

Inclusive and sustainable smart cities (CISI)

# Inclusion and urban mobility with a human-rights and gender-equality approach

A policy instrument analysis and identification  
framework for the development of sustainable  
urban mobility systems in Latin America

Rodrigo Martínez  
Carlos Maldonado  
Judith Schönsteiner  
(Editors)



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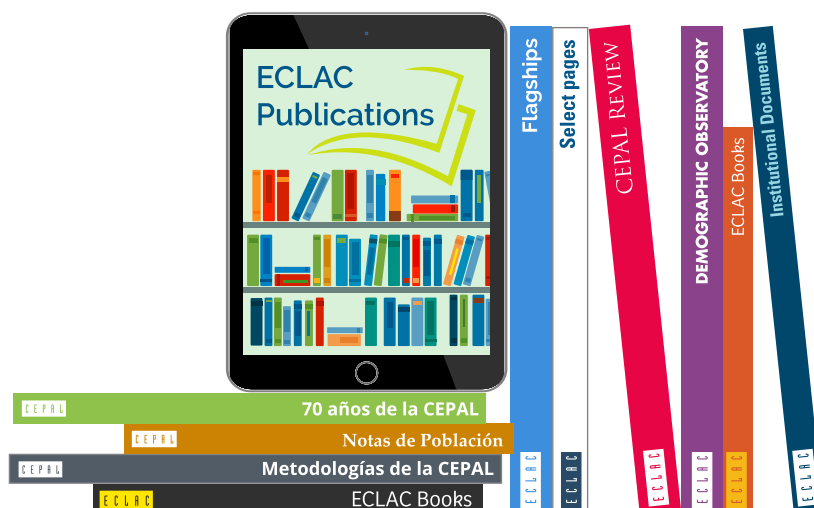
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## Contents

<b>Introduction</b> .....	<b>7</b>
<b>I. The social dimension of urban mobility</b> .....	<b>9</b>
A. Mobility, welfare, rights and social cohesion: interdependencies and mutual reinforcement .....	9
B. Mobility and urban agenda in Latin America .....	12
C. The human rights-based approach and gender perspective in urban mobility .....	14
D. Obligations, actors and principles for linking a rights-based and gender approach in unequal societies .....	15
1. International human rights obligations of States .....	15
2. Intersectionality and the principle of equality and non-discrimination .....	19
3. Observations on gender and mobility .....	25
4. Human rights applicable to mobility systems .....	29
5. Business and human rights in urban mobility .....	39
E. Instruments and areas of public policy for mobility systems from a human rights and gender perspective .....	44
1. Policy instruments and the right to mobility from a human-rights and gender perspective .....	44
2. Institutional frameworks of public policies and urban mobility .....	47
<b>II. Human rights and gender in mobility system supply chains</b> .....	<b>49</b>
A. Supply chain actors and human rights impacts .....	50
1. Energy, electromobility and rights .....	50
2. Technology, digitalization and rights in the mobility system .....	52
3. Industrial policy and electric buses from a human rights perspective .....	54
4. Other relevant stakeholders in connection with urban transit systems .....	57
B. Responsibilities of companies and their suppliers .....	59
1. Defining guidelines, incentives and sanctions .....	59
2. Stakeholder responsibilities .....	61

<b>III. Final considerations</b> .....	<b>63</b>
<b>Bibliography</b> .....	<b>67</b>
<b>Annexes</b> .....	<b>79</b>
Annex 1 .....	80
Annex 2 .....	83
<b>Tables</b>	
Table 1 The social inequality matrix in Latin America .....	20
Table 2 Categories of persons and rights impacted by discrimination in mobility systems .....	20
Table 3 Aspects of women’s lives reflecting the structural nodes of gender inequality in relation to urban mobility .....	29
Table 4 Particularly important rights connected with urban mobility systems .....	29
Table 5 International instruments and agencies that recognize the right to freedom of movement .....	30
Table 6 International instruments and agencies that recognize the right security of the person .....	30
Table 7 International instruments and agencies that recognize the right and principle of equality and the obligation to eradicate discrimination and gender-based violence .....	30
Table 8 Specific rights identified by different international human rights instruments .....	32
Table 9 International instruments and organizations that recognize the right to rest .....	33
Table 10 Selection of indicators of objective or instrumental well-being, subjective well-being and quality of service .....	34
Table 11 International instruments and agencies that recognize the right to a healthy environment.....	35
Table 12 International instruments and agencies that recognize the right to health.....	35
Table 13 International instruments and organizations that recognize the right to water .....	36
Table 14 International instruments and agencies that recognize the right to participation, access to information and transparency.....	37
Table 15 International instruments and organizations that recognize the right to work and to organize.....	38
Table A1 International instruments and organizations that recognize the right to free, prior and informed consultation and territory .....	80
Table A2 International instruments and organizations that recognize the rights to life, integrity and security .....	81
Table A3 International instruments and organizations that recognize the rights to privacy and personal data .....	82
<b>Diagrams</b>	
Diagram 1 Rights, gender and inequality matrix: three conceptual anchors for ensuring a social dimension in public policy design.....	12
Diagram 2 State Obligations under the American Convention on Human Rights and the International Covenant on Economic, Social and Cultural Rights.....	16
Diagram 3 Corporate responsibility assumptions.....	43
Diagram 4 The principles of the human rights approach and its application in public policy design.....	45
Diagram 5 Public policy cycle with a human rights approach.....	46
Diagram 6 Some policy instruments for urban mobility systems .....	48
Diagram 7 Human rights risks and impacts in the energy sector .....	51
Diagram 8 Human rights risks and impacts in the technology sector.....	53
Diagram 9 Human rights risks in the bus or automotive sector.....	55
Diagram 10 Human rights risks and impacts in the construction industry.....	58

## Abstract

Urban mobility is an important determinant of quality of life, well-being and enjoyment of rights for urban and peri-urban residents, as well as in the functioning and sustainability of cities. In turn, urban mobility systems are crucial to daily coexistence and social cohesion in such spaces. However, in Latin America, optimal mobility conditions are often an unequally distributed privilege, on top of multiple other facets of well-being and rights enjoyment where individuals and specific population groups suffer large discrimination and exclusion gaps. Therefore, as part of the ECLAC-Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) project “Inclusive and sustainable smart cities in the framework of the 2030 Agenda for Sustainable Development in Latin America and the Caribbean”, this paper examines urban mobility from a social standpoint in which human rights, the gender perspective and the matrix of social inequality converge, in order to identify areas and policy instruments to promote universal enjoyment of human rights (or avoid violations thereof) in the region’s urban mobility systems, as well as in other sectors related to its infrastructure and sustainability (renewable energy —wind and solar—, new technologies, the automotive industry, construction, among others).<sup>1</sup> This takes into account and establishes guidelines for a wide range of stakeholders, including the public sector, the private sector and citizens.

The first part of the document addresses the general implications of adopting and implementing a human rights and gender approach in urban mobility systems. It also identifies specific human rights linked to these systems, population groups at greater risk of suffering certain rights violations, and policy areas and instruments to avoid or mitigate them, in dialogue with four analytical dimensions of the institutional framework. It also identifies the responsibilities of the private sector according to the 2011 United Nations Guiding Principles on Business and Human Rights. The second part analyses key sectors of activity related to the environmental sustainability of urban mobility systems (renewable energies, new technologies, automotive and construction industries), with an emphasis on the risks of human rights violations along the supply chains in each case.

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<sup>1</sup> This paper does not encompass energy from hydroelectric power plants.





## Introduction

One of the objectives of the ECLAC-GIZ project “Inclusive and sustainable smart cities in the framework of the 2030 Agenda for Sustainable Development in Latin America and the Caribbean” is to enhance the underlying technical and institutional capacities of ECLAC and selected member countries to promote sustainable development in the area of urban connectivity. A second priority is to expand the supply of intraregional platforms for capacity and skills development for promoting sustainable development in the area of urban connectivity. The project also seeks to generate new knowledge and initiate innovation through greater interregional experience sharing.<sup>2</sup> Finally, ECLAC policy recommendations are expected to consider the effects of the coronavirus disease (COVID-19) crisis on consumption and production patterns in promoting urban connectivity as an example of the Big Push for Sustainability approach. To advance these objectives, the project’s actions are divided into three clusters. The first cluster centres on city and mobility issues, with a focus on urban transit systems and mechanical mobility. The second cluster encompasses technology and energy issues, and the third focuses on industrial policy as it relates to the automotive industry and other associated sectors, such as construction.

Each of these thematic and disciplinary divisions vocation are transversally interwoven around the project’s general objectives, with sustainability as a cross-cutting theme and a common social dimension centred on the human rights and gender approach.<sup>3</sup> Indeed, urban mobility facilitated by public transport is an important component for people’s day-to-day well-being and enjoyment of human rights. As will be seen throughout this document, mobility in adequate conditions (physically accessible, financially affordable, safe for users, among others), directly enables the exercise of certain rights associated with free movement, physical integrity and individual autonomy of people in a broad sense; at the same time, it is a means for the enjoyment of a significant array of other human rights, including the rights to work, health, education, care, leisure and rest, among others (in particular, economic, social, cultural and environmental rights). Moreover, the absence, or overcoming, of discrimination, exclusion or barriers to mobility is critical for doing away with inequality in a broad sense, particularly in the case of specific population groups.

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<sup>2</sup> Case studies and the establishment of international exchange and cooperation relationships are used to make available examples of international “best practices” and disseminate them in the region.

<sup>3</sup> Although the human rights approach includes a gender perspective, this will be addressed in a broad, cross-cutting manner in the document, as well as in a specific section. Also, because it is a specific focus and line of work of both the project and ECLAC (see section D.3).

Within this general framework, the subproject “Right to the city and institutions: inclusion and mobility with a focus on rights and gender equality” seeks to provide an approach by which the project areas and activities can identify the social dimension in each of the clusters in a cross-cutting manner. The task is to rethink urban mobility from a perspective focused on the resolution of shortcomings—understood as rights violations and exclusions—that generate inequality. This encourages the identification of guidelines or protocols for introducing social, labour and gender standards—as well as the exchange of best practices—in order to move towards institutional change that includes capacity building, the application of safeguards, and best practices for monitoring and accountability.

Hence the purpose of this document, which is to ensure that all stakeholders involved in the implementation of the ECLAC-GIZ Project “Inclusive and sustainable smart cities in the framework of the 2030 Agenda for Sustainable Development in Latin America and the Caribbean,” including governments, have tools to define basic social, labour, human rights and gender standards to guide policy design, based on legislation, policies and innovations reviewed and discussed within the scope of the project and its activities. This involves the three project clusters in a cross-cutting manner, taking into account the specificity of each one, but with a common thread whose focus is that the approach proposed helps close inequality gaps associated with the financial cost of services, travel times, comfort, and health and safety, as well as various other risks of rights violations within these systems. Other relevant considerations with a bearing on the above include access, use and utilization of urban mobility systems. Therefore, rethinking urban mobility also means analysing public measures adopted to resolve many such shortcomings in order to improve quality of life for people in urban areas.

The paper is structured as follows: The first part presents the social dimension of urban mobility. Focusing on the themes of Cluster 1 (City and mobility), it offers a rationale for and an illustration of the rights-based approach and gender perspective, on the basis of three interlinked conceptual anchors: the rights-based approach, the social inequality matrix and the gender perspective. Next, it identifies the main human rights whose enjoyment or violation are at stake in relation to mobility systems, some of the most important international human rights instruments, the responsibilities of States in this area, as well as specific needs and problems of certain population groups, especially women. In addition, it specifies the responsibilities of companies in respecting human rights and implementing corporate due diligence to that end. Lastly, it identifies the main public policy instruments that can be mobilized to address the social dimension within urban mobility systems and alludes to the main institutional dimensions (legal and regulatory, organizational, technical-operational and financing) that must be strengthened to build a solid institutional framework committed to the rights-based approach and gender perspective, as well as the mainstreaming of those approaches in the public policy cycle.<sup>4</sup> The second and third parts of the document take up and adapt, respectively, the discussion on the application of the rights and gender approach to the themes in clusters 2 (technology and energy) and 3 (industrial policy). The final section concludes with some priority lines of work in light of the project’s objectives.

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<sup>4</sup> On this basis, Annex II summarizes several elements to be considered in a protocol for incorporating a human-rights approach and a gender perspective in the design of specific public policies.

## I. The social dimension of urban mobility

Public policy reviews of urban mobility usually highlight issues such as travel needs and roadway requirements, costs, financing and fare pricing, schedules, travel times, quality of service, safety and transport capacity of the different modes of transport, energy requirements and environmental impact, among others. However, from a sustainable development perspective, the analysis and design of urban mobility systems must simultaneously include their social dimension, i.e. as a matter of human rights, welfare and equality. Urban mobility systems are elements that, as the case may be, contribute either to the enjoyment of certain rights or, on the contrary, to the violation of those rights, as well as to the improvement or worsening of people's quality of life. In other words, in highly urbanized societies such as those of Latin America, such systems are a means to pursue the realization of other rights, such as access to education or access to the workplace, helping to narrow inequality gaps. On the contrary, when a system has been designed without distinguishing the different needs of the population and without taking measures to address those needs, it can help to reproduce or widen such gaps.

The time people spend as users of transport systems, the problems and sometimes serious risks to which they are sometimes exposed, and the relative cost to their pockets, are of central importance among the multiple social, labour, gender and human rights issues, which are key components of what we call the social dimension of urban mobility systems. In that sense, it is advisable to situate such systems as scenarios that motivate and are caused by inequalities and deprivation of rights. Moreover, as spaces where people come together and coexist, such systems are one of the areas of social interaction where people experience an important part of social relations with others and with the authorities. This also has major implications for people's quality of life and social cohesion in general, as discussed below.

### A. Mobility, welfare, rights and social cohesion: interdependencies and mutual reinforcement

In recent years, several Latin American countries have seen powerful outbreaks of social unrest: inopportune protest movements prompted in principle by specific decisions or events such as increases in fuel prices or mass transit costs. In Chile, Ecuador or Haiti, such outbreaks started because changes in the mobility system (fuel and fare prices) have been perceived by significant numbers of people as directly affecting

the income and dignity of the middle and lower strata of the population. This shows that mobility systems are a key element of people's well-being and quality of life.

Indeed, access to mobility in optimal conditions has a constant and daily impact on people's quality of life and life options in two dimensions: instrumental and subjective. From an instrumental standpoint, access to mobility has a direct impact on people's physical and material well-being. This is because such access covers dimensions and issues such as physical accessibility, cost and affordability for users, travel times, the geographical scope and territorial connectivity of the system, and the health and safety aspect of the infrastructure, among other considerations. In short, the most evident contribution of these systems has to do with mobility itself, as a means for people to access employment, educational and productive opportunities, private and public services, and goods and services consumption more broadly.

However, beyond this important strictly instrumental dimension, mobility is a component of various aspects of people's quality of life, for example, by allowing access to leisure, rest, entertainment and culture, as well as for maintaining and building social ties and bonds. Mobility is a means not only of contact with family and friends, but also for constructing support networks, with ramifications in terms of social capital at the level of individuals and their households, as well as collectively in terms of participation and social interaction. Thus, as a scenario of social and interpersonal interaction, as well as with authorities and among fellow citizens, mobility systems are one of the possible scenarios where social cohesion is manifested and experienced. However, these public spaces can have a direct or indirect adverse effect on the enjoyment of other human rights (see section I.C).

In addition, there is a subjective and symbolic dimension of urban mobility that has to do with the sense of well-being and human dignity. This is related to people's quality of life via the enjoyment of rights such as culture or rest. This is a more subjective dimension, but one associated with very objective indicators such as time and material conditions, and it depends on the quality of the mobility services themselves, as well as the overall experience of their use. This has to do with the treatment received, the feeling of individual safety/insecurity during the trip, the healthiness of the facilities and the quality of the transport service, which is a key part, on the one hand, of the quality of life associated with the system's use and, on the other, the quality of interpersonal interactions in cities, which are an important consideration in the social cohesion of our societies. Indeed, experiences of discrimination, violence or mistreatment (very important for levels of interpersonal trust) are to a large extent related to mobility systems and their surroundings. Thus, it is in the conjunction of the two dimensions—instrumental and qualitative/symbolic—that quality of service and the contribution of mobility systems to individual and collective wellbeing, as well as to the effective enjoyment of rights and the closing of inequality gaps, are at stake.

More specifically, an inefficient and exclusionary urban mobility system (for example, one that is unsafe, dangerous, expensive, inefficient, not on time, polluting, dirty, harmful to health and reserved only for those who cannot access private travel options) generates a decline in the daily well-being of the people who use it, as well as in the enjoyment of their rights (to mobility, access to services, healthy living, and freedom from violence and harassment, among others). In addition, the inequality and rights gaps that are magnified by shortcomings in transport systems are generally widened in an intersectional manner. Indeed, these factors intersect with inequalities of gender, race or ethnicity, life cycle and income level. Therefore, the very idea of the right to the city, which is concisely developed in section I.D.4, presupposes the resolution of these shortcomings and inequalities through policies that incorporate a rights-based approach and a gender perspective that will enable the design of these systems to be linked to the effective enjoyment of economic, social, cultural and environmental rights.

Finally, urban mobility systems are a sector of economic activity in their own right, whose employees must enjoy decent working conditions, not only to ensure their well-being, but also for the fulfilment of their labour rights with gender equality. Those working conditions are a crucial variable that determines the quality of the services that those employees help to provide the public. This involves very specific risks, as in the case of unsafe or unhealthy working conditions that increase the likelihood

of accidents and/or health problems, as well as the quality of service through adequate, dignified and non-discriminatory treatment of users by the staff of such systems (and vice versa) (ECLAC, 2021, 2016a and 2018a). This is not restricted to transport service providers, but includes all workers involved in the mobility system's broad supply chain (from inputs for the preparation of infrastructure and means of mobility, to its operation, maintenance and customer service).

The difficulties and risks associated with access to and use of mobility systems vary considerably due to social determinants, what ECLAC has dubbed the social inequality matrix (ECLAC, 2016a). Gender inequalities are strongly manifested in these systems when issues such as harassment, violence or insecurity are examined, where mobility systems appear as spaces marked by abuse, mistreatment and rights violations for women and LGBTQI communities. From a conceptual point of view, the following three elements are articulated in greater detail later on: the human rights-based approach, gender perspective, and the inequality matrix.

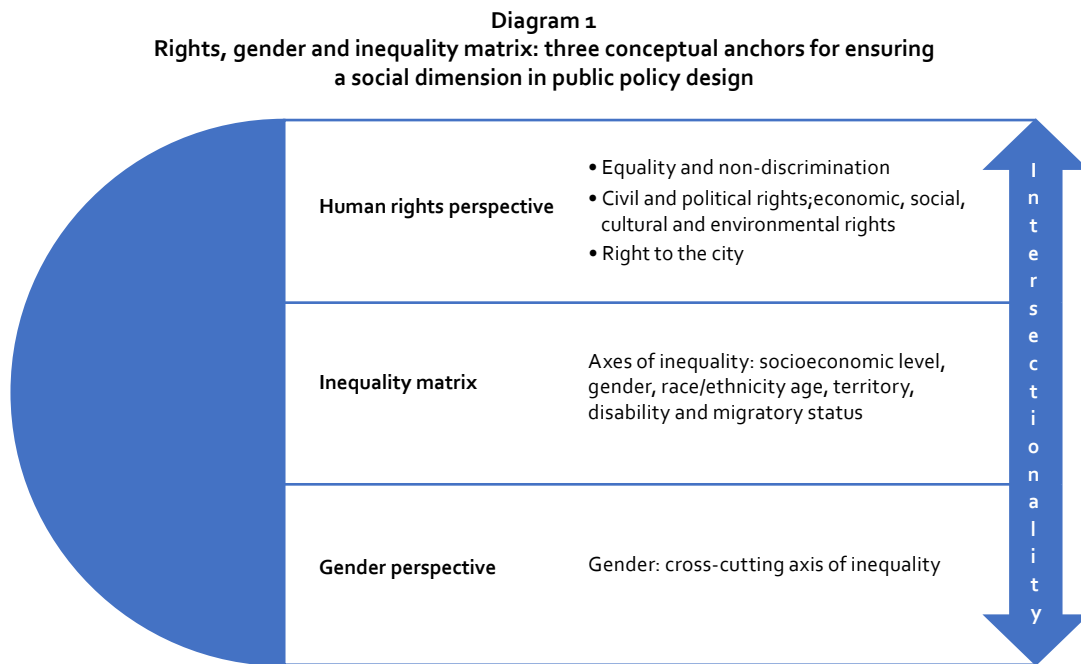
In the first place, the human rights approach, in light of the principle of non-discrimination, establishes a first step in thinking about public measures from the standpoint that no one should be deprived of any of their human rights, directly or indirectly. Policies should enable the enjoyment of those rights. However, the multiple forms of disenfranchisement affect different people in different ways. Women are a majority group that is systematically discriminated against and deprived of their rights. The cross-cutting and systemic nature of this discrimination leads to a necessary linkage between the human rights approach and gender perspective to identify the dynamics of that deprivation and discrimination. In that sense, the most practical way to achieve gender equality and the empowerment of women and girls is gender mainstreaming, as it puts the issue at the centre of decision-making, since it "transforms society positively through the elimination of discriminatory laws, norms and practices that limit women's and girls' voices, choices, and opportunities and impede them from achieving their full potential" (UN-Women, 2021, p. 2). Gender mainstreaming also responds to a process of evaluating the implications that any policy measure or programme planned in all areas and at all levels has for the rights of women and men in a differentiated manner. This constitutes a strategy to make all the needs and experiences of women, men and diversities an integral part of the design, implementation, monitoring and evaluation of policies, initiatives and programmes, thus ensuring that women and men benefit equally from development processes (United Nations, 1997).

In short, the incorporation of a rights-based approach and a gender perspective allows the construction of cities that take into account the gaps and different needs of all the people who live in them, thus promoting a reduction in inequality and the effective enjoyment of rights, especially economic, social, cultural and environmental rights.

Similarly, the diversity of situations in terms of the differentiated enjoyment (or deprivation) of rights gives rise to the need to consider the social inequality matrix—those factors and dynamics that encourage the reproduction of inequality in various dimensions—in order to identify not only specific deprivations according to different axes of discrimination (gender, age, socioeconomic level, territory, disability, ethnic-racial affiliation, migratory status and sexual orientation and gender identity), but also the logic of intersectionality between them that ends up generating wide inequality gaps in all areas of well-being and rights (see diagram 1).<sup>5</sup>

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<sup>5</sup> These three anchors are described in greater detail in Sections I.C and I.D, so they have been only briefly described here in order to underscore their complementary and interdependent nature.



Source: Prepared by the authors.

## B. Mobility and urban agenda in Latin America

The complex relationship between sustainable development, economic growth and the urbanization process is not a new issue of interest in the regional and global debate. In 1976, the General Assembly of the United Nations convened the first United Nations Conference on Human Settlements, Habitat I, in response to global demographic changes and rapid urbanization in developing countries, recognizing through various commitments the need to move towards sustainable human settlements (ECLAC, 2017). With that initial impetus, the 1996 Habitat II conference reaffirmed the commitments made twenty years earlier following the “Habitat Agenda”, a plan of action that actively incorporated the problem of decent housing in accordance with people’s needs and rights and confirmed the key role of sustainable human settlements in the development of an increasingly urbanized world (ECLAC, 2018c). Along those lines, Habitat III, the third conference held in 2016, had as its central outcome the official adoption of the New Urban Agenda for the development of cities and settlements with a defined horizon for the next 20 years.

The New Urban Agenda establishes a roadmap for moving towards a more sustainable future centred on the enjoyment of equal rights and universal access to the benefits and opportunities that cities offer, with urban systems remaining a key means to achieve sustainable development (United Nations, 2017a). This same agenda calls for action to apply its principles to the different realities, capacities and levels of development of all countries, and urges the general adoption of its principles together with concrete measures for their application. This agenda embraces the challenge of moving towards sustainable development, while balancing and integrating the economic, social and environmental dimensions and taking into account the importance of the urban dimension and the way in which cities and human settlements are planned, managed and built in the region (ECLAC, 2018c).

ECLAC undertook to support the Forum of Ministers and High-Level Authorities of Housing and Urban Development of Latin America and the Caribbean (MINURVI) in the application of these principles and devised the Regional Action Plan for the implementation of the New Urban Agenda in Latin America

and the Caribbean. This Plan seeks to translate the global commitments of the New Urban Agenda into concrete measures, dovetailing regional priorities for inclusive, prosperous and sustainable development with the implementation of the 2030 Agenda for Sustainable Development in the region (ECLAC, 2018c). In other words, the Regional Action Plan aims to bring about a structural change that recognizes the need to achieve sustainable urban development; it also seeks to highlight the critical components for the process of transformation and change (ECLAC, 2017).

In Latin America and the Caribbean, 80% of the regional population lives in cities and urban settlements, which generate close to two-thirds of the countries' GDP. By around 2030, both figures are projected to continue growing in the region, although at a slower pace than the world overall (ECLAC, 2018c). Thus, it has been recognized that the sustainable future of the region is closely linked to sustainable urbanization, associated at least with new patterns of production, distribution and consumption in urban areas, and the recognition of the city as a public good in which economic, social, environmental and cultural rights are guaranteed, encapsulated within in the notion of the right to the city (ECLAC/UN-HABITAT, 2016).

In this scenario, one of the main characteristics of the region is that urban primacy is related to strong contexts of inequality. Thus, although cities are recognized as centres of opportunity and growth, they are also settings where significant manifestations of inequality are expressed and reproduced, including exclusion and/or socioeconomic and spatial segregation, gaps in access to quality housing and urban services, and the high social, environmental and economic vulnerability faced by their inhabitants (ECLAC, 2018c).

The urban inequalities expressed in the region's cities also pose a major challenge in terms of environmental sustainability. Mobility systems are key in that respect. Thus, cities that do not provide favourable conditions for accessible, affordable and safe collective mobility contribute to the preference for private, individual motorized alternatives, which are responsible for 38% of urban greenhouse gas emissions in the region (UN-Habitat, 2012). Urban development that encourages private consumption and mobility patterns but does not value more efficient public goods and services also generates negative environmental impacts. Similarly, the mobility patterns associated with each urban configuration are as important as the modes of transport and mobility in terms of their impact on the environment (ECLAC, 2018c).

Thus, to achieve more egalitarian, equitable and inclusive cities that favour environmental sustainability, the Regional Action Plan has highlighted the role of sustainable city planning, based on addressing the linkages between urban layout, sustainable resource use and social inclusion (ECLAC, 2018c). And, even though urban planning is a political exercise, it is recognized as necessary to carry it out on the basis of research and data analysis that are oriented towards greater efficiency and effectiveness of policies, programmes and projects, for which developing greater collaboration within and between countries is fundamental (ECLAC, 2018c). Based on the above, the Regional Action Plan has defined four guiding principles and strategic outcomes for the period 2016–2036, which translate into four action areas: (i) promotion of national urban policies; (ii) creation of urban legal frameworks; (iii) urban-territorial planning and integrated urban design, and (iv) financing urbanization.

Beyond the specifics of each of these action areas, it is important to highlight that, in line with Sustainable Development Goal 11 "Make cities and human settlements inclusive, safe, resilient and sustainable" (United Nations, 2015), the plan highlights the importance of creating urban regulatory frameworks that contribute to progress in making cities more sustainable and fairer for all their inhabitants. In that regard, and with this overview of the urban agenda in the region, the next section goes into greater depth and develops the specific contents of the rights-based and gendered approach as part of the construction of sustainable cities.

## C. The human rights-based approach and gender perspective in urban mobility

The human rights-based approach as a reference point for the analysis and design of public policies has normative and instrumental value. Normatively, it implies that the analysis and design of public policies should never lose sight of the critical importance of the dignity of every person, as expressed in the human rights recognized in the international and national corpus juris. From an instrumental point of view, the rights-based approach centres the analysis and design of policies on the conditions and obstacles to the actual enjoyment of human rights by individuals. In other words, beyond the sectoral and immediate objectives of a public policy, its importance and impact from the point of view of effective enjoyment of rights are another core consideration as well as an integral part of its objectives.

Something similar occurs with the gender perspective, this time integrating gender inequalities and their multiple determinants as a structural reference point in the analysis and design of policies, with a view to strengthening women's autonomy and effective enjoyment of their rights. Both approaches—human rights and gender—are concurrent in that the former implies a general orientation towards the enjoyment of rights by the population as a whole, as well as addressing the particular needs and deprivations of specific groups, while the latter focuses precisely on the inequalities, discriminations and exclusions that stand in the way of effective enjoyment of rights by women, who represent more than half the population.<sup>6</sup> In addition, the gender perspective also emphasizes inequalities and discrimination of members of the LGBTIQI community.<sup>7</sup>

With respect to mobility systems, concern for the living conditions of people in human settlements worldwide, both urban and rural, has led to a review of various needs, including the transport systems available to city dwellers. Thus, the idea has been highlighted and reinforced that these systems afford people physical access to various services and opportunities, but also expose them to health risks, such as pollutants and modes of transport that generate congestion (United Nations, 1996).

Urban mobility in Latin American and Caribbean countries contributes, in the first place, simultaneously to the accessibility and enjoyment of various rights such as health, work, culture and education, among others. This is because “human rights are universal, indivisible and interdependent and interrelated” (United Nations, 1993, p. 5). Mobility systems also contribute to environmental degradation and pollution, thereby violating rights, including the rights to health, water and sanitation. Due to the conditions and quality of the services they offer, the type of infrastructure they use, and the fact that they are a public space for social interaction, such systems can be settings, directly or indirectly, where the violation of other rights is encouraged or facilitated.

Accordingly, States must adopt legislative measures such as public policies that enable them to fulfil their international obligations. This means that the measures adopted should envisage a human rights-based approach, which includes a gender perspective. Therefore, general measures must be adopted to facilitate the enjoyment of rights, and special measures adopted to meet the needs of various population groups. This is because unequal access to mobility systems, or the possible violation of rights as a result of how they operate, can lead to new gaps or reproduce pre-existing patterns of inequality and discrimination. Thus, all human rights must be treated globally and equitably by according them equal weight (United Nations, 1993).

Within the framework of the 2030 Agenda for Sustainable Development and considering the importance of its implementation for human rights (United Nations, 2021b), the objective of this section is to contribute to the development of new public policies on urban mobility that take account of international human rights norms and standards in their design, implementation and evaluation.

<sup>6</sup> Although the gender dimension is mentioned throughout the document in a cross-cutting manner, section D.3 discusses in greater depth the links between mobility, gender inequality and women's autonomy.

<sup>7</sup> Includes people who identify as lesbian, gay, transsexual or transgender, bisexual, intersex and queer.



Part of this objective is to help States detect, prevent or resolve potential violations of specific rights of the population as a whole, as well as those of particular groups with specific vulnerabilities and needs. One example is the case of persons with disabilities, for whom special measures must be adopted to ensure respect, guarantees and protection for the free exercise of their human rights (Inter-American Court of Human Rights, 2006b) on an equal footing and without discrimination (Inter-American Court of Human Rights, 2003 and 2021). From an analytical and policy design point of view, the framework of the social inequality matrix and the principle of difference-sensitive universalism offers a correlate to that of the universal guarantee of human rights, through actions and norms that address the different needs of specific population groups.

In addition to the diversity of the population that uses transit systems, there are numerous actors involved in the urban mobility process. These include not only public entities, but also private companies or partially State-owned enterprises that are directly and indirectly involved in the delivery and management of the service, as well as service operators and, among others, the people employed in different processes in transit systems. Therefore, there is a need to evaluate which policy mechanisms or instruments can help States in prevention and protection of human rights in these areas of public management. Such standards and policies will be useful in assessing the corporate responsibility of those providing transport services.

## **D. Obligations, actors and principles for linking a rights-based and gender approach in unequal societies**

In order to address the implications of the rights-based and gender approach from multiple standpoints focusing on its constituent elements and principles, the responsibilities of the State, the links with inequality and the needs of specific population groups, this section is organized in four parts. First, it explains the international obligations contained in treaties and universal instruments of the United Nations and regional instruments of the inter-American human rights system. Second, it analyses the general principle of equality and non-discrimination with respect to certain groups susceptible to violations. Third, it addresses the gender perspective in urban mobility systems and, lastly, presents a brief description of the content of the main human rights involved in the urban mobility and transport process, and their interconnection with other rights.

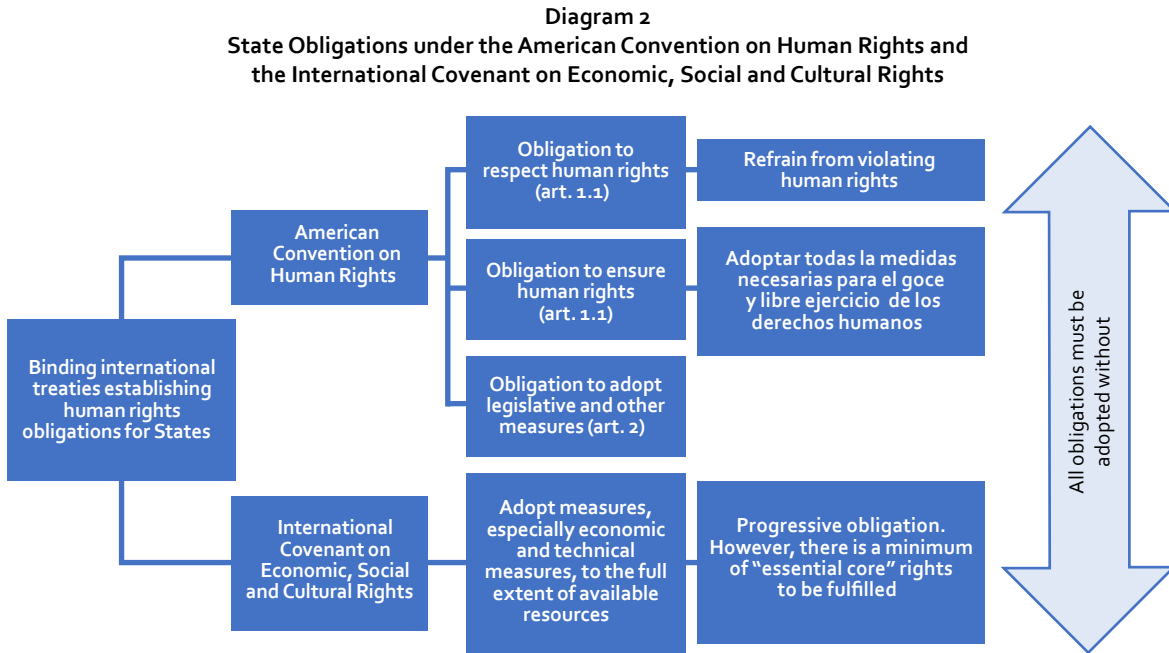
### **1. International human rights obligations of States**

#### **(a) Main State obligations based on the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights**

The main international human rights obligations of the countries of Latin America and the Caribbean are those contracted in the different human rights treaties ratified and that are in force and incorporated as part of the domestic law of the States via their constitutions, legislative measures they have adopted, or other types of measures, such as public policies. In that connection, the main international treaties whose obligations will be reviewed below are the American Convention on Human Rights (OAS, 1969) and its Additional Protocol (OAS, 1988); the International Covenant on Civil and Political Rights (United Nations, 1966b) and the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966a).

The American Convention, a regional normative instrument, establishes three main obligations—the first two in article 1.1 and the third in article 2—which must be fulfilled in a cross-cutting manner and with respect to all the rights contained in the treaty. Article 1.1 provides: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition” (OAS, 1969). Article 2 establishes the

obligation to adopt legislative or other measures, specifically: “The States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms” (OAS, 1969).



Source: Prepared by the authors, on the basis of Organization of American States (OAS), American Convention on Human Rights, San José, 1969; United Nations, International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XXI)), New York, 1966.

In short, article 1.1 obliges States to respect rights—that is, to refrain from limiting or violating the rights of individuals arbitrarily—and to ensure their exercise, which implies establishing all the measures necessary to enable individuals to enjoy the rights contained in the treaty. Article 2 establishes the need for the measures adopted by the States Parties to the Convention to be in accordance with these obligations, i.e. to respect and ensure human rights.

As regards obligations in relation to economic, social, cultural and environmental rights, such as the rights to health, work and a healthy environment, article 2 of the International Covenant on Economic, Social and Cultural Rights provides for various commitments: the adoption of measures by each State Party to the Covenant individually, as well as through international assistance and cooperation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights contained in the Covenant without discrimination of any kind.

It should be noted that the obligation of non-discrimination is immediately enforceable. Indeed, “article 2, paragraph 2, requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights” (CESCR, 2009, p. 3). Moreover, they have been included by jurisprudence as part of the obligations envisaged in the American Convention on Human Rights, under Article 26 of that Convention (Inter-American Court of Human Rights, 2017a, 2018 and 2020a), and also as an interpretative standard for the rights to life (OAS, 1969, article 4.1), to personal integrity (OAS, 1969, article 5.1) and to indigenous property (OAS, 1969, article 21).

On the other hand, it is important to bear in mind that economic, social, cultural and environmental rights are rights that are satisfied progressively and to the maximum of available resources. Each State must demonstrate that it is effectively using the maximum of its resources to ensure them. However, they

are characterized by an essential core —subject to immediate fulfilment— and specific complementary elements that determine the scope of each right. Thus, availability, quality and accessibility are intrinsic elements of economic, social, cultural and environmental rights that are fulfilled progressively, while non-discrimination is an immediate obligation.

The incorporation of a human rights approach (both civil and political, as well as economic, social, cultural and environmental) in the social policies of the countries of Latin America and the Caribbean is an obligation that has been adopted through international commitments as well as through their domestic legal systems, that is, through constitutions, domestic laws and public policies. Although the human rights approach focuses on a legal obligation, it contributes to the guarantee in other ways and can accelerate political and social consensus leading to social protection; defining the levels of social protection through international standards to ensure a good standard of living or a decent life; reducing opportunity gaps and social exclusion, enforcing compliance through standards of accessibility, adaptability, acceptability, adequacy and quality of public services; advancing a comprehensive institutional design, establishing an accountability mechanism and contributing to the elimination of discrimination and the enjoyment of rights (Sepúlveda, 2014a). Indeed, “the human rights approach urges states to adopt, as the framework of reference for their actions, the principles and standards that recognize the fundamental rights enshrined in both international instruments and national constitutions and regulatory frameworks” (IACHR, 2018, p. 20).

With regard to national strategies that include legislation, public policies and national human rights plans, among other measures (CESCR, 2009), it is essential to have mechanisms that allow people to report such problems or deprivations suffered on modes of transport and travel routes, and to have available, adequate and effective remedies that allow them to resolve such situations. “Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone without discrimination” (CESCR, 2009, p. 12).

In that sense, and from the point of view of the development of the right to the city, States should adopt all necessary measures to guarantee urban mobility, taking into consideration that such measures, whether legislative or public policy, should be adopted from a human rights-based and gender perspective. The above, in order to include materially effective changes to ensure the enjoyment of the specific rights that are linked to urban mobility and, in turn, to adopt reinforced measures with respect to particular groups, thus allowing the free enjoyment of rights on an equal footing and without discrimination for the entire population.

Among the most vulnerable groups with respect to the enjoyment and exercise of human rights are women, the majority group from a population standpoint (IACHR, 2019a), and the LGBTI community. Harassment and gender-based violence are especially prominent among the forms of discrimination and violations endured during travel in mobility systems. The Montevideo Strategy and the challenges identified by the New Urban Agenda, as well as implementing the 2030 Agenda for Sustainable Development itself, require States to put into effect mobility policies that actively help to “resolve the critical structural challenges that affect gender inequality between men and women, such as: (i) socioeconomic inequality and the persistence of poverty, in the framework of exclusionary growth; (ii) the sexual division of labour and unfair social organization of care; (iii) patriarchal, discriminatory, and violent cultural patterns; and, (iv) the predominance of the culture of privilege and the concentration of power and hierarchical relations in the public sphere” (Pérez, 2019, p. 11).

The adoption of specific measures should not only cover the transport aspect, but also include prevention of violence in all public spaces, so that girls, adolescents and women can exercise their rights freely. Therefore, measures can and should cover all facilities in urban mobility systems so that, for example, not only the transport mechanisms are safe, but there is also lighting and safe areas for waiting and alighting from means of transport (MESECVI, 2017).

Another aspect to consider are the specific obligations that apply to the different stages of the life cycle, i.e. the rights of children and adolescents, as well as of older persons. In that regard, in the first instance, States are urged to “set out appropriate policies and procedures to make transport safe, easily accessible to children with disabilities, and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child” (CRC, 2007, p. 11). The best interests of children as a group or collective must be prioritized, especially when it comes to adopting measures having to do with the environment and transport that may affect young children (CRC, 2007). Secondly, the Inter-American Convention on Protecting the Human Rights of Older Persons recognizes at Article 26 the right to accessibility and mobility and transport mechanisms as part of their autonomy and social participation; States must therefore progressively adopt measures to enable them to enjoy those rights.

Lastly, with respect to certain rights that are among the most adversely affected where mobility systems are concerned, such as the rights to a healthy environment, health and personal integrity, the Working Group on the Protocol of San Salvador (WGPSS) has referred to the right to a healthy environment, indicating that, as that instrument provides, “States have at least the following obligations ...: (a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation; and (e) promoting improvement of the environment” (WGPSS, 2015, p. 97). For some States, those obligations are complemented by those contained in the Escazú Agreement.<sup>8</sup>

#### **(b) Specific human rights obligations of private actors and State due diligence**

In order to guarantee the free and full exercise of human rights, as well as to protect them, all agents or operators responsible for ensuring the must be involved. Accordingly, state-owned, partially state-owned and private companies play a fundamental role in providing access to urban mobility. The Committee on the Rights of the Child has stated that companies and non-profit organizations can contribute to the delivery and management of services, such as the provision of safe drinking water, sanitation, education, transport and health, among other rights (CRC, 2013a). However, it does not indicate how they should be provided. It should be noted that “States are not exempted from their obligations under the Convention when they outsource or privatize services that impact on the fulfilment of children’s rights” (CRC, 2013, p. 10).

Thus, in principle, States are not directly responsible for violations committed by private parties (in this case) or the actions or externalities generated by companies that contribute to transport services and, therefore, to urban mobility. However, the inter-American human rights system has recognized the obligation to investigate infringements committed by private parties that violate the American Convention (IACHR, 2006). It states that “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention” (Inter-American Court of Human Rights, 1988, p. 30). This means that although the State may provide part of the transport service through private third parties, such as, for example, bus concession companies or bus stop lighting companies, if people’s rights are violated by the companies, their workers or persons using the means of transport, the State retains the obligation to supervise and inspect those companies, to create the necessary mechanisms to afford people access to justice and, where appropriate, to investigate the third parties involved. Failure to do so would be in contravention of international obligations such as those stated in the previous section.

Therefore, in order to fulfil the right to the city and access to transport, on the one hand, the State must comply with its international obligations to respect, guarantee and protect the aforementioned human rights. In this sense, States must act with due diligence with respect to the way in which companies

<sup>8</sup> The obligations recognized in the Escazú Agreement will not be analysed here.

operate, which entails protecting people from potential violations of human rights caused, in this case, by the activities of transport companies.

This is only possible through the State's fulfilment of its prevention obligations; the adoption of domestic measures that regulate transport by legislation or through public policies with a human rights approach; the fulfilment of the obligation to inspect and supervise the activities of private actors in order to live up to their responsibility to respect human rights (Inter-American Court of Human Rights, 2017b; IACHR, 2020), and the investigation of potential violations, imposition of penalties, and provision of redress to those affected. This aspect is developed in greater depth in section 5.

## **2. Intersectionality and the principle of equality and non-discrimination**

Development and sustainability have been the main pillars of the 2030 Agenda. Although development goes hand in hand with the economic growth of cities, this does not mean that, as a whole, they are conducive to sustainability, since socioeconomic inequality persists in certain population groups and is sometimes even a consequence of deeply rooted historical patterns in society and other modern forms of discrimination (CESCR, 2009).

Social equality should be considered the central pillar of development for two main reasons: first "because it provides policies with an ultimate foundation in rights, but also because it is a condition for moving towards a development model focused on innovation and learning. Such a model has positive effects on productivity, economic and environmental sustainability, dissemination of the knowledge society, and the strengthening of democracy and full citizenship" (ECLAC, 2019, p. 35).

Contributing to this are the international obligations mentioned in the first section, under which equality and non-discrimination are a guiding principle that should be understood not only as a right, but also as a guarantee that enables and contributes to the realization of other rights recognized both by domestic judiciaries and by international law (IACHR, 2017b).

In that sense, the urban mobility system is an integral part of the development of cities, since it not only provides people with a specific service, but also enables them to access other services, rights and opportunities (see table 1). However, in the context of what ECLAC has called the social inequality matrix, the countries of the region have a productive structure that generates great inequalities in all areas of well-being and rights, as well as a culture of privilege that normalizes and helps to perpetuate them. Among these rights is, of course, the right to free movement and mobility, in addition to others such as access to services and opportunities associated with mobility and the right to the city.

However, such inequalities do not affect all people in the same way, but are determined by different axes (socioeconomic status, gender, age, ethnicity, race, territory, disability, migration status or gender identity) that generate multiple forms of discrimination and exclusion that complement and reinforce each other. Therefore, for some, the enjoyment of rights in general, and of mobility and freedom of movement in particular, is constrained to a mass transit system, whereas others have access to a variety of mechanisms to move around the city. Part of the population in the upper and middle strata can access and travel by private means, while those with fewer resources to afford private transport, i.e. the vast majority, rely on mass transit to move around and enjoy that right. Therefore, the cost of fares directly impacts access to that right and may condition other rights. Also, more time spent on mass transit reduces the time available for the exercise of other rights. Moreover, certain groups of people afflicted by simultaneous forms of discrimination and exclusion along the above-mentioned axes face additional specific barriers; they include, for example, people with different types of disabilities who, in addition to the cost, face greater obstacles in accessing and using mobility systems, unless those systems incorporate specific inclusion mechanisms in their design and operation.

**Table 1**  
**The social inequality matrix in Latin America**

Conceptual bases	Axes and areas of welfare and rights	
	Axes	Impacted areas of welfare and human rights
Structural heterogeneity (unequal and unsustainable production matrix)	Socioeconomic level	Work and employment
Culture of privilege	Gender	Social protection and care
Concept of equality	Race and ethnicity	Education
Equality of means (income and productive resources)	Age	Health and nutrition
Equal rights	Territory	Basic services (water, sanitation, electricity, housing, transport, information and communication technologies)
Equality of capabilities	Other factors	Citizen security and a life free of violence
Autonomy and reciprocal recognition	Disability status	Time distribution
	Migratory status	Participation and decision-making
	Sexual orientation and gender identity	Healthy environment
		Mobility and free movement

Source: Economic Commission for Latin America and the Caribbean (ECLAC), Disasters and inequality in a protracted crisis: towards universal, comprehensive, resilient and sustainable social protection systems in Latin America and the Caribbean (LC/CDS.4/3), Santiago, 2021; The social inequality matrix in Latin America (LC/G.2690(MDS.1/2)), Santiago, 2016.

In short, inequality is greater, the more the above factors intersect and generate intersectional discrimination, where there are groups that have been discriminated against in a systemic manner, i.e. that face structural discrimination. It follows that in adopting their obligations regarding observance and guarantee of human rights States cannot take a homogeneous approach, but must make population diversity their core focus and identify in their public policies the needs of vulnerable groups, such as children and adolescents, older persons or people with disabilities, taking a holistic rights-based perspective sensitive to such differences.

In that way, urban mobility measures will only have positive effects on inequality or be effective to the extent that they are adopted with special attention to groups suffering inequalities and discrimination. Therefore, measures should have a reinforced character with respect to those who have suffered historical discrimination or are in a situation of vulnerability (IACHR, 2019a; United Nations, 1989b).

Table 2 below presents potential violations affecting a specific group, and the points that follow develop some ideas specific to the above groups.

**Table 2**  
**Categories of persons and rights impacted by discrimination in mobility systems**

Examples of categories susceptible to discrimination	Issues and risks in the exercise of specific rights
Vulnerable strata by income: people with low income, in poverty and in extreme poverty; unemployed and/ or informally employed people, including caregivers and domestic workers, and homeless people, among others.	Economic, social, cultural and environmental rights through mobility in general, including freedom of movement, right to work, right to security and personal integrity and to a life free of violence (women), among others.
Children and Adolescents	Education, health, safety, culture and recreation.
Persons with disabilities	Freedom of movement, health, education, security and the right to work.
Indigenous communities, ethnic groups and people of African descent.	Violation of rights due to racial discrimination; insecurity and personal integrity; a life free of violence.
Migrants	Violation of rights due to racial discrimination; insecurity and personal integrity; a life free of violence.
Women and LGBTI+ community	Rights associated with care, education, access to work, safety and personal integrity.

Source: Prepared by the authors.

### a) People in poverty and income vulnerability

Income is a central means to access essential goods and services and, in general, households “need an income in order to buy food and clothing, acquire durable goods, use transport services and basic utilities (drinking water and a source of power for cooking, heating and lighting) and recreation services in order to meet their members’ needs” (ECLAC, 2018b). Therefore, monetary resources are a critical means for achieving a level of well-being compatible with a decent life and one of the clearest factors in inequality and social gaps. In particular, insufficient monetary resources are often associated with difficulty of access to basic goods and services and more limited access to social protection, as well as a lower level of participation in the fundamental spaces of society, among others (ECLAC, 2018b).

Poverty creates barriers to equal enjoyment of human rights for individuals or groups of individuals in poverty or extreme poverty. This is reflected, in particular, in the lack of “access” to rights with implications for public action, since poverty implies “violations of human rights for which the State may bear international responsibility. Extreme poverty constitutes a serious human rights problem because of the intensity with which it undermines the enjoyment and exercise of human rights” (IACHR, 2017b, p. 9). In the case of urban mobility, poverty makes it harder to access mobility or move around in dignity, starting with the ability to afford the economic cost of available mobility services. And in general, the worse levels of systemic, multiple discrimination or social exclusion suffered by groups living in poverty or extreme poverty impede their participation in citizen spaces, access to justice and enjoyment of human rights (IACHR, 2017b and 2001).

Another important element in Latin American cities is that high income inequality is expressed and reinforced by marked territorial segregation (Vasconcellos, 2019). In peripheral urban areas, pedestrian mobility conditions are often poor due to the lack or poor quality of paths and infrastructure in general. Thus, the surrounding urban infrastructure is important, since if low-income people do not have the possibility to move about adequately to access transport networks (easy access to public roads and bus stops, among others), their free movement and mobility is hindered. The situation is worse for people living in poverty or extreme poverty, or who have some kind of disability or mobility difficulty.

In addition to people living in poverty or extreme poverty, there are other population groups that should be included due to their high level of income vulnerability. In particular, informal workers, who by definition are employed in precarious activities, typically without a contract and with limited access to social protection mechanisms, are susceptible to falling into poverty because of their lower capacity to respond to shocks. Likewise, unemployed people, who lack work income and living conditions of socioeconomic vulnerability, are a potential group for whom access to mobility may be crucial for finding a job, and therefore may be targets for preferential measures or rates (ECLAC, 2019b).

Poverty must be analysed from a human rights perspective, which implies, in first place, recognizing individuals or groups living in poverty or extreme poverty as rights holders and agents of change (IACHR, 2017b; United Nations, 2012a). Incorporating the needs of income-vulnerable people or those living in poverty requires specific policy instruments because “when the system works without regulation, the tendency is to optimize collection, which limits services to areas with higher demand, generating a ‘geographic’ exclusion, which affects the poorest” (Vasconcellos, 2019, p. 63).

Lastly, although there is not yet a right that protects people to the point of requiring that they be removed from poverty (or at least not one that creates a positive obligation), the inter-American human rights system has established several instruments aimed at overcoming poverty and extreme poverty. Thus, IACHR (2017b, p. 99) “emphasizes that in the light of these obligations, States must pay special attention to the social sectors and individuals who have suffered from the various manifestations of historic exclusion or are victims of persistent prejudice, and must immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that create and perpetuate discrimination”.

**(b) Children and adolescents**

Discrimination and inequality as structural barriers also affect children and adolescents because of their age and are associated with other axes of inequality, such as socioeconomic level, gender, race/ethnicity, migratory status or territory. On this point, according to IACHR (2019), the geographic location of this group in large cities is one of the factors in the risks to physical integrity and various forms of abuse associated with insecurity. Lack of access to adequate transport is an additional risk factor.

Access to mobility in general, and to mass transit in particular, is essential for the direct and indirect enjoyment of several rights of children and adolescents associated with their current well-being and their future development and opportunities. In addition to freedom of movement, rights such as education, culture, and health, among others, stand out. Therefore, the lack of access to mobility in optimal conditions prevents proper development and further marginalizes children and adolescents, especially when they are in a situation of poverty or extreme poverty.

The Committee on the Rights of the Child (2013a) has noted that a large number of children and adolescents living in poverty are prone to suffer a variety of adverse effects on their personal integrity, safety and health. That is because they are exposed to factors and risks that could affect those rights, such as overcrowding, lack of lighting in public spaces, traffic congestion and pollution, as well as lack of mass transit in accordance with their needs and of green spaces, playgrounds, and cultural recreation, among others. As a result, the lack of access to mass transit and other public or recreational services and infrastructure has been highlighted by the Committee on the Rights of the Child as “a major factor in the marginalization and exclusion of children with disabilities [that] markedly compromises their access to services, including health and education” (CRC, 2007, p. 11).

As with education, and given the importance of the right to health in the development of children and adolescents, better health is closely linked to access to the facilities where such services are provided. Children and adolescents with disabilities often face greater barriers to access due to various forms of discrimination and exclusion associated with lack of financial resources, living in remote areas and, in particular, problems of access to mobility and transport (CRC, 2007).

Urban mobility is linked to other risk and insecurity factors that can affect children and adolescents. It is critical for their well-being that the States implement policies aimed at reducing road accidents and, therefore, that they adopt regulations regarding, for example, safety devices in cars and buses, such as the use of seat belts or child seats. It is essential that children and adolescents have safe access to different modes of transport and that this is considered in urban, transport and road policies and planning (CRC, 2013b).

As a result of the above, it is imperative that legislative or policy measures that may have an impact on the rights of children and adolescents take into consideration the principle of the best interests of the child, in terms of health, safety, waste disposal, residential planning and transport, green spaces and education (CRC, 2013a).

Another group in an alarming situation are homeless people, especially homeless children, who have fewer possibilities to enjoy their rights and escape poverty (IACHR, 2017b). It has been noted that “States should facilitate sensitization and training for other stakeholders who come into direct or indirect contact with children in street situations, such as transport workers, ... and private sector actors, who should be encouraged to adopt the Children’s Rights and Business Principles” (CRC, 2017, p. 8).

**(c) Persons with disabilities**

Urban mobility in general, and access to mass transit in particular, has historically not taken account of people with disabilities, either in urban planning, or in the organization and infrastructure of mobility systems, disregarding that group as well as those who lack the resources to pay the established fare (Vasconcellos, 2019). Although disability can afflict anyone, regardless of life-cycle stage, gender or any determinant, some groups are at greater risk of having some type of disability. The 2011 World



Report on Disability has indicated that around 15% of the population lives with some type of disability, with a higher frequency among women and older persons than men, adults or children and adolescents (WHO/World Bank, 2011).

In Latin America and the Caribbean, the difficulties in accessing and using transit systems faced by people with some type of disability (physical, sensory, intellectual, mental, or a combination of these) stand out for their number and diversity. In addition, the presence of disabilities, in their different forms and degrees, can go hand in hand with factors such as unemployment and territorial segregation, both magnified by the difficulties of access and mobility obstacles in the existing systems. The labour exclusion factors cited by the IACHR include “a lack of training, lack of accessibility in the work place, lack of accessible transport, and the continued economic problems that afflict the region as well as companies’ resistance to hiring people with disabilities despite the fact that the laws in several of the region’s countries provide for incentives for those that do, as well as minimum quotas in the case of employment in the private and public sectors” (IACHR, 2017, p. 137).

Therefore, mass transit and the relationship with the environment are essential conditions for persons with disabilities to access and have guaranteed the freedom or right to liberty of movement, as it is called in the American Convention and the International Covenant on Civil and Political Rights (Committee on the Rights of Persons with Disabilities, 2014). This involves removing barriers that are less visible or evident and that impede accessibility and require the adaptation of various transport services and their infrastructure (IACHR, 2020a).

In this case, the Convention on the Rights of Persons with Disabilities clearly sets out the State’s obligations in terms of urban mobility through an accessible and adapted transit system. Thus, its Article 9 states: “to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transport, ... These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transport and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces” (United Nations, 2007, art. 9).

In turn, Article III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities provides that States must adopt the necessary measures to facilitate accessibility to means of transportation (OAS, 1999). In addition, States must provide technical aids. Accessibility varies depending on whether the area in which people live is urban or rural, it being much greater in the former than in remote rural areas, which tend to be less developed. However, extensive urbanization may have other types of implications or create “additional new barriers that prevent access for persons with disabilities, in particular to the built environment, transport and services, as well as more sophisticated information and communication services in heavily populated, bustling urban areas” (Committee on the Rights of Persons with Disabilities, 2014, p. 5).

#### **(d) Older persons**

Goal 11 of the 2030 Agenda highlights the importance of cities in sustainable development and accords primary importance to means of transport for that development, as well as taking into account, in target 11.7, public spaces and older persons (United Nations, 2018a). In Latin America, “the young population from 0 to 19 years of age has begun to decrease, with the young society projected to end in 2023, when 20–39 year-olds will become the largest age group” (Huenchuan, 2018).

With respect to the obligations of the State in this regard, the Inter-American Convention on Protecting the Human Rights of Older Persons recognizes at Article 26 the right to accessibility and personal mobility of older persons, by establishing the following: “In order to ensure accessibility and personal mobility for older persons, so that they may live independently and participate fully in all aspects of life, States Parties shall progressively adopt appropriate measures to ensure for older

persons access, on an equal basis with others, to the physical environment, to transportation, ... both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation, and other indoor and outdoor facilities, including centres of education, housing, medical facilities, and workplaces" (OAS, 2015, art. 26).

Accordingly, States play a fundamental role in enabling and expanding the exercise of the economic, social, cultural and environmental rights of older persons, and especially in ensuring their economic autonomy, integration in the community and recognition of their experience and knowledge. However, older persons may face a series of abuses and discrimination in daily life, particularly in terms of access to mobility and transportation (IACHR, 2020).

In addition to barriers and lack of availability and affordability of transport, proximity to centres of commerce or other services that are critical to older people may allow them to avoid unnecessary travel (United Nations, 2018). Ensuring an independent lifestyle includes the participation of older persons, which entails, apart from access to services and non-discrimination, the possibility of accessing other spaces and activities (United Nations, 2018). The above, accounts for the fact that the lack of, or lack of access to, means of transport can lead to social exclusion of older persons regardless of the country's level of development (United Nations, 2018).

For their part, older women are at a disadvantage compared to men. In general, due to discrimination and fewer opportunities in the course of the life cycle, they have fewer years of schooling, earn less income during their working lives and contribute less frequently to pension systems, so that when they do have access to such systems, they receive lower pensions in old age. In addition, they often play a key role within their families as unpaid caregivers of other dependents (ECLAC, 2019c).

Finally, the increased vehicular and air pollution that is a common feature of urban areas tends to disproportionately affect the health of older persons, especially when accessing mass transit systems (United Nations, 2018).

#### **(e) Indigenous peoples and people of African descent**

As for people of African descent and members of ethnic or indigenous groups living in urban areas, they tend to live in communities located in poorer and more spatially segregated sectors of cities and with low access to basic services and recreation (IACHR, 2021), including less access to transport services of poorer quality and with greater exposure to crime and violence (IACHR, 2021). IACHR has pointed out that "these patterns of structural inequality and economic poverty perpetuate the cycle of discrimination and invisibility to which persons of African descent have historically been subjected, because of the failure to recognize their history, thus precluding them from effectively enjoying and exercising their human rights" (IACHR, 2021, pp. 15–16).

Likewise, indigenous peoples experience a level of poverty that leads to even greater susceptibility to vulnerability and lack of access to the mobility system, since "indigenous peoples are the poorest in most Latin American countries" (UNDP/OPHI, 2021).

Discrimination against indigenous and Afrodescendent communities is not only the result of income gaps and poverty, but also of racial discrimination and cultural patterns that have negative effects on their daily lives and, therefore, on their movement in cities. In addition to the barriers linked to the economic and spatial accessibility of transport services, there are often also barriers to use associated with lack of information available in the language used.

#### **(f) Migrants and refugees**

With respect to migrants and refugees, information, signage, language and transit routes are an initial, immediate obstacle. Added to this are other obstacles that they share with other vulnerable groups, such as segregation and difficulty affording the use of mobility systems.

It is important for States to include migrants in their social and economic inclusion strategies, since they are a population group traditionally excluded from social policy actions in Latin American and Caribbean countries, partly because in many cases intraregional migratory flows are a recent development. It is important to note that access to means of transport and mobility is key for this group, as it allows them access to health and education services, as well as to work, the main source of income and social inclusion.

In the context of the COVID-19 pandemic, access to health care became even more necessary, bearing in mind that the initial dwellings of refugees and migrants are shelters, dormitories, or overcrowded conditions. Therefore, it is important that States inspect the facilities where they live and their sanitary conditions, and that they ensure the availability and accessibility of workplaces and health facilities by means of mass transit (United Nations, 2021a).

### **(g) Multiple, intersectional and structural discrimination**

From all of the above, it is apparent that conditions of access to urban mobility mechanisms are not equal. There are groups or individuals who suffer specific forms of discrimination that sometimes reinforce each other along the aforementioned axes of social inequality. For example, it is likely that women who are indigenous or have a disability; migrant women and women belonging to an ethnic community, or children or adolescents belonging to the LGBTI community, among many other cases, encounter greater obstacles and difficulties in the different areas of well-being and enjoyment of rights, including mobility: "such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying" (CESCR, 2009, p. 6).

From a legal perspective, multiple discrimination or structural discrimination occurs when several factors of discrimination, risks or vulnerability converge for specific reasons, which are generally related to the particular conditions of a person or group of persons, such as those already mentioned, i.e. older persons, migrants, and members of the LGBTI community, among others (IACHR, 2019). The consequence of the above is that "an intersection of identities and risks can aggravate human rights violations against persons, groups, and communities living in situations of historical vulnerability and discrimination in the Hemisphere" (IACHR, 2019a, p. 33).

The notion of multiple discrimination and intersectionality is necessary to establish the obligations of States. For example, discrimination against women by reason of their sexual orientation, a disability, age, socioeconomic status, health status, property ownership or ethnicity may affect them differently and to a different degree than men (Committee on the Elimination of Discrimination against Women, 2010 and 2015). To meet their international obligations, States parties to the International Covenant on Economic, Social and Cultural Rights "must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures" (Committee on the Elimination of Discrimination against Women, 2010, p. 4).

Lastly, it is worth mentioning structural discrimination in the case of a group of people who have historically faced entrenched factors of discrimination or violence, i.e. not a succession of isolated or sporadic cases, but a systematic phenomenon that is socially and culturally rooted in regulations and institutions as well as in social practices. In response, countries must adopt corrective measures (Inter-American Court of Human Rights, 2009). This discrimination has to be addressed as part of a broad assessment and considering the historical context in each country (IACHR, 2017b).

## **3. Observations on gender and mobility**

Although gender perspective and the rights approach are crosscutting considerations in the subject matter and structure of this document, this section examines elements that highlight a number of significant gender differences in the use of mass transit.

According to Jirón and Zunino (2017), from a gender perspective, mobility is a social and political relationship, as it involves power relations. Furthermore, urban mobility occurs in the public space of the city where the organization of collective life is played out and identities, social interactions and senses of belonging are generated, as the activities that frame the way in which that collective life functions, making them potential drivers of social integration and inclusion (Carrión, 2019; Jirón, Lange and Bertrand, 2010). Based on these two positions and given that when the gender dimension overlaps with the territory, situations of exclusion and discrimination appear (Bidegain, 2017), the aim is to show the importance of mobility in the public space as a key component in social relations and to highlight the respective gender elements that are affected. As Montoya, Montes and Bernal state, what is required is “a long-term vision built on data with a gender perspective, that integrates transport and its interjurisdictional connection, that promotes the effective participation of multiple actors and agencies as well as female and LGBTI leadership in the sector, that harnesses innovation and new technologies, that builds gender-sensitive infrastructure, and that recognizes and responds to gender-based violence” (Montoya, Montes and Bernal, 2021, p. 21).

Unlike other areas of social and economic life, mobility systems and their relationship to the well-being and rights of women and LGBTI people have seen relatively little development.<sup>9</sup> However, as ECLAC (2019a) explains, the relationship between transport and gender is crucial to progress towards the achievement of the SDGs and the enjoyment of human rights, since although a great effort has been made to mainstream the gender perspective in state programmes and policies, mobility systems have not been a priority, even though the use of transport by women and LGBTI people and their experiences in this area are fundamental to their rights and quality of life.

In Latin America, women tend to use mass transit and travel on foot more than men, while men are more likely to use private cars or motorcycles (ECLAC, 2018a). Faced with this fact, putting the focus on improving mass transit involves prioritizing a gender perspective to improve quality in various areas of women’s travel. Another element that reflects gender differences in this area are the characteristics of journeys: reasons for travel, distances, number of stops to be made, schedules, loads (packages and purchases) and accompanied trips (ECLAC, 2018a).

These phenomena with respect to urban mobility are not isolated facts, but are intertwined, multiply and have a basis in what ECLAC (2019a) terms the four structural challenges of gender inequality and women’s economic, physical and political autonomies. The structural challenges of gender inequality are, first, socioeconomic inequality and the persistence of poverty, in the framework of exclusionary growth. In second place, discriminatory, violent and patriarchal cultural patterns, everything that concerns the culture of privilege; third, the sexual division of labour and unjust organization of care; and fourth, the concentration of power and hierarchical relations in the political sphere. The relationship of these four challenges with the economic, physical and political autonomies of women is examined in depth in this chapter given its significance for urban mobility, since the various forms of violence and inequality towards women not only threaten human rights but also those autonomies (ECLAC, 2019c).

Regarding the first challenge (socioeconomic inequality and the persistence of poverty), it should be noted that it is a contextual element and directly affects women’s economic autonomy. Differences in terms of access to work, wage gaps, use of time, unfair distribution of time dedicated to care and household chores, among others, mean that women and LGBTI people have fewer possibilities to choose the type of transport to use for travel and development in public spaces (Jirón, Lange and Bertrand, 2010). It was determined that if middle- and low-income segment women had the necessary income, they would use alternatives to mass transit (Allen and others, 2018). This aspect is also associated with the possibility of generating income and controlling it personally. A key recommendation to counter this inequality is to redistribute responsibilities, not only between men and women, but also in terms of the role of society and the State (ECLAC, 2019c; INMUJERES, 2018).

<sup>9</sup> For this paper, the gender perspective refers not only to the inclusion of women, but also to all diversities related to gender identity and orientation. However, most previous studies on gender in mass transit allude to the binary difference between men and women, so the data presented here will mainly be represented in that way.

The second challenge—patriarchal, discriminatory and violent cultural patterns—is more evident when it comes to the experience of women and LGBTI people with mass transit, as they are most exposed to gender-based violence, particularly sexual harassment and different types of discrimination.

In view of the above, violence against women appears as one of the control mechanisms that seek to perpetuate the inequality that has historically existed between men and women in all areas of social life (United Nations, 2017b; Rico, 1996). One element reflecting the above is the threatening of the physical autonomy of women in public spaces, such as urban transit. This directly affects the possibilities and quality of movement of women and girls: “it reduces their ability to attend school or work and to participate fully in public life. It limits their access to essential services and enjoyment of cultural and recreational opportunities. It also has a negative impact on their health and well-being” (Allen, 2018, p. 16). Thus, this autonomy is based on the ability to develop freely and without violence, and, at the individual level, to make decisions about sexuality and reproduction (INMUJERES, 2018).

Another aspect that is also related to the web of patriarchal, discriminatory and violent cultural patterns is sexist advertising, which has been denounced and argued over due to its objectification of women according to gender stereotypes in relation to their bodies, tastes, functions, consumer preferences and social roles. Advertising of this type has also been present on mass transit in Latin American countries. Recently, actions and resolutions have been implemented to prohibit and punish such practices. An emblematic case is the resolution adopted by the Gender Equality Commission of the LX Legislature of the Congress of the State of Puebla, in Mexico, which in 2019 approved reforms in that regard to the Transport Act, on the grounds that they perpetuated discrimination and gender violence. The resolution aimed to prohibit the display of printed or electronic advertising with sexist content on mass transit (Gender Equality Commission, 2019; *Excelsior*, 2019). Another example dates from May 2018, when the municipal transport company of Valencia, Spain, removed advertisements promoting female breast plastic surgery, posted on the sides and rear of city buses because they “objectified women”, and sanctioned the concessionaire that managed the public entity’s advertising for violating the code of ethics on such matters (Zafra, 2018). Without a gender perspective, that negative impact could not have been detected.

The characterization of mass transit from a gender perspective also brings the discrimination endured by LGBTI people in their travel into focus. This discrimination encompasses different levels of violence, including homophobic, lesbophobic or transphobic hate crimes. One alarming fact is that the life expectancy of trans women in Latin America is between 30 and 35 years, and about 80% of the trans people murdered over a 15-month period were 35 years old or younger (IACHR, 2015).

The gender perspective and even gender-based violence continued to be overlooked in urban mobility policies. According to the National Women’s Institute of Mexico (2021), discrimination against LGBTI people has only recently been incorporated as an issue in regional agendas and consensus, despite decades of advancing the gender perspective. That is why knowledge and experience sharing can be an important way of making up for lost time and not leaving behind the rights of LGBTI people. In line with this objective, it is pertinent to mention the technical line LGBTI public policy of the mobility sector, which was built thanks to the joint effort between different entities aimed at extrapolating diversity issues to all areas of public policy. Some actions included in this process were the analysis of information to characterize the members of the LGBTI community in the area of mobility, studies for the formulation of policies that advocate the democratization of mass transit and propose alternatives (in the hands of the Directorate of Sectoral Studies and Services (Dirección de Estudios Sectoriales y de Servicios)), training in LGBTI policies for public servants of the Secretariat of Mobility and related entities, and dissemination strategies. The coordination work proposed and executed under this policy is also worth highlighting (District Department of Planning, 2017).

The third challenge, concerning sexual division of labour, is the unjust organization of care,<sup>10</sup> a key aspect when looking at urban mobility from a gender perspective. Much of the aforementioned is influenced by the greater burden of activities that women shoulder due to domestic and care tasks (Allen, 2018), which also affects their labour market incorporation (ECLAC, 2019a). As this social phenomenon is one of the roots of gender inequality (Rodríguez-Enríquez, 2020), addressing the unfair effects of the organization of care implies not only rethinking public policies, but also moving towards a cultural shift leading to models of solidarity and co-responsibility (Batthyány, 2020).

This challenge has a crosscutting impact on the three above-mentioned autonomies in women's lives. Regarding economic autonomy, unpaid care work prevents them from engaging in paid work that would guarantee a steady, sufficient income, since most jobs require travel from the home to another location. Physical autonomy is impaired because, when faced with different threats to personal safety, those who make household purchases or travel with dependents on mass transit have greater difficulty responding to such situations. Lastly, mobility problems and care work taken together are a significant impediment to women's political participation. The limited presence of women and the LGBTI population in government decision-making and mobility policies makes it difficult for them to have a say in issues that concern them and to propose measures based on their life experiences with transport. A more equitable distribution among gender diversities in the sector "makes it possible not only to generate greater equality in terms of representation, but also to bring their perspective, their creativity and greater possibilities of innovation to bear on decisions made with a view to achieving truly inclusive mobility" (Montoya, Montes and Bernal, 2021). According to the Ministry of Transport and Communications of Peru (2020), the strategy to increase women's participation in the transport sector involves education and training, access or entry into the transport sector, retention (safety, flexibility, among others), and leadership through gender-equal promotion opportunities.

The table below summarizes the above elements, showing the impact of the structural obstacles that perpetuate gender inequality on mobility patterns, autonomies and women's rights. LGBTI people face a similar situation in the sense that the different forms and dimensions of inequality and discrimination establish barriers and risks associated with mobility, affecting their autonomy and rights.

As table 3 shows, the structural challenges of gender inequality are expressed in the different areas in question, which reflects: (i) the need to incorporate a gender perspective in public policies and guidelines for urban mobility to curb this reproduction of inequalities; (ii) the complexity of this incorporation, and therefore the need for experts to include the gender perspective in the production of knowledge and the development of measures associated with urban mobility, and (iii) the importance of a broader approach aimed at eradicating forms of violence and discrimination at the cultural level. This means that policies for the urban mobility sector cannot be considered without a gender perspective, without a rights-based approach and without the intersectorality necessary to cover the extent of the chain of gender inequalities.

<sup>10</sup> In relation to transport, it is associated with "the care and movement of children, the sick, people with reduced mobility, as well as work related to home upkeep, which typically create transport service demands that can differ significantly from the mobility needs of men or women who do not do this type of work" (Jaimurzina, Muñoz and Pérez, 2017).

**Table 3**  
**Aspects of women's lives reflecting the structural nodes of gender inequality in relation to urban mobility**

Structural challenges of gender inequality and autonomies	Socioeconomic inequality and the persistence of poverty (exclusionary growth)	Patriarchal, discriminatory, and violent cultural patterns (culture of privilege)	Sexual division of labour and unfair organization of care	Concentration of power and hierarchical relations in the political sphere
Mobility patterns	Variable cost and exposure to risks according to zone, type of transport, travel reasons and distances, travel schedules	"Prohibited" times, (real) perception of insecurity, exposure to aggression/harassment in transport	Travel reasons and distances, number of stops, schedules, accompanied trips, double load. Additional barriers to labour mobility	Additional difficulties and barriers for political and social mobilization, participation in decision making
Autonomies	Economic autonomy, physical autonomy	Physical autonomy	Economic autonomy, physical autonomy	Political autonomy
Rights	Economic, social, cultural and environmental rights (Work and own income, among others)	Right to life, right to integrity, right to non-discrimination	Equality and non-discrimination; right to work	Political rights

Source: Prepared by the authors, on the basis of Economic Commission for Latin America and the Caribbean (ECLAC), Equality and women's autonomy in the sustainable development agenda (LC/G.2686/Rev.1), Santiago, 2016; Regional progress report on the Montevideo Strategy for implementation of the Regional Gender Agenda within the sustainable development framework by 2030 (LC/CRM.14/5), Santiago, 2019; Social Panorama of Latin America, 2018 (LC/PUB.2019/3-P), Santiago, 2019; M. Casas, C. Lara and C. Espinosa, "Gender determinants in urban mobility policies in Latin America", FAL Bulletin, No. 371, Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019.

#### 4. Human rights applicable to mobility systems

One way to identify the main human rights related to urban mobility is to review the very notion of the 'right to the city', which has been defined as the "right of all inhabitants, present and future, permanent and temporary, to inhabit, use, occupy, produce, transform, govern and enjoy just, inclusive, safe sustainable and democratic cities, villages and human settlements, defined as essential common goods for a decent life, that should be shared by and benefit all members of the community" (GPR2C, 2019, p. 3).

Hence the need for a connectivity system that allows all inhabitants to move freely throughout the territory and access other rights on an equal footing, without any discrimination and in an inclusive manner. The latter two elements—equality and non-discrimination—constitute a guarantee, i.e. a guiding principle that transcends all other rights (IACHR, 2019a). Therefore, the right to the city—despite not being an autonomous right under international human rights law—and its different aspects comprise an array of rights associated, in particular, with sustainable mobility and transport systems (United Nations, 2017a).

Table 4 below develops the rights that are particularly important and intimately related to urban mobility systems and systematizes them, taking into account their interdependence.

**Table 4**  
**Particularly important rights connected with urban mobility systems**

Freedom of movement
Physical integrity and human dignity; a life free of violence (gender violence)
Education, culture and the right to rest
Health, personal integrity, healthy environment and water
Right to participation and freedom of association, access to information, and transparency
Decent work, labour and trade union rights within transport companies

Source: Prepared by the authors.

**(a) Freedom of movement**

Freedom of movement is one of the indispensable human rights of every person (United Nations, 1999). In broad terms, it is the right of every person to move around within a State as well as to choose his or her residence (United Nations, 1999).

This right does not only refer to the prohibition of arbitrary interference by States. They must also adopt the necessary measures to enable people as individuals or as part of a vulnerable group to have real access to urban mobility systems for an adequate enjoyment of the right to the city. Therefore, for example, there should be bus stops or subway stations belonging to the mass transit system close to their homes; fares should be commensurate with economic capacity or differentiate by group or community, as well as considering the travel time allowed by the fare.

The following table lists the instruments and agencies that recognize the right to freedom of movement.

**Table 5**  
**International instruments and agencies that recognize the right to freedom of movement<sup>a</sup>**

Universal Declaration of Human Rights, 1948 (art. 13)
International Covenant on Civil and Political Rights, 1966 (art. 12)
American Convention on Human Rights, 1969 (art. 22)
Human Rights Committee, 1999 General Comment No. 27

Source: Prepared by the authors.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

**(b) Safety and freedom from violence in public spaces and mobility systems**

The right to security of the person and the obligation to eradicate discrimination and gender-based violence have been recognized in various international instruments and bodies (see tables 6 and 7).

**Table 6**  
**International instruments and agencies that recognize the right security of the person<sup>a</sup>**

Universal Declaration of Human Rights, 1948 (art. 3)	International Covenant on Civil and Political Rights, 1966 (art. 9)
American Convention on Human Rights, 1969 (art. 7)	American Declaration of the Rights and Duties of Man 1948 (art. I)

Source: Prepared by the authors.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

**Table 7**  
**International instruments and agencies that recognize the right and principle of equality and the obligation to eradicate discrimination and gender-based violence<sup>a</sup>**

Convention on the Nationality of Women, 1993	Lima Declaration in Favour of Women's Rights, 1938
Inter-American Convention on the Granting of Political Rights to Women, 1948	Inter-American Convention on the Granting of Civil Rights to Women, 1948
World Conference on Human Rights of 25 June 1993	Programme of Action of the International Conference on Population and Development, Cairo 1994
Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, 1995	Convention on the Elimination of All Forms of Discrimination against Women, 1979
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará, 1994.	Recommendations 19 and 35 of the Committee on the Elimination of Discrimination against Women

Source: Prepared by the authors.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.



The probability of suffering some type of humiliation or violence in public spaces is linked to discrimination and social exclusion and, according to the logic of the social inequality matrix, children, adolescents and women are generally more vulnerable. The situation described above does not affect women exclusively but is part of a situation that underlies the fear of being a victim of some type of criminal act or violence as a result of discrimination. Those who express the most fear on mass transit are women, older persons, children and adolescents, as well as the LGBTI community. Thus, improving safety not only benefits women but multiple groups such as those mentioned (Allen and others, 2018).

The role of the State is fundamental in guaranteeing rights and promoting public policies that cover all the aforementioned elements for mass transit systems that offer an optimal quality and experience to all who use them. One of the points elaborated in the Santiago Commitment (2020) is the elimination of all forms of violence in private and public spaces; Likewise, the IACHR (2015) has expressed the obligation of the State to prevent, investigate, punish and provide reparation for any type of violence manifested against members of the LGBTI community.

Women's autonomy in public spaces is undermined, as they experience travel in an unequal manner, since in addition to the fear of robbery or assault that affects the entire population, there are other fears such as "the fear of rape and kidnapping and are exposed to a daily form of violence that is expressed through words, noises, phrases that undermine them, brushes or body contact and physical abuse that have specific negative effects to living safely on the street" (ECLAC, 2015a). In the study by Allen and others (2018), it was found that women feel greater anxiety than men when using mass transit because of the threat of the varied forms of harassment that can be triggered (compliments, whistling, lewd comments and looks, obscene photographs, rubbing, groping, physical exposure, stalking, masturbation, physical assault, murder or knife crime). Despite the fact that each of these actions generates negative impacts of various kinds on people's well-being, the same study finds that in most cases they are not reported or shared with those close to them.

The most common action taken to address issues of harassment of women has been information, awareness and communication campaigns. The Peruvian Ministry of Transportation and Communications (2020) classifies them into four types of campaigns—preventive, action, appeal and ongoing—and says that the objective of such campaigns is to make sexual harassment visible as a criminal offense, highlight the consequences of sexual harassment, raise public awareness of diversity, explain different ways of seeking assistance and increase the visibility of safe spaces.<sup>11</sup>

In addition, there are several measures that have been adopted by governments to tackle gender-based violence in transport. In the case of Argentina, for example, Article 1 of Law No. 26,485,<sup>12</sup> as amended, provides: "Article 6 of Law 26,485, on comprehensive protection to prevent, punish and eradicate violence against women, shall incorporate the following as paragraph (g): (g) Violence against women in public spaces: violence against women by one or more persons in public or publicly accessible places, such as a means of transport or shopping centres, through verbal or non-verbal conduct or expressions with sexual connotations that undermine or harm their dignity, integrity, freedom, including freedom of movement or freedom to stay in a place, and/or generate a hostile or offensive environment" (Congress of the Argentine Nation, 2017).

As regards other measures, one in Mexico City stands out, where they have buses popularly known as "Ateneas", which are operated for women only and already exceed 125 in number. In addition, new support and complaint offices have been opened in the transit systems, which facilitate the reporting of harassment and other forms of sexual violence. As UN-Women notes, the "mobile phone app, Vive Segura, facilitates the reporting of incidents. Inspired by the experience in Mexico City, Puebla in central

<sup>11</sup> Preventive: aimed at operators and security personnel, among others; Action: specific actions for different target groups; Appeal: aimed at potential aggressors and witnesses; Ongoing: call to the citizen network against sexual harassment (Ministry of Transportation and Communications, 2020).

<sup>12</sup> Law No. 26,485 or "Law on comprehensive protection to prevent, punish and eradicate violence against women in the environments in which they engage in interpersonal relationships" was adopted on 11 March 2009, enacted on 1 April 2009 and amended in 2019.

Mexico and Torreón in the northern State of Coahuila recently launched their own Safe City programmes in collaboration with UN Women and other partners. Both have allocated resources from their own budgets to ensure women's safety in public spaces" (UN-Women, 2017, p. 7).

**(c) Education, culture, rest and well-being as part of economic, social, cultural and environmental rights**

The rights to education and culture have been recognized by various international instruments and organizations, as shown in table 8.

**Table 8**  
**Specific rights identified by different international human rights instruments<sup>a</sup>**

Education	Culture
Universal Declaration of Human Rights, 1948 (art. 26)	Universal Declaration of Human Rights, 1948 (art. 27)
International Covenant on Economic, Social and Cultural Rights, in relation to the right to health; 1966 (art. 13)	International Covenant on Economic, Social and Cultural Rights, in relation to the right to health; 1966 (art. 15)
Convention on the Rights of the Child, art. 28	Convention on the Rights of the Child, art. 31.2
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; 1988 (art. 13)	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; 1988 (art. 14)
Committee on Economic, Social and Cultural Rights, 1999, General Comment No. 13	Committee on Economic, Social and Cultural Rights, 2009, General Comment No. 21

Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XI)), New York, 1966; Convention on the Rights of the Child (A/RES/44/25), New York, 1989; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21: right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/21), Geneva, 2009; General Comment No. 13 (Twenty-first session, 1999): The right to education (article 13 of the Covenant) (E/C.12/1999/10), Geneva, 1999; Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", San Salvador, 1988.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

The right to education has been understood as one of the most important rights were acquiring autonomy is concerned, particularly in economic terms, which allows people to escape poverty and actively participate in the communities to which they belong, and especially at the formative stages for children, adolescents and young adults.

Furthermore, "education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth" (CESCR, 1999, p. 1).

Thus, in order to make this right effective, it is essential that children and adolescents, as well as people who are in the process of learning, regardless of their stage in the life cycle, have material accessibility. This means that the right to education "has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme)" (CESCR, 1999, p. 3). In order to provide material accessibility, a transit system is required that enables mobility to and from educational facilities, a fare commensurate with the income of the sector using the transit system, the necessary security to protect children and adolescents according to their age, vulnerability and autonomy, and the people that use it to make complaints.

In relation to the right to rest of children and adolescents, the Committee on the Rights of the Child has held that "immersion in cultural life enriches playful interactions; rest ensures that children have the necessary energy and motivation to participate in play and creative engagement" (Committee on the

Rights of the Child, 2013a, p. 4). For its part, the International Labour Organization (ILO) has stated that “young persons under 18 years of age should, wherever practicable, be granted an uninterrupted weekly rest of two days” (ILO, 1957).

In order to provide effective rest and access to cultural life, a good urban mobility model, including access to culture and parks that are part of the urban infrastructure, is not the only need; the right to rest for children and adolescents, as well as adults, is also necessary. This requires policy and budgetary measures in relation to “residential and transportation planning, design and accessibility of the urban landscape, provision of parks and other green spaces, determination of school hours, child labour and education legislation, planning applications or legislation governing privacy on the Internet, among others” (CRC, 2013a, p. 8). In addition to the above, bus routes should be established, or subway or overland train routes enabled, that are in line with the social and cultural context of people’s urban movements, i.e. swift routes through the busiest places, so as to shorten the time of use, and so that transport does not act as an impediment to accessing spaces for rest and cultural recreation, but rather enables the enjoyment of both rights.

**Table 9**  
**International instruments and organizations that recognize the right to rest<sup>a</sup>**

Universal Declaration of Human Rights, 1948 (art. 24)	International Covenant on Economic, Social and Cultural Rights, in relation to the right to health; 1966 (in relation to the right to work, art. 7(d))
Convention on the Rights of the Child, art. 31.1	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”; 1988 (in relation to the right to work, as part thereof, art. 7(h))
Committee on the Rights of the Child, General Comment No. 17, 2013	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) of the International Labour Organization, 1957

Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XI)), New York, 1966; Convention on the Rights of the Child (A/RES/44/25), New York, 1989; Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, San Salvador, 1988; Committee on the Rights of the Child (CRC), General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) (CRC/C/GC/17), Geneva, 2013; International Labour Organization (ILO), C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), Geneva, 1957.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

This is key, since large Latin American cities have a clear tendency towards unequal urban segregation, which has very strong repercussions on how quality of life is distributed, the distances people have to travel to their jobs, access to mobility, and travel time, distance and conditions, among other considerations, with respect to places other than their area of residence. This has a direct impact on the opportunity to participate in cultural activities in their communities, as well as to rest. In short, even though the right to rest is recognized in law, very long distances make it unrealizable.

Improving travel and transit conditions has a series of positive effects on people’s quality of life, both in specific ways and in terms of their subjective experience, as table 10 shows (Figuerola and Reyes, 1996). In terms of health, it reduces stress and afflictions associated with long commuting times, while in interpersonal terms it brings substantial improvements by allowing more time and energy for home life, the care economy and the cultivation of emotional ties and social relationships (Valencia, 2018).

Moreover, building a safe mobility system for all, where violence is continuously reduced (see previous section) helps to make the transport experience more enjoyable for everyone, avoiding situations of fear, stress, violence and/or trauma, among others. A system that is accessible in terms of affordability

creates a more egalitarian environment in society. Furthermore, fair fare pricing (Comité Cerezo México, 2021) mean less of an economic burden on families, providing the conditions for living standards that enable a dignified life.

**Table 10**  
**Selection of indicators of objective or instrumental well-being,**  
**subjective well-being and quality of service**

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Travel and waiting times (origin - destination - use of time)
State, safety and cleanliness of infrastructure
Suitability of operating hours
Physical, financial and perimeter accessibility
Level of overcrowding
Urban and digital connectivity
Access to the city: services, jobs, leisure, culture, healthy environment, among others
Dignified treatment of users

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Source: Prepared by the authors.

**(d) Healthy environment, health, personal well-being and water (economic, social, cultural and environmental rights)**

It is the duty of the State to promote the preservation and protection of the environment (OAS, 1988, Article 11). In addition to being a right oriented to the protection of persons, the environment has been understood as an end in itself, apart from its relationship with persons, which distinguishes it from other rights, since it “protects the components of the environment ... This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights... but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right” (Inter-American Court of Human Rights, 2017b, p. 28). This right has been recognized by various international instruments and agencies (see table 11).

As a result of its emissions, transport is catalogued as one of the highest sources of urban pollution (Miralles-Guasch, 2012). Casas and Espinoza (2019) note that it “is the main source of CO<sub>2</sub> emissions, owing to the considerable use of fossil fuels, inefficient automotive technologies and high levels of private motorized transport, which have been increasing year after year in Latin American countries”, with negative externalities such as climate change, vehicular congestion, noise, traffic accidents and air pollution (Mayorga, Ruiz and Aldas, 2020), to which, by definition, users, operators and public general are exposed, particularly on roads.

Pollutants affect the right to a healthy environment. Moreover, there is an undeniable relationship between environmental protection and the realization of other rights (Inter-American Court of human rights, 2009). Thus, all human rights are undermined when there is no conducive environment for their exercise. However, there are some rights that may be specifically affected by certain forms of pollution, such as the rights to life, health, food, water, housing and self-determination (United Nations, 2012b).

**Table 11**  
**International instruments and agencies that recognize the right to a healthy environment<sup>a</sup>**

Universal Declaration of Human Rights, 1948 (art. 25.1)	Convention on the Rights of the Child, 1989 (Art. 24.2)
International Covenant on Economic, Social and Cultural Rights, in relation to the right to health, 1966 (art. 12)	Indigenous and Tribal Peoples Convention, 1989 (No. 169), 1989 (art. 4.1)
CESCR, 2004, General Comment No. 14, para. 4	United Nations Declaration on the Rights of Indigenous Peoples, 2007 (art. 29)
American Convention on Human Rights, 1969 (interpretation of art. 26)	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", 1988 (art. 11)
Stockholm Declaration (1972)	Rio Declaration on Environment and Development (1992)
Johannesburg Declaration on Sustainable Development (2002)	American Declaration on the Rights of Indigenous Peoples, 2016 (art. 19)
Resolution 70/1 (2015) of the General Assembly of the United Nations entitled "Transforming our world: the 2030 Agenda for Sustainable Development" (defines the SDGs)	Paris Agreement (2016)
Escazú Agreement (2018)	Resolution A/HRC/48/L.23 of the Human Rights Council (2021)

Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XXI)), New York, 1966; Convention on the Rights of the Child (A/RES/44/25), New York, 1989; United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), New York, 2007; Report of the United Nations Conference on the Human Environment (A/CONF.48/14/Rev.1), New York, 1973; Report of the United Nations Conference on Environment and Development (A/CONF.151/26/Rev.1), New York, 1993; Report of the World Summit on Sustainable Development (A/CONF.199/20), New York, 2002; Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1), New York, 2015; Paris Agreement, Paris, 2015; The human right to a safe, clean, healthy and sustainable environment (A/HRC/48/L.23/Rev.1), New York, 2021; Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", San Salvador, 1988; American Convention on Human Rights, San José, 1969; American Declaration on the Rights of Indigenous Peoples, Santo Domingo, 2016; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4), Geneva, 2000; International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 1989 (No. 169), Geneva, 1989; Economic Commission for Latin America and the Caribbean (ECLAC), Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (LC/PUB.2018/8), Santiago, 2018.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

One of the rights most adversely affected by environmental degradation is health, and health, like water, has been enshrined as a right in the following international instruments (see tables 12 and 13).

**Table 12**  
**International instruments and agencies that recognize the right to health<sup>a</sup>**

Universal Declaration of Human Rights, 1948 (art. 25.1)	International Covenant on Economic, Social and Cultural Rights, 1966 (Art. 12)
Convention on the Rights of the Child, 1989 (Art. 24.1)	International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (Art. 5(e)).
American Convention on Human Rights, 1969 (interpretation of art. 26)	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, 1988 (Art. 10)
Convention on the Elimination of All Forms of Discrimination against Women, Art. 12.1)	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (Art. 28)
Convention on the Rights of Persons with Disabilities, 2006 (Art. 25)	

Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XXI)), New York, 1966; Convention on the Rights of the Child (A/RES/44/25), New York, 1989; International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2106(XX)), New York, 1965; Convention on the Elimination of All Forms of Discrimination against Women (A/RES/34/180), New York, 1979; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/RES/45/158), New York, 1990; Convention on the Rights of Persons with Disabilities (A/RES/61/106), New York, 2007; Organization of American States (OAS), American Convention on Human Rights, San José, 1969; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", San Salvador, 1988.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

**Table 13**  
**International instruments and organizations that recognize the right to water<sup>a</sup>**

Convention on the Rights of the Child, 1989 (Art. 24(c))	Convention on the Elimination of All Forms of Discrimination against Women, 1979 (art. 14, para. 2)
American Convention on Human Rights, 1969 (interpretation of art. 26)	General Comment No. 15 of the Committee on Economic, Social and Cultural Rights in 2002 (on the basis of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)
General Assembly of United Nations, through the adoption of resolution 64/292	

Source: Prepared by the authors.

<sup>a</sup> This list of international instruments and organizations is illustrative and not intended to be exhaustive in terms of the recognition of the right.

The right to health has been understood as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (CESCR, 2000, p. 2). It consists not only of “the absence of disease or infirmity, but also as a state of complete physical, mental and social well-being derived from a lifestyle that allows the individual to achieve an overall balance” (Inter-American Court of Human Rights, 2018, p. 36).

The Committee on Economic, Social and Cultural Rights (CESCR) has indicated that in order to fulfil the right to health, States must protect a healthy environment. In this sense, they must refrain “from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities” (CESCR, 2000) as well as noise and environmental pollution resulting from congestion caused by urban mobility or plants where mass transit buses park. This pollution is greater for people who live in areas where there is a lot of traffic and vehicular congestion and also in communities living near transport hubs.

The right to water was recognized by the General Assembly of the United Nations in 2010 in its resolution A/RES/64/292, and it includes not only physical access to water but also its availability for various uses: “these uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene” (CESCR, 2003). Access to water is paramount for the enjoyment of a dignified life (Inter-American Court of Human Rights, 2017b).

Thus, “access to food and water may be affected if pollution limits their availability in sufficient amounts or affects their quality” (Inter-American Court of Human Rights, 2017b). An example of this is water obtained from groundwater that has been contaminated by diesel fuel for transport.

#### **(e) Right to participation and freedom of association, access to information, and transparency**

Mobility is an instrument for exercising different civil rights and liberties. Individual and collective participation in public life requires people to be able to move around in order to exercise their right to participation and association. The right to information is both important in its own right and in relation to the exercise of other rights, starting with the environment. In order to guarantee people the enjoyment of a pollution-free environment and to protect the rights related to it, it is essential that States guarantee inhabitants the right of access to information (Hervé and Schönsteiner, 2019, p. 497). This right is currently recognized in multiple instruments of international law and General Assembly resolutions, as well as in international treaties or declarations such as the American Convention on Human Rights, specifically in Article 13.1: “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds” (OAS, 1969, art. 13) (see table 14). Thus, in referring to the terms “seek” and “receive” it protects the right to request access to information under the control of the State, with the exceptions allowed under the regime of limitations of the Convention (Inter-American Court of Human Rights, 2006a). Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production (United Nations, 2011).

**Table 14**  
**International instruments and agencies that recognize the right to participation,  
 access to information and transparency<sup>a</sup>**

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Universal Declaration of Human Rights, 1948 (art. 19)
American Convention on Human Rights, 1969 (art. 13.1)
Human Rights Committee, 2011 General Comment No. 34
Principles on the Right of Access to Information, 2008
Advisory Opinion OC-23/17, 2017
Organization of American States, resolution AG/RES. 2958 (L-O/20) "Strengthening Democracy"

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Source: Prepared by the authors, on the basis of United Nations, General comment No. 34. Article 19: Freedoms of opinion and expression (CCPR/C/GC/34), Geneva, 2011; Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; Organization of American States (OAS), American Convention on Human Rights, San José, 1969; "Principles on the Right of Access to Information", Washington, D.C., 2008; Strengthening Democracy, Washington, D.C., 2020; Inter-American Court of Human Rights, "Advisory opinion OC-23/17 of November 15, 2017, requested by the Republic of Colombia: the environment and human rights", series C, No. 23, San José, 2017.

<sup>a</sup> This list of international instruments and organizations is illustrative and not intended to be exhaustive in terms of the recognition of the right.

When the individual has access to issues that are of public interest and are under the control of the State, it empowers participation and promotes democracy through the control that society exercises through that access (Inter-American Court of Human Rights, 2017b and 2006a); it also "fosters transparency in State activities and promotes the accountability of State officials in relation to their public activities" (Inter-American Court of Human Rights, 2006a, p. 44). Likewise, urban transit involves a series of public and private agents and, as mentioned, it is an activity with a big impact on the environment, so the system's operation and its different actors (State and private companies) need to have a rights-based approach that ensures transparency and access to information.

Access to information implies that the essential content of business activities must be fully available to users in a timely manner. To guarantee this right, it is necessary to counteract the potential imbalance in the generation, interpretation and dissemination of information between companies, which act as generators and owners of information, and the communities and authorities themselves; these guarantees comprise the central axis in the processes and actions of prevention, supervision and, as appropriate, investigation, to the extent that there are violations or abuses of human rights (IACHR, 2020).

The right of access to information also applies to pricing (fares), administration of public funds, prevention of corruption in tender processes and auditing.

#### **(f) Labour and trade union rights in transport companies**

Labour and union rights within transport companies and other related employers are another important area of urban mobility rights, which concern those who work for transport companies, whether they be state-owned or private.

According to IACHR and CESCR, the right to work has been defined as "a fundamental right that is inseparable from and inherent to human dignity. Exercising this right is key to strengthening economic and social systems from a rights-based perspective, which is in turn vital to guaranteeing and enjoying other human rights and to the autonomous development of the individual. It is also a way to guarantee that people can live a life of dignity" (IACHR, 2020, p. 9). In this regard, and in accordance with the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, as well as other ILO conventions, it is the duty of States and social partners to protect and enforce this right for all transport workers (ILO, 2020).

This right has been recognized in various international instruments, including ILO Conventions, Article 6 of the International Covenant on Economic, Social and Cultural Rights, Article 23 of the Universal Declaration of Human Rights, Articles 7 and 8 of the Social Charter of the Americas, Articles 6 and 7 of the

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women and Article 32.1 of the Convention on the Rights of the Child, constituting a vast international corpus juris (Inter-American Court of Human Rights, 2017a) (see table 15).

**Table 15**  
**International instruments and organizations that recognize the right to work and to organize<sup>a</sup>**

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Universal Declaration of Human Rights, 1948, art. 23
International Covenant on Economic, Social and Cultural Rights, 1966, art. 7
American Convention on Human Rights, 1969 (interpretation of art. 26)
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988, art. 6
ILO Declaration on Fundamental Principles and Rights at Work and its follow-up (1998)
Conventions of the International Labour Organization

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Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XXI)), New York, 1966; Organization of American States (OAS), American Convention on Human Rights, San José, 1969; Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", San Salvador, 1988; International Labour Organization (ILO), ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 1998.

<sup>a</sup> This list of international instruments and bodies is for illustrative purposes only and is not intended to be exhaustive in terms of the recognition of the right.

Likewise, the CESCR indicates that an individual dimension of this right is that "every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community" (CESCR, 2005). Such work must be performed safely, in fair and satisfactory conditions. An individual dimension includes the right to form trade unions and to freedom of association (CESCR, 2005).

In that regard, the working conditions of transport employees are particularly significant. On occasion, working conditions are not hygienic or sanitary and there are not always rest areas, places to eat and toilets at stops. Additionally, workers who handle money in payment for the service are likely to be victims of muggings or other violent crimes. As the ILO has indicated, "the lack of such facilities can have negative consequences for all transport workers, including women. Ensuring sufficient welfare facilities should be an integral part of the development and updating of road systems and infrastructures" (ILO, 2020, p. 40).

Among other things, the low participation of women in this area of the labour market compared to men is notable and it is clear that "the sexual division of labour has a direct influence on women's economic autonomy, as it limits their options for earning income and their access to and control of necessary resources. ... This problem is one of the factors driving the feminization of poverty and is compounded in the case of widowhood, termination of a marriage or breakup of the family this problem tends to feminize poverty, and is aggravated in cases of widowhood, marital breakup or family disintegration" (IACHR, 2020, p. 86). However, women are not the only group affected in access to work, since trans and gender-diverse people who manage to join labour market suffer high levels of discrimination and harassment in the workplace (CDHDF, 201; IACHR, 2017b). Aggression can range from pejorative comments to serious workplace harassment and dismissal for being trans or gender-diverse (IACHR, 2020).

Lastly, people with disabilities often encounter additional barriers when they want to work in mass transit, which not only constitute discrimination but prevents them from making a living and gaining autonomy.



As will be discussed in more detail below, States must adopt special protection measures to ensure that all persons can enjoy their rights on an equal footing and without discrimination.

## 5. Business and human rights in urban mobility

Among the actors involved in urban mobility services, private actors, especially transport companies and those that provide related services, are of great importance. From the point of view of guaranteeing rights, these companies have unique responsibilities that arise (or can be determined) from the Guiding Principles on Business and Human Rights (OHCHR, 2011). The Human Rights Council adopted the Guiding Principles in 2011 in order to define the responsibility of companies to respect human rights and, where appropriate, remedy their infringement, as well as to specify the obligations of States with respect to the protection and remedy of those same rights. These Principles constitute today the guiding framework on the matter and have also been endorsed by IACHR (2020) and by the Inter-American Court of Human Rights (2015).

The Guiding Principles start from an empirical problem: companies—especially the largest ones—can violate human rights and, because of their transnational nature or their supply chains and the weakness of the rule of law in many producing countries, it is extremely difficult for a State alone to prevent or address the impacts of rights violations by these private actors. While the responsibilities for companies are not binding, they set clear expectations that in the last 10 years have also been imposed beyond the United Nations, in particular in the implementation of the OECD Guidelines for Multinational Enterprises (OECD, 2011).

It is Pillar II of the Principles, in particular, that establishes corporate responsibility. The Principles constitute a guide to expected behaviour for the definition of legal standards or national policies (that States should adopt) and for good practices that companies should observe; in this case, the transport operating companies, the companies that supply the latter with energy, technological systems and machinery, and the construction companies in charge of installing the infrastructure, from bus stops to stations or rail and road systems, with their respective national and transnational supply chains.

This section summarizes the applicable standards and explains how companies could incorporate them into their governance systems. Lastly, it analyses how these standards are specified for state-owned companies and how the State should encourage companies to observe human rights in their own activities and in their supply chains.

### (a) Corporate responsibilities: to respect rights

In order for respect for human rights in transport to be effective, it is important not only that States adopt legislative, public policy or other measures, but also that companies and unions do their part. This should be achieved through the incorporation of governance systems, sustainability policies, risk assessment, purchasing and procurement systems, as well as labour policies. Those governance systems, then, will account for the main challenges and risks identified for the realization of human rights according to the particularities of each context and, especially, the specific activities of companies and the particular structure of their supply chains (IACHR, 2020).

Pillar II of the Guiding Principles states that business has a social responsibility to respect all human rights, which the Special Representative defined as essentially implying not abusing human rights (OHCHR, 2011). Guiding Principle 11 states that business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved" (OHCHR, 2011). This has been interpreted as an outcome responsibility in relation to the company's own activities, and a due diligence (process) responsibility in relation to the supply chain, where the company has "only" influence or a degree of control, but the same control as it has over its own activities (Bonnitcha and McCorquodale, 2017).

Likewise, Principle 12 adds that “the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work” (OHCHR, 2011).

Labour rights were among the first types of human rights that companies incorporated into their internal governance structures. Several companies already have it incorporated as a function of labour law and sometimes also in their supply chains (Gereffi, Bamber and Fernandez-Stark, 2016). This is because, originally, the first major problems involving business and human rights had to do with child labour and supply chains that used sweatshops, among other issues (Beckers, 2020). Thus, respect for the labour rights of the people who work in the companies that provide urban mobility services should be one of the main responsibilities addressed. However, there are companies that take a broad view of respect for human rights, as envisaged in the Guiding Principles, and include the rights to health, safety in the workplace, equality and non-discrimination, and community rights of indigenous peoples or territorial rights (Beckers, 2020).

This responsibility is closely linked to the risks and effects produced by the activities of companies and implies that “companies should avoid causing adverse impacts on the rights of others and remedy those impacts should they occur, not only as a result of their own activities, but also of their relationships with other actors. The social responsibility to respect human rights applies to companies of all sizes, sectors, operational contexts, owners and structures” (Isea, 2011, p. 18).

In addition to labour rights, participating companies also have a role to play in protection of environmental rights, on which mobility systems have a recognized impact. However, it is also incumbent upon them to include the perspective of intersectionality in terms of non-discrimination. Thus, it has been highlighted that scenarios where women suffer sexual harassment and violence should be prevented as a problem that concerns business and human rights (IACHR, 2019b). One of the main considerations with respect to users, then, is to incorporate the principle of equality and non-discrimination in the actions of companies and operating agents, as well as in all production processes, i.e. throughout the production chain. “To achieve non-discrimination, work is required at the attitudinal level (not only knowledge), in order to change prejudices and preconceptions towards people who are usually discriminated against” (UNCAC Anti-Corruption Alliance, 2021, p. 15).

At the same time, a proactive private sector is key to making progress in this area. In addition, with respect to climate change, to achieve proposed carbon emissions reductions by 2050, electricity from clean sources is critical, particularly in electric mass transit fleets (IACHR, 2020).

#### **(b) Due diligence and compliance**

Under Pillar II of the Guiding Principles, Principle 17, on corporate due diligence, prescribes that “should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed” (OHCHR, 2011, Principle 17). Specifically, this due diligence (i) should cover adverse human rights impacts; (ii) will vary in complexity with the size of the business enterprise; and (iii) should be ongoing, recognizing that the human rights risks may change over time” (OHCHR, 2011).

Due diligence is a commercial term that has been adopted by international law. It is used specifically when an actor does not have complete control over the processes under its supervision. Thus, once a commitment to human rights has been made, companies should adopt mechanisms to take into account the risks and impacts of their transactions on the human rights of third parties and, in order to reduce their liability, mitigate or avoid them (Sherman and Lehr, 2010). Thus, due diligence makes it possible to assess, and at the same time reduce, the risks generated by companies, such as those that have a direct adverse impact on human rights (Sherman and Lehr, 2010). In addition, they should implement

transparency mechanisms in relation to these operational processes and disclose the assessment of their risks and impacts (OHCHR 2011, Principle 21). Finally, they should adopt grievance mechanisms to be able to receive complaints about non-compliance with the human rights policy, whether within the company itself or from its suppliers (its supply chain) (Beckers, 2020); OHCHR, 2011, Principle 30).

In the assessment of risks and impacts, it is important to involve experts (e.g., on environmental matters) but also, in particular, all affected stakeholders, i.e. the users (OHCHR, 2011, Principle 18). This will allow companies to adopt measures or mechanisms to prevent such impacts, as well as to minimize their frequency and scope. Secondly, the creation of complaint and denunciation mechanisms is intended to allow people to formally channel claims for possible violations suffered during and in the context of the operation of these services, such as, for example, acts of harassment, theft, mistreatment by an official, health risks or damage, or noise and environmental pollution for those living near bus parking lots, among other possible situations.

The discussion on due diligence in relation to business and human rights applies to all business enterprises, from the smallest companies to the largest transnationals. However, given the asymmetry of means and potential harm or risks, a major challenge has been how to base this diversity on obligations that are differentiated according to the size and resources of each company. Moreover, this is a concern and a demand frequently expressed by the companies themselves, since most of them are small and medium-sized (Garcia, 2015). Ultimately, Principle 14 recognizes that the degree of responsibility will vary according to the size of the company, the potential risk to the enjoyment of human rights and the level and degree of that risk in terms of consequences, not to mention the line of business, since not all pose the same risks (Isea, 2011; OHCHR, 2011, Principle 14).

Due diligence also implies that companies should be aware of the impacts that their activities may cause. In this regard, section 4 of this document examines the most important rights in terms of potential impact on the urban mobility sector. However, in the medium and long term, a human rights risk may well become a risk for the company, as a result of loss of reputation and prestige, for example, or missed business opportunities, such as a bidding process, for non-compliance with certain human rights parameters contained in the terms of reference established by the State in that regard (Parella, 2021).

The Guiding Principles recommend that “business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence” (OHCHR, 2011, Principle 17). As mentioned above, transport companies will probably give priority to rights related to carbon footprint and health risks (especially air pollution), dignified and equal treatment of users, including, for example, affirmative measures for those with disabilities, and traffic safety to avoid accidents.

Another key requirement for companies to act with due diligence is to have grievance or complaint mechanisms in place. The Guiding Principles indicate that “to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted” (OHCHR, 2011, Principle 29). Therefore, it is important that transport companies provide telephone lines for reporting complaints, or those that operate through an app, include such instruments in their “support and assistance” options, including legal advice. In this way, users or workers can immediately report difficulties or possible violations, enabling, on the one hand, a registry or database of potential infringements in connection with mass transit or private transit systems, in order to devise measures to avoid recurrence and, on the other hand, the possibility of providing a solution while averting further harm.

According to Principle 31, these mechanisms must have a series of characteristics and should be: (i) *legitimate*: they must be able to generate trust in users of urban mobility systems; (ii) *accessible*: users of the transit systems should be aware of the existence of these mechanisms, which may be in visible

places such as advertising spaces in subway cars, next to door windows or on the back of seats in buses or in places usually used for advertising; (iii) *predictable*, the specific steps involved in the process, its duration, possible outcomes and how its implementation will be monitored should be clearly stated; (iv) *equitable*: they should provide victims with the necessary tools to avoid generating an asymmetrical relationship between the company and the people who access these resources, for example, through advisory services or additional information; (v) *transparent*: the parties involved in processes should have access to information on the status of the process if it has made progress, and build confidence in the users of this service; (vi) *rights-compatible*: to ensure that outcomes and remedies of processes accord with human rights, and (vii) *a source of continuous learning*: by the same premise as the point above, necessary measures should be adopted to avoid future harm based on participation and dialogue, including establishing spaces in which groups or persons using the mobility system can participate and offer opinions on its design and operation.

There are different formats available to implement the requirements of the Guiding Principles. One is the incorporation of compliance and risk mechanisms. Thus, compliance processes involve efforts and other instruments on the part of companies and their operators so that the activities of the latter entail political and regulatory standards and conform to the practice of the industrial sector and the company's internal policies and rules (Cantú and Esparza, 2021). Thus, compliance processes have rapidly become business tools for good corporate governance, and their use has expanded to different regions as a good practice adopted by proactive enterprises (Cantú and Esparza, 2021).

Based on the above, the interrelation between the due diligence elements in human rights and compliance suggests that they could be integrated in a way that enables their easy incorporation at a business level, thus providing the basis for a business management that identifies risks by means of a human rights approach (Cantú and Esparza, 2021; Ruggie, Rees and Davis, 2020).

Therefore, regardless of the fact that compliance was originally intended to counter corruption, as a result of the consequences or implications of the good practices that it entails, it can also be the framework within which business due diligence is developed in order to contribute to the respect, mitigation and redress of human rights violated by business activities, allowing later reporting on risks, impacts, and measures to prevent them, ideally, in line with a framework that reflects these processes, such as the 2022/2023 version of the Global Reporting Initiative.

Lastly, those same due diligence processes, particularly in environmental matters (carbon footprint, zero emissions), can help attract investors who are governed by the principles of green or sustainable finance (Schoenmaker and Schramade, 2019; LMA/APLMA/LSTA, 2021; Ceres, 2014; Equator Principles Association, 2003; UNEP, 2019) and who, upon weighing long-term returns, are attentive to risks or potential losses resulting from negative environmental externalities that could undermine investment return.<sup>13</sup>

In short, to better understand the responsibilities of companies under Pillar II, three situations or scenarios can be used, as shown in diagram 3. First, if the company *caused or could cause* a direct impact as a result of its own activities, it must prevent or stop the impact and remedy it. Second, if the company *contributed or could contribute* to the impact indirectly, it must prevent and stop the impact to the extent that its leverage enables it to mitigate and remedy the impact. This can occur, for example, through its influence on the shareholders' meeting of joint ventures, or through the standards, norms and conditions defined in contracts with suppliers (especially turn-key contracts) and subcontractors. Third, if the impact is *directly linked to the company's operations, products or services*, it must assess its leverage to change the company's behaviour in the supply chain, depending on the seriousness and importance of the business relationship and the effort involved in preventing or mitigating the impact. If necessary, it should even consider terminating the business relationship, while assessing, to be sure, the impact this decision would have on the overall enjoyment of human rights in that situation (OHCHR, 2011, Principles 13 and 19; Pitts, 2016).

<sup>13</sup> The inputs on sustainable finance come from ANID, Fondecyt project No. 1201380; researcher responsible: Judith Schönsteiner.

**Diagram 3**  
**Corporate responsibility assumptions**



Source: Prepared by the authors, on the basis of Office of the United Nations High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (HR/PUB/11/04)*, Geneva, 2011; C. Pitts, "The United Nations 'Protect, Respect, Remedy' Framework and Guiding Principles", *Business and Human Rights: From Principles to Practice*, D. Baumann-Pauly and J. Nolan (eds.), Milton Park, Routledge, 2016.

### (c) State-owned enterprises

In principle, Pillars II and III of the Guiding Principles apply equally to private and state-owned enterprises. In that sense, in the event of a violation or infringement of rights, the State would be liable under two assumptions. First, because of its governance; the governance of a state-owned or partially state-owned company should be as similar as possible to that of other companies, so that competition is as fair as possible (Schönsteiner, Martínez and Miranda, 2020). Secondly, as explained above, because of its duty to protect human rights.

However, there are three situations for which international human rights law establishes a more stringent requirement. Firstly, according to the Working Group's interpretation of Guiding Principle 4, State-owned companies should "lead by example", since under that principle, "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence" (OHCHR, 2011, Principle 4). The Inter-American Court of Human Rights and IACHR go as far as considering that the responsibility of a State-owned company is always the same as that of a state organ. Second, when the State delegates a public service to a private company (Inter-American Court of Human Rights, 2006b). In this case, the Guiding Principles provide that "States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights" (OHCHR, 2011, Principle 5). The third situation applies when the State engages in public procurement, since "States should promote respect for human rights by business enterprises with which they conduct commercial transactions" (OHCHR, 2011, Principle 6).

The foregoing brings two main considerations into play. The first is that if the State has decided to privatize the transit system or assign some elements to a private system, such as, for example, a bus concession, the administration of subway trains, bus stop lighting, or bus parking lots, then in such cases it is not released from its international human rights obligations but retains the duty to ensure that companies comply with their obligations through proper supervision and oversight of the service. The same is true where agreements with contracted companies contain commitments expected of companies with respect to human rights. Secondly, with regard to public procurement of supplies for State activities for the provision of this service, States have the power to set terms and conditions that are oriented towards awareness-raising and respect for human rights.

Therefore, as mentioned, despite the diversity of public and private actors involved in the transit system, they are all of equal relevance when it comes to effectively respecting human rights and ensuring the human right to freedom of movement. In this sense, corporate governance involves business enterprises as necessary agents and enables them to autonomously adopt good practices for the observance of human rights. However, this can in no way mean that the State relinquishes its obligations. On the contrary, corporate governance must respond to incentives (positive and negative) established by States and cover both the suppliers in the supply chain and the transport companies themselves. However, even if the State does not comply with its direct obligations as a supplier and indirect obligations as a regulator in accordance with current international standards, companies still have responsibilities with respect to their own activities and supply chains, regardless of whether they operate within the same country or in other countries.

## **E. Instruments and areas of public policy for mobility systems from a human rights and gender perspective**

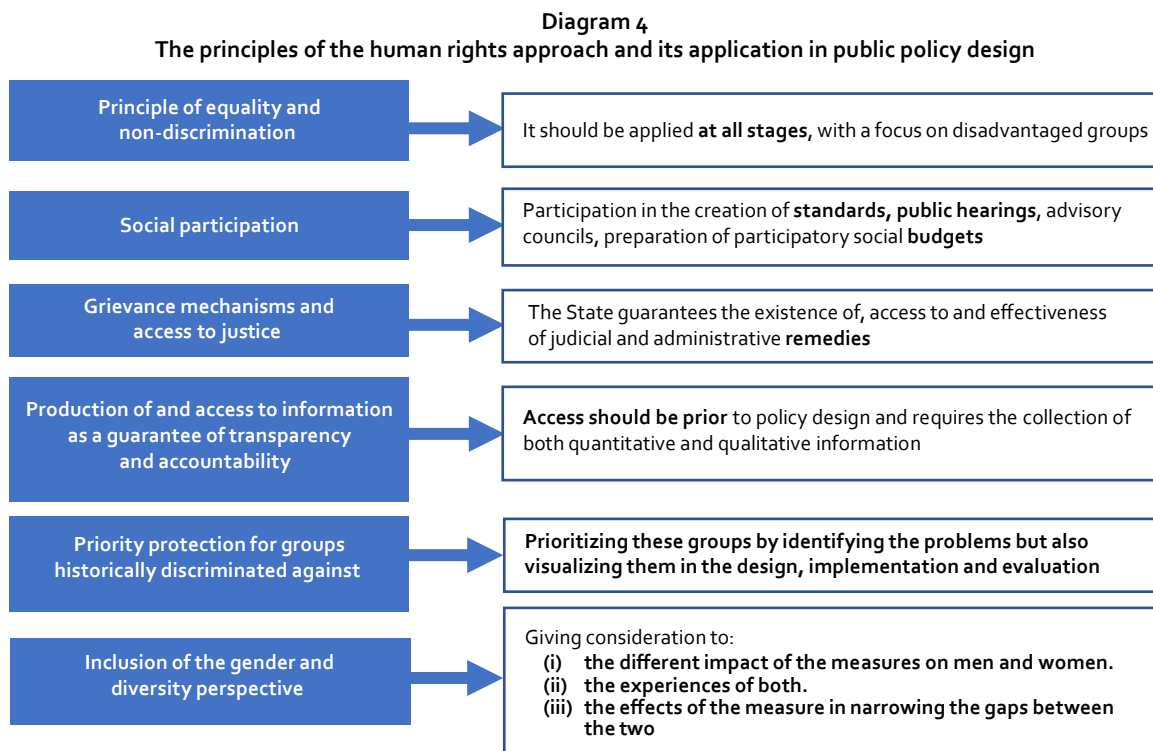
The purpose of this section is to provide an account of different public policy instruments available to authorities for ensuring rights in connection with urban mobility systems and that make it possible enhance the well-being of those who use them. For this purpose, the chapter has three parts. The first section provides a conceptual characterization of the importance and diversity of public policy instruments for applying the human rights approach, particularly as regards the issue of mobility from a gender perspective. The second part discusses the institutional requirements and the main dimensions for securing the sustainability of the elements addressed, thereby ensuring that public policy instruments are designed and implemented according to standards consistent with people's needs, bearing in mind the mainstreaming of the human rights and gender perspective. The third part describes the main types of policy instruments that have been implemented in the region, with special emphasis on the four cities that are part of the case study of this project.

### **1. Policy instruments and the right to mobility from a human-rights and gender perspective**

In view of the fact that Latin American States have encountered difficulties in responding effectively to the various problems and needs they seek to address (Martínez, 2002), public policy instruments are key elements to take into account, as they condition, both positively and negatively, the capacities of those same States to address the problems they hope to solve (Isuani, 2012). In this sense, it is fair to say that the potential of public policies in bringing about changes proposed by the State depends to a large extent on the relevance, adaptability and effectiveness of the policy instruments used for that purpose. Beyond their applicability in general terms, policy instruments have proved important in implementing a human rights approach, especially considering the importance of human rights to an operational perspective that enables the construction of legal, political and programmatic mechanisms capable of transforming people's social and daily lives (Güendel, 2000). Thus, the human rights approach guides the actions and interventions of public authorities, functioning not only as an ethical basis for the formulation and implementation of public policies, but also as an end in itself, insofar as it seeks the realization and protection of important dimensions of social life (Garretón, 2004; Jiménez, 2007; IACHR, 2018).

Although progress has been made in Latin America and the Caribbean in incorporating the human rights approach into the design and implementation of public policies, this has been done at a general level, without the approach necessarily permeating all specific policy sectors. Therefore, it is essential that the actions that seek to actively incorporate a human rights perspective in the configuration of public policies go beyond the rhetorical level and materialize through instruments that guide progress in their practical implementation, within an appropriate institutional framework (Sepúlveda, 2014a). Specifically, it is a matter of being able to crystallize the principles that guide the overall human rights perspective in

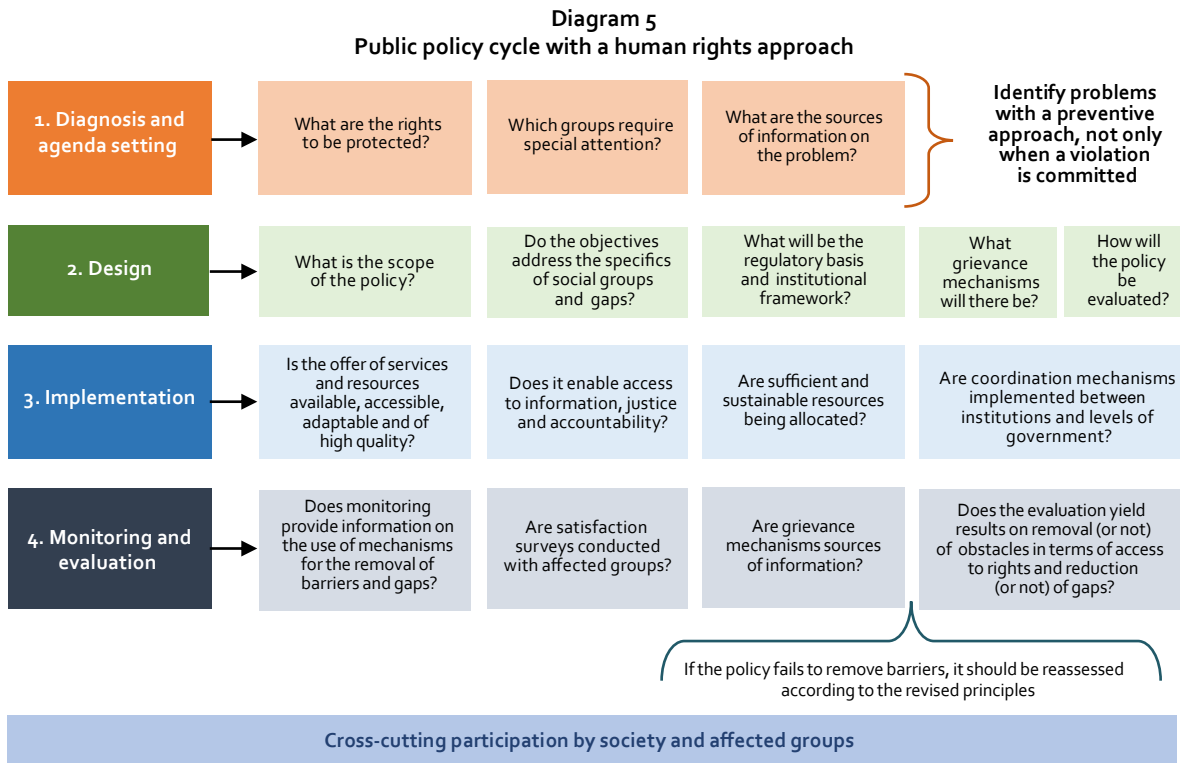
political agreements that have a positive impact on the different public policy sectors in which progress has been made in a theoretical, rather than a practical, manner (Sepúlveda, 2014b). The incorporation of such principles into policy design must be done at all stages of the policy design process and, as shown in diagram 4, involves addressing very specific considerations.



Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Inter-American Commission on Human Rights (IACHR), *Public Policy with a Human Rights Approach*, Washington, D.C., 2018.

A key effort in this regard has been that of IACHR (2018), which has highlighted the importance of reinforcing the democratic institutions of States, strengthening their capacity to implement public policies with a human rights approach that have a real impact on the enjoyment and exercise of such rights. Thus, the Commission's efforts have been aimed at providing effective tools that consider human rights as key in public policy planning, formulation, implementation and evaluation (IACHR, 2018). Specifically, the purpose is to promote and protect international standards designed to ensure compliance with the human rights approach in the overall policy cycle, based on six core guidelines: the principle of equality and non-discrimination; social participation; grievance mechanisms and access to justice; production of and access to information as a guarantee of transparency and accountability; priority protection for groups historically discriminated against; and the inclusion of the gender and diversity perspective (IACHR, 2018). Diagram 5 shows the outline of the public policy cycle proposed by the Commission to ensure compliance with the human rights approach at all stages.

In this context, despite the fact that the human mobility dimension in the human rights approach has mainly been addressed in terms of international mobility and the right to migration, mobility as an everyday urban phenomenon has been gaining increasing importance, taking into account the growing complexity of cities in the region and their impact on people's quality of life. In other words, mobility systems are a central dimension of coexistence in our societies. In that framework, the effective enjoyment of the right to mobility within the broader human rights framework serves as a guide to focus the analysis.



Source: Prepared by the authors.

Thus, the preoccupation with urban mobility in today’s cities comes about mainly in the context of the growing increase in frequency, speed, and purposes of travel compared with the past (Herce, 2009). The increase in commuting is one of the most significant elements in the transformation of urban realities, in interaction with factors as diverse as the volatility of economic activity amid contexts of globalization, the change in production models towards new business rationales, the impact of information and communication technologies (ICTs), digitalization and robotization, as well as new consumption patterns (García, 2008). The final impact on commuting patterns and intensity of some of these factors, such as digitalization, robotization or teleworking, has yet to be clarified, as they reduce the need for certain traditional commuting (working from home, for example), while freeing up time for other possible travel (ECLAC, 2020).

Due to the complexity of this array of factors that influence urban mobility systems, different approaches have emerged to discern how the different aspects in play in the mobility problem are interrelated. The most widespread paradigm is termed dialectic, and it assumes a reciprocal and circular relationship in time between city, transport and mobility (Miralles-Guasch, 2002). This perspective makes it possible to analyse the complex reality of mobility, taking into account the continuous interrelationship between its main components and the different typologies that can be constructed from there. In this sense, the understanding of urban mobility as a dimension involved in various aspects of social reality (Urry, 2012) favours its treatment from a human rights approach, particularly from the perspective of the right to mobility that translates above all into modifications of approaches to public policy instruments (Herce, 2009) because it covers the dimensions of dignity in a broad sense, which the human rights approach precisely seeks to ensure.

Public policy instruments are key to progress in that task, as their formulation is a first step in promoting integrated and sustainable mobility solutions with a gender perspective for the entire region (Pérez, 2019). The next section reviews the main dimensions that, according to the literature, should be taken into account in designing public policy instruments with a human rights approach and incorporating a gender perspective.



## 2. Institutional frameworks of public policies and urban mobility

Thus far, we have discussed the importance of policy instruments for the programmatic development of mobility with a human rights perspective in general, and a gender perspective in particular, as well as some of the considerations and questions that should be addressed in the public policy cycle. The main agreements that have been adopted at the international level to address this problem are described below. To that end, it is worth reviewing the dimensions of the institutional framework of social policy that ECLAC itself has identified, which are key to considering the scope and forms that policy instruments can take. According to Martinez (2019), there are four dimensions for analysing the complexity of these models as broadly as possible:

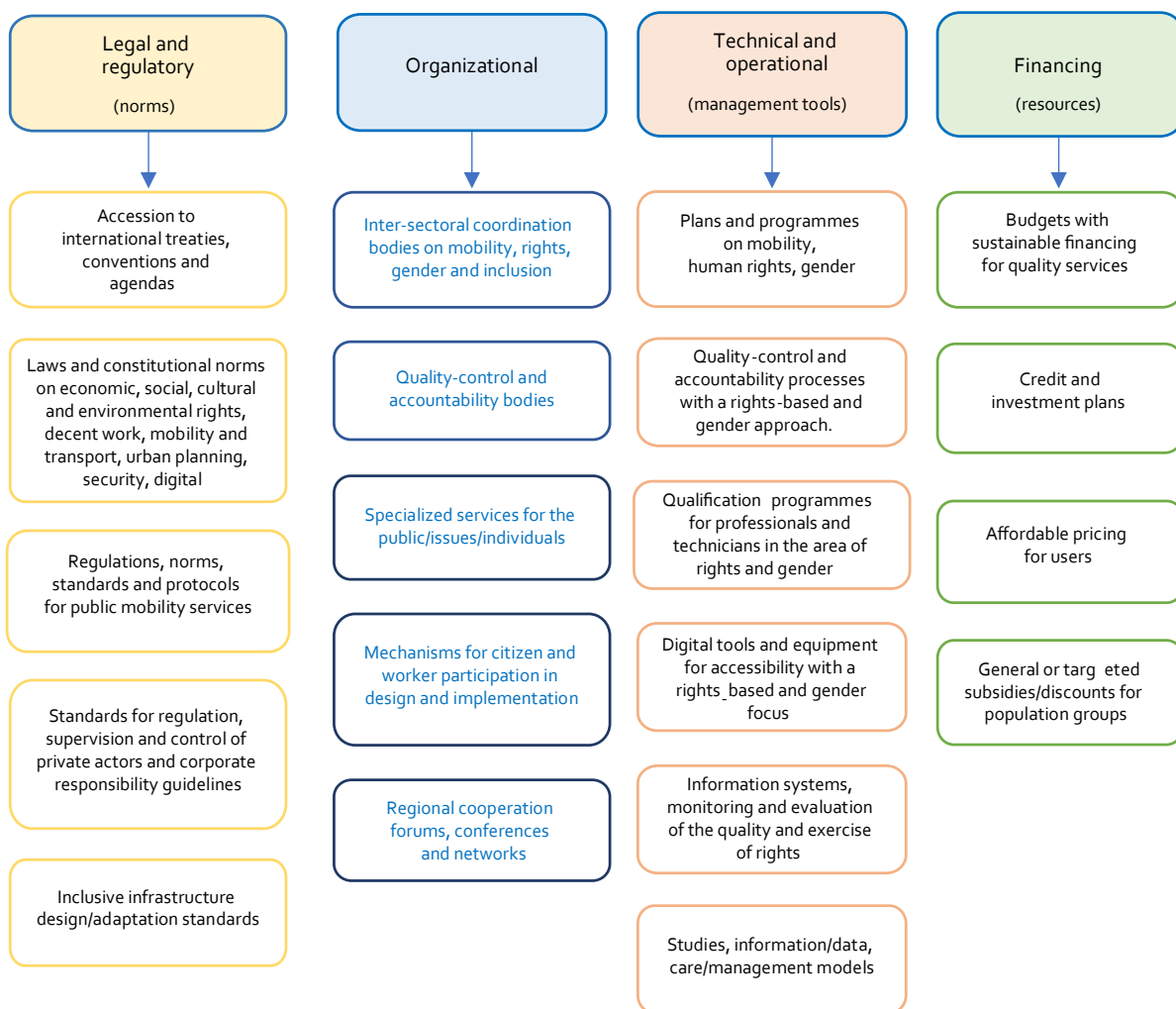
- (a) **The legal-regulatory dimension** is the legal substratum on which policies are designed and implemented, and which determines the participation of the different actors involved. It is made up of the constitutional frameworks, laws and regulations of each country, in addition to international treaties that are domestically applicable, either in strictly legal terms, or as a reference to guide decision making. From the perspective of the human rights approach, the formulation of public policies must necessarily, though not sufficiently, be based on the foundations that make it possible to guarantee social rights.
- (b) **The organizational dimension** refers to the division of labour within the State, i.e. the formal structure of decision-making, communication and coordination of the actors involved in the public policy cycle, as mandated by the regulations in force. It involves different national and local levels, as well as different types of organizations and their respective roles. The responsibilities and coordination models between these different parties must be legally or administratively assigned, although that alone is not sufficient for them to operate in practice; therefore, their implementation includes taking into account the distribution of power and coordination between sectoral authorities, the governmental structure that enables the management of social policy and the communication models by which actors to make decisions.
- (c) **The technical-operational dimension** includes the instruments and tools available to actors/authorities for policy implementation, which are key to its effectiveness, efficiency, transparency and participation. It involves, in turn, considering the procedures, resources and capabilities available for implementation, and its analysis incorporates strategic planning instruments and processes, information systems for decision-making and tools related to transparency and accountability.
- (d) **The financing dimension** covers the amount and composition of resources allocated to finance social policies in accordance with their priority in each country. The relevant indicators for this dimension refer to sources of financing, sufficiency and cyclicity of resources, and execution capacity.

These dimensions are important and identifiable in all public policy sectors, and their adequate performance requires a simultaneous and coordinated implementation of all four in order to yield effective and efficient public actions with a rights-based and gender focus. This is to the extent that the legal-regulatory dimension presupposes, in all sectors, consistency between the norms in force and the obligations acquired by the States at the national and international levels, particularly with the instruments of international law mentioned in this document as components of the rights-based and gender perspectives. Thus, one of the first realizations when it comes to designing and implementing public policy instruments in relation to the issue of urban mobility is that the move towards a holistic understanding of urban mobility requires a paradigm shift in planning and management. More specifically, the aim is to address the inadequacies of the traditional mobility management model, associated with plans that have an analytical and planning apparatus that is technically outdated, and to move towards policies motivated by environmental sustainability and economic efficiency (Herce, 2009). In this context, there is consensus that the correct formulation of mobility programmes is not sufficient

to ensure their success; also necessary are coordination of responsibilities and autonomy of powers and resources, especially at the local level, as that helps to limit the risk of conflicts in decision-making priorities (Lupano and Sanchez, 2009).

Thus, although each country has its own specificities, there are public policy instruments that address the link between mobility and the protection of human rights. Diagram 6 shows a generic presentation of various policy instruments that can be used to ensure the exercise of human rights and a gender perspective. These instruments question specific dimensions of the institutional framework with respect to institutional and financial capacity building or resources. Therefore, the implementation of a comprehensive mobility policy framework from a rights and gender perspective requires the simultaneous building of state capacities in all four dimensions.

**Diagram 6**  
Some policy instruments for urban mobility systems



Source: Prepared by the authors.

Each of these policy instruments requires specialized design and implementation processes that, in addition to strengthening the institutional framework, entail the development of a culture of rights within the organizations involved in mobility policies, as well as among system users. The aim is to strengthen mutual support and operational synergies to ensure inclusion without leaving anyone behind.

## II. Human rights and gender in mobility system supply chains

In the link between the human rights and gender approach and the energy, technology, equipment and infrastructure dimensions of mobility systems (clusters 2 and 3 of the project), particularly in relation to the role of public and private actors involved in their development,<sup>14</sup> there are several elements and policy instruments to consider. Notable among them are the United Nations Guiding Principles on Business and Human Rights, which apply “to all sectors” (OHCHR, 2011, General Principles and Principle 8) and to business enterprises “of all sizes” (OHCHR, 2011, General Principles and Principle 14), although, of course, adjustments must be made to the particularities of each sector.

This section presents a specific proposal based on corporate responsibilities in the energy, technology and industrial sectors, in light of the structure of supply chains and the specific impacts in each sector. To that end, it identifies each supply chain’s actors and structure; recurrent human rights risks and impacts; possible legislative, public policy or governance orientations and incentives for the respect of human rights by the companies involved; and possible corporate and state responsibilities in the event of any human rights violation.

In the last decade, since the adoption of the Guiding Principles and the updating of the OECD Guidelines for Multinational Enterprises, a number of tools have been developed to help companies implement these instruments. The most important of these are summarized below:

- (a) OECD due diligence guidelines for supply chains, developed for implementation in transnational corporations. In addition to a general guidance, there is specific guidance, for example, for the extractive sector (OECD, 2016).
- (b) Human rights impact assessment questionnaires for companies (Danish Institute for Human Rights, 2020) and communities (Oxfam, 2020).
- (c) Standardized tools for sustainability reporting, including human rights variables (Global Reporting Initiative, 2022).
- (d) Investor tools for the consideration of social, environmental or human rights variables in the evaluation of a company’s credit rating (World Benchmarking Alliance, 2022b; LMA/APLMA/LSTA, 2021; UNEP, 2022b).

<sup>14</sup> Annex 1 lists some of these instruments as well as the United Nations agencies involved in this area.

Sections 1 and 2 of part A analyse the renewable energy (wind and solar) and technology sectors, followed by the human rights impact and risks of the industrial sector, with respect to two key main sectors: (i) the manufacture of electric buses—which according to the cluster 3 proposal must meet the requirements of climate change targets—will be the most important industrial supply chain in the coming decades (section 3); and (ii) construction of public transport infrastructure, such as bus stops, bus-only lanes, subway stations, and others (section 4). For these four supply chains this section identifies key actors and their structure, as well as the main human rights risks and impacts. It then offers a cross-cutting description of public and private incentives to avoid or reduce such risks and impacts. The section concludes with an examination of possible corporate responsibilities for non-observance of human rights.

This report does not identify any particular supply chain; any company embarking on a human rights impact assessment must, therefore, map its own supply chain, ensure the traceability of inputs, and define, on the basis of that exercise, actual and potential risks, as well as the specific impacts on each link in the chain. The risks and impacts mentioned here have been defined according to the typical (main) origin of the natural resources required in production and according to the typical characteristics of industrial production.

## **A. Supply chain actors and human rights impacts**

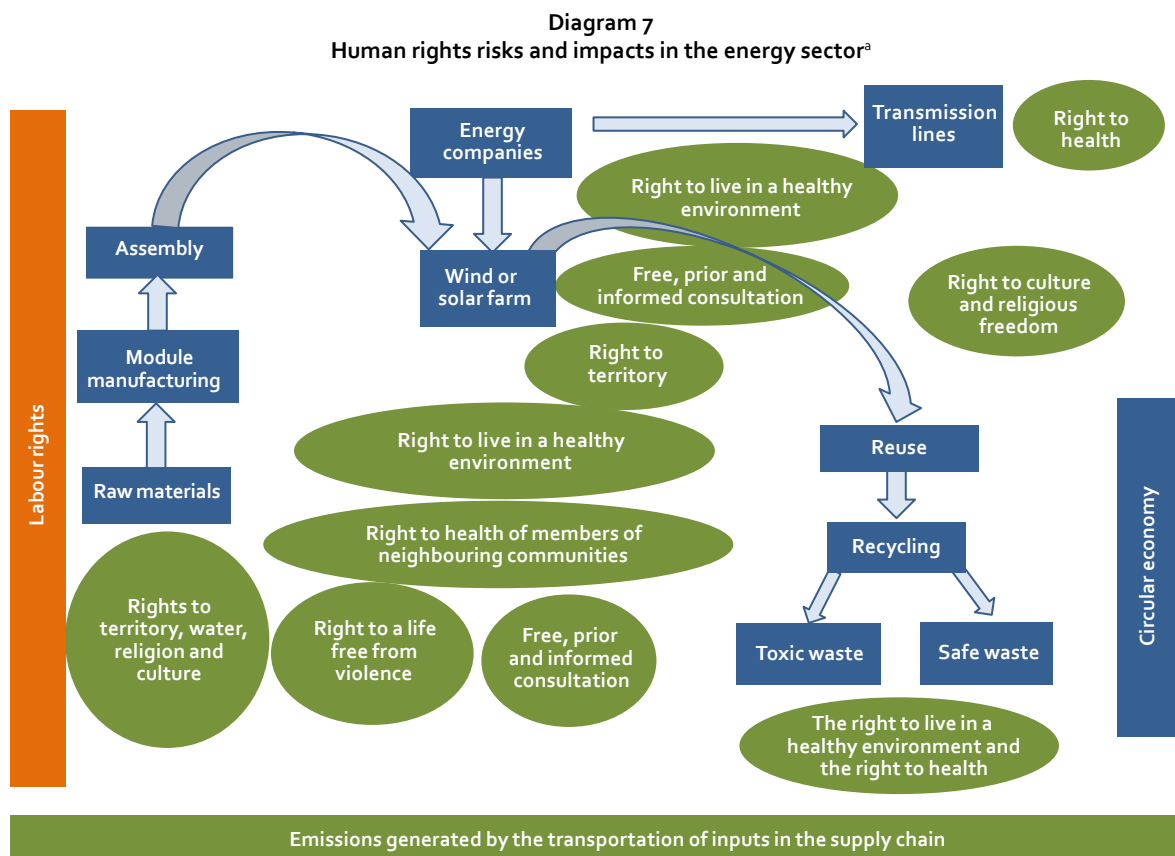
### **1. Energy, electromobility and rights**

The transition to electromobility will achieve a significant reduction in the carbon footprint of transport, as long as energy generation is not fossil-based. However, to achieve cities and countries that are truly sustainable and respectful of human rights, including the right to live in a healthy environment, the steps taken by transport companies to reduce adverse social and environmental impacts can and should go well beyond changing the energy matrix. To that end a review of transport industry supply chains with a human rights and gender focus is recommended (see part I.D.3). This section outlines a human rights impact assessment of energy generation based on non-conventional renewable technologies.

#### **(a) Stakeholders and supply chain structure**

In the renewable energy supply chain (such as wind and solar energy), three fundamental aspects must be considered: risks and impacts in the manufacture of panels and turbines, in terms of the raw materials used, labour and safety conditions in their assembly and transportation to the wind farm where they are finally installed; risks and impacts in the installation and operation and, lastly, risks and impacts in their reuse and, if not possible, the recycling of these specific materials and eventually their safe final disposal (see diagram 7).

The energy sector is dominated by transnational companies from countries as diverse as Denmark, China, the United States and Canada, among others, so the human rights risks and impacts in manufacturing will depend considerably on the particular supply chain. As there is significant competition among different supplier companies, there is the possibility of reducing negative impacts by selecting companies that have adopted a human-rights and gender approach as specified in part I.D.5 (Business & Human Rights Resource Centre, 2020). Public policy and regulation could take advantage of the market structure to define bidding and public procurement criteria that include human rights requirements. In the private sector, financial incentives through green, social or sustainable bonds or funds are becoming increasingly important (see incentives section).



Source: Prepared by the authors.

<sup>a</sup> The boxes corresponding to toxic and safe waste should be updated to a closed flow of material or a circular economy.

## (b) Typical human rights risks and impacts

The first part of the supply chain is the extraction of raw materials and their initial refining (IACHR, 2015a). The human rights impacts—regardless of whether this extraction is carried out by state-owned or private companies—are related to the contamination of aquifers, soil and air and the very high use of drinking water, and may therefore violate the right to water, the right to live in a healthy environment, the right of indigenous peoples to ancestral territory, the right to religious freedom and the right to free, prior and informed consultation. Depending on the natural resource being extracted or the materials used—for non-conventional renewable energies, steel, copper, aluminium, fiberglass, neodymium or dysprosium (wind) are required; monocrystalline and polycrystalline silicon, aluminium, glass, cadmium telluride, copper selenide, indium, gallium (solar panels)—a certain amount of water, energy, machinery and other items are required, which should continue to be evaluated for their impact on those rights. The specific risk will vary depending not only on the raw material, but also on the country of origin, especially in light of its environmental and labour regulations and controls of each country, including its metrology institutions.

In addition, wherever the opposition of civil society and/or local communities, including indigenous peoples, among others, to extractive projects is repressed by private security agents or State security forces, the possibility exists of finding violations of the rights to physical integrity, life, freedom of expression, and freedom of association. Such repression is considerably more prevalent in some countries than in others, and corporate due diligence should identify the specific risks in the company's human rights impact assessment. There are specific instruments to guide the actions of private security companies (Voluntary Principles on Security and Human Rights, 2000) and a specific OECD guidance for conducting

due diligence in extractive industries (OECD, 2017). In addition, the carbon footprint of transporting inputs to the assembly plant will need to be accounted for to complete the assessment of the risks and impacts of the renewable energy (wind and solar) supply chain.

In manufacturing, the risks are mainly associated with labour rights and, in some processes, with the health and safety of nearby populations. States must ensure an appropriate distance between industrial plants and residential areas, while companies should reduce occupational and general accident risks in production by adopting a preventive approach. Risks and impacts to labour rights are not only limited to health and safety issues, but also include respect for individual labour rights such as protection against workplace and sexual harassment and forced or child labour, and collective labour rights such as the right to strike, the right to form unions and the right to social security.

Regarding the location where a wind or solar farm is installed, the rights at risk tend to be the rights to ancestral territory, religious freedom, free and informed prior consultation, private property of vulnerable groups, the right to live in a healthy environment, and privacy (noise). In this sense, here as in any industry that intervenes in people's territories, it is important to have citizen participation and, where appropriate, the free and informed prior consultation of the indigenous and Afrodescendent communities concerned from the early stages of the installation of the project, ideally before a concession or permit is granted (IACHR, 2020), in accordance with Article 6 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ILO, 1989).

Finally, the private transport company—or the State—that purchases energy from renewable sources should perform due diligence on the waste produced by the generation of electric energy, with the abiding objective of respecting human rights and preventing, as far as possible, harm before it occurs. Thus, from a circular economy perspective, overall impacts are reduced because less raw material will be needed; however, it will be necessary to compare companies in terms of the impact generated by the end-of-life cycle and, in particular, toxic waste that cannot be reintegrated into any production chain. This is a challenge, for example, in the closure of hydroelectric power generation sites or the installation of solar panels or wind turbines.

There are classification exercises for renewable energy companies (wind and solar) under the United Nations Guiding Principles (Business & Human Rights Resource Centre, 2020) that can be updated and complemented with the criteria outlined here. In that regard, the company or the entire sector in a country could assess the impact through tools such as those developed by the Danish Institute for Human Rights, Oxfam and the World Benchmarking Alliance for some input industries (Danish Institute for Human Rights, 2020; Oxfam 2020; World Benchmarking Alliance, 2022b).

## 2. Technology, digitalization and rights in the mobility system

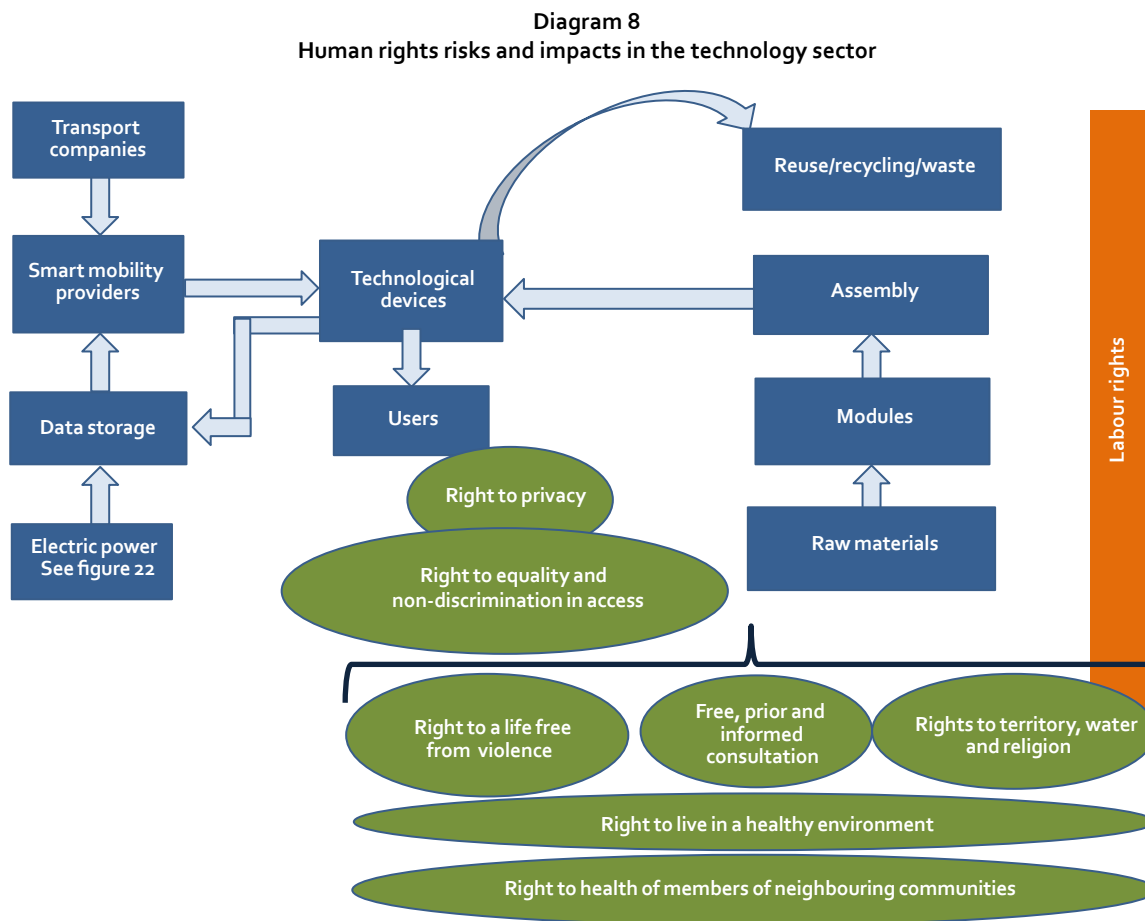
Technology opens up considerable opportunities for coordination, energy savings and efficient organization of urban mobility networks. For instance, it can make it easier to ensure the human rights of transport users. However, technologies also generate considerable risks and impacts, both directly and indirectly. This section briefly reviews them.

### (a) Stakeholders and supply chain structure

Smart mobility supply chains are highly complex. For the purposes of this paper, they are simplified by differentiating between the production chains of technological devices (individual and networked), data storage and the respective use of electricity, and the circular economy in relation to all these devices, as diagram 8 shows. It does not review the non-traditional renewable energy supply chain (see section 1), but notes that the use of electricity from fossil sources in a “smart city” and the respective carbon footprint must be balanced with the savings that the use of this technology allows.

Technology giants, as the largest transnational technology companies are called, operate in highly concentrated markets. While this market, especially that of technology design, is mainly concentrated

in United States companies, device manufacturing is concentrated in China where it is carried out by subsidiaries or suppliers of those same companies. Thus, the largest technology companies, according to the Forbes list (Forbes, 2021), are based in the United States (7), South Korea (1), China (1) and Taiwan (1). A trade dispute has broken out between the United States and China over the deployment of 5G networks. Regardless of the actors that provide certain services, human rights risk and impact assessment is key. However, in highly concentrated sectors it may be difficult for public actors to award tenders to companies that effectively guarantee respect for human rights. The blue elements in diagram 8 represent these supply chains.



Source: Prepared by the authors.

### (b) Typical human rights risks and impacts

The supply chains of technological devices such as smartphones, laptops, online cameras and others are among those that elicit the most discussion in terms of their impact on human rights. This is due to unacceptable labour conditions in manufacturing and the extraction of raw materials, including slave, forced and child labour. In addition, the widespread use of the devices means that production chains generate large-scale impacts and use large amounts of electricity.

The human rights and gender impacts and risks in this business sector—related to the technologies needed to implement smart mobility—can be grouped into four categories according to the main production processes involved. First, there are the risks and impacts generated by the production of the devices needed to install and navigate the Internet of things (electronic devices such as cell phones, cameras, microphones, and the data centres where information is stored and analysed). Second, there is

the generation of the electricity needed to keep those devices running, for example, by charging batteries or cooling data centres. In third place is the accessibility of the services provided by the technologies, without exclusion or discrimination based on socioeconomic level, place of residence, age and other categories of discrimination. Lastly, in fourth place, there is the environmental impact at the end of the useful life of the devices used. These impacts should be weighed against the benefits that the use of technology brings in terms of energy savings, convenience or enjoyment of the right to freedom of movement, among other human rights.

For example, returning to the first category (industrial production of devices), the production chain for smartphones can be divided into three links: raw material extraction and transformation, production of circuits and parts, and assembly (Amnesty International, 2018; Make ICT Fair, 2021). Risks in the area of raw materials are mainly related to labour, environmental and conflict conditions in the countries where metals such as tin, tungsten or tantalum, which are necessary for the production of parts, are found. Rights violations are mainly concentrated in Central Africa, where the Democratic Republic of Congo is the main supplier of these raw materials. The European Union has responded by establishing several directives on the subject. Parts production is related to labour conditions in plants, particularly in the People's Republic of China where collective labour rights are not respected, protected or guaranteed and very poor working conditions and remuneration have been reported. On this aspect, the standards defined by the information and communication technology manufacturing ranking in the Corporate Human Rights Benchmark can provide initial data on the human rights performance of some industry leaders (Corporate Human Rights Benchmark, 2021).

Regarding electrical power generation, the reader is referred to what was described in the previous section (1), assuming that cities opt for clean energies to supply smart city facilities.

In relation to data privacy, several academic publications have pointed out the difficulty of preventing data from being linked to the person who produced it. In that sense, big data, despite aggregating it, does not anonymize such data. The risk of violations of the right to privacy can only be reduced through proper regulation of the use of this data, especially the prohibition of non-consensual use and, furthermore, the prohibition of tying device and application functionality to broad consent for data storage. This is especially so in countries whose definition of privacy does not conform to that of international civil rights treaties. The risk in terms of the consequences of possible rights violations increases when data on children and adolescents are involved, or if the data allow profiling according to prohibited categories of discrimination, such as socioeconomic level, race, religion, among others. Because the impacts are diffuse and difficult to trace, compared to other industry sectors it is often even more difficult to report improper data storage and use of information (McGregor and others, 2017).

Another risk of human rights and gender-related violations in the area of smart mobility has to do with non-discriminatory access to services, in particular, without discrimination on economic grounds, age and place of residence. Inasmuch as they require electricity, data networks, data plans and sometimes even broadband availability, all these services are difficult to access for excluded sectors, socioeconomically or otherwise (see part I.D.2).

Lastly, the inclusion of users' electronic and data storage devices in the circular economy poses similar challenges to those described in sections 1 and 3. Therefore, this aspect will not be discussed in depth, but reference will be made to some studies that companies and public actors should consider when conducting the assessing the potential human rights impacts of advancing towards smart cities (Tantau and Santa, 2021).

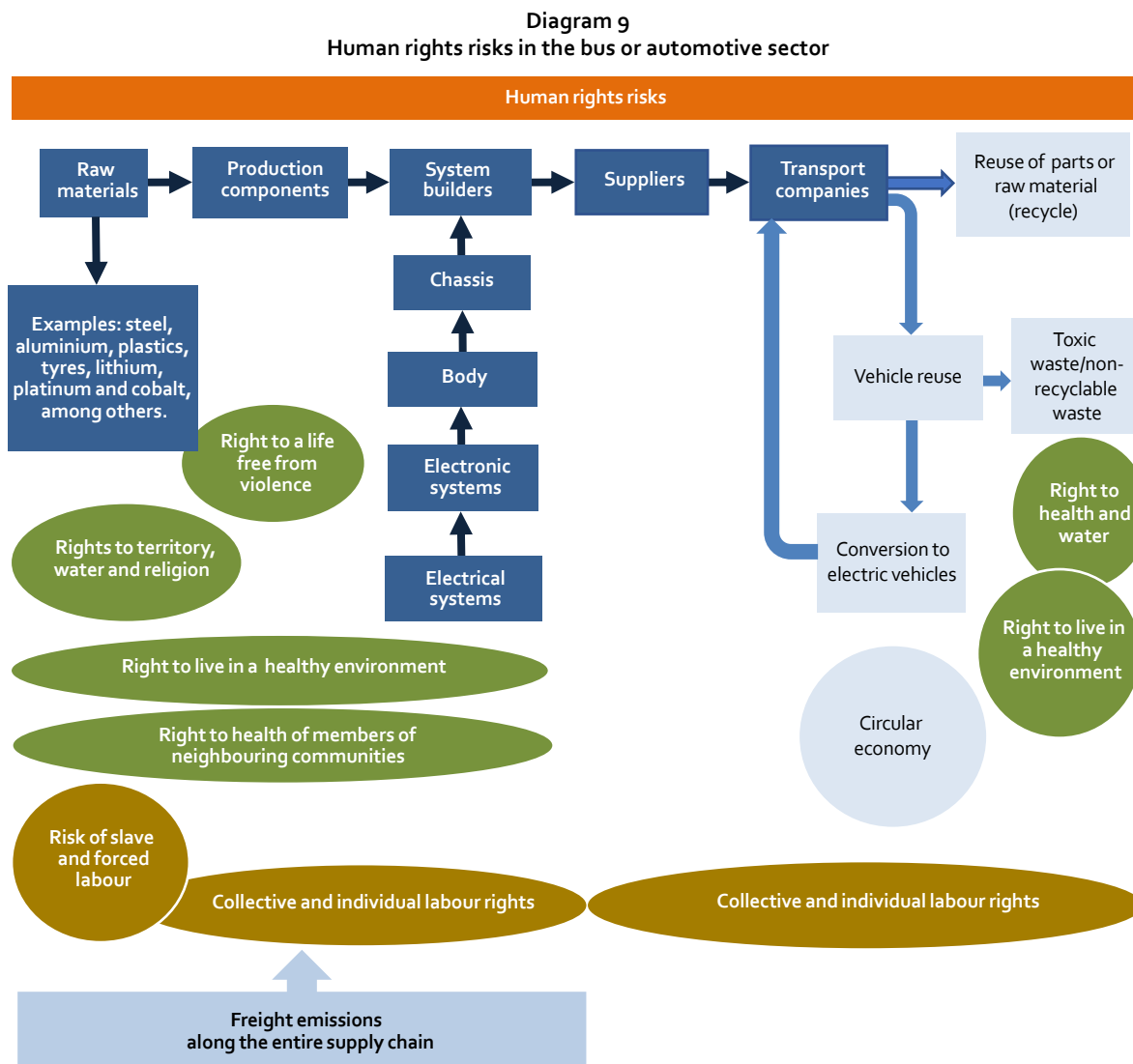
### **3. Industrial policy and electric buses from a human rights perspective**

#### **(a) Stakeholders and supply chain structure**

From the point of view of a city that decides to invest in public transport with electric vehicles, the supply chain is divided into two main lines. On the one hand, are suppliers of new buses, trains or other



electric vehicles, as well as the conversion of fossil fuel vehicles, with their respective charging stations. On the other hand, is the management of final waste from electric buses that have reached the end of their useful life (Sarkis and Dou, 2017). Diagram 9 shows the supply chains that provide inputs for transport companies (CGGC, 2009).



Source: Prepared by the authors.

### (b) Typical human rights risks and impacts

In general, impact studies on human rights violations in the automotive sector—including public transport vehicles—indicate that this is high and the implementation of the Guiding Principles in this sector is particularly weak (World Benchmarking Alliance, 2022b). For example, the company BYD, a leader in the electric bus sector in Latin America (44.9% of vehicles in circulation in Latin America and the Caribbean), obtained an index of only 2.7 out of 100 according to the Corporate Human Rights Benchmark, which measures the implementation of the Guiding Principles by companies (World Benchmarking Alliance, 2020).

Most of alleged human rights violations occurring in automobile or component manufacturing plants took place in Asia (35.7%), followed by Europe, Latin America and the United States (all 21.4%). Indeed,

alleged human rights violations were associated with large orders by States or public-private enterprises, especially in North Africa and the Middle East (71.4%) (Business & Human Rights Resource Centre, 2018).

It follows that both production facilities and supply chains for electric buses are sources of risk and potential harm to human rights (Business & Human Rights Resource Centre, 2018). For electric buses, the debate usually focuses on battery production, which mainly requires lithium and cobalt. New technologies point to the possibility of using sodium-based batteries, but these are not yet in widespread use (IOPscience, 2022). Some inputs, in particular, have drawn criticism and denunciations from civil society organizations, in relation to artisanal cobalt mining in the Democratic Republic of Congo or slave labour in cobalt and bauxite mining in Colombia (Dufey, 2020; Moloney 2015). Some companies have responded by reducing the use of cobalt in their batteries (Moerenhout, 2021). As for lithium, Chilean non-metallic mining tends to be less risky than Congolese mining, due to better working conditions, greater respect for the rights of indigenous peoples and better oversight, in a context that is clearly less corrupt and without armed conflict. However, impact assessment studies of lithium mining in the Atacama Desert have shown violations of the right of indigenous peoples to free, prior and informed consultation and of the territorial and water rights of communities (Aylwin, Didier and Mora, 2021).

However, battery inputs are not the only relevant components in human rights impact assessment. To develop the means of transport that make up the public or private transport fleet, a series of inputs are required, regardless of the energy source used for mobilization. Thus, other critical inputs—because their place of origin often exhibits high-risk working conditions, exacerbated sexual violence in contexts of armed conflict or others—are platinum (for production of catalytic converters) (Brot für die Welt, 2018), the extraction of which has an adverse impact, not only the environment and on the right to health of communities in the vicinity of extractive companies, but also on the people working in its extraction. The risks are worse when the jobs are informal and may constitute forced or slave labour; the same applies to cobalt from countries that are or have recently been involved in armed conflicts.

Steel and aluminium are needed for chassis, in addition to other petroleum-based products and chemical products (tyres, for example). In addition to the right to live in a healthy environment, which may be at risk both in the communities where the resources are extracted and in the communities in areas surrounding the factories of the various suppliers and final assembly plants, risks to labour rights are also often documented, including restrictions on freedom of association, or occupational health and safety risks. The largest steel producers are situated in China, Japan, India, the United States and Russia—all countries that, for different reasons and to varying degrees, have poor labour rights protection. Faced with this scenario, every transport company should take these risks and impacts into account when conducting human rights impact assessment.

The negative impact must be considered according to the type of energy used for input production and manufacturing and the transport carbon footprint in supply chains, which are often global. Therefore, third-party production and sourcing in locations close to the place of final use of the buses can certainly contribute to a reduction in such impacts.

Regarding the labour rights of workers in auto parts and tyre manufacturing companies, to name one example, the Business & Human Rights Resource Centre conducted a study between 2011 and 2018 where human rights impacts and incidences were assessed in relation to 26 automotive companies worldwide; the findings showed alleged violations of violence, oppression and even sexual abuse. The complaints mainly alluded to violations of the right to freedom of expression, the right to unionize, freedom of association, and also the right to a living wage and forced labour (Business & Human Rights Resource Centre, 2018).

Regarding rights relating to territories and natural resources, the same study highlighted that at least 11 of the complaints pointed to a lack of access to safe water and displacement from land. However, industries located in specific territories not only harm the environment and its natural resources and displace communities, but also, on occasion, cause potential violations directly involving safety issues;

in other words, the work of the companies creates areas of conflict between the locals and the companies, with the supply of raw materials being the main cause of such violations.

More than half the companies included in the study are headquartered in Europe, yet the complaints of human rights abuses occur outside the region. Almost 100% of the alleged violations took place in non-European countries, and the violations that were directly related to the supply of raw materials occurred mostly in countries in Africa (Business & Human Rights Resource Centre, 2018).

Finally, in relation to the risks associated with waste or end-of-life of buses, they are mainly environmental due to the impact of toxic waste on the environment, biodiversity, natural resources such as water, and on human life and health (Numfor and others, 2021). However, from a circular economy perspective, these impacts could be reduced considerably and, ideally, without generating new adverse impacts, for example, by having in place stricter occupational health and safety standards in reuse and recycling industries.

#### **4. Other relevant stakeholders in connection with urban transit systems**

This document does not attempt to identify all the risks and impacts of the business enterprises involved in the provision of mobility systems and their various supply chains. Accordingly, only those considered most relevant for the transition to sustainable mobility were selected. However, for a human rights risk and impact assessment of a particular mobility system—for example, in a given city—it will be necessary to include other private actors in the analysis. Without pretending to be exhaustive, the following have been identified:

- Companies in the infrastructure construction sector and their supply chains, covering such raw materials as asphalt, bitumen, concrete and cement, as well as electrical systems, and interior design, as well as the machinery required for construction. Such machinery is especially important in subway infrastructure construction. This sector is characterized by high rates of informal labour, deficiencies in health and safety, and substandard working conditions. Working conditions, however, are better among workers with higher education (construction engineering, architecture, urban design and others).
- Private security companies, considering safety on platforms, prevention of crime, suicides, and fare dodging.
- Concessionaire companies for lighting at bus stops and other road infrastructure facilities.
- Road-cleaning concession companies.
- Informal street commerce.
- Illicit economic activities (one-time and organized crime).

In addition, as in any other sector, there were actors with converging and/or diverging interests that could create de facto incentives or disincentives for compliance with the human rights approach. Thus, different economic sectors engage in lobbying activities that may eventually lead to acts of corruption or State capture. It depends on each State and its administrative and criminal law, as well as its anti-corruption policy, to what extent it succeeds in countering these illicit activities. Both the Guiding Principles and the OHCHR recognize the detrimental effect that corruption can have on the enjoyment of human rights (United Nations, 2011; OHCHR, 2021).

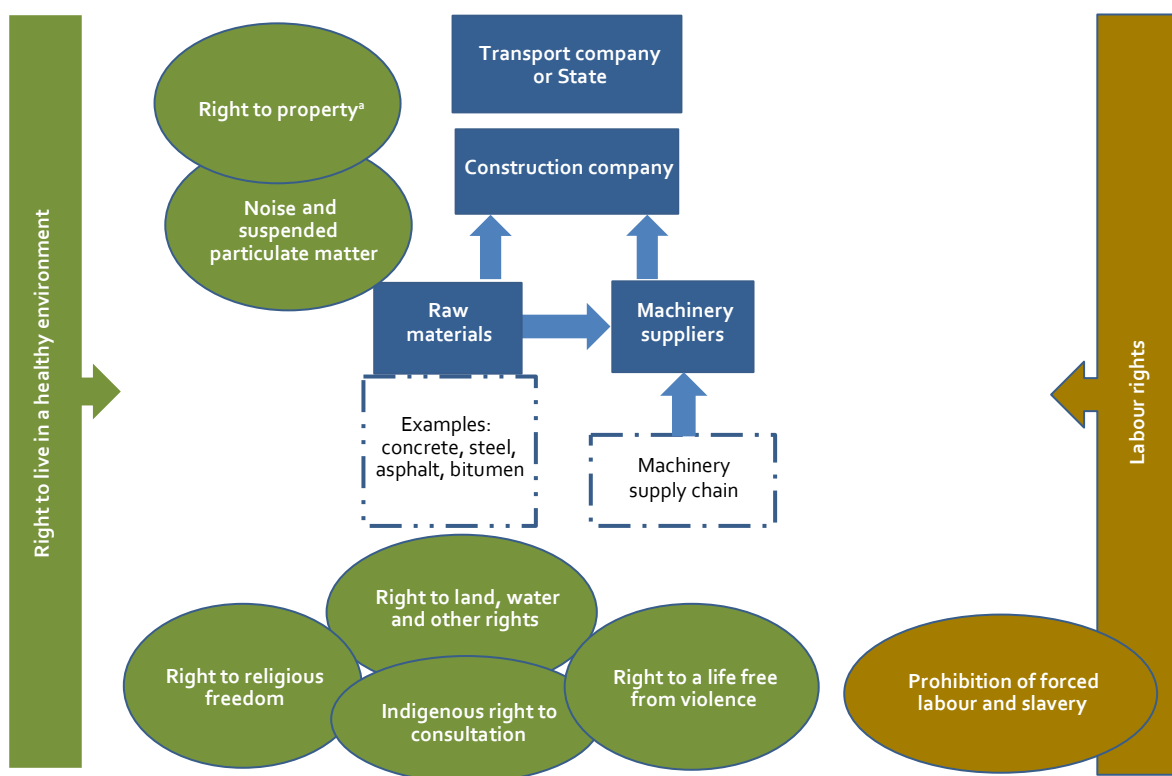
To provide a concrete example of the analysis to be carried out with respect to private economic actors linked to mobility systems, the main human rights risks and impacts in the construction of infrastructure are briefly identified. There is no clear documentation regarding the origin of the companies that make up the structures of the construction industry supply chains, which should be described for each city and type of transport. Thus, the list of construction inputs for a subway train is certainly more complex in terms of raw materials (concrete, cement, steel, among others, as well as the machinery used and their

respective supply chains), than it is for widening a road corridor (asphalt, bitumen, among others, and often without any great use of machinery).

The impacts in the construction sector mainly arise in three areas: (i) in the communities where the exclusive road, the public transit corridor, the metro station or tracks are built, among others; (ii) among construction workers, due to the specific risks involved in this work; and (iii) in relation to the inputs and raw materials that construction requires, from cement and steel to excavation machinery and electronics for the operation of the infrastructure (see diagram 10).

Communities in the vicinity of construction sites often suffer adverse impacts on their right to health due to noise and dust (suspended particulate matter), but that usually improves subsequently together with increased enjoyment of the right to mobility.

**Diagram 10**  
Human rights risks and impacts in the construction industry



Source: Prepared by the authors.

<sup>a</sup> Right to property of residents in the vicinity of transport infrastructure.

As for those who work in construction, the sector tends to have high rates of informal labour and unsafe working conditions and, therefore, a lack of guarantees of collective rights and the right to social security. In addition, it reports high accident and fatality rates, which violates the right to life and physical integrity (OHCHR, 2017).

The dynamics of supply chains are similar to those described in the previous section. In addition, the sand and cement sector tends to have high impacts on the right to health of people living in the proximity the extraction sites, due to the toxic dust in suspension.

## B. Responsibilities of companies and their suppliers

According to the Guiding Principles, business enterprises should respect human rights in all their activities (Principle 11) and exert their influence so that their suppliers also respect them (Principle 17). To achieve this, they should conduct due diligence in relation to their entire supply chain, based on a human rights impact assessment, and adopt the respective prevention, mitigation and remediation measures (Principle 17). In addition, they should install transparency mechanisms (Principle 21) and grievance mechanisms at the corporate or union level (Principles 29 and 30).<sup>15</sup> Along with this, States should provide access to justice and reparation through judicial and extrajudicial mechanisms (Principles 26 and 27).

This section outlines the main types of incentives to encourage human rights observance by business enterprises (national and transnational) that have been discussed and established in the debate on human rights and business. It examines public and private incentives that could lead enterprises to implement Pillars II and III of the Guiding Principles for their own activities and supply chain. It also provides a brief summary of the types of liability that could result from a failure to observe human rights.

### 1. Defining guidelines, incentives and sanctions

According to the Guiding Principles, States should direct or encourage —through sectoral, labour, environmental and other legislation, as well as through public policies, bidding contracts and public procurement— corporate compliance with observance of human rights. To that end, they could encourage the purchase or conversion of electric buses whose carbon footprint and impact on human rights during manufacturing is minimal. This could be done through legislative and administrative instruments at the municipal, regional, or state level.

Contracts offered by public bodies to private companies could require them to include in their bid a carbon footprint projection and a human rights due diligence model, as well as bus disposal strategies that include high levels of reuse and recycling of resources. In order not to distort the competitiveness of the different suppliers, one could rely on regulatory standards or specific standards for awarding scores when evaluating public procurement bids.

If the companies contracting the services of suppliers are private, with or without the backing of a public stakeholder or financier, they can adopt governance incentives by incorporating due diligence criteria (see part I.D.5.b) in their compliance processes, in particular by including certain requirements for their suppliers in the contracts they enter into with them. In case of serious infringements, they should leave open the possibility of declaring a breach of contract, with the appropriate consequences under civil law (Cantú, 2021), regardless of the supplier's country of incorporation. If supply chains span several countries, such contracts should be applied transnationally, grant clear and succinct rights to third parties that could suffer a particular harm, and be enforceable through *exequatur*. The State could support due diligence in national and transnational supply chains through disclosure laws for companies such as the recent Chilean standard for companies listed on the Santiago stock exchange (CMF, 2021), a regulation that encourages due diligence (National Assembly of France, 2017; Deutscher Bundestag, 2021; Ministry of Children and Families, 2021) or judicial cooperation (United Nations, 2017c).

In terms of climate change, in Latin America and the Caribbean the attempt has been made to join efforts in the creation and adoption of public policies. On the basis of the Paris Agreement, countries have initiated a process of reviewing their climate policies to determine what concrete contributions they can make in terms of reducing greenhouse gas emissions through so-called nationally determined contributions (NDCs) (European Commission, 2019). All of the region's countries provided a preliminary presentation of instruments of commitment within the framework of the Paris Agreement, although with different intensities: in some countries, such as Brazil and Mexico, the NDCs were put into effect as soon as the Agreement was ratified; in others, such as Argentina, Uruguay and Ecuador, their confirmation is still under discussion.

<sup>15</sup> For example, reports structured as recommended by the Global Reporting Initiative.

Despite this relatively auspicious outlook and in relation to the reduction of anthropogenic causes of global warming, the issue of urban mobility has been scantily incorporated in binding terms, at least at a general level. In the case of the implementation of circular economies, despite the fact that it is recognized in Tarapacá, Chile, one of the territories with the greatest potential worldwide, within the four countries that are part of this study, only in Argentina has it been established as a mitigation priority (European Commission, 2019). In the case of electric mobility, Costa Rica, Chile and Uruguay are the countries with the most advanced initiatives in this area. In the cases of Brazil, Mexico, Colombia and Argentina, although emission reduction mechanisms associated with mass transit are established, none of the countries has specifically incorporated the issue of electric mobility (European Commission, 2019).

Although the Paris Agreement has not necessarily translated into NDCs related to electric mobility and circular economies, some initiatives by the cities covered by the case study in this report stand out. In Mexico City, for example, the importance of expanding its trolleybus fleet has been highlighted as a way to move towards electrification that leverages existing infrastructure; In Buenos Aires, the Lithium Round Table (Mesa de Litio) has been set up to identify the needs and potential of lithium value chains and their contribution to new transit systems; In São Paulo, prototypes of electric vehicles have been developed to support construction work, and Bogotá stands out as one of the cities with the greatest progress in the electrification of mass transit buses (UNEP, 2021).

In particular, in the area of business and human rights, since 2014, specific instruments have been developed to incentivize companies to respect human rights. Until recently, only a few countries had made progress in regulating corporate due diligence. Currently, several dozen countries have adopted National Action Plans on Human Rights and Business promoted by the Working Group on the issue of human rights and transnational corporations and other business enterprises. In Latin America, Colombia, Chile and Mexico have such plans, while other countries are in the process of developing them. However, their effectiveness has been widely criticized for a lack of binding incentives (Cantú, 2019; Schönsteiner, 2019). For example, due to lack of voluntary compliance with National Action Plan commitments by German companies, the German government adopted binding legislation in June 2021 (Deutscher Bundestag, 2021).

Several of the new due diligence laws have a transnational impact on Latin American electromobility supply chains. For example, laws against modern slavery (e.g., in Australia or the United Kingdom) require companies to disclose whether they have conducted due diligence on their supply chains. For their part, French (2017), German (2021) and Norwegian (2021) due diligence laws require companies of a certain size to conduct human rights due diligence and install grievance mechanisms for potential violations in their supply chains. In the case of French law, it covers all links in the supply chain, where the most serious violations tend to occur, and also allows for litigation in French civil courts, even if the harm occurs outside France. The Netherlands has a law against child labour in the supply chains of companies incorporated in that country. The state of California also has a supply chain transparency law.

Another important incentive for the automotive industry in general, and for electric buses in particular, is the green finance market that seeks to invest in sustainable energy and production chains in order to contribute, in this way, to the fulfilment of climate change goals (Paris Agreement) (Gutterman, 2021). Ideally, the exclusion criteria for financiers should include, in addition to environmental criteria, labour criteria and impacts on the communities where raw materials are extracted.

In recent years, the increase in demand for green and socially sustainable investments has been discussed as one of the most important incentives (UNEP, 2022b; Schoenmaker and Schramade, 2019). By differentiating according to investment instruments (equities, bonds, loans/credits), criteria have been developed for the exclusion of certain industries from investment portfolios (e.g., coal-fired power plants), criteria for conditional funds (sustainability linked loans or bonds), or impact investments (e.g., only in non-conventional renewable energy or electric mobility). Different organizations have published taxonomies even under the auspices of the United Nations, as in the case of the Principles for Responsible Investment (2022) in the framework of UNEP (2022a), and there is a tendency to unify measurement to ensure comparability between different companies. However, only a few of the metrics

and criteria would actually meet human rights standards and there is a significant risk of greenwashing. It is expected that in the coming years demand will continue to increase and instruments will improve to detect failings in meeting commitments.<sup>16</sup> Sustainable mobility is highly likely to qualify for green investments. If labour conditions in the supply chain are improved at the same time, it could also qualify as social investments (UNEP, 2022a).

Finally, in relation to the reuse and recycling of vehicles, there are business (economic) incentives; however, as regards final waste—in particular, if the waste is toxic—the State’s action is essential, and its incentives are considered important for reuse and recycling. Thus, for example, the European Union is revising the 2000 end-of-life vehicles directive, taking into account stricter environmental standards (European Commission, 2000).

Any incentive, however, should weigh the costs of new bus production against the possibility of retrofitting and the effective net reduction in carbon emissions. If the introduction of electric buses entails scrapping conventional buses, it may well be environmentally advisable to postpone the purchase of the new vehicle until the end of the useful life of the conventional bus, or to opt for the conversion of the conventional model, even if it is less efficient.

## 2. Stakeholder responsibilities

States should therefore ensure that companies, whether private or public, assume their responsibilities under Pillars II and III of the Guiding Principles. In some countries there are already laws requiring large companies to implement due diligence mechanisms. However, considering the countries of origin of the main companies involved in these supply chains, the sectoral regulation or climate change policy of the countries play a key role (Schönsteiner, 2016).

As for the possibility of denouncing companies in the courts of the respective countries of origin, complaints can be brought in specific cases, such as companies of Australian, British, Dutch (forced labour, slavery and child labour), Californian, Norwegian, and German (human and labour rights violations up to the first link in the supply chain) origin. Only in the context of transnational litigation within the European Union has it been accepted—with a very few exceptions—that the jurisdiction of the company’s home country might not be appropriate (*forum non conveniens*), allowing claims in relation to events occurring in the countries of operation (Parra and Schönsteiner, 2022). It is, therefore, in the countries of operation of transnational corporations where access to justice should be improved, eliminating possible privileges of not having to answer lawsuits.

But even without due diligence laws, mechanisms should be available for business enterprises to provide redress to victims of human rights violations through proceedings for criminal, civil or administrative liability, depending on the type of harm caused. Thus, it has been found that the main obstacles to access to justice are the lack of free legal counsel, limited liability that prevents suing those truly responsible for an injury (corporate veil), corporate capture of oversight bodies (usually administrative) and lack of inversion of the burden of proof in cases in which the evidence is in the hands of the business enterprise (KAS, 2022; Kessedjian and Cantú, 2020).

In most countries it is possible to claim compensation for damages or seek the suspension of activities that violate fundamental rights. However, throughout the region, difficulties in access to justice are reported due to lack of equal access to defence, lack of free legal assistance or lack of knowledge about the possibilities for holding a company liable. Although the Committee on Economic, Social and Cultural Rights, IACHR and the Inter-American Court of Human Rights have established that the liability of States for transboundary damage applies in the context of transnational economic activities, it is still impossible in the vast majority of countries in the world—and all in Latin America—to bring such claim to court. There are also OECD National Contact Points in many Latin American countries, and in almost all

<sup>16</sup> This part of the document was prepared with information collected in the framework of Chilean National Agency for Research and Development (ANID), National Fund for Scientific and Technological Development (FONDECYT) Regular Project No. 1201380.

the countries of the global North from which the transnational companies in the supply chains analysed originate, which are extrajudicial dispute settlement mechanisms that offer mediation in conflicts between communities or unions, on the one hand, and business enterprises, on the other, in the event that the latter have violated the OECD Guidelines for Multinational Enterprises on labour, environmental, human rights, corruption or consumer issues, among others. To the extent that companies participate and acknowledge their responsibility, agreements can be reached to prevent or remedy future harm to human rights.

According to the Guiding Principles, there should also be trade union grievance mechanisms. However, no such mechanisms are known for the industries involved in the supply chains described in this document. The absence of such initiatives suggests that the proactivity of States in providing impartial and independent, as well as accessible, dispute resolution mechanisms is paramount (OHCHR, 2022).

Another incentive that is often discussed in the business and human rights framework seems to be less relevant in relation to urban transit companies: the ability of consumers to choose a supplier that respects human rights and the environment. As there are usually no mobility alternatives on the same route, users are normally unable to choose between more or less sustainable providers or providers that respect human and labour rights. However, they would have the possibility to file complaints in the event of misleading advertising, such as, for example, advertisements about the company's sustainability based on false or partial evidence. This situation makes government incentives even more important.

Lastly, it is worth referring to the non-legal (reputational) responsibility that may have repercussions on finances, shareholder behaviour, green investment funds, or the extension of the public bidding process when the company does not meet environmental or labour requirements of such stakeholders. Thus, for instance, a company that has been sanctioned by the Chilean Labour Directorate may not participate in public bids for the next two years.



### III. Final considerations

As this document has tried to demonstrate, there are important links between the effective enjoyment of human rights, the implementation of a gender approach and the conditions of access and use of urban mobility systems, as well as with various sectors of activity associated with their infrastructure, inputs and equipment (clean energy, automotive industry, construction industry and new technologies). Mobility in general, particularly in the context of large cities in the region, has multiple direct and indirect implications for the effective enjoyment of human rights and people's well-being, including various aspects and dimensions associated with women's rights and full autonomy (economic, physical, psychological and political).

As the document has noted, mobility has a direct and immediate impact on the enjoyment of specific human rights, starting with the right to freedom of movement and the right to security and physical integrity, the latter right also being related in multiple international law instruments to the right to a life free from violence. Likewise, when urban mobility systems are envisaged under optimal conditions, not only in terms of safety, but also of sanitation and/or without mistreatment, an immediate link emerges with the enjoyment of the right to health. Lastly, also important is the right to a healthy environment, weakened in cities themselves by pollution and environmental degradation, just as it is, in connection with mobility-related sectors of activity, in areas where raw materials are extracted or vehicles, inputs or energy (particularly if it is not clean) are produced.

In addition, there are numerous indirect and instrumental links. People's access to and use of mobility is also a means or instrument —will in many cases indispensable— for the effective enjoyment of multiple human rights, including education and health (through physical access to such services), and work, among others. Furthermore, in societies with high levels of inequality and social gaps, effective access to and use of mobility is closely linked to compliance with the principle of equality and non-discrimination due to the intersectionality between the axes of social inequality, such as socioeconomic status, sexual stereotypes, sexual orientation, gender identity, age, territorial segregation, ethnicity/race, disability, or migration status (ECLAC, 2016c and 2021). From the perspective of the principle of equality, the inclusion of people in the full diversity of their conditions and particular situations leads to a broader discussion on the necessary but differentiated determinants and requirements for accessing and effectively using urban mobility systems.

From a perspective focused on mobility systems as a sector of economic and social activity, there are other dimensions involving rights to consider: non-discrimination and, in particular, decent work for the people who work in mobility systems, as well as the existence of standards governing their treatment of and behaviour towards users. If the human rights of those who participate in the provision of mobility services and/or in the construction and maintenance of their infrastructure are not guaranteed in these systems, this situation may result in additional risks of violations of their labour rights and the right of the system's users, when such services or infrastructure do not operate under optimal conditions of safety, health and dignified treatment.

Finally, as a setting for widespread, everyday social coexistence, urban mobility systems perform a key role as a link in social cohesion. If the risks of multiple human rights violations by public and private actors are high in these systems, including due to a lack of protection of rights by the State, and access to them is exclusive, reinforcing social segregation and discrimination, their contribution to harmonious social coexistence and the consolidation of a sense of belonging will be low or even adverse. On the contrary, if they contribute to generating positive, inclusive, collective experiences, such systems help to shape a sense of belonging and community.

This document also addresses the risks and implications for the enjoyment of human rights with special attention to the gender perspective in the main sectors related to mobility systems and their supply chains: the clean energy sector, industrial sectors linked to urban mobility systems (especially the electric bus production sector), as well as the new technologies sector. In these areas, the human rights and gender approach is addressed through standards for business enterprises that were established for all sectors in the Guiding Principles (United Nations, 2012a). It outlines how the responsibilities of companies converge by evaluating their supply chains from the point of view of risks to human rights and their possible violation as a consequence of the activities of each specific sector, from the extraction of raw materials and their impact on the territories and rights of neighbouring communities, to the carbon footprint generated by inputs with long transport distances inputs, the conditions of production and assembly, especially in terms of labour conditions and pollution impacts, and the circular economy at the end of the useful life of machines, solar panels or wind turbines, to name a few examples. In that sense, the document examines the externalities that they generate for the environment, as were those that occur within them, understood as sectors of activity that employ people with rights.

Once the links between human rights and mobility have been identified, as well as between those rights and the other sectors of activity just mentioned, it becomes clearer to which actors should be called upon to prevent rights violations or at least mitigate the risks of their occurrence. In the case of urban mobility systems, there is an array of actors, among which the most important are, on the one hand, the State through its multiple functions and levels, since there are various public authorities in charge of the regulation, administration and management of such systems, from local authorities in charge of mobility and protection of human rights, to regional or national authorities, including public companies. On the other hand, there are various private actors who are not exempt from responsibility for potential or actual violations of rights, and whose particular liability will vary according to their level of involvement and functions in each case.

Based on the linkages between human rights, the gender perspective and women's autonomy with mobility systems and the sectors mentioned above, several possible policy instruments for applying a rights-based and gender approach can be derived. In the legal-normative sphere, international, national, state or municipal laws and regulations on multiple issues (mobility, rights, gender, disability, labour, among others) provide a framework that is more or less adapted to the application of a rights and gender approach based on State commitments and institutionalized procedures. That framework includes the scope and procedures related to public regulation and supervision/control of private actors and the guidelines for determining their level of responsibility with respect to possible direct or indirect violations of rights.

Although essential to ensure a cross-cutting application of the human rights and gender approach, the room for manoeuvre in terms of public policies is not limited to the legal-regulatory dimension. Indeed,

in the organizational and technical-operational, administrative and programmatic dimensions, there is significant scope for implementing formal standards and protocols in relation to public services and providers and various private actors. In particular, in the case of mobility systems, there is the possibility of establishing specialized public assistance authorities where the guarantee and protection of human rights are central. To that end, coordination and governance instruments can be adopted so that the various competent authorities (mobility, social inclusion, gender, public safety and disability, among others) adopt and implement general or specific strategies to guarantee rights especially affected in mobility systems, such as physical integrity from the right to a life free of violence, or actions and infrastructures with accessibility or additional services for specific users, among others. Also, the presence of systems for monitoring the quality of services and for accountability in general is an additional way to ensure that the compliance with the standards or commitments established in terms of rights is respected.

Another key policy instrument that can be derived from national norms, but that does not always depend on them, are standards or guidelines for the adaptation and design of inclusive infrastructure to eliminate or reduce barriers to access and use of mobility services, a crucial element for addressing needs, exclusion or discrimination of specific groups, such as persons with disabilities, children and adolescents, pregnant women, older persons or indigenous people (e.g., signage in several languages). Although the adaptation of infrastructure for greater inclusiveness may require high, long-term investments, in each context specific adaptations can be implemented of other key aspects to facilitate the use of such non-discriminatory systems, including user information and services (signage, information on routes and schedules, for example).

An additional tool is the right of access to information on urban mobility in general. Of particular significance in the case of the promotion and application of a rights and gender approach are communication and public awareness strategies and campaigns on available mechanisms to address possible rights violations, as well as behaviour and practices adverse to the enjoyment of rights. Finally, a relatively new area of public action concerns digital tools and additional connectivity options within such systems, which can play an important role in overcoming access and information barriers, as well as in channelling part of the monitoring, reporting and accountability devices.

In the area of financing, fare pricing is one of the most obvious policy instruments for determining a variety of possible measures, whether general or targeted, for eliminating or lessening economic barriers to access associated with people's income, in order to pay special attention to those who belong to various groups with access barriers, often based on a confluence of intersecting discriminations. By definition, these measures require considerable resources and, in general, large cities in the region already have largely subsidized systems where the margin for additional manoeuvre is narrow.

In the case of sectors of activity related to mobility, such as the energy, technology, automotive and other associated sectors, a key instrument for advancing global or transversal governance with a rights and gender focus are the incentives generated by public policies and financiers, direct corporate responsibilities and access to justice. On the one hand, the State has the capacity to regulate, incentivize and promote standards and procedures for companies, investors and unions to follow human rights directives, for example, through guidelines and requirements associated with tender contracts, public procurement, or taxes. Through these instruments it is possible to enforce certain standards with respect to the human rights and gender perspective, and thus their responsibilities under Pillars II and III of the Guiding Principles (United Nations, 2012a). This requires not only domestic legislation consistent with international standards on the subject, but also sectoral measures or policies that are in line with proposed goals to mitigate climate change and promote greater sustainability.

On the other hand, and beyond the actions implemented directly by companies, they can and should adopt governance incentives and due diligence criteria to demand good practices from their suppliers and contractors. Although under international law there is no obligation to adopt them as such, where "liability" for potential harm or infringements is recognized, in several countries this has become an obligation in national law. With regard to access to justice, it is important that there are formal institutional

mechanisms affording people who suffer violations of their rights committed by national and, in particular, transnational companies the possibility of reporting or filing suit in their own country or in the country where the events occurred, or to provide extrajudicial mechanisms to repair the violation that occurred and, if possible, to ensure that such violations are not repeated. In any case, the most desirable thing is that the last resort for individuals should not be to take such allegations to the company's country of origin, as this requires resources and represents an unlevel playing field for such individuals by imposing new barriers to justice and redress, as appropriate.

In any context, the definition and implementation of policies with a human rights and gender perspective benefits from information, data and studies for the purposes of designing relevant and effective alternatives. Also, although some policy instruments and guidelines for their design are mentioned here in a general manner, the definition and combination of policies in each context responds to specific processes, depending on people's needs, the resources (financial, human, informational) and the institutional framework in force. Hence the importance of intersectoral exchange and dialogue processes for progressive governance building in which the rights-based and gender perspective are shared by the main institutional actors.

Finally, and beyond the identification of specific policy instruments, the effective incorporation of a rights-based and gender perspective in the design of such instruments and of sectoral policies in general requires adhering to certain principles and addressing specific considerations at all stages of the public policy cycle. Annex 2 summarizes these components and includes some indispensable elements for a possible protocol aimed at incorporating the human-rights approach and the gender perspective in the design of specific public policies, as well as identifying considerations and requirements in the four dimensions of the institutional framework (legal-regulatory, organizational, technical-operational and financing).

A general look at the reality of the rights-based and gender approach in urban mobility policies in the region reveals that there are many gaps to be filled, but there are also many opportunities for progress. To the extent that in both policy design and implementation it is possible to make effective progress in the consideration of the reflections and guidelines contained herein, it will be possible to move more decisively towards the achievement of the goals of the 2030 Agenda for Sustainable Development, which would be encouraging for giving a major boost to sustainability, with greater inclusion and social cohesion.

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## **Annexes**

## Annex 1

### Human rights instruments and international organizations related to the themes in clusters 2 and 3

Part I.D.4 reviewed the human rights at stake for users of urban mobility systems, together with the potential violations of labour rights by private actors. Starting from the supply chains of the renewable energy (wind and solar) and technology sectors, as well as of the electric bus industry, a series of risks and other potential violations arise that must be considered, in particular the right to territory; to the right of indigenous peoples to free, prior and informed consultation; the right to personal data protection and the right to security, i.e. a life free of violence in the territory. This annex briefly describes the scope of these rights and their legal sources. The sources indicated in this annex are binding upon countries outside the Americas, since transnational supply chains include countries such as the Democratic Republic of the Congo and the People's Republic of China, among other European countries that are leaders in these industries.

**Table A1**  
International instruments and organizations that recognize the right to free, prior and informed consultation and territory<sup>a</sup>

Indigenous and Tribal Peoples Convention, 1989 (No. 169), 1989, (arts. 6 and 15)	United Nations Declaration on the Rights of Indigenous Peoples, 2007
American Convention on Human Rights, 1969 (art. 21)	American Declaration on the Rights of Indigenous Peoples, 2016
African Charter on Human and Peoples' Rights, Banjul Charter, 1981	

Source: Prepared by the authors, on the basis of International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 1989 (No. 169), Geneva, 1989; United Nations, United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), New York, 2007; Organization of American States (OAS), American Convention on Human Rights, San José, 1969; Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, Nairobi, 1981.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

The vast majority of Latin American States have recognized the right to territory of indigenous peoples. This right implies that, during the extraction of raw materials, indigenous peoples, Afrodescendants and ethnic groups have the internationally recognized right to prior consultation in accordance with their traditions regarding administrative or legislative measures that may affect them. This right is based on and interrelated with other human rights, such as collective ownership of land and its resources and the right to access information and participation, as well as the right to cultural recognition of peoples and the right to religious freedom. The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) has recognized the right to consultation as an obligation in the following terms: "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" (ILO, 1989).

In the first place, this means that consultation is a duty of the States, since is an international obligation; secondly, such communities must be consulted whenever a law is enacted or an administrative decision is made, such as granting a tender or concession on minerals, like lithium, copper or others, assuming their extraction could potentially affect neighbouring communities or communities that live in the territory where the extraction will take place, as is often the case. Thirdly, although companies may engage in dialogue with communities, this does not release countries from the above obligation. For this process to be effective and ensure full respect and guarantee for rights, it must be carried out before the initial phases of the project begin, that is, before the exploration phase, involving a good faith,

free and informed process that includes real access to information, in accordance with the traditions of the communities, seeking a lasting agreement or consent that entails benefits for the communities (IACHR, 2015).

In addition, the exploration and extraction of natural raw materials sometimes involve the forced displacement of communities or an interruption in access to their own livelihoods. In this regard, it has been recognized that communities have collective property rights over the territories they inhabit as well as over their natural resources, such as water.

At times, resistance from the communities in the territories concerned or from environmental rights defenders and community leaders result in disagreements and conflicts with the companies.

Acts of violence such as threats, harassment and assaults, including physical violence and even sexual violence, are often —albeit with significant differences among countries— perpetrated against leaders who defend the rights of indigenous, tribal and Afrodescendent peoples who oppose projects; such violations that are often enhanced by lack of access to justice (IACHR, 2015).

In this regard, States have a duty to prevent illegal activities and acts of violence against populations in areas affected by extractive activities. The right to life, personal integrity and security, as well as the elimination of all forms of discrimination and gender-based violence, have been enshrined in international instruments, as shown in table A2.

**Table A2**  
**International instruments and organizations that recognize the rights to life, integrity and security<sup>a</sup>**

International Covenant on Civil and Political Rights, 1966	Universal Declaration of Human Rights, 1948 (art. 13)
International Covenant on Economic, Social and Cultural Rights, 1966	American Declaration of the Rights and Duties of Man 1948 (art. I)
Convention on the Elimination of All Forms of Discrimination against Women, 1979	African Charter on Human and Peoples' Rights, Banjul Charter, 1981
Indigenous and Tribal Peoples Convention, 1989 (No. 169) (art. 7)	Escazú Agreement, 2018, art. 9
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará, 1994	Protocols I and II Additional to the Geneva Conventions of 1949, 1977

Source: Prepared by the authors, on the basis of United Nations, International Covenant on Civil and Political Rights (A/RES/2200A(XXI)), New York, 1966; Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Economic, Social and Cultural Rights (A/RES/2200A(XXI)), New York, 1966; American Declaration of the Rights and Duties of Man (E/CN.4/122/Rev.1), New York, 1948; Convention on the Elimination of All Forms of Discrimination against Women (A/RES/34/180), New York, 1979; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 1977; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol II), Geneva, 1977; Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, Nairobi, 1981; International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 1989 (No. 169), Geneva, 1989; Economic Commission for Latin America and the Caribbean (ECLAC), Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (LC/PUB.2018/8), Santiago, 2018; Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Washington, D. C., 1994.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

Lastly, with respect to the new technologies industry, Internet applications that make urban mobility systems more efficient, such as those showing the location of nearby transport, the most efficient and expeditious routes or private mobility options, facilitate the enjoyment of rights such as freedom of movement or the right to rest, among others. However, new technologies, both devices and networks, can generate potential risks to human rights. In the case of networks and applications, there is a potential risk to privacy, since these technologies capture, and sometimes exploit, personal data provided by the users of these services.

As supply chains are transnational, legal sources such as those in the following boxes include international treaties and instruments that protect human rights. The rights to privacy and personal data protection have been recognized in various instruments such as those shown in table A3.

**Table A3**  
**International instruments and organizations that recognize the rights to privacy and personal data<sup>a</sup>**

Universal Declaration of Human Rights, 1948, art. 12	International Covenant on Civil and Political Rights, 1966, art. 17
American Convention on Human Rights, 1969, art. 11	Convention on the Rights of the Child, 1989, art. 16
European Convention on Human Rights, 1950, art. 8	Convention No. 108 of the Council of Europe, for the countries of the Americas that are party to it (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data), 1981
Preliminary Principles and Recommendations on Data Protection (The Protection of Personal Data) of the Organization of American States, 2011	

Source: Prepared by the authors, on the basis of United Nations, Universal Declaration of Human Rights (A/RES/217(III)), Paris, 1948; International Covenant on Civil and Political Rights (A/RES/2200A(XXI)), New York, 1966; Convention on the Rights of the Child (A/RES/44/25), New York, 1989; Organization of American States (OAS), American Convention on Human Rights, San José, 1969; Preliminary Principles and Recommendations on Data Protection (The Protection of Personal Data), Washington, D.C., 2011; Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950; Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 1981.

<sup>a</sup> This list of international instruments and organizations is not intended to be exhaustive in terms of the recognition of the right.

## Annex 2

### **Elements to be considered in a protocol for incorporating a human-rights approach and a gender perspective in the design of specific public policies**

The purpose of this annex is to present a series of elements to guide the operationalization of the social dimension of the Project ECLAC-GIZ “Inclusive, sustainable and smart cities in the framework of the 2030 Agenda for Sustainable Development in Latin America and the Caribbean.” Included are some indispensable elements to be considered within a concrete protocol to guide States on the necessary standards to be attained so that public policies on urban mobility have a human rights and gender perspective, including the roles of different public actors, organizations and private agents involved in the implementation.

The standards gathered here apply to countries, subnational entities, cities, municipalities and any other government agency involved in the creation of public policies on transport and mobility, their implementation and monitoring. For this purpose, the study considered the use and adaptation of human rights indicators and standards from various sources, including the thematic report of the Inter-American Commission on Human Rights “Public Policy with a Human Rights Approach” (IACHR, 2018); the Guiding Principles on Business and Human Rights (OHCHR, 2011) and the Progress Indicators for Measuring Rights Under the Protocol of San Salvador (WGPSS, 2015).

Incorporating the human rights approach, including the gender perspective, should be seen not as an ancillary or separate process from the creation, modification, implementation and monitoring of public policies, but as a core part thereof (IACHR, 2018). To that end, the following principles should permeate the entire public policy-making process in a cross-cutting manner: (i) equality and non-discrimination; (ii) social participation; (iii) grievance mechanisms and access to justice; (iv) production of and access to information as a guarantee;; (v) priority protection for groups historically subjected to discrimination; and (vi) inclusion of a gender and diversity perspective.

The operational nature of what is proposed here is that its guidelines address general questions to be considered by the decision-making authority in the area of transport and mobility in order to verify the inclusion of the aforementioned standards. In addition to their inclusion in a cross-cutting manner throughout the public policy cycle, these elements are organized on the basis of the four interdependent analytical dimensions that make up the institutional framework of social policy: legal-regulatory, organizational, technical-operational and financing, following the analysis framework developed by ECLAC in relation to institutional frameworks (Martínez, 2019). However, although core generic elements are emphasized, they cannot be considered exhaustive, as adaptation to each context will always be required.

#### **A. Elements to be incorporated from the legal-regulatory dimension**

The legal-normative dimension of the institutional framework consists of the set of international, national and subnational (state, provincial or local) legal instruments that define both the powers of public actors in various sectors and spheres, and the limits and procedures that should frame public action. In particular, it defines the more or less explicit commitments to guaranteeing human rights. Hence its importance, given that, without a legal-regulatory framework committed to the defence, guarantee and promotion of human rights, no formal obligation exists, and its fulfilment could easily be relegated to a secondary level of priority amid other possible objectives and mandates.

In the areas addressed in this document, the following notable elements are ordered from the international and general level to the national level and its different tiers of legal primacy, beginning with the constitutional level.

- (i) State-ratified international instruments that recognize the rights of users and specific groups susceptible to risk in connection with urban mobility activities:
- International Covenant on Economic, Social and Cultural Rights, 1966
  - International Covenant on Civil and Political Rights, 1966
  - American Convention on Human Rights, 1969
  - Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, 1988
  - Convention on the Rights of the Child
  - Inter-American Convention on Protecting the Human Rights of Older Persons
  - Convention on the Elimination of All Forms of Discrimination against Women, 1999
  - Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará, 1994
  - Convention on the Rights of Persons with Disabilities, 1994
  - Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities
  - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) of the International Labour Organization (ILO)
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
  - International Convention on the Elimination of All Forms of Racial Discrimination, 1965
  - Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance
  - Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO)
  - Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
  - Other conventions that protect human rights and specific groups
- (ii) Does the Constitution (and/or state or provincial constitutions) include the right to freedom of movement in relation to transport services and urban mobility?
- (iii) Does the current public policy framework address all/some of the possible violations with respect to the urban transit system, from a human rights and gender perspective? Which? (For example, the safety and integrity of the person, the right to rest, environmental pollution or labour rights).
- (iv) Is there specific legislation that addresses the right to freedom of movement from the perspective of urban mobility and use of transit systems, or legislation that addresses its relationship to access to other human rights and/or services? Among them: (a) Transport Code; (b) Laws on gender violence that contemplate the public aspect and safety in transport; laws on persons with disabilities, environmental laws that contemplate gas emissions, among others; (c) Special chapters or titles in other codes; (d) A set of disparate laws and regulations; (e) Collective bargaining rules; (f) Other regulations.

## **B. Elements to be incorporated from the organizational dimension**

The organizational dimension is related to the division of labour within the State. Stemming from the legal-regulatory framework, this division entails a series of mandates, responsibilities and coordination

mechanisms among multiple public actors with varying levels of coherence and complementarity with respect to the actual implementation of measures in accordance with formal objectives and goals. When it comes to incorporating a rights-based approach and gender perspective, the elements of particular note in this dimension are those related to the presence of mandates on human rights, equality and non-discrimination, the existence of predefined bodies to guarantee access to justice and, as appropriate, reparation, as well as diagnostic and implementation considerations to make this approach effective. This dimension includes the role of the bodies that design, implement and monitor processes, as well as public and private actors.

- (i) Are there bodies in the organizational structure of the mobility system responsible for the protection of rights and/or non-discrimination in general, or oriented to specific groups of the population (women, particular age groups, sexual orientation, migratory status, disability, among others)?
- (ii) Is there a body or entity in charge of coordinating measures in favour of a rights-based and gender perspective in the policy processes of the different public and private institutions involved in different phases of the mobility policy cycle?
- (iii) Are there bodies in charge of monitoring or supervising implementation of public policies to ensure that gaps are reduced?
- (iv) To what extent are the groups concerned, such as women or persons with disabilities, involved in public policy creation?
- (v) In the area of justice and reparation:
  - Are there information services for citizens on how to file complaints or extrajudicial claims?
  - Are there administrative bodies with which to file claims and complaints over compliance with the transport service or for any alleged violation suffered in its use?
  - Is free counsel and support offered to people whose human rights are violated while using urban transit?
  - Are there public mediation or conciliation offices to resolve issues related to complaints and claims of alleged violations while using transport?
- (vi) In relation to private actors in the system:
  - Is there a mapping of the most important private urban transit actors (transport companies, private security companies, collection companies, energy and fuel suppliers, among others)? Is there a mechanism in place for their coordination?
  - Are there any oversight and supervisory bodies for (i) labour; (ii) the environment; (iii) consumers, and/or (iv) gender issues with respect to companies providing transport or related services in cities?
- (vii) Is there a national business and human rights plan or a human rights policy that includes business aspects in the area of transport services?
- (viii) Are there public procurement incentives for companies to adopt measures to respect human rights and a gender perspective? Are they required to exercise human rights due diligence in their supply chains?

### **C. Elements to be highlighted from the technical-operational dimension**

The technical-operational dimension of the institutional framework encompasses the array of tools in use for policy implementation and management. It involves instruments, capabilities and information and management systems that enable measures to be developed in accordance with legal mandates and the division of labour (and roles) at the organizational level. In addition to generic elements of enormous

importance in all policy sectors, such as information systems, planning, monitoring and evaluation, mechanisms for accountability, transparency and access to information, as well as participation, are also central to the rights and gender approach. In this sector, the presence of specific instruments for access to justice and reparation is particularly critical for ensuring a systematic guarantee of human rights through public action. From that perspective, the following elements stand out:

### 1. Design and implementation

- (i) Is a preventive analysis carried out with respect to individuals or groups of individuals who have difficulties accessing the transit system?
- (ii) Are situations of structural inequality identified when describing the mobility challenges to be addressed?
- (iii) Is priority accorded to social groups identified as being in a situation of inequality or structural discrimination in the problem's definition and diagnosis? How?
- (iv) Are barriers to the use of the transport system identified for indigenous peoples or communities, people of African descent, refugees, asylum seekers and stateless persons? What tools are being used to mitigate them?
- (v) Are barriers or difficulties in accessing and using the transport system considered for women who engage in domestic or care work, as compared to people who do not perform such work? What tools are being used to mitigate them?
- (vi) What are the public policy instruments in use to facilitate effective access to urban transit?
- (vii) Are there policy measures aimed at building accessible urban public spaces and transport so that persons with disabilities can make regular use of them?
- (viii) Is a transit system being built to ensure/guarantee that children and adolescents have access to educational and health facilities? Do the latter include crossing safety, lighting and other aspects?
- (ix) Regarding the role of companies and private actors:
  - Is there a national business and human rights plan or a human rights policy that includes business aspects in the area of transport services?
  - Are there human rights requirements in public procurement contracts, tenders or concessions offered by mobility authorities to private suppliers?
  - What penalties are envisaged in the event of non-fulfilment with respect to supplier companies, concessionaires or those involved in a bidding process if it is decided that there has been a human rights infringement in the context of urban transit?
  - Are there public procurement incentives for companies to adopt measures to respect human rights and a gender perspective? Do they oblige them to exercise human rights due diligence in their supply chains?
  - Are there human rights requirements or guidelines to follow in public procurement contracts, tenders or concessions offered by mobility authorities to private suppliers?
  - What penalties are envisaged in the event of non-fulfilment with respect to supplier companies, concessionaires or those involved in a bidding process if it is decided that there has been a human rights infringement in the context of urban transit?

### 2. Information, accountability and participation

- (i) To what extent and with what frequency do the statistical information systems in the area of transport allow the characteristics of the population using the mobility system to



be surveyed by gender, ethnicity, race, age, nationality, legal status (refugee or stateless status), public or private coverage, and territorial distribution?

- (ii) Are individuals or groups concerned consulted to gather opinions, experiences and information on the situation to be addressed, through surveys, forums or other instruments?
- (iii) Are information and dissemination mechanisms in place regarding the right to freedom of movement in the context of the use of public transit and access to other service rights?
- (iv) What are the characteristics, frequency and coverage of official campaigns on the rights to freedom of movement, safety and the environment, all in connection with mobility services?
- (v) Is there data collection on the number of complaints and claims filed annually or in shorter period, regarding alleged violations suffered while using transport?
- (vi) Are the data on the number of complaints and claims disaggregated by right or by group of persons?

### 3. Access to justice and redress

- (i) Within the framework of planning and policy design systems or procedures, is there an analysis of the availability, quality, accessibility and adaptability of legal remedies designed and available during the implementation of a public policy on urban mobility?
- (ii) Are there adequate and effective judicial remedies, mechanisms or channels for complaints about a potential violation suffered while using transport?
- (iii) Does the monitoring/evaluation record the percentage of solutions provided by grievance mechanisms? Is user satisfaction monitored according to gender and disaggregated by vulnerable groups?
- (iv) Are mechanisms or measures envisaged to ensure universal access (such as for persons with disabilities) to reporting, grievance and data collection mechanisms?
- (v) Are there human rights and gender perspective training policies for judges and pro bono lawyers who handle complaints alleging violations in the use of transport?
- (vi) Are due process guarantees enforced in judicial proceedings regarding claims or complaints related to possible violations in the transport system? (a) independent and impartial tribunal; (b) reasonable time; (c) equality of arms; (d) res judicata; (e) right to appeal?
- (vii) Are redress and non-repetition mechanisms contemplated for people who suffer human rights violations while using urban transit?

#### D. Elements to consider from the financing dimension


The financing dimension of the institutional framework has to do with the volume and source of financial resources available in each sector. This includes its periodicity, sufficiency, stability, distributive effects and sustainability, among other considerations. With respect to mobility, financing is key from the point of view of guaranteeing rights in order to ensure the viability and sustainability of the operations and investments required to guarantee quality, safe, efficient infrastructure that is physically and financially accessible for all. From that perspective, the following elements are important:

- (i) Is there regulation that provides for the allocation of annual budget expenditure for public mobility policies in the city?
- (ii) Do budget allocation and execution address the different principles for incorporating a human rights approach in public policies?<sup>27</sup> This refers to decisions on amounts and

<sup>27</sup> Per IACHR (2018), these principles are: (i) equality and non-discrimination; (ii) social participation; (iii) grievance mechanisms and access to justice; (iv) production of and access to information as a guarantee; (v) priority protection for groups historically subjected to discrimination; and (vi) inclusion of a gender and diversity perspective.

recipients, bearing in mind that the objective should be to reduce inequality gaps, prioritize historically discriminated-against groups and remove obstacles to the fulfilment of rights, among others.

- (iii) Is there budgetary capacity to conduct a preventive analysis to identify a problem affecting a particular group or individuals in connection with urban mobility and the exercise of their rights?
- (iv) Do you consider that there is currently —or could a budget be requested— to gather sufficient quantitative and qualitative information to conduct a situation diagnosis with respect to the mobility system and groups possibly affected in the exercise of their rights?



The quality of life, well-being and enjoyment of rights by people who live in and around cities are closely linked to urban mobility. From that perspective, how can we ensure that policies implemented in mobility systems and other related sectors adopt a human rights and gender approach? This document, framed within the project "Inclusive, sustainable and smart cities in the framework of the 2030 Agenda for Sustainable Development in Latin America and the Caribbean" of the ECLAC/BMZ-GIZ cooperation programme, addresses urban mobility from a social perspective in which human rights, the gender approach and the social inequality matrix converge. The objective is to identify policy areas and instruments that favour universal enjoyment of human rights and prevent their violation in urban mobility systems in Latin America, as well as in other sectors related to their infrastructure and sustainability (renewable energies, new technologies, automotive industry, construction among others). To achieve this, it offers policy guidelines for the various public and private actors with responsibilities in this area.