A. Normative framework

The inequalities affecting indigenous peoples are directly linked to the recognition of their rights. The path towards ensuring the rights of indigenous peoples consisted mainly of seeking their recognition as holders of collective rights and guaranteeing the rights to self-determination, collective ownership of land and political participation. That path is evident in the various international agreements and forums established following the adoption of the first instrument on this topic, the Indigenous and Tribal Populations Convention, 1957 (No. 107) of the International Labour Organization (ILO, 2017a).

Following this first Convention, recognition of the rights of indigenous peoples has been set forth in various international instruments, among which the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of ILO (2017b) stands out as the first treaty to define indigenous peoples as collective and differentiated subjects of rights, as does the United Nations Declaration on the Rights of Indigenous Peoples (adopted on 13 September 2007), which recognizes their right to self-determination. The mechanisms established for putting these instruments into practice include the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the mandate of the Special Rapporteur on the rights of indigenous peoples (Del Popolo, 2017).

At the core of collective rights of indigenous peoples in these mechanisms is indigenous territory and the natural resources that lie within it, as well as the culture and identity of the indigenous population. It is very important that indigenous children and adolescents, as well as indigenous women, are included and protected in the framework of these collective rights.

Progress on a specific indigenous agenda has also been set forth in the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs), which are closely bound up with the cross-cutting development of indigenous peoples. Over a third of the 169 targets have substantive links with the United Nations Declaration on the Rights of Indigenous Peoples. Specifically, the SDGs include four targets that make explicit references to indigenous peoples (2.3, 4.5, 10.2 and 17.18). These refer to their role as agricultural producers, the importance of closing gaps in education and progress towards better economic, social and political inclusion. It is also important to make the challenges in ensuring rights more statistically visible.

These instruments, which make up the global normative framework that underpins implementation of the rights agenda of indigenous peoples, were reaffirmed at the World Conference on Indigenous Peoples, held in New York in September 2014.

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1 This chapter was prepared by Humberto Soto de la Rosa, Social Affairs Officer of the Social Development Unit of the ECLAC subregional headquarters in Mexico; and Sandra Huenchuan, Research Assistant, and Citlalli Lamotte, Consultant, with the Social Development Unit.

2 For more information, see ECLAC/FILAC (2020).
At the regional level, the inclusion of a specific chapter on indigenous peoples in the Montevideo Consensus on Population and Development (ECLAC, 2013) reinforced the commitment of the countries of the region to taking action to ensure the fulfilment of the rights of this group.

On the basis of the above-mentioned instruments, two major aspects have been identified that must be taken into account for a conceptual analysis of the situation of indigenous peoples in a given territory. The first is that ensuring the exercise of their rights should be framed in terms of the right of self-determination of indigenous peoples. Certain conditions are necessary to achieve this, such as strengthening their institutions, as well as their possibilities and capacities for relations with the State, respecting existing agreements or accords, as indicated in the United Nations Declaration on the Rights of Indigenous Peoples (article 5): “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State” (United Nations, 2007, p. 4).

The second aspect has to do with structural discrimination, which, in practice, has historically excluded indigenous peoples from the development process, regardless of their gender, disability status or age, and is manifested in equality gaps in various spheres. Discrimination against indigenous peoples and other ethnic groups is structural insofar as it is directly related to structures of concentration of resources and power. This concentration of resources and power protects economically and socially privileged groups and acts to their advantage and to the detriment of non-privileged groups, in this case indigenous peoples. It is manifested though the justice system, tax policy, the land ownership regime and norms on treatment between genders, among other things.

Structural discrimination is also explained by a culture of privilege that dates back to the colonial rationale and naturalizes inequality. It is reproduced through actors, institutions, rules and practices. This culture of denial of the other is also embedded in economic, political and social privilege linked to ascriptive differences to the detriment of indigenous populations (Bielschowsky and Torres, 2018).

The right of self-determination of indigenous peoples and structural discrimination are both concepts that must be taken into account in the analysis carried out in order to arrive at an assessment of the situation of indigenous peoples.

B. Assessment of inequalities affecting indigenous peoples

- A major challenge lies in the statistical identification of indigenous peoples, which relies basically on self-identification, following ILO Convention No. 169. Estimates for Latin America in 2018 placed the indigenous population at 58 million.

- The indigenous population is overrepresented in the segments of greatest income poverty. In several of the region’s countries, the majority of the indigenous population is poor.

- Access to health services is lower among the indigenous population. This is reflected in higher infant mortality, which is almost double the rate seen in the non-indigenous population.

- Access to education services is also lower, which translates into lower levels of schooling and lower rates of school attendance. Only a minority of the indigenous population enters tertiary education.

- Indigenous peoples are more exposed to different types of violence, including higher rates of gender violence and violence against defenders of the land rights of indigenous peoples.
Analysis of the level of well-being and guarantee of the rights of indigenous peoples and of the equality gaps vis-à-vis the rest of society has been historically difficult, given the difficulty of their statistical identification. Geographical dispersion and a complex definition of indigenous peoples have impeded the compilation of statistical records.

Given the different definitions of what is understood to be an indigenous people, the definition usually employed is that given in ILO Convention No. 169, which indicates that the Convention applies to peoples who “are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (ILO, 2017c).

Indigenous organizations themselves have proposed definitions. They include the following, put forward by the World Council of Indigenous Peoples, which declares that:

“indigenous peoples are such population groups as we are, who from old-age time have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others (World Council of Indigenous Peoples quoted by Martínez Cobo, 1986, p. 5).

For statistical purposes, and based on the idea of sense of belonging referred to in ILO Convention No. 169, the main method used has been self-identification, i.e. the sense of indigenous belonging. Today, most census processes include identification of the indigenous population, usually based on the criterion of self-identification, albeit with some variation between countries. Importantly, however, self-identification of the indigenous population has not been widely incorporated into sectoral surveys, which hinders its statistical visibility.

Based on the foregoing, it is estimated that the indigenous population of Latin America was around 58 million in 2018, which represents 10% of the regional population. In most of the countries, the indigenous population is characteristically younger than the rest, owing mainly to higher rates of fertility, and retains its rural traits although it has an increasing presence in cities (ECLAC/FILAC, 2020).

In the framework of the right to self-determination, indigenous peoples have their own well-being reference, or “good living”. This concept is underpinned by the idea of mutual dependence between human beings, their natural environmental and ancestral beings, as well as the understanding of cultures as multiple and plural realities. This notion represents a break from Western ideologies and their supposed universalism, and it is not comparable to the Western notion of progress or continuous development —towards a future horizon— as a condition for achieving well-being (ECLAC/FILAC, 2020).

Accordingly, in order to identify indicators that adequately reflect gaps in states of “well-being” as indigenous persons understand it, it is important to bear in mind that an assessment of equality gaps in the indigenous population should ideally consider the cosmovision of each indigenous people. Such a way of proceeding —which would align with the concept of self-determination referred to above— is complex, however, because cosmovisions are heterogenous and could thus pose many alternative versions of the concept of well-being.

For that reason, gaps are assessed using measurements that are framed within a rights-based approach, with particular reference to economic and social rights (health, education, dignified life, decent work and decent housing, among others). There are certain caveats to

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3 For more information, see ECLAC/UNFPA (2013).
these measurements, however. For example, measuring the monetary poverty of individuals or households does not take into account the collective dimension of indigenous peoples. Or, similarly, when aspects such as access to health services are analysed without considering the knowledge and practice of traditional medicine, or education is analysed without considering its cultural relevance or access to first languages in the transmission of knowledge among the indigenous population. Given the difficulty of incorporating these aspects into measurements, the following sections offer examples of how to conduct an assessment of the well-being of indigenous peoples based on the statistical resources available, attempting to identify aspects of structural discrimination that help to bring in the very important second conceptual element described in the normative framework.

1. Poverty

As in the rest of the world, in Latin America indigenous peoples are overrepresented in the poorest segments. This is the case in Guatemala, where 69.6% of the indigenous population lives in poverty, Nicaragua (60.2%), Mexico (52.2%), the Plurinational State of Bolivia (47.7%), and Ecuador (50.5%) (see figure IX.1).

Positive changes for society overall have not sufficed to overcome the disadvantages faced by indigenous peoples. For example, in Latin America the decrease seen in inequality in the first decade of the twenty-first century did not occur equally for indigenous persons and households. Studies by the World Bank show that, in 2015, the gap separating indigenous persons from other Latin Americans had stopped narrowing and had even widened, and documented that being born to indigenous parents substantially increased the likelihood of growing up in a poor household, given that a household was 13% more likely to be poor if it was headed by an indigenous person, regardless of level of education, gender, place of residence (urban/rural) or number of dependents (World Bank, 2015).

**FIGURE IX.1**
Latin America (10 countries): poverty rate of the indigenous and non-indigenous population, around 2018
(Percentages)

<table>
<thead>
<tr>
<th>Country</th>
<th>Non-indigenous</th>
<th>Indigenous</th>
<th>Extreme poverty</th>
<th>Poverty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guatemala</td>
<td>29.2</td>
<td>48.7</td>
<td>22.9</td>
<td>33.7</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>25.9</td>
<td>34.7</td>
<td>22.9</td>
<td>33.7</td>
</tr>
<tr>
<td>Panama</td>
<td>17.8</td>
<td>29.2</td>
<td>17.7</td>
<td>29.2</td>
</tr>
<tr>
<td>Mexico</td>
<td>13.6</td>
<td>17.9</td>
<td>7.6</td>
<td>17.9</td>
</tr>
<tr>
<td>Ecuador</td>
<td>15.9</td>
<td>17.9</td>
<td>10.5</td>
<td>17.9</td>
</tr>
<tr>
<td>Bolivia (Plur. State)</td>
<td>27.6</td>
<td>27.6</td>
<td>27.6</td>
<td>27.6</td>
</tr>
<tr>
<td>Brazil</td>
<td>24.3</td>
<td>16.6</td>
<td>8.2</td>
<td>16.6</td>
</tr>
<tr>
<td>Peru</td>
<td>17</td>
<td>14</td>
<td>5.1</td>
<td>14</td>
</tr>
<tr>
<td>Chile</td>
<td>19</td>
<td>13.5</td>
<td>8.8</td>
<td>13.5</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1.8</td>
<td>2.6</td>
<td>1.8</td>
<td>2.6</td>
</tr>
</tbody>
</table>

**Source:** Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of special processing of household surveys conducted in the respective countries.

The data for Guatemala and Nicaragua refer to 2014, those for Chile and Panama refer to 2017. For the rest of the countries shown, the data are from 2018.
The probability of being poor rises even more for indigenous households that are rural or that are headed by a woman, with children being one of the groups most affected by this situation. In Honduras, for example, 88% of Tolupán, Lenca and Pech children live in extreme poverty (United Nations, 2016). Migration to cities does not change the situation of indigenous people, given that most of them enter precarious and poorly paid jobs, with little access to social protection.

2. Work

Own-account work is the main category of occupation among the indigenous population, although they have gradually been gaining ground in wage work in the agricultural sector, which does not necessarily mean decent employment owing to the precarious conditions in which it is carried out. There is also a large indigenous presence in unpaid work and higher rates of child labour than in the rest of the population. Joint studies by the Economic Commission for Latin America and the Caribbean (ECLAC) and the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean (FILAC) for selected countries in the region have found that the rate of child labour for children aged between 5 and 14 is noticeably higher among the indigenous than the non-indigenous population, with gaps exceeding 20 percentage points in some cases (ECLAC/FILAC, 2020). The prevalence of informal employment exacerbates the precarious conditions of the indigenous workforce, since they make it less likely that workers will receive health and social security benefits and legal entitlements, thereby reducing the possibility of boosting traditional indigenous economies. This is the case of indigenous women, as they participate more in own account work and domestic work than non-indigenous women, proportionally speaking.

In Guatemala, the probability of an indigenous person working in the informal sector rose from 9.3% in 2000 to 14.5% in 2011 (World Bank, 2015). The information available from national censuses also shows that urban indigenous persons are more likely to be in unskilled employment than non-indigenous persons. In the case of Costa Rica, 74% of indigenous persons are in unskilled work, compared with 57% of the non-indigenous population; in Chile the respective figures are 70% and 55%, and in Ecuador, 83% and 66% (World Bank, 2015).

The disadvantage of indigenous persons in the labour market impacts their labour income. In Honduras, the average monthly income of indigenous people amounts to 36.8% of the national average, and much less in the case of the Tolupán, Chortí, Pech and Lenca (United Nations, 2016). The gaps are also seen in lower access to social protection among the indigenous population, compared with the non-indigenous population. Eight of ten indigenous workers do not contribute or are not affiliated to social security systems (ECLAC/FILAC, 2020). In Mexico, for example, information from the 2016 national household income and expenditure survey shows that 45% of the non-indigenous population contributed to social security, while only 31.8% of those who self-identified as indigenous did so. As noted earlier, this, among other reasons, explains why indigenous persons have fewer opportunities to secure formal employment, which excludes them from the social security system, labour-related entitlements and other benefits (United Nations, 2018a).

3. Health

According to data from Latinobarómetro for 18 countries of the region, 46% of those self-identifying as indigenous have no health insurance, compared with 30% of the non-indigenous population, and have to cover health-related costs directly out of pocket (see figure IX.2).
Most studies show indigenous peoples at an alarming disadvantage in health across such varied indicators as infant mortality, diabetes, several types of cancer and mental illness (Montenegro and Stephens, 2006). The infant and child mortality rates show very significant gaps in all the countries that have an indigenous presence, and they are particularly wide in Panama and Ecuador, where the rates in the indigenous population practically double those in the non-indigenous population (ECLAC/FILAC, 2020).

Indigenous health is very worrisome among persons of adult age, especially in communities whose original ways of life, environment and livelihoods have been destroyed, often giving way to unemployment and deficient housing, among other things. Their access to health services is limited, especially in rural and remote locations. For example, in indigenous regions (comarcas) and other areas with a large indigenous population in Panama, the presence of health personnel remains limited. In 2011, the health worker density at the national level was close to 30 per 10,000 inhabitants, compared with 2.6 in the comarca of Ngäbe Buglé and 13 in Kuna Yala. A diagnostic study on the health of the indigenous peoples in Panama showed that 64.2% of indigenous persons interviewed identified distance as a difficulty in access to health services (United Nations, 2014).

### 4. Education

There is also evidence of notorious gaps with respect to education. Significant advances have been made in the region in the last few decades in terms of literacy. According to census data from 2000 and 2010 (Corbetta and others, 2018), illiteracy decreased significantly among the indigenous population in all the countries. For example, in Costa Rica, Mexico and Panama, the drop was over 10 percentage points in the population between 15 and 24 years of age, with the rate falling below 4% in Mexico and Costa Rica. However, the ethnic gaps remained wide, given that in the 2010 figures for the Bolivarian Republic of Venezuela, Brazil and Panama, illiteracy remained above 10% in the indigenous population aged 15–24, compared with under 2% in the non-indigenous population of the same age.
With respect to attendance at educational establishments in the inter-census period, the indigenous child population between the ages of 6 and 11 attending school rose considerably in all the countries (primary education). The largest rises occurred in Costa Rica and Panama (14 percentage points), bringing coverage to 88.2% and 92.3% respectively; however, even after those rises the gap remains, given that school attendance in the overall population exceeds 97% in Costa Rica and 94% in Panama.

In the case of secondary education, school attendance by indigenous adolescents aged between 12 and 17 shows substantially lower rates than in the younger age group. For the six countries analysed (Bolivarian Republic of Venezuela, Brazil, Costa Rica, Ecuador, Mexico and Panama), around 2010 over 70% of indigenous adolescents were in the school system, a rate not far from the corresponding one in the non-indigenous population, which was around 70% to 80% in these countries.

The rates of attendance in tertiary and/or higher education by indigenous youth between the ages of 18 and 22 do not exceed 40% in any of the countries studied (they ranged from 24% in Mexico to almost 40% in Costa Rica around 2010). In general, those rates are lower than for the non-indigenous population, although not by much, and this age group shows the most lag in terms of educational attendance.

Reflecting the indicators analysed above, the average number of years of schooling of the adult indigenous population is always lower than the average for the non-indigenous population (see figure IX.3), regardless of age group or sex. This sphere, which is key for breaking the intergenerational cycle of poverty and inequality, thus continues to be one of the great axes of inequality for the indigenous population.

![Figure IX.3](https://redatam.org/redbin/RpWebEngine.exe/Portal?BASE=SISPPI)

**Latin America (4 countries): average years of schooling of non-indigenous and indigenous adults, by age group, 2010**

There are several factors that breach the right to education of indigenous children and adolescents: child labour, lack of cultural and linguistic relevance of public policies, lack of educational infrastructure and lack of access to basic services within educational infrastructure (water and sanitation, adequate spaces for teaching and academic activities), among others (Corbetta and others, 2018). Another notable aspect is the gap in access to technology, with differences in access to Internet among the indigenous population (ECLAC, 2014b).
5. Violence

Another relevant aspect for assessing the structural inequalities that indigenous peoples face is violence suffered by defenders of indigenous peoples' rights. The great pressure on indigenous territories as a result of natural resources exploitation, infrastructure-building or armed conflicts over past decades has worsened this situation. The annual report of the Special Rapporteur on the rights of indigenous peoples expressed concern over “the drastic increase in attacks and acts of violence against, criminalization of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging” (United Nations, 2018b, p. 3).

For example, in the 2018 report of the Inter-American Commission on Human Rights (IACHR) concern was expressed at “the approval of Law No. 30,723 [of Peru], which declares the construction of highways in border areas and the maintenance of passable unpaved roads in the department of Ucayali, which has a detrimental impact on protected natural areas, indigenous reserves, territorial reserves for peoples in isolation and initial contact” (IACHR, 2018, p. 334). In Colombia, the report of the United Nations High Commissioner for Human Rights for 2019 indicates that “illegal economic activities of criminal groups and other violent groups negatively affected the use of traditional lands”, leading also to “the high number of killings of indigenous people in Cauca” (United Nations, 2020, p. 14).

There are also gaps between indigenous and non-indigenous women in aspects such as gender violence and sexual and reproductive health. Contraceptive use is lower among indigenous than non-indigenous women in all the countries (ECLAC, 2014b).

The information set forth thus far reflects the expressions of structural discrimination against indigenous peoples prevailing in the region. There is a pattern that is repeated regardless of the indigenous people in question, their geographical local or sex, age or any other factor of social differentiation. It is a pattern that is independent of individual wills, which generates an accumulation of disadvantages, both over the life cycle of individuals and between generations (Solís, 2017).

Non-indigenous people not only have better outcomes in almost all socioeconomic indicators, but are also able to accumulate intergenerational advantages over time, which concentrate and sustain the differences in the distribution of wealth, power and other indicators of well-being. This does not mean that non-indigenous people do not suffer the effects of poverty or discrimination. Neither does it mean that no individual outside indigenous groups experiences socioeconomic disadvantages. Rather, it means that, as a group, the non-indigenous exert more power and privilege relative to indigenous people (Human Rights Commission, 2012).

For all these reasons, indigenous peoples should be treated as a priority in planning public policies aimed at closing equality gaps. This includes trying to compensate for the lack of statistical data for carrying out more accurate assessment of the equality gap faced by indigenous peoples. The lack of statistical information is both a cause and a consequence of their social invisibility. In this regard, it is necessary to develop the institutional and methodological capacities needed to obtain the data for in-depth study of the ways in which this inequality is manifested and reproduced, so that public policies can be devised to address it.
The risk experienced by indigenous peoples in our region as a result of the COVID-19 pandemic is marked by pre-existing morbidities, neglect and limited assistance, lack of access to drinking water and medical services, and growing food insecurity, among other factors (FILAC/FIAY, 2020).

The Pan-American Health Organization (PAHO, 2020) also indicates that these groups face institutional barriers, including linguistic ones, in health service access, less access to social safety nets and mistrust caused by a history of racism. Generally speaking, COVID-19 cases among indigenous peoples are virtually invisible in the official statistics in Latin America and the Caribbean, even in countries with a large percentage of indigenous population.

The possibility of a global depression could lead to the death of many indigenous people, not only from the virus itself but also from conflicts and violence linked to the scarcity of resources, especially drinking water and food (EMRIP, 2020).

States have a responsibility to meet their obligations to protect the health and lives of indigenous peoples, as set forth in the United Nations Declaration on the Rights of Indigenous Peoples. However, as noted by Jesús Amadeo Martínez Guzmán, General Coordinator of the Abya Yala Indigenous Forum (FIAY), little or no humanitarian assistance has reached indigenous territories, and indigenous peoples are dealing with the situation by means of their own knowledge and experience. The General Coordinator emphasized that government assistance is needed in the short term, as well as culturally relevant policies in the medium term (Medina, 2020).

In order to reduce the spread of COVID-19 among indigenous and Afrodescendent populations and other ethnic groups, PAHO has published a guide with recommendations aimed at promoting hygiene and social distancing, as well as improving access to basic health services (PAHO, 2020). The guide offers recommendations for indigenous peoples, Afrodescendants and other ethnic groups, for community leaders and for government and health workers. Some of these recommendations are listed below:

- Governments should foster participation and dialogue, not only to tackle the effects of COVID-19 in the short run, but also to address the post-emergency phase, when efforts will be needed to support economic and social recovery.
- The pandemic can only be mitigated if these groups participate from the start in any decision that affects their health.
- All household members need to know what to do if any other family member contracts COVID-19 and what specific support they must provide.
- Health authorities must provide information in indigenous languages and in accessible formats, with culturally appropriate messages validated by the community, using symbols and images when possible.
- Measures must be taken to protect territories, such as steps to provide food and drinking water, soap and disinfectant, and other basics.
- With respect to the safe management of dead bodies, national protocols and guidelines should contain specific, safe, dignified and culturally acceptable responses, tailored to the traditions and customs of indigenous peoples, Afrodescendants, and other ethnic groups.

### C. Priority policies for reducing inequalities affecting indigenous peoples

Policies to reduce the social inequality faced by the indigenous population should consider, in a cross-cutting manner, the respective peoples’ own forms of understanding well-being ("good living") according to their cosmovision. The policies most needed include:

- **Affirmative action** as a special measure to compensate for the situation of disadvantage and revert the structural discrimination against indigenous people in terms of work, education, health, housing and access to well-being in general, taking into account their individual and collective rights.

- **Reparations** for the breach of indigenous populations’ rights in specific contexts and measures to ensure that the associated violations and structural discrimination are not repeated.

- **Design and implementation of laws, plans, strategies, policies and programmes** to ensure the territorial rights of indigenous peoples, with effective implementation to ensure the right to free, prior and informed consent, as well as the right to participation in decision-making.

As noted earlier, the challenges of closing gaps between the indigenous population and the rest of the population, in order to ensure the effective enjoyment of their rights, include the complexity of adopting measures that reflect their construal of well-being according to their cosmovisions. Well-being for the indigenous population is largely associated with land, so ensuring their rights over land and natural resources is a pillar for the exercise of other rights. Their survival, community organization, identity and cultural integrity are based on the exercise of the collective right of access and control over territories which have historically been theirs, including the natural resources that lie within them. This is also where the right to self-determination and autonomy is exercised.

Accordingly, laws, plans, strategies, policies and programmes need to be designed and implemented to ensure the territorial rights of indigenous peoples and, moreover, shift from the individual to the collective to guarantee the integrated **set of collective rights that are essential to "good living"** (ECLAC/FILAC, 2020).

On this basis and from the rights-based approach enshrined in international and regional instruments concerning indigenous peoples, the following five areas of priority attention may be identified (ECLAC, 2014a):

- The right to development and social well-being
- The right to non-discrimination
- The right to ownership, access, use and control over lands, territories and natural resources, and free, prior and informed consent
- The right to political participation

### 1. The right to development and social well-being

Ensuring the right to development social well-being of the indigenous population must be based on the guarantee of their political and territorial rights. One of the enablers of such a guarantee is access to a decent job to obtain the resources necessary to ensure other rights.

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*The notion of ‘good living’ is complex and is underpinned by the idea of mutual dependence between human beings, their natural environment and ancestral beings, as well as the conception of cultures as multiple and plural realities.*
associated with well-being, and thereby leave poverty. This is one of the key ways of reducing indigenous poverty. In this regard, policies aim to:

- **Strengthen and promote traditional activities related to the subsistence economy of indigenous peoples and adopt measures to ensure that they have access to training programmes in tune with their interests.** For example, in Mexico, the National Programme for Indigenous Peoples 2018–2024\(^1\) of the National Institute of Indigenous Peoples promotes projects to foster the indigenous economy, with a gender perspective, supporting certification and the trade identity of indigenous value chains with fair trade schemes for products and services, and promoting access to credit and building up enterprise in the indigenous population.

- **Implement development policies to support production, the creation of decent jobs and enterprise in specific areas (such as sustainable tourism) in a context of indigenous control over territories, in order to avoid marginalization and ecocide.** For example, the Indigenous Tourism Network of Mexico (RITA)\(^4\) coordinates a number of indigenous enterprises to promote and strengthen the sustainability of tourism services as effective tools for conserving cultural and environmental heritage, fostering active participation and shared responsibility by the partners (ECLAC/FILAC, 2020). Particular care is required with regard to indigenous workers in urban labour markets, focusing especially on the prevention of wage discrimination in this context.

- **Foster social protection policies that recognize the contribution of indigenous older persons, as well as their greater vulnerability, and afford them special protection.** For example, in the Bolivarian Republic of Venezuela, since 2010 they have been guaranteed access to pensions at younger ages than the rest of the population. The Government of Mexico recently adopted a similar measure, establishing differentiated ages for indigenous and non-indigenous persons to be able to begin drawing a pension (65 and 68, respectively)\(^5\) (ECLAC/FILAC, 2020).

With regard to education, generally speaking, it is necessary to ensure that educational content is revised with a view to mainstreaming interculturality throughout society, in particular for all children, adolescents and youth. In particular, it is important to:

- **Implement measures to remove the great barriers indigenous people face in access to secondary and tertiary education, especially in rural areas, with an emphasis on indigenous professional training, fostering the development, extension and consolidation of intercultural higher education institutions and indigenous universities.** Examples are seen in Paraguay, where 1% of bursaries offered at the tertiary level are reserved for indigenous persons by law,\(^6\) and Brazil, where Act No. 12.711 (2012) provides for bursaries and reserves places for graduates of State secondary schools who self-identify as indigenous or Afrodescendent.\(^7\)

In the area of health, broadly, it is necessary to have a **robust legal framework and policies to ensure access to health for indigenous population.** It is also necessary to:

- **Foster policies with specific health goals, in order to assess the outcomes of strategies and mechanisms for systematically measuring indicators differentiated by people of belonging.** Brazil’s 2016 national plan for reducing indigenous child mortality of is a good example of this, as it includes specific targets for indigenous populations to be achieved by 2019, which were monitored on an ongoing basis with regular reports on the matter. In fact, Brazil has a Single Health System and Indigenous Peoples Health Subsystem (PAHO, 2009).

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\(^2\) For further reference, see [online] http://www.rita.com.mx/

\(^3\) See [online] https://www.gob.mx/pensionpersonasadultosmayores#:~:text=E1%20programa%20a%20tiende%20a%20z%20indigenas%20a%20z%20cada%20z%20z%20meses

\(^4\) Act No 3733 allocating 1% of scholarships for higher education to the indigenous sector (Paraguay, 2009).

\(^5\) See Brazil (2012).
The social development gaps faced by indigenous peoples are structural. It is imperative to close them to bring about an epochal shift towards substantive equality.

Consider culturally appropriate services in the framework of general comment No. 14 (2000) of the United Nations Committee on Economic, Social and Cultural Rights (United Nations, 2000), i.e. taking into account preventive care, curative practices and traditional medicines in a coordinated manner in order to respect the practices of indigenous peoples. For example, in Paraguay, Act No. 5469/2015 on Indigenous Health established the National Council for Indigenous Peoples Health and the National Directorate for Indigenous Peoples, as well as health secretariats in several government departments on indigenous affairs. Another case is the Ministry of Health of Colombia, which, by Decree 1848 of 2017, set up “indigenous health provider entities” for the period of transition to the Indigenous System of Own and Intercultural Health (SISPI). These are a temporary arrangement to channel the requirements and procedures identified as a result of the administrative, scientific, technical, cultural and financial conditions needed to ensure access to health services with a differential approach, given the sociocultural and geographical specificities of indigenous peoples (Colombia, 2017).

2. The right to non-discrimination: reparations

As well as measures to close gaps in access to well-being, and where required, one way of reverting structural discrimination is to through reparations policies, based on the United Nations Declaration on the Rights of Indigenous Peoples. The aim is to remedy the particular obstacles and structural discrimination that a given indigenous people faces in the enjoyment of its basic rights. In this case it is necessary to:

- Provide reparations based, among others, on article 63.1 of the American Convention on Human Rights, on the restitution of rights, assets and freedoms, and on the guarantee that breaches will not be repeated, in some cases considering compensation for material and moral damage (OAS, 1969). These measures focus on cases where rights have been violated. For example, in Yakye Axa Indigenous Community v. Paraguay (Inter-American Court of Human Rights, 2005), the Yakye Axa brought a complaint before the Inter-American Commission on Human Rights, alleging that the State had failed to guarantee their right to ancestral property, as the Community’s territorial claim had been in processing since 1993. This had prevented the Community and its members from enjoying the ownership and possession of their lands, resulting in food, medical and health vulnerability and constantly threatening the survival of the members of the Community and of the Community as such. The Inter-American Court of Human Rights (2005) ruled that the State, immediately and on a regular and ongoing basis, must take steps to provide sufficient drinking water for consumption and personal hygiene of the members of the Community, regular medical and psychosocial care to protect the health of all persons, especially children and the elderly, respecting their traditions and customs, including vaccination and deworming treatment; special medical care for pregnant women, both pre-partum and during the early post-partum months, as well as for newborns, food of sufficient quantity and quality for proper nourishment, latrines or any other appropriate type of sanitary facilities in the Community’s settlement, and the materials and human resources needed to ensure access to basic education for the Community’s children in the school, taking particular care that the education provided respect their cultural traditions and ensure the protection of their own language.

10 See Paraguay (2015).
3. The right to ownership, access, use and control over lands, territories and natural resources, and free, prior and informed consent

Ensuring the right to ownership, and in particular to access, use and control of lands and the resources therein, is very important for closing the structural equality gaps faced by indigenous peoples. This must be approached from both the normative and programmatic fronts. Requirements on the normative front include:

- **Constitutional recognition of indigenous peoples and their territorial rights.** Most of the countries (except for Chile, Costa Rica and Uruguay) include recognition of indigenous peoples and of their territorial rights in the Constitution.

- **Recognition of the territorial rights of indigenous peoples (collective property) in lower legislation and sector laws so that they can be properly instrumented.** Rules and administrative procedures, as well as State bodies, must recognize common law as a fundamental principle of indigenous property, thereby avoiding the imposition of arbitrary delimitations that impinge on community lands. Bolivian legislation is the longest-standing and the most advanced in terms of recognition of the territorial rights of the indigenous population. Between 1990 and 1992, eight indigenous territories were written into land title, with a total surface area of 2,547,061 hectares (ECLAC/FILAC, 2020). Brazil also has advanced legal guarantees, since the issue in January 1996 of Decree No. 1775, which establishes an administrative mechanism to formalize legal title to land (Brazil, 1996).

- **Recognition of rights to natural resources in second and third level legislation.** To date, there is only a limited recognition in a minority of countries where indigenous peoples retain custodianship of those resources. In the other countries, it is permissible for natural resource concessions to be awarded to private national or transnational corporations (Del Popolo, 2017; ECLAC/FILAC, 2020).

On the programmatic front, in order to ensure fulfilment of the normative provision, it is necessary to:

- **Implement policies and mechanisms for conveying land titles to indigenous groups that are genuinely accessible for these groups in terms of cost and of legal, technical and probatory requirements, avoiding excessive red tape.** According to ECLAC/FILAC (2020) some cases even require effective ad hoc mechanisms to restore the original right to collective property. For example, in Guatemala during the armed conflict that lasted over three decades, many communities were displaced from the traditional territories and their lands underwent process of “nationalization” and were registered to the State. In the 1980s, the National Institute for Agrarian Transformation (INTA) declared the lands of displaced families “abandoned”, which justified their conveyance to new occupants, mainly owners of large estates (latifundistas) and military officers (IACHR, 2015b). After the conflict ended with the signing of the Peace Accords (1996), legislation and institutions were created to enable indigenous groups to own their traditional lands again, however, public policies for the recognition, titling, protection, restoration, restitution and compensation have been evaluated as insufficient, which testifies to the need for special mechanisms to restore the right to original land ownership (Counsel for Human Rights, 2018).

- **Ensure the right to free, prior and informed consent, to safeguard the rights of indigenous peoples over the territories, lands and natural resources.**

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11 The Inter-American Commission on Human Rights (IACHR) states that prior consultation and consent are required for the adoption of any decision that can affect, modify, reduce or extinguish indigenous property rights (ECLAC/FILAC, 2020).
Economic Commission for Latin America and the Caribbean (ECLAC)

POLICIES

Indigenous peoples must have the possibility to participate throughout the full cycle of public policymaking: design, implementation, follow-up and evaluation.

regulation. Examples are seen in the Bolivarian Republic of Venezuela, Ecuador, Mexico and the Plurinational State of Bolivia, which enshrine the principle of free, prior and informed consent of indigenous peoples in their Constitutions, although with differing scope and contents. Ecuador, Mexico, the Plurinational State of Bolivia and Nicaragua include the principle in related sector laws as well, for example in relation to hydrocarbons, mining and water resources. However, the tendency in most of the countries of the region (9 of 17) is to issue specific legal rules or regulations; however, as consultation is poorly regulated and implementation is inefficient, the mechanism is not effective in avoiding violation of the territorial rights of indigenous peoples.

- Promote the production of statistical information on the current situation of indigenous land ownership, for example by creating interactive platforms with data on ownership of indigenous lands, from official sources and civil society organizations. Paraguay offers an example with the interactive platform Tierras Indígenas, (“Indigenous Lands”) which consolidates data from various official sources (National Institute of Statistics, National Institute of Indigenous Affairs (INDI), National Land Registry Service) and from indigenous organizations.\(^\text{12}\)

4. The right to participate in decision-making

Another important element in closing gaps is ensuring the political rights of indigenous groups. This requires States to:

- Foster affirmative action regarding the right to participation in decision-making, since it impacts indigenous peoples’ capacity to influence public policies of all kinds. Examples of affirmative action in relation to decision-making in the region include the adoption in 2017 by the Council of the National Electoral Institute of Mexico of criteria and affirmative action that national political parties or coalitions must fulfil in their lists of candidatures for lower or upper house seats, in order to safeguard the principle of gender parity and guarantee the inclusion of indigenous candidates (National Electoral Institute, 2017). Another example is in article 171 of the Constitution of Colombia of 1991, which established a special constituency for the election of senators from indigenous communities, and article 246 established special jurisdictions for indigenous peoples’ authorities (Colombia, 1991).

The proposals presented in relation to closing the well-being and development gaps faced by indigenous peoples, which seek to ensure the rights to non-discrimination, to property and to participation, require efforts on two fronts: the strengthening of statistical capacities to increase the visibility of the indigenous population and the availability of public resources\(^\text{13}\) to implement and strengthen the policies mentioned in this section.

\(^{12}\) See [online] https://www.tierrasindigenas.org/.

\(^{13}\) It is important that the budget laws in the countries endow policies and programmes aimed at indigenous people with the necessary financing.
D. Suggested references


E. Questions

- Analyse the concept of self-identification to define indigenous peoples statistically, and review how they are identified in your country, region or district. Compare and comment.

- Identify the main development and well-being gaps between indigenous peoples and the rest of the population in your country, region or district.

- Provide examples of structural discrimination against indigenous peoples in your country, region or district.

- Analyse the concept and implications of reparations to revert problems of (structural) discrimination. Apply that concept to practical examples relating to social protection in your country, region or district.

- Identify three measures, policies or laws focused on strengthening the guarantee of the right to ownership, access, use and control of lands, territories and resources for indigenous peoples in your country, region or district.
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