3 March 2006, paragraph 54.

²⁷ UN Doc. HRI/MC/2006/7 of 11 May 2006.

²⁸ In some tables of indicators and signs, in order to simplify the table, a structural indicator has been combined with a process indicator. For example, inquiries are made about the existence of a program (structural indicator) and its coverage and scope (process indicator).

²⁹ The UN Special Rapporteur on the Right to Health points out that outcome indicators measure the impact of programmes, activities and interventions on health status and related issues. To illustrate, he mentions that outcome indicators include maternal mortality, child mortality, HIV prevalence rates, and the percentage of women who know about contraceptive methods. He also mentions that "plausible links may be established between a structural indicator (Is there a strategy and plan of action to reduce maternal deaths?), a process indicator (the proportion of births attended by skilled health personnel), and an outcome indicator (maternal mortality). However, outcome indicators often reflect many complex interrelated factors. It will often be difficult to establish firm causal links between structural, process and outcome indicators – that is, between a policy, an intervention, and a health status outcome. As the Special Rapporteur has emphasized elsewhere, it is misguided to expect too much from indicators. For example, a structural indicator is: does the State constitutionalize the right to health? If the answer is "yes", this is a useful piece of information. But if a constitutionalized right to health neither generates any successful litigation nor is taken into account in national policy-making, this particular constitutional provision is of very restricted value. With this in mind, the Special Rapporteur suggests that the answer to any indicator may be supplemented by a brief note or remark (a "narrative"). For example, in the above example the answer might be: "Yes - but the right has yet to be integrated into health policy-making." Of course, a brief note of this sort does not dispel the manifold limitations of indicators. Nonetheless, it can help to provide a fuller picture of the right to health in the relevant State than a bare yes/no or numerical answer." See UN. Doc. E/CN.4/2006/48 of 3 March 2006, paragraphs 59-60.

34. In order to improve the possibility of analysis and better organize information collected in the process, it is suggested that it be divided into three categories:³⁰ i) incorporation of the right; ii) state capabilities; and, iii) financial context and budgetary commitment.

35. The first category is the *incorporation of the right* in the legal system, in the institutional apparatus, and in public policy. The idea is to collect relevant information on how the right recognized in the Protocol is incorporated in the domestic law books and in public policy and practice. On one hand, the aim is identify the level of the provisions that recognize it, as well as their effectiveness and statutory rank. Thus, the right may be recognized in the Constitution, in laws, in jurisprudence or in government programs or practices. The idea, too, is to collect information on the scope of that recognition; that is, the degree of precision with which the basic obligations of the State or minimum enforceable standards are defined. Also requested is an indication as to the persons who are individually or collectively possessed of that right; the conditions for its exercise, for example, if it is considered an effective right and can be demanded directly from the government authorities and, as appropriate, enforced by the courts, or if it is not directly enforceable. Finally, what guarantees or appeal procedures are available in the event of a violation of the respective obligations?

36. Another aspect that is important to explore is what social services or policies has the State established for implementation or realization of the rights contained in Protocol? Sometimes programs or services create benefits of a welfare nature and do not recognize the existence of rights. Therefore, the extent to which a right is a part of the logic and meaning of public policy is an aspect usually measured through process indicators.

37. An example of a structural indicator of the incorporation of a right is, if the right has been included in the Constitution, is it effective or not? A process indicator on the incorporation of a right is if relevant jurisprudence exist on its enforceability; or the scope and coverage of public policies enacted as implementation measures for that right.

38. The second category has to do with *state capabilities*. This category describes a technical-instrumental and distributive aspect of government resources within the state apparatus. That is, it entails a review of how and according to what parameters government (and its various branches and departments) deals with different socially problematized issues; in particular, how it establishes its goals and development strategies; and under what parameters the implementation of the rights contained in the Protocol is inscribed therein. It entails reviewing the rules of play within the state apparatus, interagency relations, task allocation, financial capacity, and the skills of the human resources that must carry out the allotted tasks.³¹ To provide an example, a structural indicator of state capacity is the existence of specific government agencies for the protection or implementation of a social right. A structural indicator may also be used to examine competencies and functions. A process indicator on state capacity endeavors to determine the scope and coverage of the programs and services implemented by those agencies. A process indicator on state capacity could also measure changes in the quality and scope of those interventions over a period of time.

³⁰ The categories are the levels where it is possible to classify the units of analysis, which are generally derived from the frame of reference and an in-depth situation review. Hernández Sampieri, R.; Fernández Collado, C. and Baptista Lucio, P. (1998) *Metodología de la investigación*. México, McGraw-Hill ed.

³¹ The main aspects of the concept of state capabilities are drawn from Burijovich, Jacinta and Pautassi, Laura (2006) "Capacidades institucionales para una mayor equidad en el empleo," in María Nieves Rico and Flavia Marco (coordinators) *Mujer y Empleo. La reforma de la salud y la salud de la reforma en Argentina*. Buenos Aires, Siglo XXI editores and ECLAC, pp. 301-338 and from Repetto, Fabián (2003), "Capacidad estatal: requisito necesario para una mejor política social en América Latina", Eighth International Congress of CLAD on State and Civil Service Reform, Panama City, October 28 to 31, 2003.

39. The purpose of including state capabilities as a category in the indicators is to collect information on core aspects that serve to evaluate the extent to which the political will of the State is materialized. Their inclusion also serves to verify if the conditions are in place for effectively implementing, through public policy, a rights-based approach in the framework of the existing state structure. The aim of including this category is also to have a more accurate idea of the problems that the State faces for fulfilling its obligations, by making it possible in the evaluation to identify problems to do with policy decision-making as distinct from public administration problems.

40. An important aspect for measuring state capabilities is the existence of oversight, monitoring, and evaluation agencies for social services and programs within the state structure, as well as the capacity of the State to implement policies to combat corruption and patronage in the use of funds allocated to the social sector. The idea is also to collect information on the accessibility of social programs and services organized by the State by examining, for example, physical access, disclosure, and cultural pertinence.³²

41. Another aspect that the proposed indicators on state capabilities are designed to capture has to do with fragmentation in the different levels of the government administration and in different social services. The provision of goods and services connected with social rights overall is administered by different levels of government. Decentralization of social services and policies can allow a greater measure of flexibility and adaptation to regional realities and local needs. That said, it can also entail numerous coordination problems. The problem stems, therefore, from a lack of clarity in the definition and distribution of areas of responsibility among different government agencies and, on occasion, among different governments at the national, regional, provincial, and local level.³³ Added to the foregoing is the customary *fragmentation in social services* themselves due to deficient coordination and lack of communication among agencies as well as the absence of comprehensive policies and adequate record-keeping.

42. In a similar vein, another category to include in the measurement and evaluation process is the ***basic financial context***, which has to do with the actual amount of state funds available for public social spending and how it is distributed, whether it be measured in the usual manner (as a percentage of gross domestic product for each social sector) or by means of an alternative mechanism. In that connection, included in the same category is ***budgetary commitment***, which makes it possible to assess the importance that the State accords to the right in question. This information also complements the measurement of state capabilities. The importance of measuring this category stems from the fact that if a state institutes a public spending policy that entails a cutback in the area of social infrastructure (for instance, health care and sanitation), apart from acting as a regressive measure, it will have the effect of transferring the costs of care directly to families, and within the family to women.

³² When there is a mismatch between a service and the cultural outlook of users, it tends to act as an obstacle to access. In Guatemala, the Maya population's concept of health and disease is different from that of the non-indigenous population. In this regard, see UNDP (2005), "Ethnic and Cultural Diversity: Citizenship in a Plural State" and ECLAC (2006a) *Panorama Social de América Latina* [Social Panorama of Latin America], Santiago, Chile, UN December 2006, Ch. III.

³³ The study on access to social rights adopted by the European Committee for Social Cohesion identifies a number of the main "fragmentation" problems connected with health and other social rights: i) lack of coordination among different political spheres; ii) insufficient information about responsibilities and functions at the national, regional, and local levels (This is the case with social and welfare services and can also occur in the areas of health, employment, and housing services.); iii) insufficient independence permitted to local administrations in the use of resources, as well as insufficient participation in decision-making, implementation, and resource-mobilization processes; iv) monitoring and implementation of policies at the national level inadequate to ensure equitable nationwide provision. See, European Committee for Social Cohesion, "Access to Social Rights in Europe", Strasburg, May 2002.

43. However many categories are included and no matter how many conceptual aspects their analysis might seek to uncover, it will never be possible to encompass all of the issues that shape the effectiveness of a right. Therefore, it is advisable to limit the number of categories to those that are most relevant to the right under consideration and that match the compliance goals set. For that reason, it is advisable to review the availability of information for measurement. This is not a minor consideration given the difficulties in the region as regards access to reliable information sources.

44. In conclusion, the information requested from the State on each right set forth in the Protocol would be organized under a model composed of quantitative indicators and qualitative signs of progress arranged according to three types of indicators (structural, process, and outcome indicators), which would provide information on three conceptual categories (incorporation of the right, state capabilities, and financial context and budgetary commitment).

IV. INDICATORS ON CROSSCUTTING ISSUES: EQUALITY, ACCESS TO JUSTICE, ACCESS TO INFORMATION AND PARTICIPATION.

45. The Standards provide that information with respect to each of the protected rights should take the following into consideration: gender equity; special needs groups (children, the elderly, and persons with disabilities); ethnic and cultural diversity, in particular with respect to indigenous peoples and persons of African descent; and involvement of civil society organizations in any progress in legislative and public policy reform.

46. The Commission believes that one way to incorporate this mandate in its indicators proposal could be to formulate quantitative indicators and qualitative signs of progress on crosscutting issues present in all of the rights contained in the Protocol, with a view to measuring aspects that have to do with the conditions that determine the actual possibility of exercising social rights in each State through the free interplay of institutions and democratic and deliberative processes; in other words, those aspects connected with the institutional and social guarantees of those rights and with the capabilities and resources that the population has at its disposal to demand and exercise them. To that end, the IACHR believes it appropriate to draw attention to a number of mechanisms and policies that the State should have in place to ensure protection and adequate access to information, participation, transparency, and accountability. It is also important to mention the resources and capabilities that the public, in particular social sectors that face disadvantage or inequality, should have at their disposal in order to have a say in public policy decisions; demand government compliance with obligations, monitor that compliance, and have recourse to liability systems in the event of non-fulfillment of those obligations.

47. For that purpose, the IACHR suggests inclusion in the evaluation process of certain indicators and signs of progress on three crosscutting issues: i) equality; ii) access to justice; iii) access to information and participation.

A. Equality

48. The first obligation “with immediate effect” arising from the progressive development of economic, social, and cultural rights consists of ensuring that those rights shall be exercised in conditions of equality and without discrimination, which entails prevention of different treatment based on factors expressly prohibited in the Protocol.³⁴ The foregoing requires that states

³⁴ Article 2.2, ICESCR, General Comment No. 3, paragraph 1 and Art. 3, Protocol of San Salvador (“The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.” In this connection, the UN Committee on ESCR, in General Comment No. 13 “The right

recognize and ensure the rights contained in the Protocol equally to the entire population, basing difference in treatment on *reasonable and the objective criteria*, and preventing arbitrary discrepancies in treatment, in particular on the basis of expressly prohibited factors, such as race, religion, or social origin. However, it also requires that states recognize that there are groups that face disadvantages in the exercise of social rights, and that they should adopt affirmative action measures and policies to ensure their rights.

49. The system indicators should be useful for gathering information on the situation of social sectors that contend with serious problems of structural inequality and inequity, as well as for verifying the effectiveness of government policies instituted to ensure access to social rights for these sectors. The system should also provide information with which to identify the social and institutional resources available in each State for individuals to remedy specific discrimination problems in the exercise of social rights.

50. Accordingly, it is essential to monitor each state's progress in the effective observance and provision of social rights to all persons, and in particular the measures that they have adopted for the recognition and extension of those rights to persons who belong to groups that are traditionally discriminated against.

51. For example, the historic discrimination against the indigenous peoples of the Americas is based on ideological constructions of domination that assume inequalities between groups to be "natural" as opposed to the consequence of a particular social structure.³⁵ Because of their characteristics indigenous peoples are among the groups that have historically suffered discrimination, set apart by a supposed inferiority that has helped to deepen inequality and discrimination over time.³⁶

52. Ethnic/racial discrimination cannot be understood in isolation from the structural and historic factors from which it arose. Thus, the colonial domination and slavery to which indigenous peoples and Afro-descendants were subjected form a backdrop that helps to understand the latter-day processes of economic, political, and social exclusion in a historical perspective.³⁷

...continuation

to education", has expressed a generally recognized principle that should be regarded as encompassing all economic, social and cultural rights: "The prohibition against discrimination [...] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination" (GC No. 13, paragraph 31).

³⁵ As initially conceived, racism was based on biological inferiority and difference; nowadays, that interiorization is based for the most part on cultural traits. This means that today, racists propose that there are some ethnic groups that are "backward" and, therefore, constitute an obstacle for development, in contrast to other groups, whose characteristic values and accomplishments represent the modernity to be attained. Again, the foregoing supposes the naturalization of those differences in a manner that may appear contradictory. The way that people normally become accustomed to thinking about racism is as the basis of discrimination, of differentiated conduct, depending on the origin of the person one is dealing with. In this connection, see: UNDP (2005) National Human Development Report. Ethnic and Cultural Diversity: Citizenship in a Plural State, UNDP, Guatemala, 2005, p. 14

³⁶ Martín Hopenhayn, Álvaro Bello, and Francisca Miranda (2006) *Los pueblos indígenas y afrodescendientes ante el nuevo milenio* [Indigenous Peoples and Afro-Descendants in the New Millennium]. *Políticas Sociales* series N° 118, ECLAC, Santiago, Chile, p. 18.

³⁷ The earliest form of ethnic and racial exclusion and segregation is found in the system of conquest and colonization. The dominion of territories, appropriation of the natural wealth of the region, political and cultural hegemony, submission or evangelization, and the mass pressing of the workforce into agricultural and mining labors were the links in the chain of submission and discrimination of indigenous groups and Afro-descendant populations through so-called "indentured service" or "*encomienda*," as well as slavery or forced labor. In this respect, see Hopenhayn, Álvaro Bello and Francisca Miranda (2006), *op. cit.*, p. 20.

53. Accordingly, the starting point should be the situation of structural inequality that encompasses vast social groups in the Americas, such as those mentioned in the Standards (women, indigenous peoples, Afro-American peoples, illegal immigrants), and to consider in each state which groups and sectors endure situations of severe inequality that condition or limit the possibility to enjoy their social rights.

54. The concept of material equality provides a tool with enormous potential for examining not only standards that recognize rights, but also public policies that can serve to ensure them or, on occasion, potentially impair them. Thus, the United Nations Committee on Economic, Social and Cultural Rights has established that the State has an obligation to groups that are vulnerable or whose economic, social and cultural rights are susceptible to violation, which is to enact laws that protect them from that discrimination and to adopt special measures, including active policies of protection, not merely compensation.³⁸ Accordingly, the IACHR suggests the enactment of egalitarian policies that take into account the specific needs of the most disadvantaged groups.

55. For the rest, the Commission considers it appropriate that states ascertain which groups require priority or special assistance in the exercise of social rights at a particular historical moment, and that they adopt concrete protection measures for those groups or sectors in their plans of action. Such was the conclusion reached, for example, by the UN Committee on Economic, Social and Cultural Rights with respect to several rights, in particular the right to housing³⁹ and public health.⁴⁰ Accordingly, in addition to identifying these sectors that have traditionally suffered discrimination in access to certain rights, the State, before formulating its social plans and policies, should determine which sectors need priority assistance (for example, the inhabitants of a particular area of the country, or persons in a specific age group) and, in implementing its social policies and services, establish special or differential measures to uphold and ensure the rights of those sectors.

56. To date, the area in which the greatest number of affirmative action measures and active policies for protection and promotion of equality have been adopted is gender discrimination. Although significant strides have been made throughout the region, especially in terms of formal recognition of equality between men and women, there is still a need for states to implement a variety of new measures to promote equality, particularly where social rights are concerned.

³⁸ A number of instruments call for the adoption of special measures, including legislative measures, and active policies aimed at protecting the economic, social and cultural rights of vulnerable groups. The obligation to protect the most vulnerable and least protected groups during periods of adjustment appears in General Comment (GC) No. 2, paragraph 9 and General Comment No. 3, paragraphs 12 and 13; the obligation to protect persons with disabilities and the elderly appears in GC No. 5, paragraph 9, and GC No. 6, paragraph 17, respectively. GC No. 4, paragraph 8 (e) provides that adequate housing must be accessible to those entitled to it. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be assured some degree of priority consideration in the housing sphere, including access to land for landless or impoverished segments of society. In GC No. 7, paragraph 10, the Committee observes that women, children, youth, older persons, indigenous people, ethnic and other minorities and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction, imposing an additional obligation upon governments to ensure that appropriate measures are taken to ensure that no form of discrimination is involved. In GC No. 5, paragraph 18, the Committee writes that because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of Article 2(2) of the International Covenant, as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective. Special measures to protect vulnerable groups or individuals are referenced in the Limburg Principles (principles 14 and 39).

³⁹ GC No. 4, paragraph 13.

⁴⁰ GC No. 14, paragraphs 43(f) and 53.

57. The concepts of independence and empowerment are critical to the foregoing and should certainly be a part of the agenda for curbing gender and social inequalities. Independence, is a core requirement for attaining equality between men and women. Accordingly, it is a crosscutting concept in all matters concerning the realization of economic, social, and cultural rights.⁴¹

58. The obligation of the State to take positive steps to safeguard the exercise of social rights raises important implications to do, for example, with the type of statistical information that it should produce. From this perspective, the generation of information suitably disaggregated to identify these disadvantaged sectors or groups deprived of the enjoyment of rights is not only a means to ensure the effectiveness of a public policy, but a core obligation that the State must perform in order to fulfill its duty to provide special and priority assistance to these sectors. For example, the disaggregation of data by sex, race or ethnicity is an essential tool for highlighting problems of inequality.⁴²

59. The production of information on gender inequalities has been widely promoted and increased significantly, overcoming the lack of disaggregated data. Countries have adopted the use of gender indicators in their statistics systems, which serve to measure changes and trends in gender relations, with the result that these indicators are calculated for both men and women. In turn, the situation of women in each country may be measured against that of men in the same country or that of other women in different ethnic or social groups, and an attempt made to determine what the value of the indicator would be in a situation considered socially equal, so that, on obtaining this value, one can determine how close or how far the actual situation is to this standard.⁴³

60. In other fields, the severe difficulties that the available statistics sources have in capturing in their records the enormous ethnic and cultural diversity that exists in each of the countries in the region remain a matter of concern.⁴⁴

⁴¹ For example, an analysis of gender inequalities reveals that lack of economic independence increases the vulnerability of women to being forced to remain in poorly paid employment in the labor market, especially if they live in situations of poverty; in turn, freedom of choice about one's body requires the acknowledgement of men's and women's reproductive and sexual rights; that recognition generates conditions conducive to the reduction of maternal mortality and desired fertility rates, which are goals connected with poverty reduction, improvement of maternal health care, and reduction of child mortality risks. In that connection, in the region, the Women and Development Unit of the Economic Commission for Latin America and the Caribbean (ECLAC) keeps a system of gender indicators (both general and pertaining to the Millennium Development Goals) that is an important source of up-to-date information available for countries in the region to consult. See www.cepal.org/mujer/indicators. See, also, *Guía de Asistencia técnica para la producción y el uso de indicadores de género*, Women and Development Unit, ECLAC, August 2006, with support from UNIFEM and UNFPA, which is an important tool for states to use.

⁴² In the words of the UN Special Rapporteur on the Right to Health, "[d]isaggregated indicators can reveal whether or not some disadvantaged individuals and communities are suffering from *de facto* discrimination." Hunt (2006) op. cit. See, also the recent report of the IACHR (2007) *Access to Justice for Women Victims of Violence in the Americas*. Washington, D. C., OAS, Inter-American Commission on Human Rights.

⁴³ ECLAC (2006) op. cit. It is worth emphasizing that a good indicator starts with a clear and precise question and takes into consideration the fact that factors based on gender differences affect women and men differently.

⁴⁴ In the specific case of Guatemala as a result of long-standing discrimination in which dichotomies are used to categorize persons belonging to indigenous communities (as indian/ladino), the situation overlooks large groups that do not identify with these limited categories. Accordingly, ethnic self-labeling continues to be restricted to the "indigenous/nonindigenous" categories. To further complicate matters the data are then usually interpreted as applying to the "indigenous/ladino" categories or, as occurs with increasing frequency, people do not identify with any of these categories. For example, there are people who, following the political construction of a "maya" identity, have begun to refer to themselves as such, while others call themselves "mestizo" and, therefore, do not acknowledge themselves as "ladino" or "nonindigenous". UNDP (2005) National Human Development Report. Ethnic and Cultural Diversity: Citizenship in a Plural State, UNDP, Guatemala, 2005.

61. According to ECLAC, the information predicament is something that affects the majority of groups defined as victims of racism and discrimination. The question as to the number, size, and characteristics of indigenous and Afro-descendant populations in the region is an old problem that has still not been solved altogether. It has been recognized that one of the main problems in the analysis of racism, discrimination, and xenophobia in the Americas is the absence or insufficiency of data with which to build clear indicators. The way in which States and governments have managed these figures has very often had to do with a denial of racism, discrimination, and xenophobia. Nevertheless, in recent years the majority of countries in the region have included in their censuses and household surveys questions about identity, origin, or language, which represents a giant stride compared with previous decades.⁴⁵

62. Clearly there are no adequate indicators to measure the diversity and specificity of indigenous peoples or that take into consideration the particular context in which they live. Accordingly, what is needed is a conceptual framework of indicators based on indigenous rights that particularly takes into account their cultural identity, the special relationship that indigenous peoples have with their indigenous territories, and the autonomy of and participation in decisions that affect them.

63. No less important is the need to include indicators on inclusion and exclusion to highlight situations of structural poverty or patterns of intolerance and stigmatization of social sectors, among other elements for evaluating contexts of inequity. These contexts should be cross-referenced with information on access to productive resources or to the labor market and indicators on distribution of public, budgetary and extra-budgetary resources.

64. The principle of equality and nondiscrimination can also have consequences in terms of the criteria by which budgets and social spending should be distributed in a country. Discrimination in access to rights may originate, for example, from severe disparities in neglected geographic zones. Indicators should also serve to identify not only social sectors and groups that suffer discrimination, but also *disadvantaged geographic zones*. The causes of regional differences of this type may lie in a variety of factors, such as distribution of services infrastructure, unemployment, social and environmental problems, climatic conditions, distance from the more developed areas, and public transport problems.⁴⁶ Also, as mentioned, administrative decentralization processes implemented without adequate (economic and human) resources, policy guidelines, and good linkage between different levels of government, can lead to inequity in access to public services of comparable quality for the inhabitants of different geographic regions.

⁴⁵ Hopenhayn, Álvaro Bello and Francisca Miranda (2006), *op. cit.*, p. 25.

⁴⁶ ECLAC's various assessments of territorial decentralization of social services in the region have found that the experience was only successful in a number of respects, such as the fact of having attained consensus on the need to decentralize services and to create more effective participation mechanisms in contexts where democratization is an important objective. However the assessments have also revealed the scant actual independence of certain lower-level positions (such as human resource management); regulatory frameworks barely sufficiently developed for the correct implementation of various allocation mechanisms and provision supervision systems, lack of independence of service production units, absence of up-to-date information systems, and insufficient training efforts to meet the new service provision demands. Last but not least, the lack of efficiency and equity noted in the reforms is even clearer in the limited progress in terms of social efficiency of provision and expenditure yield, as well as a considerable drift in quality indicators. Di Gropello, E. and Cominetti, R. (comp.) (1998) *La descentralización de la educación y la salud: Un análisis comparativo de la experiencia Latinoamericana*. Santiago, Chile, ECLAC.

65. The table below contains examples of how quantitative indicators can be triangulated with qualitative signs of progress in the area of respect for equality and nondiscrimination in the enjoyment of social rights.⁴⁷

⁴⁷ A methodological clarification: the outcome indicators for equality and nondiscrimination include gaps, which, as appropriate, are designed to quantify extant inequality by comparing the values of the indicators in each group (indicator value for women/indicator value for men*100), where 100 represents equality and values below 100 represents inequality for women (or other groups that suffer discrimination). Originally the gap concept was used to calculate the distance between the mean situation for men and the mean situation for women. The gap establishes the proportional difference between indicators (rates or percentages) corresponding to women and men in a particular category. In quantitative terms the value of the indicator that corresponds to men is compared with that of women. A positive gap denotes that the mean values for men are higher than those for women. In this case the value of the gap can be interpreted as the quantitative distance that women must travel to catch up with men. A value equal to one indicates that the proportion of men and women in a given situation is similar; in other words, there is parity. This indicator is particularly applicable to areas connected with access to material and social resources, participation in key decision-making levels on policy, social, economic, cultural, and rights-related issues. Another indicator is the so-called social gap, which is the proportional difference between indicators for poor and non-poor women, or highly educated and poorly educated women. This indicator can also be applied to population sectors (persons with disabilities, migrants, people of African descent, indigenous peoples, etc.). Inequality is measured by the gap between the groups that suffer discrimination and the national average, with gender equity (or inequity) regarded as a crosscutting issue throughout. Giacometti, C. (2005) "The Millennium Goals and Gender Equality. The case of Argentina." *Serie Mujer y Desarrollo* No. 72. (Santiago, Chile, ECLAC, UNIFEM, 2005). For the sake of economy in the process it would be advisable for monitoring purposes to present the Millennium (MDG) indicators as gaps, incorporating race, ethnicity, and rural/urban setting, through a gender perspective lens

Equality and nondiscrimination

EQUALITY AND NONDISCRIMINATION		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Inclusion of the principle of equality in the constitution. Scope. - Inclusion of the principle of nondiscrimination in the constitution. Scope. - Inclusion of the principle of real equality and/or of opportunities in the constitution. Scope. - Inclusion of the principle of political equality in the constitution. Scope. - Inclusion of the principle of equality in the rights of the family in the constitution. Scope. - Inclusion of the principle of equality in nationality and citizenship. Scope. - Inclusion of the principle of equality in education. Scope. - Ratification by the state of the following international treaties (yes/no). Indicate date: <ul style="list-style-type: none"> a) CEDAW. Optional protocol b) ICESCR. Protocol of San Salvador c) Convention on the rights of the child d) Inter-American Convention against Corruption e) ILO Convention No. 169 f) 1951 Convention Relating to the Status of Refugees and its 1967 Protocol g) 1954 Convention relating to the Status of Stateless Persons h) 1961 Convention on the Reduction of Statelessness i) ILO Convention No. 138 CONCERNING MINIMUM AGE FOR ADMISSION TO EMPLOYMENT j) ILO Convention No.182 Concerning the prohibition and immediate action for the elimination of the worst forms of child labor 	<ul style="list-style-type: none"> - Existence and scope of national plans on equality of opportunities for men and women in ESCR. - Existence and jurisdiction of any or all of the following specific government areas to promote equality and nondiscrimination in the country: <ul style="list-style-type: none"> a) offices for the advancement of women; b) antidiscrimination offices; c) ombudsmen or similar; d) immigration affairs offices; e) offices of indigenous affairs. - Implementation of affirmative action measures for vulnerable populations that include the exercise of social rights. Scope and performance indicators. - Existence of policies or programs on employment integration or regularization for migrants and refugees, and on access to other social rights. Scope and performance indicators. - Existence of policies or programs on employment integration or regularization for agricultural laborers and peasant farmers, and on access to other social rights. Scope and performance indicators. - Existence of affirmative action measures to advance integration in the world of work for persons with disabilities. Scope and performance indicators. - Existence of complaints of discrimination in connection with ESCR received, investigated, and resolved by the constitutional authorities or their equivalent and appropriate agencies. Include statistics if the available. - Number of complaints by members of the public or civil society organizations alleging gender discrimination or other forms of discrimination. 	<ul style="list-style-type: none"> - Activity, employment, and unemployment rate gaps, by age group, ethnicity, nationality, legal status (refugee or stateless person), academic level, and income bracket. - Wage gaps taking into account academic level, ethnicity, occupational qualifications, and occupational category. - Gaps by occupation sector (formal, informal). - Femininity index of poverty and indigence. - Employees social security coverage gaps. - Percentage of persons with disabilities integrated in the labor force, by sex and nationality. - Individual documentary status of refugees, asylum seekers and stateless persons.

		<p>k) Inter- American Convention on the elimination of all forms of discrimination against persons with disabilities</p> <p>- Standards recognizing the principle of equality and nondiscrimination in other frameworks and for other sectors of the population. Scope in terms of expansion or restriction of the provisions contained in the ICESCR and the protocol.</p>	<p>- Existence and scope of measures implemented by civil society organizations to petition regulatory provisions in favor of disadvantaged groups.</p>	
	SIGNS OF PROGRESS	<p>- Type and forms of allocation of national priorities, in terms of resources, policies, and areas, in order to ensure equality and nondiscrimination with respect to social rights coverage.</p>	<p>- Evaluations and assessments of affirmative action measures adopted, by type of measure (quota, world of work, people with disabilities). Include main outcomes if available.</p> <p>- Evaluations of living standards and labor/social integration of immigrants. Include main outcomes if available.</p> <p>- Evaluations of living standards and labor/social integration of indigenous people and persons of Afro descendent. Include main outcomes if available.</p> <p>- Evaluations of living standards and labor/social integration of populations displaced by armed conflicts, refugees, asylum seekers, internally displaced persons and stateless persons. Include main outcomes if available.</p> <p>- Assessment of child labor.</p>	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<p>- Budget composition: items and breakdown.</p> <p>- Existence of a budget for gender-related issues. Date of inclusion and items covered.</p> <p>- Existence of disaggregated social spending budgets for indigenous peoples and afro-descendants.</p> <p>- Existence of disaggregated social spending budgets for refugees, and asylum seekers, internally displaced persons, and stateless persons.</p>	<p>- Per capita monthly and annual income, by sex, academic level, and activity status.</p> <p>- Agriculture as a percentage of GDP.</p> <p>- Performance of agricultural GDP and food output.</p> <p>- Public social spending as a percentage of GDP.</p> <p>- Public social spending per capita. Trends. By geographic zone in the country.</p>	<p>- Inequity ratio (ratio between the wealthiest decile and the poorest decile of the population)</p> <p>- GINI inequality coefficient by regions, according to income.</p> <p>- Income gap.</p> <p>- Minimum wage and GDP per capita.</p> <p>- Percentage of non earning adults, by sex.</p>

		<ul style="list-style-type: none"> - Composition of total expenditure as a percentage of revenue. - Recognition of unpaid domestic labor (reproductive labor). Cite legal and administrative instruments. - Allowance to meet the cost of regularization of migrant workers. Amount and areas covered. 	<ul style="list-style-type: none"> - Proportion of total expenditure allocated to specific agencies. - Household expenditure pattern. 	<ul style="list-style-type: none"> - Wage gap between men and women; between migrants and nationals; between indigenous peoples and persons of Afro descendent. - Percentage of persons with access to basic services (infrastructure) by geographic zone or region.
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Existence of priorities in resource allocation to poor or vulnerable sectors, by depressed geographic region or zone. - Instruments and policies that take the above priorities into account. 		
STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of oversight agencies to monitor and evaluate implementation of ESCR. Indicate jurisdiction, responsibilities, coverage and budget. - Existence of effective policy and social services coordination mechanisms between national, provincial and local levels. Scope, responsibilities and assessments. - Existence of a specific anti-corruption monitoring agency. Responsibilities, jurisdiction, budget. - Powers of anti-corruption agencies to receive, process, resolve and/or refer complaints. - Existence of measures and actions in social policies to eradicate patronage. Scope, jurisdiction, responsibilities and outcomes. 	<ul style="list-style-type: none"> - Existence of government assessments of the main problems affecting compliance with the obligations under the protocol. - Number of reports presented by the country to treaty monitoring bodies concerned with the issues of equality, discrimination, and social rights. - Number of shadow reports presented by civil society organizations to treaty monitoring bodies concerned with the issues of equality, discrimination, and social rights. - Number and forms of resolution of measures and interventions by internal auditors to verify observance of social rights. - Number of complaints received and resolved concerning corruption connected with access to social programs and plans. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Reviews on implementation and type of measures to combat political patronage in the area of social policy. 	

B. Access to justice

66. The second crosscutting issue for progress indicators concerns access to justice to demand the social rights set forth in the Protocol. In this document we adopt a broad concept of access to justice, which includes a review of the legal and actual possibilities of access to appeal and protection mechanisms in administrative and judicial proceedings.⁴⁸

67. As the Committee on Economic, Social and Cultural Rights has found, significant dimensions of social rights are immediately enforceable before the domestic courts. Accordingly, the Committee has held that the adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.⁴⁹ In order to implement a monitoring system on the guarantees of access to justice in social rights, the Council of Europe has proposed a number of questions and indicators that could be illustrative in the task of developing the inter-American framework⁵⁰ that the Commission has considered in the course of designing the indicators.

68. Human rights law has developed standards on the right to suitable and effective remedies, whether of a judicial or other nature, to repair violations of fundamental rights. In that regard, states have not only a negative obligation -not to prevent access to those remedies- but also, fundamentally, a positive obligation to organize their institutional apparatus so that everyone can access those remedies. To that end, states are required to remove any regulatory, social, or economic obstacles that might prevent or limit the possibility of access to justice. In recent years, the inter-American system of human rights has recognized the need to begin to outline principles and standards on the scope of rights to judicial guarantees and effective judicial protection in cases concerning violation of economic, social, and cultural rights.

69. Further to the foregoing, this report covers the standards of the inter-American system on four issues: *i) The obligation to remove economic obstacles to ensure access to the courts; ii) the components of due process of law in administrative proceedings concerning social rights; iii) the components of due process of law in judicial proceedings concerning social rights; and, iv) the components of the right to effective judicial protection of individual and collective social rights.*⁵¹

70. These standards can help to improve the institutional framework of social services and policies in the Americas by strengthening oversight systems, transparency, and accountability, as well as participation mechanisms and societal surveillance of public policy in this area.

⁴⁸ Accordingly, a broad concept of access to justice is adopted, which the IACHR is already used in its thematic reports. See IACHR, *Access to Justice for Women Victims of Violence in the Americas*, 2006, paragraphs 5 and 6.

⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 9 "The Domestic Application of the Covenant," UN Doc. E/C.12/1998/24 of 3 December 1998.

⁵⁰ "Guidelines for improving to social protection and explanatory memorandum", prepared by the Group of Specialists on Access to Social Protection. Consult also: European Committee for Social Cohesion (CDCS), Group of Specialists on User Involvement in Social Services and Integrated Social Services Delivery: "User Involvement in Social Services", Final Report 2003/2004, Strasbourg 30 September 2004. See also: "Access to Social Rights in Europe," Report by Mary Daly, Queen's University, Belfast, adopted by the European Committee for Social Cohesion (CDCS), Strasbourg 28 to 30 May 2002.

⁵¹ To that end, we have followed the same order as the IACHR in its recent study on Inter-American standards on access to justice and economic, social, and cultural rights. See IACHR, *Access to Justice As a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, 2007.

71. The indicators on access to justice prepared in this document are essentially based on the standards of the inter-American system of human rights and are designed to collect quantitative and qualitative information from states on the main issues covered in the above-mentioned review.

72. The first question considered is the possibility of access to legal remedies for protection of social rights, as well as public policies instituted to remove any financial, physical, and cultural obstacles that block access to the courts and available remedies. While this is an enormous and complex issue, we have centered on a number of relevant points that enable us to visualize extreme scenarios of lack of access to justice.

73. The second question concerns the available guarantees and remedies in administrative proceedings to decide the social rights of persons. In this respect, while we basically consider certain standards of the inter-American system on the application of rules of due process in these proceedings, we also endeavor to examine aspects relating to the institutional design of social services and programs, in particular the existence of clear and objective criteria for granting welfare benefits and services that can help to limit the scope of discretion and arbitrariness of government authorities. The questions of access to social programs and services and the existence of adequate monitoring systems for those programs and services are matters to be considered under the issue of state capability in conjunction with the indicators for each right. On this point, we include as indicators of access to justice, information on appeal or remedy mechanisms against the denial of rights by administrations. Even when a person is denied benefits considered discretionary in a state, they should be afforded suitable due process mechanisms.⁵²

74. The third aspect examined is that of procedural guarantees in judicial proceedings concerning social rights; for example, in the area of labor or social security. Here we follow the principal standards set by the inter-American system, not only with respect to procedure, but also as regards the possibility of enforcing judicial decisions or judgments. We considered general indicators on judicial guarantees for all rights, while allowing the possibility to include certain specific judicial guarantees connected with a number of the rights recognized in the Protocol. For example, the right to housing includes a prohibition against forced eviction without due process, so that it would be important to consider specific indicators for this matter.

75. The fourth aspect is access to judicial remedies for effective protection of the social rights contained in the Protocol. Taking the standards of the inter-American system as its starting point, the system of indicators aims to collect information on measures that could be used in urgent situations and function as simple and prompt remedies to repair violations in such special circumstances. It also aims to gather information on precautionary or preventive measures that could be adopted, for example, to avert the mass eviction of an indigenous community, ensure access to urgent medical treatment, or prevent the dismissal of a union representative. The intention is also to examine the number of relevant procedural aspects to determine the suitability and effectiveness of judicial remedies available for protection of social rights, such as factors that prevent or provide legal standing to groups or collective persons, or nongovernmental organizations, as well as procedures, judicial reforms, and public policies that favor public interest litigation.

76. In addition to preparing a general collection of access to justice indicators for social rights, specific indicators should also be included for dealing with particular rights contained in the Protocol.

⁵² See report on Access to Social Rights in Europe, section 3.2.2 on case law on Article 13 of the European Social Charter and the absence of appeals procedure for denial of discretionary benefits.

Access to justice

I. POLICIES ON ACCESS AND REMOVAL OF FINANCIAL AND OTHER OBSTACLES		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Recognition of the right of access to justice in the legal system of the state. Scope. - Enforceability and justiciability of the social rights recognized in the protocol. Scope. - Recognition of indigenous systems of justice. 	<ul style="list-style-type: none"> - Relevant case law of federal and state superior courts on the enforceability of social rights. - Relevant case law of federal and state superior courts on access to justice. - Training programs for judges and lawyers. Thematic and jurisdictional coverage, frequency and requirements. 	
	SIGNS OF PROGRESS			
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Estimated litigation cost of a social rights case, including court costs and attorneys' fees. - Estimated litigation cost of a labor case. - Estimated litigation costs of a social security, environmental, consumer, and land dispute case. - Existence of mechanisms for exemption of court costs. Eligibility requirements for this benefit. 	<ul style="list-style-type: none"> - Changes in the national budget allocated to government legal services and programs to ensure access to justice in the area of social rights. - Number of litigants who benefit from the full or partial exemption of court costs in proceedings on social rights. - Total percentage of litigants in proceedings before social courts. 	
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Table comparing movements in average salaries between public defenders and prosecutors and judges. 		
STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - State-organized, comprehensive, free legal services for protection of rights. - Existence and availability of free legal services organized by non-state actors (e.g. Pro bono services) - Nature of the legal services in place: <ul style="list-style-type: none"> • Public service • Government social policy • Welfare services • Other. Specify 	<ul style="list-style-type: none"> - Territorial and population coverage of legal services and programs. - Physical accessibility and population coverage of the state's legal aid program. - Physical accessibility and population coverage of legal aid. - Number of social rights cases processed by the public defender's office since ratification of the protocol. Number of persons represented. 	

		<ul style="list-style-type: none"> - Legal aid in social rights claims. Scope and outcomes. - Plans or policies for removal of financial, material, or cultural obstacles that prevent access to the courts. Jurisdiction and territorial scope. - Government agencies that generate information, assessments, and policies on access to justice. - Public offices that provide mediation or conciliation services to resolve social rights disputes in the country. - Structure and jurisdiction of the justice administration system for social rights (tribunals for labor, social security, land, environmental, and consumer disputes). - Existence of tribunals for agrarian and indigenous land disputes. Jurisdiction. - Special rules of procedure adopted by social courts. Indicate if they provide for any of the following: <ul style="list-style-type: none"> • Prosecution ex officio; • Official experts; • Waiver of costs; • Informality; • Mediation and conciliation. 	<ul style="list-style-type: none"> - Average duration of cases processed by the public defenders office compared to average duration of the type of case in question (pensions, evictions, labor). - Training programs on social rights for legal aid attorneys and public defenders. Type, contents, duration, and mechanisms. - Coverage of translation services in indigenous and ethnic minority languages. - Territorial coverage and physical accessibility of public mediation offices with jurisdiction over social rights. - Existence of coordination mechanisms between federal and subnational governments on access-to-justice policies. Scope and responsibilities. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Existence of studies on effectiveness of and user satisfaction with legal aid, public defenders, and access-to-justice programs. 	

II. DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Acknowledgement by the legal system of the application of the standards of legal due process in administrative proceedings. - Indicate in connection with each of the social programs, plans, and services reported in accordance with article 19 of the protocol: <ul style="list-style-type: none"> i) if benefits and services are determined based on stable, objective, and previously disclosed criteria; ii) if the social plans, programs, and services reported target a predetermined group of beneficiaries or users; iii) if benefits or services are granted on the basis of reasoned decisions; iv) if beneficiaries or users may appeal or challenge the denial of benefits or services; v) if they have the possibility of presenting evidence or submissions on facts and legal arguments; vi) if challenges must be disposed of within a reasonable time; vii) if they have the possibility to invoke a review of an administrative decision in a judicial proceeding or by an independent administrative body. 	<ul style="list-style-type: none"> - Measures on each social program, plan, and service reported have been adopted to improve the promptness and effectiveness of administrative proceedings. Scope. - Measures used to ensure that beneficiaries and users of the services are properly apprised of the criteria for their award and the processing requirements in applying for them. - Measures to define and circulate information on the rights of beneficiaries and users of the social plans and services reported by the state. Scope and characteristics. - Measures to improve access to and coverage of the social programs, plans, and services implemented. Scope and characteristics. - Affirmative action measures to ensure access to plans and services for vulnerable or disadvantaged sectors (for example, incentives for public transport systems). Scope, characteristics, and evaluation. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Existence of user/beneficiary satisfaction/ perception surveys on the social programs, plans, and services reported. 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Estimated cost to users of administrative procedures necessary to become eligible for the benefits and services reported. Indicate a figure. - Existence of means testing or poverty screening to determine eligibility for benefits or services. 		
	SIGNS OF PROGRESS			

STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of independent public agencies to protect users and consumers of public services, such as water, electricity, and transport. Characteristics and jurisdiction. - If so, are these agencies empowered to receive user complaints and imposed punitive measures on service providers? Provide details. - Existence of independent public agencies with authority in the area of environmental protection. Describe their characteristics and jurisdiction. - If so, are these agencies empowered to receive user complaints and imposed punitive measures on companies? Scope and limits. 	<ul style="list-style-type: none"> - Reliable record-keeping mechanisms for beneficiaries and users. Characteristics, scope and coverage. - Measures or policies implemented for integration or coordination of the various social plans, programs, and services reported. Scope, operation and outcomes. - Linkage policies among federal, provincial, and local governments on the social plans, programs, and services reported. Scope and operating characteristics. - Number of cases processed by user and consumer protection agencies. - Number of punitive measures imposed on providers. - Number of cases processed by environmental protection agencies. Punitive measures imposed on polluting companies. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Operation assessments of agencies and linkage policies between different levels of government. Main outcomes. - Assessments of linkage strategies among social programs and services. Main outcomes. 	

III. DUE PROCESS IN JUDICIAL PROCEEDINGS		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Application of the following procedural guarantees in judicial proceedings for the determination of social rights: I) Independence and impartiality of the tribunal; II) Reasonable time; III) <i>Egalité des armes</i>. IV) <i>Res judicata</i>. V) Right of appeal to a higher court to review the judgment. 	<ul style="list-style-type: none"> - Average duration of judicial proceedings in social cases based on the standards of the inter-American system. - Statistical information on trends in proceedings on labor, social security, environmental, consumer, agrarian, and indigenous land dispute cases. - Average duration of the judgment enforcement process in labor and social security matters versus the state. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Opinion polls on how the justice administration system operates. - Existence of perception studies on the independence and effectiveness of the justice system. 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Should special tribunals exist: amount of budgetary resources allocated to the maintenance of social, labor, social security, environmental, and consumer Tribunals? 		
	SIGNS OF PROGRESS			
STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of special rules of procedure for labor matters. Characteristics, scope and limits. - Procedural prerogatives or special privileges for the state in proceedings of this type. Scope and limits. - Existence of special rules on enforcement of judgments against the state. Scope and limits. 		
	SIGNS OF PROGRESS			

IV. EFFECTIVE JUDICIAL PROTECTION		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Existence in the legal system of simple and prompt procedures to protect social rights. Type and characteristics. - Existence in the legal system of precautionary or provisional measures procedures to avert irreparable harm to social rights. Type and characteristics. - Existence of requirements for standing to bring actions of this type. - Standing to sue on behalf of groups or collectives whose social rights have been violated (examples of cases in which environmental, consumer, or other collective rights have been affected). Scope and limits. - Standing of unions to sue on behalf of workers in individual or collective disputes. Scope and limits. - Standing of third parties to present <i>amicus curiae</i> submissions in cases of this type. Scope and limits. - Existence of class actions. Scope and limits. - Existence of special public interest actions or procedures. Characteristics, definition of public interest (including if it recognizes social rights) and limits. 	<ul style="list-style-type: none"> - Average duration of actions to protect social rights. - Existence of a statutory time limit on procedures of this type. Please state. - Average duration of precautionary measures procedures. - Existence of a statutory time limit on procedures of this type. Please state. - Judicial statistics available on the number and effectiveness of actions of this type in the federal and state justice system. 	
	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Existence of studies on the effectiveness of the aforementioned actions. Main outcomes. 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Approximate cost of precautionary or provisional measures procedures, including court costs and attorneys' fees. 	<ul style="list-style-type: none"> - Existence of government measures or policies to reduce the litigation cost of public interest cases. Main characteristics and scope of application. 	
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Table comparing the salaries of social tribunal judges (should they exist) with judges of equal rank in other tribunals, by sex. 		

STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of public agencies, ombudsmen, government attorneys, attorney general, etc., with standing to sue on behalf of collective interests or groups whose social rights have been violated. Scope and limits. - Types of judicial remedies that judges or tribunals can adopt in collective suits: <ul style="list-style-type: none"> i) declaratory judgments, ii) remand rulings iii) remedies of a structural nature - Existence of open proceedings and public hearings in the aforementioned protection lawsuits. Scope and limits. 	<ul style="list-style-type: none"> - Policies or measures that encourage public interest litigation on social rights. Characteristics, scope and main outcomes. - Measures to encourage action on the part of nongovernmental organizations that litigate public interest cases to protect social rights, such as groups involved in the following fields: environmental protection, users' rights, justice and gender, and protection of indigenous peoples. Scope and limits. - Training programs on international human rights law for judges and justice operators that center on class action suits and public interest litigation. Characteristics, frequency, content. 	
	SIGNS OF PROGRESS			

C. Access to information and participation

77. The third crosscutting issue for progress indicators concerns access to information and civil society participation in public social policy.

78. The Committee on Economic, Social and Cultural Rights has drawn attention to the state obligation to produce information bases with which to validate indicators and, in general, access to many of the guarantees covered by each social right. Accordingly, this obligation is essential for the enforceability of these rights.

79. Dissemination of information in a democratic society enables the citizenry to monitor the activities of the authorities to whom they have entrusted the protection of their interests. It follows from the above that the State has a positive obligation to provide that information to the citizenry, particularly when it is in its possession and there is no other way to access it. The foregoing is without prejudice to special limits previously established by law and subject to the principles of proportionality and need.

80. Adequate *access to public information* is a key tool for citizen participation in public policies that implement rights enshrined in the Protocol. Hence the need to have a flow of available information to provide the elements necessary for appraisal and oversight of policies and decisions that directly affect them. Paradoxically, despite the fact that most countries in the region have ratified the main international instruments recognizing civil rights, very few have in place laws on access to public information or domestic rules that surpass the minimum legal standards on in this area.

81. Valuable documents have recently been prepared that seek to determine the scope of the fundamental right to information in the possession of the State enshrined in international human rights law. One particularly important document is that prepared by the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights Dealing with Article 13 of the Convention. Said document is important because it sets the benchmark to be met by laws on access to information adopted by the countries in the region. The document provides that the right of access must be ensured by states and, therefore, is not subject to limits or restrictions except on exceptional grounds that shall be examined according to a strict standard. Openness of public information is, therefore, the norm and confidentiality shall be the exception subject to a strict interpretation. The document also mentions that the State is not only required to observe the right by permitting access to files and databases, but also by discharging a positive obligation to disclose information in certain situations. In some cases, circumstances are recognized as generating the obligation to produce information on the exercise of rights by sectors that have traditionally suffered exclusion and discrimination.⁵³ We should also mention the obligation of states to enact laws to ensure the exercise of this right, which must meet certain basic requirements: the principle of maximum disclosure of information, the presumption of openness of meetings and key documents, broad definitions of the type of information that is accessible, short time limits and

⁵³ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) creates the obligation for the State to “ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes.” (Art. 8 (h)). As we shall see, this is a clear obligation to produce information and is enforceable as a right.

reasonable costs, independent review of denials of information requests, penalties for failure to provide requested information, and an appropriate procedure for establishing exceptions to access.⁵⁴

82. One successful strategy to improve the adequacy and pertinence of social policies and services and, therefore, the progressive realization of social rights, is to guarantee a say in the design and implementation of government strategies for civil society organizations, nongovernmental organizations with technical resources and expertise, and groups that represent the sectors targeted by the policies and services. Participatory rulemaking mechanisms, public hearings, consultative councils, and participatory social budgets are ways that have been tried by several countries in the Americas to channel that participation. Another practice considered appropriate for improving transparency and accountability is to increase forums for social participation in evaluation, oversight, and responsibility mechanisms. This document suggests a number of indicators and signs of progress to measure the level or degree of social participation in these processes.

83. As mentioned, once a state ratifies the Protocol it is incumbent upon it to monitor the observance of the rights enshrined in said instrument. Accordingly, indicators and signs of progress should be adopted that measure access to public information and participation from that point forward and have the following scope.

⁵⁴ Office of the Special Rapporteur for Freedom of Expression, "Access to Public Information in the Americas. Contributions of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," p. 12. This document also outlines discussions on legislative reforms in this area in the Americas. See also Article XIX, *The Public's Right to Know: Principles on Access to Information Legislation* (June 1999), available at [www..article19.org/docimages/](http://www.article19.org/docimages/), *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1996), available at <http://www.article19.org/docimages/511>. Kate Doyle, "Freedom of Information in Mexico", May 2, 2002, available at <http://www.gwu.edu/~nsarchvi/NSAEBB/NSAEBB68>. Toby Mendel, "Freedom of Information as an Internationally Protected Human Right", Article 19, 2000, in www.article19.org. "La Información como herramienta para la protección de los derechos humanos", _CELS, 2004; and Statistical Conference of the Americas, <http://www.eclac.cl/deype/ceacepal/index.htm>.

Access to information and participation

ACCESS TO INFORMATION		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Existence of a law or administrative provisions that recognize the right of access to public information. Jurisdictional, territorial, and thematic scope and competence. - Characteristics of national, provincial, regional, or local statistics systems. Jurisdictional, territorial and thematic coverage. - Existence of the following sources of statistical information: <ul style="list-style-type: none"> a) National population and housing census b) National agricultural census c) National economic census d) Permanent household surveys e) Household spending survey f) surveys of immigrants and ethnic groups, refugees, asylum seekers, internally displaced persons, and stateless persons g) Violence surveys h) Time use surveys i) Living standards survey j) Special modules for immigrants, persons of Afro-descendants, and indigenous peoples in any or all of the foregoing. u) Others. State which. - In all cases mention sample coverage, periodicity, availability, agency responsible, and jurisdictions responsible. 	<ul style="list-style-type: none"> - Type of information provided by the statistics system in the country, disaggregated by sex, ethnicity, language, socioeconomic status, nationality, legal status (refugee or stateless person), jurisdiction (provincial, local), and other factors. - Frequency of censuses and surveys. Mention periodicity - Existence of gender indicators by type of information sources and coverage (population, territorial, thematic). - Existence of information and data sources on racial and cultural differences. Coverage, frequency, characteristics. - Existence of information disaggregated by political and administrative divisions and/or by regions. Scope and limits. - Existence of inter-sectoral and interagency information system operating measures (for users and for the state). Scope and limits. 	<p>Indicators of dissemination of microdata from censuses or surveys; Number of visits to online databases by jurisdiction</p>

	SIGNS OF PROGRESS		<ul style="list-style-type: none"> - Mechanisms by which the state informs the population of progress, changes and/or policy with respect to social issues: <ul style="list-style-type: none"> a) Government public awareness campaigns b) Public awareness and action campaigns by civil society organizations c) Community-based measures d) Print media e) Broadcast media f) Other media g) Mail shots d) Other 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Budget of statistics agencies and/or the statistics departments of each ministry. - Budget for collection and production of information in other areas of the state apparatus. 	<ul style="list-style-type: none"> - Entity or agency (public, private, or mixed) in charge of data collection and household survey processing. - <i>Idem</i> for other information sources mentioned <i>supra</i>. 	
	SIGNS OF PROGRESS			
STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of coordination mechanisms (formal or informal) for statistical data collection among different jurisdictions. Scope and limits. - Existence of oversight bodies to monitor statistics agencies. Scope and limits. 	<ul style="list-style-type: none"> - Number of internal audits and measures to verify compliance with production of statistical information - Number of complaints received alleging lack of access or availability of public information. 	
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Production in any state department of qualitative research or studies. Characteristics, scope and limits. 	<ul style="list-style-type: none"> - Training for statistics production staff. Characteristics, frequency, agents and agencies covered. 	

ACCESS TO PARTICIPATION		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Existence of laws or administrative provisions that recognize the right of participation in public affairs. Jurisdictional, territorial, and thematic scope and competence. - Existence of any of the following social participation mechanisms: <ul style="list-style-type: none"> i) Participatory rulemaking; ii) Public hearings. iii) Consultative councils or bodies on social services and policy. iv) Economic and social councils. v) Users and consumers councils. - Existence of legislative or other measures that encourage the organization of users and beneficiaries of social services and policies. - Existence of legislative or other measures that encourage the formation of nongovernmental organizations in the area of social development, services and policy. Statutory recognition of indigenous peoples' right to consultation. - Incorporation in domestic law of ILO convention 169. Effectiveness. 	<ul style="list-style-type: none"> - Indicate whether consultation and social participation processes were implemented in connection with the policies, programs, or services reported on. Scope of those processes. - Existence of relevant case law recognizing the participation and consultation rights of indigenous peoples. - Existence of relevant case law recognizing the right to participation and consultation on environmental issues, as well as the rights of users and consumers. 	
	SIGNS OF PROGRESS		- Assessments of the level of social participation in the social services and policies reported on.	

BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<ul style="list-style-type: none"> - Are there participatory processes for the preparation of budgets directly or indirectly used for social spending? - Are there mechanisms in place to enable NGOs and citizens to participate in the design, approval, and implementation of social spending budgets? 		
	SIGNS OF PROGRESS			
STATE CAPABILITIES	INDICATOR	- Existence of public agencies that promote citizen participation policies, in particular in social services and policies.	Scope and coverage of programs and strategies to promote citizen participation.	
	SIGNS OF PROGRESS			

V. PROTECTED RIGHTS. GUIDELINES FOR THEIR MONITORING

80. The IACHR suggests a number of guidelines to evaluate implementation of the rights to social security and health (Articles 9 and 10 of the Protocol). These rights were selected based on the experience garnered by the IACHR from its system of cases on these rights as well as developments in standards in the United Nations system. The indicators presented in this section could be considered for the design of progress indicators on other rights contained in the Protocol.⁵⁵

A. Right to Social Security

81. On the matter of social security, Article 9 of the Protocol provides that *“Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.”*

82. The starting point for social security legislation is the concept of contingency. This refers to a future event or situation, which, should it occur, will have harmful effect on the individual. It is therefore an event that is future and uncertain –but which has a high probability of occurring– that makes it necessary to protect the individual, or a group of individuals, from such an eventuality.⁵⁶

83. The protection of the social security system comes into effect once the contingency has arisen, having caused an individual, or members of the individual’s family, or both, to be negatively affected in terms of standard of living, as a consequence of either increased consumption, or decreased or suppressed income.

84. Most bodies of legislation in Latin America and the Caribbean, divide contingencies into three categories: i) *pathological contingencies*: situations where protection is required against the eventuality of disease (health insurance), accident or occupational illness (pensions for invalidity or ill-health); ii) *socioeconomic contingencies*: this refers to security against the eventuality of loss of income (retirement or pension), lack of work (unemployment insurance) or due to “expansion of the family” as a result of a birth or dependent spouse (family benefits); iii) *biological contingencies*: precautions taken in active life in order to ensure the protection of rightful claimants (pension for surviving spouse or children who are minors), in the event of death (burial costs), or a pension for non-workers who lack resources (ex-gratia or non-contributory pensions).

85. In all these cases what is “protected” is that which, if absent, is understood to constitute a lack or deprivation. Contingency is therefore indissolubly linked to lack, in the most traditional concept of social security, or to the State of need of the person, in the more modern

⁵⁵ In the comments submitted by the International Commission of Jurists (ICJ) and the government of Colombia during the consultation period for this document, it was suggested that the outcome indicators to be chosen for each of the rights selected should reflect at least those components of the rights expressly provided for in the text of the treaty that lend themselves to translation in quantitative terms, particularly -and at least-, as outcome indicators. Furthermore, the goal with each of the individual indicators included as qualitative signs of progress is to relate those signs of progress, in turn, to the crosscutting issues proposed, so as to link government policies and measures (or the absence thereof) to the objectives as regards implementation of the Protocol and of the development model adopted by each state.

⁵⁶ Laura Pautassi *“El derecho a la seguridad social. Una aproximación a América Latina”*, In: Abramovich, V.; Añón, M.; Courtis, C. (comps.), *Derechos Sociales: instrucciones de uso. Doctrina Jurídica Contemporánea*, Mexico, Fontamara Ediciones, 2003.

vision. In either of these two cases, the protection must be linked to the coverage, that is, to what is needed to make up for the lack.

86. As the right to social security developed and mechanisms were designed to ensure that benefits were effectively received, dependent workers and in some cases their family group were included. Coverage for the unwaged was limited to a number of well-defined contingencies, although in most cases protection was a consequence of voluntary adherence. In other words, the principle of universality has not been sufficiently developed, and it is still a requirement to demonstrate certain circumstances in order to accede to protection.⁵⁷

87. These particularities are provided for in the Protocol since it recognizes the difference in coverage between salaried workers and those not in paid employment. It should also be considered that, as a result of the reforms adopted by the region's countries during the last decade, the different forms of social security organization in each country have undergone substantial changes, especially in terms of access, coverage, and related rights.

88. Strictly speaking, in addition to attempting to record degrees of realization of the right as well as conditions of access thereto, indicators should seek to collect more detailed information about the transformations that have occurred in systems of responsibility in order to identify with whom the obligation to safeguard the guarantee of social security cover rests; that is, is the State still the main guarantor -and provider- or has chief responsibility shifted to the private sector, through specific forms of private insurance? Under the latter systems, the role of the State under domestic law has been reduced to that of protector, while in some countries' legal frameworks their responsibilities are even less clear or further diminished. These circumstances are considered relevant for monitoring compliance with the Protocol.

⁵⁷ In short, protected individuals are all those who are included in the system's field of application, or in special regimes (professionals, armed forces). They are potential claimants of the benefits established, which will come into effect when the contingency occurs, provided that they meet the required conditions (age, illness, etc.). In order to be a beneficiary, however, it is not enough to come within the field of application of these regimes; it is always necessary to meet legal requirements to accede to the status of beneficiary. These requirements may refer to the objectivization of the contingency (degree of invalidity, for example) or to legal conditions (married status) or be related to the administrative and financial authority of the regime in question (length of membership or minimum contribution). Clearly, the system is not unconditionally accessible to all citizens.

RIGHT TO SOCIAL SECURITY		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Date of ratification by the state of the following international treaties that recognize the right to social security: <ul style="list-style-type: none"> a) ICESCR. Protocol of San Salvador. b) CEDAW. Optional protocol. c) ILO Conventions (35, 36, 38, 39, 40, 48, 67, 70, 71, 102, 118, 128, 131, 156, 157, 167, 165, 168, 183, among others). d) 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol e) 1954 Convention Relating to the Status of Stateless Persons - Recognition in the constitution of the right to social security. Scope and coverage. - Specific legislation that recognizes the right to social security: <ul style="list-style-type: none"> a) social security code; b) special chapters or titles in the labor code; c) sundry laws and regulations; d) collective bargaining rules; e) Other standards. State which. 	<ul style="list-style-type: none"> - Organization of the social security system by type of coverage: for wage earners and family group; for the unwaged and persons in other circumstances; for the unemployed, by sex, nationality, legal status (refugee or stateless person), jurisdiction, and conditions of access. - Conditions and requirements for social security access and coverage for groups not formally recognized in the labor market. Scope and conditions. - Trends in contingency coverage by type and level of coverage, population covered, conditions of entitlement. - Social security benefit programs for informal workers. Coverage, type of benefits, and jurisdictions involved. - Specific contingency coverage for senior citizens without income or sufficient contributions. Characteristics, scope, conditions of access, amounts. - Number of reports and specific measures that the state has presented to international monitoring bodies on observance of the right to social security - Number of shadow reports on social security presented by civil society organizations to treaty monitoring bodies. 	<ul style="list-style-type: none"> - Pension gaps by age group - Social security contributor gaps, by sex and age
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Number of registered civil society organizations involved in the promotion and protection of the right to social security. - Recognition of indigenous health systems. 	<ul style="list-style-type: none"> - Existence of user satisfaction assessments with respect to the quantity and quality of social security coverage. 	

STATE CAPABILITIES	INDICATOR	<p>- Legal nature of the agencies that manage social security services:</p> <ul style="list-style-type: none"> • Public • Private • Mixed • Union • Other. Describe type. <p>- Type of benefits they provide and population covered.</p>	<p>- Percentage of population with access to social security coverage.</p> <p>- Number of social security plan participants, whether as contributors or beneficiaries, by age, sex, and occupational category.</p> <p>- Number of workers covered against work accidents, by sex, age, nationality, legal status (refugee or stateless person), occupation or category, and branch of activity.</p> <p>- Work accident trends by type of coverage, age, sex, nationality, legal status (refugee or stateless person), and branch of activity.</p> <p>- Number of invalidity pensions granted in the past year, by sex, nationality, legal status (refugee or stateless person), and place of residence.</p>	<p>Percentage of population without social security coverage, by age, nationality, legal status (refugee or stateless person), activity status, ethnicity.</p> <p>- Public-private social security coverage gap.</p>
	SIGNS OF PROGRESS	<p>- Existence of public policies on inclusion of nonparticipants in the social security system.</p>	<p>- Existence of institutional mechanisms to promote inclusion of groups without social security coverage.</p>	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATOR	<p>- Forms of financing the social security system:</p> <ul style="list-style-type: none"> • Percentage of contributions charged to employers and percentage charged to formal workers. • Percentage paid for with state funds. <p>- Ratio between contributions and the minimum wage.</p> <p>- Percentage of the system under private management. Describe.</p> <p>- Existence of solidarity funds. Describe.</p> <p>- Use of extra-budgetary funds to finance the system or its deficit. Indicate if they come from international agency loans; borrowing, reserves, or other sources.</p>	<p>- Percentage of public social spending allocated to social security by geographic zone in the country (urban/rural) and by regions or provinces.</p> <p>- Financing of maternity leave charged to: i) the social security system in full; ii) the employer in full; iii) other mechanisms. Describe which.</p> <p>- Existence of a social security benefit update system. Parameters.</p> <p>- Existence of mechanisms to take account of the male-female wage gap for social security purposes. Describe.</p> <p>- Existence of mechanisms to offset the disparity in income and benefits in different geographic zone or region in the country. Describe.</p>	<p>- Male-female wage gap and its effect on the social security system</p> <p>- Types of non occupational illness, by sex, type of activity, and age.</p>
	SIGNS OF PROGRESS	<p>- Existence of estimates of the physical cost of social security reforms. Describe.</p>		

EQUALITY AND NON DISCRIMINATION	INDICATOR	<ul style="list-style-type: none"> - Conditions and requirements for access to the social security system. - Conditions and requirements for access to the system for indigenous peoples, afro-descendants, refugees, asylum seekers, and stateless persons. - Conditions and requirements for access to the system for workers in domestic service. - Conditions and requirements for access to the system for agricultural laborers. 	<ul style="list-style-type: none"> - Social security benefits are calculated on the same basis for men as for women. Describe. - Type and use of actuarial tables to calculate social security benefit (pension balance). - In the case of divorce, family allowances are issued to the person with custody (if there are minor children). - Existence of a mechanism for inclusion in contingency coverage of persons who engage in reproductive or domestic labor. 	<ul style="list-style-type: none"> - Percentage of beneficiaries of a retirement pension, by sex and by age. - Percentage of qualifying dependents who receive a pension or an allowance, by sex and by age. - Percentage of immigrants, refugees, asylum seekers, and stateless persons. with social security coverage - Percentage of agricultural workers with social security coverage
	SIGNS OF PROGRESS			
ACCESS TO INFORMATION AND PARTICIPATION	INDICATOR	<ul style="list-style-type: none"> - Existence of social security statistics disaggregated by sex, ethnicity, age, nationality, legal status (refugee or stateless person), public/private coverage, territorial distribution. - Existence of surveys that measure contingency specificities (by gender, race). 	<ul style="list-style-type: none"> - Frequency of reports sent to social security contributors, be they individual capital account holders or participants in the public pension system. - Registration of work accident statistics by the state. Methodology, periodicity, and coverage. - Measures to prevent work accidents. State or private jurisdiction. Describe. 	
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Existence of public awareness campaigns on social security rights. State responsibility, frequency, and target groups. - Measures by labor union to inform workers about guarantees to social security rights. Frequency and coverage. 	<ul style="list-style-type: none"> - Distribution of information about rights to recipients of forms of ex-gratia or non-contributory pensions. Scope and limits. 	
ACCESS TO JUSTICE	INDICATOR	<ul style="list-style-type: none"> - Existence of pre-judicial mechanisms to lodge complaints alleging breach of social security obligations. Jurisdiction. - Existence of state supervisory organs and operation of private social security benefits systems. Description, functions, jurisdiction. 	<ul style="list-style-type: none"> - Number of complaints concerning the rights to social security received, investigated, and disposed of by the national human rights protection agency or other administrative mechanisms. - Jurisdiction and oversight powers of the state with respect to management of individual capital funds by private entities. Scope and limits. 	

		<ul style="list-style-type: none"> - Existence of complaint mechanisms for participants in individual capital account systems. Description, jurisdiction and functions. 	<ul style="list-style-type: none"> - Number of judicial decisions that to grant social security coverage. - Number of complaints that have resulted in social security coverage granted to informal workers. - Number of lawsuits that have resulted in a denial of a non-contributory pension. 	
	SIGNS OF PROGRESS			

B. Right to Health

89. Article 10 of the Protocol of San Salvador provides with respect to this right that *“Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a) Primary health care, that is, essential health care made available to all individuals and families in the community; b) Extension of the benefits of health services to all individuals subject to the State’s jurisdiction; c) Universal immunization against the principal infectious diseases; d) Prevention and treatment of endemic, occupational and other diseases; e) Education of the population on the prevention and treatment of health problems, and, f) Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”*

90. The Protocol refers to observance of the right in the framework of a health system that, however basic it may be, should ensure access to primary health care and the progressive development of a system that provides coverage to the country’s entire population. In turn, it should afford special assistance to vulnerable groups and those in a situation of poverty.

91. The right to health has a large number of measurement instruments, in particular quantitative instruments. At the same time the right to health is addressed in three Millennium Development Goals (on child mortality, maternal mortality, and HIV/AIDS, malaria and other diseases), for which there is information available in most countries in the region. In these cases, it is up to the reporting State if it wishes to combine information on progress in the MDGs with the indicators suggested here.⁵⁸

92. In keeping with the aforesaid framework, for the purpose of monitoring the implementation process in terms of the scope of the provisions contained in the Protocol, the table below sets out the main (structural, process and outcome) indicators as well as qualitative signs of progress. We should reiterate that the indicators shown should be regarded as a guide for a broader process in which further indicators and more precise signs of progress are included.

93. The table also includes indicators on crosscutting issues in order to demonstrate their importance and the possibility to have a combination of separate tables for all the rights contained in the Protocol (such as those mentioned in the first part of this document) with disaggregated information on crosscutting issues in the tables of indicators on specific rights.

⁵⁸ In its response to the consultation on the instant document, the PAHO indicated that, in addition to the MDGs as a measurement instrument, it was also necessary to include all the resolutions that concern the right to health, in particular on primary health care and protection of vulnerable groups, discussed and adopted by the OAS member states in the Directing Council and/or the Pan American Sanitary Conference of the PAHO in the context of the Constitution of the WHO. It mentioned, to that end, that it is crucial to offer states, civil society, and specialized inter-American agencies the possibility to measure the right to health in accordance with the guidelines that come out of the PAHO/WHO as the inter-American agency that is responsible for public health in the hemisphere and which consists of a large number of offices that monitor state compliance with necessary measures to protect the right to physical and mental health of the most vulnerable groups.

RIGHT TO HEALTH		STRUCTURAL INDICATORS	PROCESS INDICATORS	OUTCOME INDICATORS
INCORPORATION OF THE RIGHT	INDICATOR	<ul style="list-style-type: none"> - Ratification by the state of the following international treaties that recognize the right to health (indicate date of ratification): <ul style="list-style-type: none"> a) ICESCR. Protocol of San Salvador b) CEDAW. Optional protocol c) CRC d) ICERD - Recognition in the constitution of the right to health. Scope. - For federal states: recognition and guarantees of the rights to health in subnational constitutions. - Forms of and regulations on organization of the health system (public, private, health insurance). Describe and specify. 	<ul style="list-style-type: none"> - Number of reports and specific measures that the state has presented to international monitoring bodies on the right to health. - Number of shadow reports presented by civil society organizations to treaty monitoring bodies. - Existence of programs that grant priority for health services to vulnerable sectors. Scope, population and territorial coverage, financing. - Estimated percentage of births, marriages and deaths registered in a civil records system. 	<ul style="list-style-type: none"> - Life expectancy by geographic zone in the country. - Mortality rate by sex and age group. - Mortality rate due to accidents, homicide, or suicide, by sex. - Percentage of population with access to safe water. - Percentage of population with access to basic sanitation services. - Number of professionally attended deliveries. - Percentage of women at reproductive age with anemia
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - The health system is organized according to the principle of universality or targeting criteria. Justify. - Existence of national agencies or agreements on health system organization and operation. Describe. - Number of registered civil society organizations involved in the promotion and protection of the right to health. Scope and territorial population coverage. 	<ul style="list-style-type: none"> - Existence of user satisfaction assessments with respect to the quantity and quality of health services. Main outcomes. 	
STATE CAPABILITIES	INDICATOR	<ul style="list-style-type: none"> - Existence of official documents that recognize the fundamental concept of comprehensive and universal primary health care. List documents - Existence of a national policy on drugs, including generic drugs. Scope, population and territorial coverage, operation mechanisms. 	<ul style="list-style-type: none"> - The health services aim to provide universal coverage or only subsidize demand. Justify. - Percentage of population with sustainable access to essential and/or generic drugs. - Existence of significant public-private disparities in health spending and coverage. Justify. 	<ul style="list-style-type: none"> - Primary health care program coverage. - Coverage of the senior-citizen care program. - Services utilization rate. - Number of health-insured persons as contributors or beneficiaries.

		<ul style="list-style-type: none"> - Density of physicians per inhabitants. - Density of nurses per inhabitants. 	<ul style="list-style-type: none"> - Percentage of public health services subcontracted to private companies or NGOs. - Number of professional and auxiliary personnel per hospital beds. 	<ul style="list-style-type: none"> - Comparative density of physicians in rural and urban areas. - Hospital discharges, by cause, disaggregated by sex and age
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Negotiation of international technical and financial assistance in health. Mention amounts, objectives, and applicant agencies. - Existence of perception studies on access to healthcare. 	<ul style="list-style-type: none"> - The State has designed institutional mechanisms that encourage citizen participation in decision-making in the public health sector. Describe. - The entire population is ensured adequate access to timely, quality, and decent health care regardless of their capacity to pay. Justify. 	
BASIC FINANCIAL CONTEXT AND BUDGETARY COMMITMENTS	INDICATORS	<ul style="list-style-type: none"> - The health sector is financed: <ul style="list-style-type: none"> • Exclusively with budgetary resources. Indicate the percentage of public social spending allocated to health. • With extra-budgetary resources. Source of financing, amounts, periods. - Existence of incentives, tax allowances, and subsidies for the private health sector. Amount, scope, and access requirements. - Existence of government incentives for the private pharmaceutical industry. Quantity, requirement. 	<ul style="list-style-type: none"> - Public health care spending per capita. - Distribution of public social spending on health by geographic (urban/rural) zone in the country and by region or province. - Percentage of funds used for training of human resources in health. 	<ul style="list-style-type: none"> - Average expenditure on health as a percentage of household income.
	SIGNS OF PROGRESS			
EQUALITY	INDICATORS	<ul style="list-style-type: none"> - Rules on abortion. Cases, scope, prohibitions. - Existence of a law or national policy for persons with physical and mental disabilities. Scope and coverage. - Recognition of sexual and reproductive rights. Mention legal-regulatory instruments and their scope. 	<ul style="list-style-type: none"> - Estimated number of abortions by age, place of residence (urban or rural) and socioeconomic status of pregnant woman. - Percentage of population that uses indigenous or alternative health care systems. - Existence and implementation of programs on sexual and reproductive health. Scope and coverage. 	<ul style="list-style-type: none"> - Maternal mortality rate - Distribution of maternal mortality by cause, disaggregated by age groups - Percentage of persons with physical or mental disabilities who have access to services at public or social facilities - Treatment of persons with disabilities at community facilities.

		<ul style="list-style-type: none"> - Existence and availability of mental health services, by region. 	<ul style="list-style-type: none"> - Food program coverage of boys and girls (%). - Proportion of boys and girls who receive prenatal care and care up to age five. - Births attended by skilled personnel. - Percentage of pregnant women with HIV/AIDS tests - Percentage of infants born to HIV-positive mothers who contract HIV/AIDS within the first two years of life. (reported number of vertically transmitted aids cases). - Percentage of pregnant women who received prenatal care. - Indicators for exclusive breastfeeding for four and six months. 	<ul style="list-style-type: none"> - Perinatal mortality rate. - Percentage of children under five years old who are underweight - Percentage of children with low birth weight (less than 2.5 kg). - Rate of assistance due to domestic violence - Composition by sex of reported cases of AIDS and HIV diagnoses. - Estimated number of illegal abortions, by age, place of residence (urban or rural) and socio-economic circumstances of the pregnant woman, or other available data.
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Existence of public perception surveys on the relationship between fertility, child mortality, and maternal mortality. Main findings. 	<ul style="list-style-type: none"> - Existence of public perception studies on sexually transmitted diseases (<i>inter alia</i>, HIV/AIDS). Main findings. - Existence of studies and estimates on illegal abortions disaggregated by age, place of residence (urban or rural), socioeconomic status of pregnant woman, or other available data. 	
ACCESS TO INFORMATION AND PARTICIPATION	INDICATOR	<ul style="list-style-type: none"> - Existence of a health statistics system. Territorial, thematic, jurisdictional, and population coverage. - Existence of surveys that measure risk factors. Scope and limits. - Statutory protection of personal health information. Scope and limits. - Does the law require patient consent for treatment? Describe. 	<ul style="list-style-type: none"> - Percentage of children and youth that receive health education. - Percentage of health facilities with confidentiality protocols on health information. - Government dissemination of information on sexual and reproductive health policy. Scope and coverage. - Advisory services for pregnant women on mother-child HIV/AIDS transmission. 	<ul style="list-style-type: none"> - Percentage of children born with fetal malformations caused by alcohol and other drug use.

			<ul style="list-style-type: none"> - Availability of information and awareness programs on the effects of alcohol, tobacco and other drug use. - Existence at health facilities of translation services to and from other languages spoken in the country. Scope and territorial and ethnic coverage. 	
	SIGNS OF PROGRESS	<ul style="list-style-type: none"> - Existence of studies on health care needs. Description and main findings. - Existence of public awareness campaigns in this respect. Scope. 	<p>Indicate which of the following mechanisms are used to disseminate information to the public about their health care rights:</p> <ul style="list-style-type: none"> a) government public awareness campaigns; b) public awareness and action campaigns by civil society organizations; c) community-based measures d) print media e) broadcast media f) other media g) mail shots <p>d) other</p>	
ACCESS TO JUSTICE	INDICATORS	<ul style="list-style-type: none"> - Existence of pre-judicial mechanisms to lodge complaints alleging breach of obligations connected to the right to health. Jurisdiction and scope. - Jurisdiction of government ministries to receive complaints from health system users. Scope and powers. 	<ul style="list-style-type: none"> - Number of judicial decisions that have upheld guarantees in the area of health, in general, and in specific cases (<i>inter alia</i>, sexual and reproductive health, persons with HIV/AIDS). - Number of complaints on the right to health received, investigated and disposed of by the competent national human rights protection agencies in the country. 	
	SIGNS OF PROGRESS			

VI. CONTRIBUTIONS FOR THE PREPARATION AND EVALUATION OF NATIONAL REPORTS

94. A methodology to monitor fulfillment of the rights and obligations contained in the Protocol such as the one proposed above, poses implications as regards the procedures for the preparation and evaluation of national reports. Accordingly, the Inter-American Commission suggests a set of guidelines that it believes could help to establish a simple and effective procedure in that regard, and which might also serve as a model evaluation system for states.

95. Some of these proposals are designed to contribute to the future activities of the Working Group to implement the reporting system, the composition and functioning of which were defined by the OAS General Assembly on June 5, 2007 (AG/RES. 2262).

96. To that end, the Commission first sets out a number of general aspects regarding the procedure for reporting to the UN Committee on Economic, Social and Cultural Rights. The purpose of this presentation is to draw attention to a number of lessons learned from this procedure that could be useful for the design eventually implemented in the inter-American context. The aim, in particular, is to underscore possible differences between one procedure and the other and to endeavor to ensure that the monitoring systems do not needlessly duplicate efforts. Following that, the Inter-American Commission offers a number of observations on the use of a participatory procedure in the preparation of reports and on evaluation methodology.

A. Considerations to Bear in Mind Based on the Experience of the United Nations Committee on Economic, Social and Cultural Rights

97. Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, states parties undertake to submit reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized therein. These reports are initially examined by a Pre-Sessional Working Group composed of five members of the Committee,⁵⁹ who meet for one week before the plenary of the Committee examines the report. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States. The group prepares a list of issues which are then transmitted to the reporting state, so that it might reply in writing before it appears before the Committee or at the public hearing.⁶⁰ The representatives of the States parties appear before the Committee, present the report, and answer questions. The representatives are then given a period in which to answer questions posed or facilitate additional information.⁶¹ Finally, the Committee completes its examinations and publishes its "concluding observations" on the report.

98. The Committee devotes three meetings (of three hours each) to its public examination of States parties' reports. Finally, it holds a private session at which it adopts its concluding observations.

⁵⁹ These persons are nominated by the Committee Chair, taking account of the desirability of a balanced geographical distribution and other relevant factors, such as the areas of expertise of the Committee members.

⁶⁰ The list of issues contains questions addressed in writing to the State party based on documents presented by it. The list is prepared some 6 to 12 months before the Committee examines the report of the State party.

⁶¹ In order to have available all the information necessary to evaluate reports, the Committee permits nongovernmental organizations to present information at any time during the review process and even allows the submission of alternative reports (commonly referred to as *shadow reports*).

99. In the course of its sessions in 2000, the Committee resolved that, as a general rule, a State party's next periodic report should be submitted five years after the Committee's consideration of the State's preceding report, but that the Committee may reduce this five-year period on the basis of the following criteria and taking into account all relevant circumstances: i) the timeliness of the State party's submission of its reports; ii) the quality of all the information submitted by the State party; iii) the quality of the constructive dialogue between the Committee and the State party; iv) the adequacy of the State party's response to the Committee's concluding observations; and, v) The State party's actual implementation of the Covenant.

100. In situations in which the Committee considers that it is unable to obtain the information it requires, in accordance with Article 23 of the Covenant and the follow-up procedure in relation to the consideration of reports, it may request that the State party concerned accept a mission consisting of one or two members of the Committee. Such a mission requires the approval of both ECOSOC and the State party concerned. The purpose of such missions is to enable the Committee to collect information to strengthen follow-up on its recommendations and provide technical assistance on specific issues.

B. Participatory Procedure in the Preparation of Reports

101. Given that monitoring compliance with obligations in the area of social rights is an especially complex task, since its first session in 1987, the Committee on Economic, Social and Cultural Rights has relied on information provided by official UN sources, specialized agencies, and nongovernmental organizations. Resolution 1296 (XLIV) introduced the participation of nongovernmental organizations in the work of the Committee. Furthermore, in 1993, the Committee approved a document entitled "Participation of non-governmental organizations in the Committee on Economic, Social and Cultural Rights."⁶² Although a number of member states initially expressed their rejection of the use of information supplied by nongovernmental organizations, the Committee has vigorously defended the role of the information provided, especially since it can be compared with the original information provided by the State. This process has led to various forms of civil society participation in the activities of the Committee, in particular through the submission of alternative, parallel, or shadow reports.

102. The submission of a parallel or alternative report to that of the State is possible through coordination between the Committee and NGOs. This participation is open to NGOs i) during consideration of state party reports, at which they may participate without voice; ii) on general discussion days, at which they have the opportunity to make oral presentations; and, iii) in the drafting of general comments. It has also been the practice of the Committee to permit participation of civil society organizations in the meetings at which the Pre-Sessional Working Group drafts the questions to be put by the Committee to the reporting state. Some states provide specific procedures for civil society participation in the presentation of their respective reports to the Committee.

103. Moreover, civil society participation in the presentation of alternative reports to treaty-based monitoring bodies is a practice that already deserves the highest possible respect as a citizen oversight mechanism on state compliance with international obligations.

104. In the framework of the inter-American system, the Permanent Council adopted a resolution that contains a series of guidelines on civil society participation in OAS activities,⁶³ which

⁶² UN Doc. E/C.12/1993/WP.14 of 12 May 1993. See also, "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights", 7 July 2000 (E/C.12/2000/6).

⁶³ CP/RES.759 (1217/99).

has prompted the registration, mobilization, and participation of nongovernmental organizations active in various fields. In any event, this recognition of the necessary participation of civil society puts a seal of legitimacy on the activities of the Organization.

105. The IACHR considers that the reporting procedure under the Protocol will be highly useful for ensuring adequate participation for civil society in the various stages. It is possible that many states will manage to ensure that participation in their internal procedures for drafting the reports to be submitted to the Working Group. In that connection, the IACHR considers that, generally speaking, the information collected for the report provided in the Protocol will be of a public nature or of public interest and that there should be no obstacles to limit participation and discussion forums with different societal stakeholders that represent the diverse sectors involved in the issues covered in the report. The participation in the reporting and evaluation processes of the Working Group will make it possible to ensure greater transparency and legitimacy in the process, increase sources of information which the Working Group would be able to compare with the statistical and factual data provided by different states, and, finally, boost the effectiveness of follow-up on the observations of the Working Group. The social and policy dialogue that the Protocol monitoring process could trigger would certainly be a notable outcome in itself, as a strategy for ensuring social rights in states parties.

106. In turn, the principle of participation requires that all procedures corresponding to the reporting system be governed by the principle of broad disclosure. As mentioned above, without prejudice to the fact that some information might be confidential, the type of information requested for the system of indicators and for the reporting on the situation of the social rights enshrined in the Protocol in general, is of a public nature or of public interest, and states should furnish and publicize it widely. Accordingly, the IACHR considers that the reporting to the Working Group should proceed in a framework that is as open to participation and as public as possible.

C. Monitoring Phases

107. Discussions have been held in the framework of the Committee on Economic, Social and Cultural Rights as to whether it would be more suitable for reports presented to cover clusters of rights or all of the rights protected in the Covenant. While reports were initially submitted on clusters, it was later decided to have documents that examined all of the rights protected.

108. The General Assembly resolution that contains the Reporting Guidelines does not lean toward any methodology in particular. It merely alludes to the possibility of grouping the rights protected according to thematic clusters and mentions the need to cross reference that information with information on the respective rights subject to special protection. However, there is no rule with respect to the 'cluster reporting' methodology.

109. The Inter-American Commission considers that the implementation process for the reporting system should proceed as vigorously as possible while adhering to minimum requirements of reasonableness, in accordance with the institutional structure currently in place in the Organization for monitoring. Consequently, the Inter-American Commission proposes that the reporting system be implemented by stages that cover clusters of related rights and alternative strategic themes consistent with the needs and priorities of the region.

110. It should be borne in mind that the report evaluation procedures are relatively short (60 days), with the result that the Working Group will not have enough time to analyze an overly extensive amount of information. Therefore, the Inter-American Commission considers that to adopt a system of reports that cover all of the rights contained in the Protocol could lead to recommendations of an exceedingly general nature that fail to address areas of non-compliance in

sufficient depth. The various proposals on clusters and procedure are designed to make reporting as suitable and effective as possible.

111. As noted, the IACHR believes that a possible starting point would be the presentation of reports on crosscutting issues common to all of the rights and in the manner described in this document. The difficulty of submitting exhaustive reports on every component of each of the rights enshrined in the Protocol, justifies an approach that would initially provide information on the baseline situation in those settings that best encourage the judicial enforceability and political observance of social rights at the domestic level.

112. In parallel to the indicators on crosscutting issues, at an ensuing stage it would be necessary to develop, in a participatory and deliberative manner, a set of indicators on the other social rights contained in the Protocol.

113. Finally, a core aspect of the first phase is for each state to establish priority goals and objectives. We have already mentioned the need that this process formally includes the participation of civil society. Goal setting also requires the design of a precise strategy or plan for meeting those goals and a detailed timetable by which to monitor fulfillment of proposed objectives. Goals and objectives should be consistent with the level of development and available resources in each state and be designed with particular attention to the scope and content of each right in the Protocol, as determined by the case law of the inter-American system, the analogous implementation of the general comments and concluding observations of the UN Committee on Economic, Social and Cultural Rights, and the relevant case law of domestic tribunals.

D. Design of Indicators in Accordance with Local Problems and Determination of Regional Needs and Priorities

114. A system of indicators to analyze the observance of rights is technically a highly complex tool. One of the most useful strategies for reducing this problem is to adapt or adjust a set of general progress indicators to match local and/or regional issues to be examined in each period. This requires that, prior to the presentation of reports, the Working Group to implement the system prepare a preliminary analysis or outline of the problems in each country under review based on relevant information from specialized agencies, the government departments of the State in question, and consultations with civil society organizations. It might also be appropriate, for that purpose, to confer with the Inter-American Commission on Human Rights. The IACHR considers that, in addition to a set of general progress indicators, it would be advisable for the Working Group to specify which information is deemed relevant and to add or remove some of those indicators, as appropriate, in order to make it easier for the State to enhance the accuracy and utility of its reports. Accordingly, the IACHR recommends a preparatory activity of some description similar to that carried out by the UN Committee's Pre-Sessional Working Group.

E. Presentation of Reports to the Working Group and Their Evaluation. Need for a Tripartite Working Group

115. It should be borne in mind that some of the procedures of the Committee on Economic, Social and Cultural Rights suffer from certain restrictions owing to the difficulty that this agency has in monitoring a rather high number of countries (more than 100). The fact that there are fewer countries in the inter-American framework would make it possible to explore creative methodologies with respect to the evaluation of reports. Following, we offer a number of suggestions on presentation, evaluation, and follow-up on implementation of recommendations.

116. As regards *evaluation* of reports, it could be useful for the working group to have the possibility to make country visits -should it consider that necessary- to ensure direct contact with

government agencies and greater participation on the part of the relevant civil society organizations. This initiative is in keeping with the constructive nature of the reporting system, which seeks to guide states in the adequate fulfillment of the Protocol.

117. *Evaluations* should be conducted according to the principle of maximum disclosure and not be guided by the logic of secrecy. Evaluations should also take into account information supplied by nongovernmental organizations regarding reports submitted by states (alternative or supplemental reports).

118. Follow-up on implementation of recommendations is a task that should be globally supervised by the Working Group according to set deadlines at the domestic level. It should be kept in mind that the principle of reciprocity does not signify that reporting is limited simply to a dialogue between states and the Working Group without any form of coercibility or constraint. Indeed, such procedures were abandoned by the Universal System in favor of the procedure of the ESCR Committee and the need to adopt concluding observations, the recommendations from which provide the framework for the presentation of ensuing reports.

119. The members and procedures of the Working Group must safeguard the principles of autonomy, independence, and impartiality, in particular *vis-a-vis* governments.