LAW Nº 9602 OF THE PROVINCE OF TUCUMÁN, ARGENTINA: A MECHANISM FOR ADAPTING TO THE LAW OF VULNERABILITIES

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Abstract
In mid-September 2022, the Legislature of Tucumán conceived a mechanism aimed at providing specific protection to individuals who are experiencing natural conditions or circumstances that hinder the development of their personal autonomy or the enjoyment of essential rights, and who, consequently, suffer from defencelessness and interdependence. This regulation oscillates between the unavoidable obligation to shelter the legitimate claims for equality and justice presented by vulnerable subjects and the complexity of doing so through a concept that multiplies the possible responses, potentially damaging the sustainability of State resources. Therefore, the best solution is to concentrate on specific cases, relying on the collaboration of the Inter-American System of Human Rights Protection, as it clearly indicates the degree of fragility that warrants robust protection.

Keywords
Principle of equality. Principle of non-discrimination. Vulnerability.

Summary

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1. INTRODUCTION

By way of introduction, it is worth noting that

> la noción de vulnerabilidad, ya recogida en varios estudios sociológicos y filosóficos, ofrece un nueva forma de (re)pensar la relación del ser humano con el Otro y con su sociedad. Por la importancia de la visión que ofrece, los juristas deben aproximarse a ella, pues brindará un nuevo campo de aplicación del derecho, no solamente a partir de las personas vulnerables, sino de la identificación de los contextos de vulneración.[2]

With this conviction, it is appropriate to reflect on the concept of vulnerability emanating from Law 9602, given that the Inter-American System of Human Rights Protection has been developing its own concept, and its contributions and teachings are illuminating for the effective implementation of the sanctioned law.

Along this line, the paper comprehensively analyses the current legislation, focusing on its precepts and parliamentary precedents. It also examines both the positive facets of the regulation in question and the perplexities it generates, considering the dilemma it faces. Finally, it investigates the experience of the regional mechanism for safeguarding human rights, considering the criteria provided by the legal instruments that form its basis and the rulings of the Inter-American Court of Human Rights; while also verifying the manner in which these guidelines were utilised by the Supreme Court of Justice of the Province of Tucumán. Precisely, this focus on the

[2] BURGORGUE-LARSEN 2014, 121: the notion of vulnerability, already embraced in various sociological and philosophical studies, offers a new way of (re)thinking the relationship of the human being with the Other and with their society. Given the importance of the vision it offers, legal scholars must approach it, as it will provide a new field for the application of law, not only based on vulnerable persons but also on the identification of contexts of vulnerability.

jurisprudence of the highest court in Tucumán constitutes the deepening of an extensive study pertaining to this topic.[3]

Based on the foregoing, having addressed a highly current and interesting subject, the reader is invited to read this scientific production, with the hope that it will contribute to the topic, encourage further research, and promote the construction of more equitable and just spaces for the underprivileged sectors of the community.

2. NORMATIVE BASIS: THE TUCUMÁN MECHANISM FOR ADAPTING TO THE LAW OF VULNERABILITIES

In mid-September 2022, the Honourable Legislature of the Province of Tucumán sanctioned a mechanism with the force of law for the purpose of adapting to the law of vulnerabilities. Said regulatory digest was promulgated in accordance with Article 71 of the local Constitution, and was registered under the number 9602. In this direction, it is worth clarifying that the text that came into force holds a concept of vulnerability that warrants detailed analysis, making it imperative to study the regulatory regime in question and its parliamentary antecedents comprehensively.

2.1. *Law 9602*

The Law 9602 certainly affirms that the Provincial State must implement a transversal vulnerability approach. This is done in order to achieve the equality enshrined in Article 16 of the National Constitution, while also making effective the human rights recognised therein and in international treaties. In this vein, it seeks to provide tools for the detection of and reaction to rights violations, to be applied to administrative acts, public policies, and protocols; provincial and municipal regulations, and acts and processes of the Judicial Power and the Public Prosecution and Defence Ministries.

[3] NEME SCHEIJ 2025.

In the same way, it asserts that it is essential for State actions to be guided by this vulnerability perspective, which encompasses and organises other perspectives that attempt to protect individuals based on their degree of defencelessness. In this orientation, it states explicitly that any person experiencing a context that renders them vulnerable is entitled to special protection, by virtue of the particular duties which the State must fulfil to satisfy the general obligations of guaranteeing and respecting human rights, particularly the right to life from conception to natural death, and those emerging from the best interests of the child.

Similarly, it stipulates that the State can only establish objective and reasonable distinctions insofar as they are carried out with due respect for human rights and in accordance with the application of the norm that best safeguards the individual.

In this regard, it incorporates the definitions set out below:

- Vulnerability: A condition, state, or situation that, regardless of its permanent or temporary nature, objectively hinders or prevents the full exercise of human and individual rights and the development of personal autonomy.
- Equality: The notion of equality emanates directly from the unity of human nature and is inseparable from the individual's essential dignity.
- Vulnerability Perspective: An orientation of public policies and State intervention that seeks to protect individuals who, regardless of their belonging to a specific group, are experiencing a situation that makes them fragile, always prioritising the main protection of the subject whose situation of fragility, defencelessness, and interdependence is greatest or compromises superior rights, even when compared to other vulnerable individuals.

It even offers the following classification of vulnerability:

- By Temporal Duration: • Temporary: Cases in which a passing element hinders or prevents the full enjoyment of human and individual rights and the development of personal autonomy. • Permanent: Instances that persist over time.

- By Origin: • Natural: When they are the result of a natural condition or circumstance in which man or the State does not intervene. • Created by the State: Hypotheses in which the State, through action or omission, places individuals in a context that makes them fragile. • Provoked: Instances in which private persons or institutions, through action or omission, place subjects in a situation that makes them fragile. Notwithstanding the above, the causes or origin of vulnerability do not exempt the need for State protection.

Furthermore, it points out that State intervention aimed at correcting vulnerability must observe three criteria:

- Adequacy: To the cultural, economic, spiritual, historical, ideological, and political circumstances of the society in which it operates.
- Proportionality: In relation to the principles and values embodied in the entire legal system.
- Reasonableness: In conformity with the purpose and nature of the institution to which the differential treatment is applied.

Finally, it maintains that the protocols, laws, and public policies of the State, in its three Powers, must be imbued with the vulnerability approach, in accordance with the aforementioned criteria, understanding it as a container and organiser of other protective perspectives.

Based on this, it is evident that the Honourable Legislature of the Province of Tucumán conceived a mechanism designed to grant specific protection to individuals experiencing natural conditions or contexts that complicate or obstruct the development of their personal autonomy or the enjoyment of human rights, and who, consequently, suffer from defencelessness and interdependence.

2.2. *Parliamentary precedents*

It should be noted that the General Legislation Commission of the Honourable Legislature of the Province of Tucumán, through an opinion dated 13 September 2022 concerning item 3 of the agenda 47/117, advised the sanction of the draft law by parliamentarian Ms. Nadima del V. Pecci de

Etienot, which proposed the regime for adapting to the law of vulnerabilities.[4]

During the Ordinary Session held on 15 September 2022,[5] the aforementioned legislator argued that the project aspires for the State to concentrate its energy on those who are going through certain concrete circumstances in which they lack protection to such an extent that they do not fully enjoy human rights. To this end, the State must detect the weaknesses at stake based on an analysis of each specific case and the context in which it takes place, regardless of whether or not it falls into the abstract and general categories of vulnerability that are known. In this line, she expressed that the National Constitution and international treaties compel the State to protect those who suffer circumstances that make them more fragile, which requires a systematic interpretation. She noted that considering protective legal and political mechanisms from a fragmented perspective or one focused on specific concepts distorts the notion of vulnerability in particular cases, causing injustices or, worse still, the defencelessness of those who are truly fragile. Finally, she stated that she turns to the criterion of vulnerability with the objective of remedying those circumstances that make people weaker, recognising that there are fragile groups due to peculiar characteristics such as social condition, age, or health, in which a situation of fragility can obviously be presumed, in the sense of dependence on the assistance of another to fully achieve their human rights.

Pausing here, it is clear that parliamentarian Nadima del V. Pecci de Etienot based her normative proposal on a specific idea of vulnerability, which stands out for considering it a particular context that entails dependence on the support of a third party, defencelessness, and the impossibility of exercising human rights.

2.3. *An interesting step forward and a reasonable doubt*

[4] File 285-PL-21.

[5] XIIIth Meeting.

In this order, Law 9602 seems very promising, as it calls upon the Powers of the State to focus on resolving the difficulties specific to individuals suffering from aggravated vulnerability, for which it provides tools arising from a broad and realistic interpretation of the principle of equality and non-discrimination. However, it raises some concerns regarding the nature of the situations it hopes will receive a solution, as an excessive claim could conspire against the effectiveness of State systems in offering adequate responses. Taking this into account, it is unavoidable to weigh both the positive aspects of the sanctioned text and the uncertainties it produces.

3. DOGMATIC DIMENSION:POSITIVE FACETS AND PERPLEXITIES

Analysing Law 9602, it is possible to note that it applies a concept of vulnerability that landed in the legal sphere hand-in-hand with a broader and more realistic interpretation of the scope of the principle of equality and non-discrimination, which seeks to protect individuals who suffer from aberrant disparities. Likewise, it can be appreciated that this idea of vulnerability it employs may affect the effectiveness of the containment it intends to provide. If it is not properly circumscribed, it seems very difficult for State operators to have certain and concrete possibilities of offering valuable solutions for all the situations that, *a priori*, it encompasses. Based on this, it is interesting to examine the notion of vulnerability used in order to observe the true dimension of the positive facets and perplexities of the sanctioned normative text.

3.1. *Positive facets*

It is true that Law 9602 embraces a concept of vulnerability that was foreign to the world of Law until an understanding of the principle of equality and non-discrimination gained importance. This understanding not only mandates operators to pursue legitimate ends through proportional means to achieve them but also exhorts them to adopt positions aimed at ensuring that there are no excluded groups in the community.

As Rosmerlin Estupiñan Silva argues, across the globe "*las cortes hablan de vulnerabilidad a pesar de la extrañeza jurídica del concepto*".[6] This phenomenon can be explained by the fact that, as Roberto Saba indicates, a structural reading of equality gained relevance that "*no se vincula con la irrazonabilidad (funcional o instrumental) del criterio escogido para realizar la distinción, sino que entiende que lo que la igualdad ante la ley persigue es el objetivo de evitar la constitución y establecimiento de grupos sometidos, excluidos o sojuzgados por otros grupos*".[7] In this context, attention shifted from individuals to the collectives they integrate , while the focus remained on the weaknesses they collectively endure, which facilitated the insertion of the idea of vulnerability into the characterisation of certain sectors considered fragile.

From this perspective, it can be noted that the sanctioned law is consistent with the guideline of the Inter-American System of Human Rights Protection according to which every person who is in a state of fragility is entitled to enhanced protection.

In this direction, it is worth highlighting that Edward Jess Pérez stated that

> el derecho interamericano exige que la concepción de igualdad formal se vea complementada por la concepción de igualdad de oportunidades en aquellos casos en los cuales las personas se encuentren en una situación estructural de exclusión y discriminación, siendo especialmente vulnerables a ser víctimas de violaciones a sus derechos humanos. Por esa razón es imperativo que el intérprete jurídico, al valorar una posible transgresión a la igualdad y no discriminación, la entienda no sólo como un derecho sustantivo, sino como un proceso en el que se ponderen los bienes

[6] ESTUPIÑAN SILVA 2014a, 194: "courts speak of vulnerability despite the legal strangeness of the concept".

[7] SABA 2004, 479-514: "is not linked to the unreasonableness (functional or instrumental) of the criterion chosen to make the distinction, but understands that what equality before the law seeks is the objective of avoiding the constitution and establishment of groups subjected, excluded or subjugated by other groups".

> jurídicos involucrados, y la necesidad de atender a una situación de discriminación estructural. Para ello, el derecho interamericano brindó dos herramientas para atender a estos elementos: 1) el test de igualdad, que permitirá identificar cuándo una distinción es legítima o no, y 2) la obligación de acción positiva, por la cual el Estado corregiría la discriminación estructural en perjuicio de un grupo, para promover su inclusión social.[8]

In this understanding, it is clear that the text that came into force honours the aforementioned logic of the regional mechanism for safeguarding human rights. This is because, on the one hand, it determines that the State can only establish objective and reasonable distinctions, while, on the other hand, it mandates that the greater the defencelessness of the individual, the greater their protection must be, in order to mitigate the suffering they are undergoing. Maintaining this orientation, it attempts to provide tools for the detection of and reaction to human rights violations as a way of making their enjoyment feasible and the equality enshrined in Article 16 of the Argentine Constitution attainable. By invigorating the protection of vulnerable subjects, Law 9602 stands out for echoing the equitable precepts that govern the Inter-American regime for the protection of fundamental rights.

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[8] PÉREZ 2016, 58-59: Inter-American Law demands that the conception of formal equality be complemented by the conception of equality of opportunity in those cases where people are in a structural situation of exclusion and discrimination, making them especially vulnerable to being victims of human rights violations. For this reason, it is imperative for the legal interpreter, when assessing a possible transgression of equality and non-discrimination, to understand it not only as a substantive right but as a process in which the legal interests involved are weighed, and the need to address a situation of structural discrimination. To this end, Inter-American Law provided two tools to address these elements: 1) the equality test, which will allow identifying when a distinction is legitimate or not, and 2) the obligation of positive action, by which the State would correct structural discrimination to the detriment of a group, to promote its social inclusion.

Pausing here, it is clear that the sanctioned law possesses absolutely positive facets, since it assimilates an equality paradigm suitable for addressing the instances of structural discrimination that abound in the region. This makes it a legal instrument capable of materialising the parity that crowns the constitutional and supra-constitutional order.

3.2. *Perplexities*

However, Law 9602 necessitates an inquiry into the circumstances that State agencies would be able to effectively protect. The concept of vulnerability with which it operates is of such breadth that, if not prudently circumscribed, it could cause the collapse of the systems operating in different areas.

Indeed, this central idea of the sanctioned law has great scope, as it alludes to a characteristic inherent to the human species, with every person, in some aspect, being helpless or a member of a disadvantaged group. In this way, the enshrined regime should lead to State mechanisms constantly adjusting their responses, insofar as the spirit governing it leads to strengthening solutions when individuals are going through states of fragility, which, as indicated, always occurs due to the very nature of man. Consequently, the current text tends to atomise the possible variants, conspiring against the minimum degree of generality that a legal system needs and making it too difficult to sustain such a standard.

Connected to the matter, it is worth noting that vulnerability, as a quality inherent to human beings, accompanied their emergence and subsequent subsistence. Based on this criterion, Emilio García Sánchez affirmed that "*la biografía de cada hombre está marcada por la fragilidad, la vulnerabilidad, la precariedad, a veces demasiada precariedad. Se trata del dibujo más real de los miembros de la gran familia humana, una imagen que atraviesa la humanidad desde su origen*".[9]

[9] GARCÍA SÁNCHEZ 2013, 32: "the biography of every human is marked by fragility, vulnerability, precariousness—sometimes too much precariousness. It is the most realistic portrait of the members of the great human family, an image that crosses humanity from its origin".

Similarly, Philippe Malaurie expressed that "*todos somos personas vulnerables, todos hemos sido desde siempre vulnerables y lo seremos siempre, y los remedios a la fragilidad humana son ellos mismos frágiles: a veces son benéficos, a veces hacen mal*".[10]
In this direction, the safeguarding of conditions that embrace weakness has been a concern throughout history, mainly in instances that involved a peculiar fragility. Nevertheless, numerous groups continue to suffer severe hardships today, demonstrating the difficulties involved in achieving more balanced positions. The truth is that "*no basta con proclamar la igualdad para que exista, porque la simple declaración de la igualdad formal sólo sirve en un primer momento para despojar a los más débiles de aquello que los protege*".[11] Starting from this basis, parity is not the instant product of a specific normative manifestation, but the result of vast processes that require operators to mediate all necessary means so that everyone obtains their due.
For the arguments presented, it is immensely complex to convert vulnerability into a factor whose impetus must lead to more vigorous responses for individuals suffering from it. This is because it pulverises the feasible solutions as a consequence of being a very common and general characteristic in our species.
Precisely, the Inter-American System of Human Rights Protection highlights this omnipresence of the trait, as it identifies a large number of disadvantaged subjects. On this matter, it is interesting to stress that the normative instruments of the regional mechanism conceive as particularly fragile: older adults, people with disabilities, the sick, migrants, women, children, persons deprived of liberty, refugees, and victims of discrimination, mistreatment, torture, trafficking, and human rights

[10] MALAURIE 2017, XXXIX: "we are all vulnerable people, we have all always been vulnerable and always will be, and the remedies for human fragility are themselves fragile: sometimes they are beneficial, sometimes they cause harm".
[11] SUPIOT 2012, 280-281: "proclaiming equality is not enough for it to exist, because the simple declaration of formal equality only serves in the first instance to strip the weakest of what protects them".

violations.[12] Also, certain rulings of the Inter-American Court of Human Rights have interpreted as peculiarly fragile: displaced persons, migrants, women, children, people with disabilities, illegally detained persons, older adults, indigenous peoples, and victims of forced disappearance.[13] Furthermore, these enumerations are susceptible to amplification, and instances of intersectionality involving individuals who suffer, at the same time, several autonomous causes of vulnerability must be considered. Seeing this, the enormous dimension of the undertaking consisting of providing special protection to conditions of helplessness is evident.

Following this orientation, Law 9602 establishes a protective framework that sows certain perplexities. Its good intentions may be affected by the exhaustion involved in offering specific solutions to vulnerable subjects, since the universality of this character, which is consubstantial to the human species, makes this task arduous, permanent, and perpetual.

3.3. *A dilemma and a feasible solution*

From the analysis, it can be seen that Law 9602 harbours a complex dilemma. This is because it leads to providing responses that are adequate to satisfy the needs of the most disadvantaged individuals, as imposed by the principle of equality and non-discrimination enshrined in our constitutional and supra-constitutional order. However, the fulfilment of this requirement conspires against the stability of the various State mechanisms, as it works with a concept that atomises the possible solutions to the detriment of the generality that any system requires. As indicated, the sanctioned law oscillates between the unavoidable obligation to shelter the claims for equity and justice legitimately presented by vulnerable persons and the difficulty of doing so through an idea that multiplies the viable variants, affecting the sustainability of existing platforms.

Seeking a way out of this tension, the regulatory framework incorporates a series of clauses that circumscribe the notion of vulnerability used, limiting

[12] COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS 2020.
[13] ESTUPIÑAN SILVA 2014b, 193-231.

it to individuals who experience natural conditions or contexts that hinder or obstruct the development of their personal autonomy or the enjoyment of human rights, thus leaving them defenseless and interdependent. In this way, it becomes more feasible to contain the reasonable demands for greater balance while simultaneously preserving the integrity of the safeguard regimes, since the applicable responses are significantly reduced, reaching only cases of egregious inequality.

Naturally, as a general framework, Law 9602 only introduces a broad definition of who the especially fragile individuals are. However, and logically, it does not precisely detail the causes of the suffering they endure, nor does it specify the aspects on which the condition impacts, nor does it pinpoint the concrete determinations that must be adopted. Based on this, as is predictable, it leaves it to the operators to resolve when a situation deserves differential positive treatment, giving them the guideline that it must involve a vulnerability above the average inherent to all humans.

In this direction, it seems imperative to study the Inter-American System of Human Rights Protection, as it focused its attention on certain people it considered extremely fragile, developing a valuable standard aimed at safeguarding them from the suffering they experience. In this order, the normative instruments of the regional mechanism and the rulings of its jurisdictional body compose an exceptional beacon for the investigation of the topic. It is essential for State system actors to resort to them to delineate a criterion about the degree of vulnerability that warrants strengthened protection. All of this persuades one of the importance of approaching the Inter-American mechanism, as it is a priority and vital to provide conventional content to the concept of vulnerability brought by Law 9602.

4. JURISPRUDENTIAL PERSPECTIVE: FROM THE INTER-AMERICAN COURT OF HUMAN RIGHTS TO THE SUPREME COURT OF JUSTICE OF THE PROVINCE OF TUCUMÁN

In line with what has been stated, the Inter-American System of Human Rights Protection understood that some individuals go through

circumstances that make them weak, giving impetus to a logic that leads to protecting them from the inequities they suffer. Thus, it becomes imperative to resort to certain normative instruments of the regional mechanism and specific rulings of its jurisdictional body, as the guidelines that allow establishing the conditions and circumstances that merit enhanced protection rest there.

4.1. *Normative instruments of the american mechanism*

Towards the end of the 1980s, as democracy regained its validity on the continent, the Inter-American regime began to focus on the complexities inherent in the phenomenon of inequality. In parallel, its legislative momentum shifted from norms aimed at governing the organisation and ensuring the enjoyment of human rights without arbitrary distinctions, towards precepts ordered to protect much more specific states suffered by numerous people for whom general regulations were insufficient. Venturing into this terrain, it embraced the concept of vulnerability, embodying it in varied instruments that teach who the especially fragile subjects are, the causes of the torments they experience, the points on which this characteristic overflows, and the paths that should be followed.

Specifically, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador)[14] determines that State Parties must address the health needs of the most weakened groups due to poverty (Article 10, subsection 2, paragraph f).

Similarly, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)[15] stipulates that State Parties are obliged to give special consideration to the condition of vulnerability to violence experienced by women because

[14] Adopted in San Salvador, El Salvador, on November 17, 1988, at the eighteenth regular session of the General Assembly of the Organization of American States.

[15] Adopted in Belém do Pará, Brazil, on June 9, 1994, during the twenty-fourth regular session of the General Assembly of the Organization of American States.

they are pregnant, in adverse socioeconomic circumstances, involved in armed conflicts, or deprived of liberty ; are part of a certain ethnicity or race, and are elderly, displaced, disabled, minors, migrants, or refugees (Article 9).

Imbued with a similar spirit, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas[16] highlight that the weakness they suffer makes due process of law extremely important for the effective safeguarding of their rights. Maintaining this direction, they view with concern detention centres that house overcrowded individuals, lack dignified living conditions, and are violent ; the fragility of subjects with mental disabilities imprisoned in psychiatric hospitals and penitentiary institutions, and the risks faced by older adults, stateless persons, captives in armed conflicts, undocumented persons, migrants, women, girls, and boys, and asylum or refugee seekers. Finally, they prescribe that peculiar measures must be adopted in order to resolve the health problems of prisoners who are members of fragile groups, such as older adults, people with disabilities, terminally ill patients, women, girls and boys, patients with tuberculosis, and HIV-AIDS carriers (Principle X).

Maintaining this orientation, the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance[17] argues that intolerance affects groups in fragile contexts, excluding them from private or public life areas or generating violence against them (Article 1, subsection 6). Furthermore, it establishes that State Parties must prevent, eliminate, prohibit, and punish acts and manifestations of racism, racial discrimination, and related forms of intolerance, including racially discriminatory restrictions on the enjoyment of human rights, particularly those applicable to fragile groups (Article 4, subsection viii). Finally, it

[16] Adopted by the Inter-American Commission on Human Rights during the 131st ordinary session, held between March 3 and 14, 2008.

[17] Adopted in Antigua, Guatemala, on June 5, 2013, during the forty-third regular session of the General Assembly of the Organization of American States.

mandates that signatory Nations shall submit reports to the Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination, and All Forms of Discrimination and Intolerance, and must provide disaggregated data and statistics on disadvantaged groups (Article 15, subsection v).

For its part, the Inter-American Convention against All Forms of Discrimination and Intolerance[18] details the manner in which intolerance is manifested (Article 1, subsection 5), specifies the commitments undertaken by State Parties to confront the phenomenon (Article 4, subsection viii), and outlines the reporting burden to the committee it creates (Article 15, subsection v).

Finally, the Inter-American Convention on the Protection of the Human Rights of Older Persons[19] stipulates that State Parties must develop specific approaches in their legislations, plans, and policies regarding aging and old age, in relation to the older person in a condition of weakness and victim of multiple discrimination. This includes Afro-descendants, migrants, women, and people with disabilities, of diverse gender identities and sexual orientations, in situations of poverty or social marginalisation, belonging to ethnic, linguistic, national, racial, religious, and rural groups, indigenous and traditional peoples, deprived of liberty, and homeless, among others (Article 5). Following this course, it establishes that signatory Nations are obliged to ensure older persons the effective enjoyment of the right to education (Article 20), both by facilitating their access to adequate educational programmes (subsection a)) and by designing and implementing active policies to eradicate illiteracy (subsection e)). All of this is imperative to be carried out with greater emphasis when disadvantaged groups are involved. Furthermore, it orders that State Parties must guarantee the right to

[18] Adopted in Antigua, Guatemala, on June 5, 2013, during the forty-third regular session of the General Assembly of the Organization of American States.

[19] Adopted in Washington, DC, United States, on June 15, 2015, at the forty-fifth regular session of the General Assembly of the Organization of American States.

property of older persons, eliminating administrative or financial practices that discriminate against them, and it is vital that this occur if it impacts fragile groups (Article 23). Still further, it prescribes that signatory Nations are tasked with making the right to a dignified home tangible for older persons, so it is necessary that their policies allow them to access land and housing, granting priority to those who suffer situations of vulnerability (Article 24).

Based on this, it can be appreciated that they conceive as especially weak: older adults, Afro-descendants, stateless persons, asylum seekers, displaced persons, people with disabilities, the sick, undocumented persons, migrants, women, girls and boys, people of diverse gender identities and sexual orientations, persons deprived of liberty, indigenous and traditional peoples, and refugees. Considering this, they understand that the fragility that characterises them responds to multiple causes enhanced by armed conflicts, discrimination, exclusion, overcrowding, intolerance, poverty, racism, and violence. All of this leads to recalling that they postulate that this fragility affects human rights such as due process of law, education, dignified home, property, and health. Seeing this panorama, they require the problem to be contained by addressing and considering the difficulties it generates. This includes providing adequate information, developing appropriate approaches and policies, eliminating, preventing, prohibiting, and punishing harmful practices, granting necessary protection and priority treatment, taking suitable measures, and making accessible what is not.

Taking into consideration what has been explained, it is evident that the concept of vulnerability inserted in the normative instruments of the Inter-American System of Human Rights Protection emphasises the circumstances surrounding the individual. Therefore, its application must be the result of an analysis that bears in mind both the subject and the context in which they survive, unable to abstract itself from that underlying reality. Valuing this, it is notorious that such a notion is susceptible to degrees or levels, since it encompasses cases in which causes that autonomously cause weakness converge, leading to instances of aggravated fragility that must entail robust legal responses. Reverting to what was

stated, the norms that compose the regional mechanism for safeguarding human rights teach one to examine the situation surrounding people and consider the possibility that independent causes of fragility may converge.

4.2. *Rulings of the Inter-American Court of Human Rights*

In turn, the Inter-American Court of Human Rights accompanied this expansion of the normative core of the regional mechanism, which came to protect certain circumstances that did not enjoy adequate containment due to the lack of specific instruments.

Thus, it judged the international responsibility of different State Parties to the Pact of San José, Costa Rica, analysing in detail the condition of the affected individuals and the context of the reported injuries. In this way, it noted the centrality of addressing the essential weakness shared by all individuals, but also focusing on the circumstances they are going through. This is because it is only there that this natural fragility would acquire its real dimension and transcendence for the purpose of granting specific protection.

In fact, it argued that

> el análisis del derecho a la libertad personal en el presente caso no debe realizarse sin tener en cuenta que se está mayormente ante la presencia de niños. Es decir, el contenido del derecho a la libertad personal de los niños no puede deslindarse del interés superior del niño, razón por la cual requiere de la adopción de medidas especiales para su protección, en atención a su condición de vulnerabilidad.[20]

[20] Inter-American Court of Human Rights in "Case 'Institute for the Re-education of Minors' v. Paraguay", judgment of September 2, 2004 (Preliminary Objections, Merits, Reparations and Costs), paragraph 225: the analysis of the right to personal liberty in the present case must not be carried out without taking into account that the presence is primarily of children. That is to say, the content of the right to personal liberty of children cannot be detached from the best interests of the child, which is why it requires the adoption of special measures for their protection, in attention to their condition of vulnerability.

In this direction, it explained that "*en lo que respecta a pueblos indígenas, es indispensable que los Estados otorguen una protección efectiva que tome en cuenta sus particularidades propias, sus características económicas y sociales, así como su situación de especial vulnerabilidad, su derecho consuetudinario, valores, usos y costumbres*".[21] Similarly, it indicated that

> en razón de la complejidad del fenómeno del desplazamiento interno y de la amplia gama de derechos humanos que afecta o pone en riesgo, y en atención a dichas circunstancias de especial debilidad, vulnerabilidad e indefensión en que generalmente se encuentran los desplazados como sujetos de derechos humanos, su situación puede ser entendida como una condición individual de facto de desprotección respecto del resto de personas que se encuentren en situaciones semejantes. Esta condición de vulnerabilidad tiene una dimensión social, que se presenta en el contexto histórico específico del conflicto armado interno en Colombia, y conduce al establecimiento de diferencias en el acceso de los desplazados a los recursos públicos administrados por el Estado. Dicha condición es reproducida por prejuicios culturales que dificultan la integración de los desplazados a la sociedad y pueden llevar a la impunidad de las violaciones de derechos humanos cometidas en su contra.[22]

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[21] Inter-American Court in "Yakye Axa Indigenous Community Case vs. Paraguay", ruling of June 17, 2005 (Merits, Reparations and Costs), paragraph 63: "with respect to indigenous peoples, it is essential that States grant effective protection that considers their own particularities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, uses, and customs".

[22] Inter-American Court of Human Rights in "Case of the 'Mapiripán Massacre' vs. Colombia", judgment of September 15, 2005, paragraph 177: due to the complexity of the phenomenon of internal displacement and the wide range of human rights it affects or puts at risk, and in attention to said circumstances of special weakness, vulnerability, and defencelessness in which displaced persons generally find themselves as subjects of human rights, their situation can be understood as an individual de facto condition of defencelessness with respect to other persons who are in similar situations. This condition of vulnerability has a social dimension, which is presented in the specific

Having said that, it can be inferred that the jurisdictional body of the Inter-American System of Human Rights Protection considers vulnerability both a condition inherent to persons and a situation they may experience, which is not minor, insofar as it triggers different consequences. While in the first case it entails only the attention characteristic of a kind of alarm signal, in the second instance it defines specific robust protection.

In the same vein, it is convenient to clarify that the court of the regional mechanism aims for States to protect individuals who suffer a higher weakness than that of any person by their nature as such. It specifies that this happens when different causes of fragility interact, placing the subject in an increasingly greater state of vulnerability.

In relation to the matter, it affirmed

> que por la naturaleza misma de la desaparición forzada, la víctima se encuentra en una situación agravada de vulnerabilidad, de la cual surge el riesgo de que se violen diversos derechos, entre ellos, el derecho a la vida, consagrado en el artículo 4 de la Convención. Esta situación se ve acentuada cuando se está frente a un patrón sistemático de violaciones de derechos humanos. Del mismo modo, la Corte ha establecido que la falta de investigación de lo ocurrido, representa una infracción de un deber jurídico establecido en el artículo 1.1 de la Convención en relación con el artículo 4.1 de la misma, como es el de garantizar a toda persona sujeta a su jurisdicción la inviolabilidad de la vida y el derecho a no ser privado de ella arbitrariamente, lo cual comprende la prevención razonable

historical context of the internal armed conflict in Colombia, and leads to the establishment of differences in the access of displaced persons to public resources administered by the State. Said condition is reproduced by cultural prejudices that hinder the integration of displaced persons into society and can lead to the impunity of human rights violations committed against them.

> de situaciones que puedan redundar en la supresión de ese derecho.[23]

It even expressed that

> en el caso de Talía confluyeron en forma interseccional múltiples factores de vulnerabilidad y riesgo de discriminación (3) asociados a su condición de niña, mujer, persona en situación de pobreza y persona con VIH. La discriminación que vivió Talía no sólo fue ocasionada por múltiples factores, sino que derivó en una forma específica de discriminación que resultó de la intersección de dichos factores, es decir, si alguno de dichos factores no hubiese existido, la discriminación habría tenido una naturaleza diferente. En efecto, la pobreza impactó en el acceso inicial a una atención en salud que no fue de calidad y que, por el contrario, generó el contagio con VIH. La situación de pobreza impactó también en las dificultades para encontrar un mejor acceso al sistema educativo y tener una vivienda digna. Posteriormente, siendo una niña con VIH, los obstáculos que sufrió Talía en el acceso a la educación tuvieron un impacto negativo para su desarrollo integral, que es también un impacto diferenciado teniendo en cuenta el rol de la educación para superar los estereotipos de género. Como niña con VIH necesitaba mayor apoyo del Estado para impulsar su proyecto vida. Como

[23] Inter-American Court of Human Rights in "Case Ticona Estrada and others v. Bolivia", judgment of November 27, 2008 (Merits, Reparations and Costs), paragraph 60: that due to the very nature of forced disappearance, the victim is in an aggravated situation of vulnerability , from which the risk of violating various rights arises, including the right to life, enshrined in Article 4 of the Convention. This situation is accentuated when facing a systematic pattern of human rights violations. In the same way, the Court has established that the lack of investigation of what occurred represents an infringement of a legal duty established in Article 1.1 of the Convention in relation to Article 4.1 thereof, such as guaranteeing every person subject to its jurisdiction the inviolability of life and the right not to be arbitrarily deprived of it, which includes the reasonable prevention of situations that may result in the suppression of that right.

> mujer, Talía ha señalado los dilemas que siente en torno a la maternidad futura y su interacción en relaciones de pareja, y ha hecho visible que no ha contado con consejería adecuada. En suma, el caso de Talía ilustra que la estigmatización relacionada con el VIH no impacta en forma homogénea a todas las personas y que resultan más graves los impactos en los grupos que de por sí son marginados.[24]

In a similar vein, it is worth highlighting that the Inter-American Court of Human Rights seeks enhanced safeguarding not only when the individual's weakness entails an injury to their essential rights, but also in the hypothesis that it signifies a danger to their full validity.

Specifically, it asserted that

> el derecho al reconocimiento de la personalidad jurídica representa un parámetro para determinar si una persona es titular o no de los

[24] Inter-American Court of Human Rights in "Case Gonzales Lluy et al. v. Ecuador", judgment of September 1, 2015 (Preliminary Objections, Merits, Reparations and Costs), paragraph 290: in the case of Tala, multiple factors of vulnerability and risk of discrimination intersected, associated with her condition as a girl, a woman, a person in a situation of poverty, and a person with HIV. The discrimination Tala experienced was not only caused by multiple factors but also derived in a specific form of discrimination that resulted from the intersection of said factors. That is, if any of those factors had not existed, the discrimination would have had a different nature. Indeed, poverty impacted the initial access to health care that was not of quality and which, on the contrary, generated HIV contagion. The situation of poverty also impacted the difficulties in finding better access to the educational system and having a dignified home. Subsequently, being a girl with HIV, the obstacles Tala suffered in accessing education had a negative impact on her comprehensive development, which is also a differentiated impact taking into account the role of education in overcoming gender stereotypes. As a girl with HIV, she needed greater State support to promote her life project. As a woman, Tala has pointed out the dilemmas she feels regarding future motherhood and her interaction in partner relationships, and has made visible that she has not had adequate counselling. In short, the case of Tala illustrates that the stigmatisation related to HIV does not impact all people uniformly and that the impacts are more severe in groups that are already marginalised.

> derechos de que se trate, y si los puede ejercer. La violación de aquel reconocimiento supone desconocer en términos absolutos la posibilidad de ser titular de esos derechos y contraer obligaciones, y hace al individuo vulnerable frente a la no observancia de los mismos por parte del Estado o de particulares.[25]

It even exposed that

> un Estado tiene la obligación de adoptar todas las medidas necesarias y razonables para garantizar el derecho a la vida, libertad personal e integridad personal de aquellos defensores y defensoras que denuncien violaciones de derechos humanos y que se encuentren en una situación de especial vulnerabilidad como lo es el conflicto armado interno colombiano, siempre y cuando el Estado tenga conocimiento de un riesgo real e inmediato en contra de éstos y toda vez que existan posibilidades razonables de prevenir o evitar ese riesgo.[26]

Furthermore, the jurisdictional body of the Inter-American System of Human Rights associated vulnerability with weakness, lack of knowledge

[25] Inter-American Court in "Sawhoyamaxa Indigenous Community Case vs. Paraguay", ruling of March 29, 2006 (Merits, Reparations and Costs), paragraph 188: the right to recognition of legal personality represents a parameter for determining whether a person is the holder or not of the rights in question, and whether they can exercise them. The violation of that recognition implies absolutely disregarding the possibility of holding those rights and contracting obligations, and makes the individual vulnerable to the non-observance of the same by the State or by private individuals.

[26] Inter-American Court of Human Rights in "Case of Valle Jaramillo and others v. Colombia", judgment of November 27, 2008 (Merits, Reparations and Costs), paragraph 90: a State has the obligation to adopt all necessary and reasonable measures to guarantee the right to life, personal liberty, and personal integrity of those defenders who report human rights violations and who are in a situation of special vulnerability, such as the Colombian internal armed conflict , provided that the State has knowledge of a real and immediate risk against them and whenever reasonable possibilities exist to prevent or avoid that risk.

(*desconocimiento*), and defencelessness, at the same time relating it to discrimination that implies exclusion and marginalisation.

Precisely, it indicated that

> quien sea detenido "tiene derecho a vivir en condiciones de detención compatibles con su dignidad personal y el Estado debe garantizarle el derecho a la vida y a la integridad personal". La Corte ha establecido que el Estado, como responsable de los establecimientos de detención, es el garante de estos derechos de los detenidos, lo cual implica, entre otras cosas, que le corresponde explicar lo que suceda a las personas que se encuentran bajo su custodia. Las autoridades estatales ejercen un control total sobre la persona que se encuentra sujeta a su custodia. La forma en que se trata a un detenido debe estar sujeta al escrutinio más estricto, tomando en cuenta la especial vulnerabilidad de aquél, función estatal de garantía que reviste de particular importancia cuando el detenido es un menor de edad. Esta circunstancia obliga al Estado a ejercer su función de garante adaptando todos los cuidados que reclama la debilidad, el desconocimiento y la indefensión que presentan naturalmente, en tales circunstancias, los menores de edad.[27]

[27] Inter-American Court of Human Rights in "Bulacio v. Argentina Case", judgment of September 18, 2003 (Merits, Reparations and Costs), paragraph 126: whoever is detained has the right to live in detention conditions compatible with their personal dignity, and the State must guarantee their right to life and personal integrity. The Court has established that the State, as the party responsible for detention facilities, is the guarantor of these rights for detainees, which implies, among other things, that it is responsible for explaining what happens to people under its custody. The way a detainee is treated must be subject to the strictest scrutiny, taking into account their special vulnerability, a State guarantee function that is of particular importance when the detainee is a minor. This circumstance obliges the State to exercise its guarantor function by adapting all the care demanded by the weakness, lack of knowledge, and defencelessness that minors naturally present in such circumstances.

Maintaining this orientation, it stated that

> en razón de la complejidad del fenómeno del desplazamiento interno y de la amplia gama de derechos humanos que afecta o pone en riesgo, y en atención a las circunstancias de especial vulnerabilidad e indefensión en que generalmente se encuentran los desplazados, su situación puede ser entendida como una condición de facto de desprotección. En los términos de la Convención Americana, dicha situación obliga a los Estados a otorgar un trato preferente a su favor y a adoptar medidas de carácter positivo para revertir los efectos de su referida condición de debilidad, vulnerabilidad e indefensión, incluso vis-à-vis actuaciones y prácticas de terceros particulares.[28]

Marching in a similar direction, it highlighted that "*existía una afectación desproporcional en contra de una parte de la población que compartía características relativas a su condición de exclusión, pobreza y falta de estudios. Se constató que las víctimas de la inspección del año 2000 compartían estas características, las cuales los colocaban en una particular situación de vulnerabilidad*".[29]

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[28] Inter-American Court of Human Rights in "Case of the Ituango Massacres v. Colombia", judgment of July 1, 2006, paragraph 210: due to the complexity of the phenomenon of internal displacement and the wide range of human rights it affects or puts at risk, and in attention to the circumstances of special vulnerability and defencelessness in which displaced persons generally find themselves, their situation can be understood as a de facto condition of defencelessness. In the terms of the American Convention, said situation obliges States to grant preferential treatment in their favour and to adopt positive measures to reverse the effects of their aforementioned condition of weakness, vulnerability, and defencelessness, even vis-à-vis actions and practices of third parties.

[29] Inter-American Court of Human Rights in "Case of Workers of the Brasil Verde Farm vs. Brazil", judgment of October 20, 2016 (Preliminary Objections, Merits, Reparations and Costs), paragraph 417: "there was a disproportionate impact against a segment of the population that shared characteristics related to their condition of exclusion, poverty, and lack of education. It was established that the victims of the inspection in 2000 shared these characteristics, which placed them in a particular situation of vulnerability".

It also stressed that

> con el fin de que la información pueda ser cabalmente entendida, el personal de salud deberá tener en cuenta las particularidades y necesidades del paciente, como por ejemplo su cultura, religión, estilos de vida, así como su nivel de educación. Ello hace parte del deber de brindar una atención en salud culturalmente aceptable (1°). (…). Al respecto, la orientación de la información no sólo va dirigida a lo que el médico podría considerar como razonable y necesario compartir (objetivo), sino que también debería enfocarse en lo que es importante para su paciente (subjetivo). Es decir que la información brindada deberá tener un elemento objetivo y subjetivo. Tomar en cuenta las particularidades de la persona es especialmente importante cuando los pacientes pertenecen a grupos en situación de vulnerabilidad o con necesidades específicas de protección debido a fuentes de exclusión, marginalización o discriminación, relevantes para el entendimiento de la información. A su vez, la Corte considera que, para que la información sea cabalmente comprendida y se tome una decisión con conocimiento de causa, se debe garantizar un plazo razonable de reflexión, el cual podrá variar de acuerdo a las condiciones de cada caso y a las circunstancias de cada persona. Ello constituye una garantía especialmente eficaz para evitar esterilizaciones no consentidas o involuntarias.[30]

[30] Inter-American Court of Human Rights in "Case I.V. vs. Bolivia", judgment of November 30, 2016 (Preliminary Objections, Merits, Reparations and Costs), paragraph 192: in order for the information to be fully understood, health personnel must take into account the particularities and needs of the patient, such as their culture, religion, lifestyles, as well as their level of education. This is part of the duty to provide culturally acceptable health care. In this regard, the orientation of the information is not only directed at what the doctor might consider reasonable and necessary to share (objective), but should also focus on what is important to their patient (subjective). That is to say, the information provided must have both an objective and a subjective element. Taking the particularities

Furthermore, the court of the regional mechanism taught that vulnerability usually entails a significant difficulty or a severe obstacle to accessing public goods administered by the State, among which education, justice, and health could be mentioned.

Precisely, it stressed that

> de las obligaciones generales de respetar y garantizar los derechos, derivan deberes especiales, determinables en función de las particulares necesidades de protección del sujeto de derecho, ya sea por su condición personal o por la situación específica en que se encuentre. A este respecto, los migrantes indocumentados o en situación irregular han sido identificados como un grupo en situación de vulnerabilidad, pues "son los más expuestos a las violaciones potenciales o reales de sus derechos" y sufren, a consecuencia de su situación, un nivel elevado de desprotección de sus derechos y "diferencias en el acceso […] a los recursos públicos administrados por el Estado [con relación a los nacionales o residentes]". Evidentemente, esta condición de vulnerabilidad conlleva "una dimensión ideológica y se presenta en un contexto histórico que es distinto para cada Estado, y es mantenida por situaciones de jure (desigualdades entre nacionales y extranjeros en las leyes) y de facto (desigualdades estructurales)". Del mismo modo, los prejuicios culturales acerca de los migrantes permiten la reproducción de las condiciones de vulnerabilidad, dificultando la integración de los migrantes a la sociedad. Finalmente, es de notar

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of the person into account is especially important when patients belong to groups in a situation of vulnerability or with specific protection needs due to sources of exclusion, marginalisation, or discrimination, relevant for the understanding of the information. In turn, the Court considers that, for the information to be fully understood and a decision made with knowledge of the cause, a reasonable reflection period must be guaranteed. This period may vary according to the conditions of each case and the circumstances of each person. This constitutes an especially effective guarantee to avoid non-consensual or involuntary sterilisation.

> que las violaciones de derechos humanos cometidas en contra de los migrantes quedan muchas veces en impunidad debido, inter alia, a la existencia de factores culturales que justifican estos hechos, a la falta de acceso a las estructuras de poder en una sociedad determinada, y a impedimentos normativos y fácticos que tornan ilusorios un efectivo acceso a la justicia.[31]

Based on this, it is clear that the Inter-American Court of Human Rights considers vulnerability both a condition inherent to individuals and a circumstance they must go through, which demands everything from special attention to strengthened protective measures. Also, it seems notorious that it begins by using the weakness common to people to stop at the point where that fragility becomes more severe due to the intersectional confluence of causes that autonomously lead to a pernicious position. Taking this into account, it can be observed that it directs its concern to the negative impact it produces on the enjoyment of fundamental rights, so

[31] Inter-American Court of Human Rights in "Vélez Loor v. Panama Case", judgment of November 23, 2010 (Preliminary Objections, Merits, Reparations and Costs), paragraph 98: from the general obligations to respect and guarantee rights, special duties are derived, determinable based on the particular protection needs of the subject of law, either due to their personal condition or the specific situation in which they find themselves. In this regard, undocumented or irregular migrants have been identified as a group in a situation of vulnerability , as they are the most exposed to potential or actual violations of their rights and suffer, as a consequence of their situation, a high level of defencelessness of their rights and differences in access [...] to public resources administered by the State [in relation to nationals or residents]. Evidently, this condition of vulnerability entails an ideological dimension and is presented in a historical context that is different for each State, and is maintained by de jure situations (inequalities between nationals and foreigners in laws) and de facto situations (structural inequalities). In the same way, cultural prejudices about migrants allow the reproduction of conditions of vulnerability, hindering the integration of migrants into society. Finally, it is noteworthy that human rights violations committed against migrants often remain in impunity due, inter alia, to the existence of cultural factors that justify these acts, the lack of access to power structures in a given society, and normative and factual impediments that make effective access to justice illusory.

action must be taken against effective injuries and against the danger of this happening. Still further, it is patent that it draws a connection with contexts that imply weakness, lack of knowledge, and defencelessness, in the same way as with situations where discrimination that entails exclusion and marginalisation stands out. Following this path, it also emerges that it refers to instances where access to public resources administered by the State is disparate, and there is no suitable protection that remedies such an inequity. Seeing what has been pointed out so far, one can only conclude that the idea of vulnerability reasoned by the Inter-American jurisdictional body appreciates both the subject and the space that surrounds them , turns on its mechanisms when it reaches a level higher than the average , and aims to offer containment to discriminatory situations devoid of sufficient protection.

4.3. *The Inter-American System of Human Rights Protection to the rescue*As things stand, Law 9602 addresses a highly complex problem , which leaves it oscillating between the constitutional and conventional duty to equitably shelter the needs of individuals suffering from conditions of weakness and the enormous difficulty of doing so based on a factor that multiplies the possible responses to the detriment of the solvency of the normative systems that must provide the refuge.

Seeking to harmonise such tension, the sanctioned legislation circumscribes its solutions to cases involving subjects who are going through natural conditions or contexts that hinder or obstruct the development of their personal autonomy or the enjoyment of human rights, and who, consequently, suffer from defencelessness and interdependence. This seems reasonable, as it reduces the instances in which strengthened protection proceeds, making it much more feasible for State resources to be sustainable over time.

In any case, as is logical, it does not precisely detail the causes of the suffering they endure, nor does it specify the aspects on which the condition or situation impacts, nor does it pinpoint the concrete determinations that must be adopted. For this reason, it is up to the operators to establish when

a situation deserves differential positive treatment, possessing only some guides made available to them by the Tucumán parliamentarians.

In this way, the Inter-American System of Human Rights Protection comes to the rescue of said operators, insofar as the normative instruments that serve as its basis and the rulings of its jurisdictional body compose a framework from which valuable guidelines emanate to provide containment to the most disadvantaged.

In fact, a catalogue emerges that illustrates the proliferation of inequality in Latin America, indicating the individuals who are going through contexts of weakness, the reasons that enhance their fragility, the sides on which this impacts, and the suitable provisions to safeguard them.

Specifically, a powerful synthesis of the phenomenon of fragility emerges , which stands out for pointing out that vulnerability requires enhanced protection only if it exceeds the typical vulnerability that is inherent to any person ; the suitability of this peculiar protection must be resolved by considering the situation in which the subject is found ; and the essential point consists of verifying the occurrence of an inequitable access to public resources administered by the State that has not been remedied by useful means to that effect.

Focussing on this, it is evident that the regional mechanism constitutes a source of precepts for the handling of the topic, being notorious that they are fully applicable to local cases.

Gravitating around the matter, it is worth highlighting that Law 9602 shares the view that the focus must be on the circumstances that seriously impede the exercise of human rights, as they generate an intolerable defencelessness. It even refers directly to jurisprudence of the Inter-American Court of Human Rights according to

> toda persona que se encuentre en una situación de vulnerabilidad es titular de una protección especial, en razón de los deberes especiales cuyo cumplimiento por parte del Estado es necesario para satisfacer las obligaciones generales de respeto y garantía de los derechos humanos. La Corte reitera que no basta que los Estados se abstengan de violar los derechos, sino que es imperativa la adopción

> de medidas positivas, determinables en función de las particulares necesidades de protección del sujeto de derecho, ya sea por su condición personal o por la situación específica en que se encuentre.[32]

Precisely because of this, it cannot escape anyone that, looking to the Inter-American System of Human Rights Protection, it promotes a series of postulates that tend to strengthen the protection of individuals who tolerate more acute afflictions than normal. Therefore, the teachings of the regional mechanism must integrate the analysis of the different operators.

This leads them to define the corresponding measures after contrasting the framework in which the individual operates and examining whether, even though it implies an obstacle to accessing public goods administered by the State, they do not enjoy assistance that helps break such a barrier.

Maintaining this line, Law 9602 assumes the challenge of assisting individuals affected by conditions or situations that make them weak, for which it is essential to proceed with prudence, so that the protection reaches those who truly require it without deteriorating the protective mechanisms. For this, it is necessary to rely on the light of the Inter-American System of Human Rights Protection, as it guides where efforts should be directed so that they are not fruitless. It emphasises the attention that cases involving extraordinary fragility deserve, the crucial nature of looking at the environment that constrains people, and the decisive importance of investigating whether an inequitable access to public resources administered by the State occurs that does not receive any amendment.

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[32] Inter-American Court of Human Rights in "Case Ximenes Lopes v. Brazil", judgment of July 4, 2006, paragraph 103: which every person in a situation of vulnerability is entitled to special protection, by virtue of the special duties whose fulfilment by the State is necessary to satisfy the general obligations of respect and guarantee of human rights. The Court reiterates that it is not enough for States to refrain from violating rights, but that the adoption of positive measures is imperative, determinable based on the particular protection needs of the subject of law, either due to their personal condition or the specific situation in which they find themselves.

For this reason, being parameters extrapolable to the local reality, it seems imperative that they be fully incorporated into the reasoning of the various operators and that their observance fosters a constructive dialogue for those who are going to apply them.

4.4. *Integration of inter-american standards by the Supreme Court of Justice of the Province of Tucumán*

Given the imperative need to circumscribe the concept of vulnerability brought by Law 9602, it is worth highlighting that the applicability of the standards of the Inter-American System of Human Rights Protection to the local reality finds its practical confirmation in the jurisprudence of the Supreme Court of Justice of the Province of Tucumán.

Basically, the highest court in Tucumán has been consolidating a decisional line that actively employs the criteria developed by the Inter-American Court of Human Rights in its doctrine alluding to individuals who suffer contexts that make them more fragile.

Coinciding with the jurisdictional body of the regional mechanism for safeguarding human rights, the Supreme Court of Justice of the Province of Tucumán argued that "*los individuos que atraviesan situaciones de vulnerabilidad merecen una tutela específica, la cual debe ser más robusta cuando concurren causales que aumentan el grado de fragilidad*".[33]

From this perspective, the highest court in Tucumán adopted guidelines that the Inter-American Court of Human Rights dedicates to addressing cases involving girls, boys, and adolescents, establishing the obligation to use the best interests of the child as a guiding principle. In this direction, it connects said principle with the vulnerability inherent to childhood, by affirming that

[33] CSJTuc *in re* "F.H., J.M.A. s/ Seriously outrageous sexual abuse", ruling 1490 of December 2, 2022: "individuals going through situations of vulnerability deserve specific protection, which must be more robust when concurrent causes increase the degree of fragility".

> resulta obligatoria la inserción del "interés superior del niño" como criterio de interpretación de la normativa aplicable, los hechos y las pruebas del caso, puesto que, en definitiva, no solo es un producto de un sistema jurídico que, tras advertir las peculiares condiciones que determinan la situación de vulnerabilidad del niño (edad, nivel de madurez y necesidades específicas), conmina a brindar respuestas concretas incluso en decisiones jurisdiccionales como la presente, sino que además nos sitúa en una comprensión global de ese estado de fragilidad que padecen los niños que es fundamental para resolver adecuadamente la controversia.[34]

In a similar manner, the Supreme Court of Justice of the Province of Tucumán analysed the impact of the structural vulnerability of older adults on the right of access to justice. Along this line, it asserted that

> aun cuando sea susceptible de revisión lo definido por este proceso, iniciar un nuevo litigio no es una cuestión menor. No lo es para ninguna persona, pero mucho menos para una persona que pertenece al grupo etario de adulta mayor tener que hacerlo para lograr revertir la decisión de aportar un gran porcentaje de sus ingresos mensuales para la manutención de su nieta. La variable de los costos de acceder a la justicia no debe subestimarse cuando se refiere a los derechos de las personas adultas mayores que tienen

[34] CSJTuc *in re* "R., M.A. s/ Sexual abuse with carnal access", sentence 1496 of December 5, 2022: the insertion of the best interests of the child as a criterion for the interpretation of the applicable regulations, the facts, and the evidence of the case is obligatory. This is because, ultimately, it is not only a product of a legal system that, after noting the peculiar conditions that determine the child's situation of vulnerability (age, level of maturity, and specific needs), mandates providing concrete responses even in jurisdictional decisions such as the present one , but also places us in a global understanding of that state of fragility that children suffer, which is fundamental for adequately resolving the dispute.

> una condición que los identifica como vulnerables estructuralmente en el acceso a este derecho.[35]

In this order, the highest court in Tucumán examined the role of the Judicial Power in ensuring enhanced protection for women victims of gender violence, as a result of their state of vulnerability. It then explained that

> normativamente se introdujo una perspectiva que pretende prevenir y erradicar la violencia contra las mujeres, lo cual depende tanto de la elaboración de programas y políticas públicas que persigan esos fines, como del rol que responsablemente asuman los organismos del Estado, entre ellos el Poder Judicial. Justamente, de los sistemas normativos detallados se colige que las mujeres víctimas de violencia poseen un "especial" estándar de protección en el proceso judicial. Sin lugar a dudas, ello es producto de una "sensibilidad" que, tras advertir las peculiares condiciones que configuran su estado de vulnerabilidad, determina la necesidad de una protección "enriquecida".[36]

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[35] CSJTuc *in re* "Q.C., T.M. vs. C., L.E. and another s/ Alimony", judgment 1506 of December 6, 2022: even if what is defined by this process is susceptible to revision, initiating a new lawsuit is not a minor matter. It is not for any person, but much less for a person belonging to the older adult age group to have to do so to reverse the decision to contribute a large percentage of their monthly income for the maintenance of their granddaughter. The variable of the costs of accessing justice must not be underestimated when referring to the rights of older adults who have a condition that identifies them as structurally vulnerable in accessing this right.

[36] CSJTuc *in re* "S., J.C. s/ Sexual abuse with carnal access, aggravated sexual abuse, seriously outrageous sexual abuse, in real concurrence with corruption of minors", sentence 211 of March 17, 2023: a perspective was normatively introduced that aims to prevent and eradicate violence against women, which depends both on the development of programmes and public policies that pursue those ends, and on the role responsibly assumed by State agencies, including the Judicial Power. Precisely, it is inferred from the detailed normative systems that women victims of violence possess a special standard of protection in the judicial process. Undoubtedly, this is the product of a sensibility that, after

In the same orientation, the Supreme Court of Justice of the Province of Tucumán emphasised the reinforced duty of diligence of the State in order to guarantee that persons with disabilities access rights and have adequate protection. Specifically, it expressed that

> la vulnerabilidad de una persona que padece una discapacidad impone al Estado un deber de diligencia reforzado para el acceso a sus derechos. Por ello, no luce exagerado que la existencia de una condición de discapacidad conlleve, en un primer momento, que la actividad estatal se inicie en base a presunciones; por ejemplo, el deber de investigar si la denuncia que realiza el representante de una persona con discapacidad es posible. Por ello, so pretexto de cumplir con el deber estatal de proteger los derechos de M., parece razonable que la noticia críminis dada por la señora S. M. L., en tanto madre de una joven que se denuncia como con discapacidad, sea suficiente para activar la intervención estatal.[37]

At one point, the highest court in Tucumán considered the confluence of exclusion factors to incorporate an intersectional view of vulnerability. Specifically, it exposed that

> el juzgador para afirmar la materialidad del hecho y la autoría por parte del imputado, debe ponderar primordialmente la credibilidad de la declaración de la víctima en Cámara Gesell y, su informe

noting the peculiar conditions that configure their state of vulnerability, determines the need for enhanced protection.

[37] CSJTuc *in re* "S., H.J.R. s/ Sexual abuse with carnal access, injuries", sentence 305 of March 31, 2023: the vulnerability of a person suffering from a disability imposes a reinforced duty of diligence on the State for access to their rights. Therefore, it does not seem exaggerated that the existence of a condition of disability entails, in the first instance, that State activity begins based on presumptions; for example, the duty to investigate whether the complaint made by the representative of a person with disability is possible. Therefore, under the pretext of complying with the State duty to protect the rights of M., it seems reasonable that the notitia criminis given by Ms. S. M. L., as the mother of a young woman who is reported as having a disability, is sufficient to activate State intervention.

> técnico, (lo que luego podrá ser corroborado con otras pruebas). Tales estándares implican no poder exigirle a una menor, mujer y discapacitada (triple vulnerabilidad en el caso de autos) que precise circunstancias traumáticas como las vividas y que sin duda desconocía y aún desconoce, en sus alcances. Por ello, tampoco podemos exigirle a la acusación y, menos al magistrado sentenciante que determine lo que la víctima no pudo hacer.[38]

Similarly, the Supreme Court of Justice of the Province of Tucumán included isolation as part of its study, recognising it as an element that aggravates vulnerability and demands an appropriate State response. Precisely, it indicated that the

> acontecimiento abusivo da cuenta del tenor de los hechos ocurridos más tarde, los que tuvieron lugar en el marco de una situación de absoluta vulnerabilidad que impiden considerar que la víctima haya prestado un consentimiento válido. Sobre el particular, merece ponerse de relieve que la legitimidad del consentimiento debe medirse analizando el contexto en el que pudiera tener lugar, por lo que la pasividad que tal vez demostró la niña no puede considerar una voluntad válida en las concretas circunstancias de la causa, en la medida que padecía una enorme vulnerabilidad producto, entre

[38] CSJTuc *in re* "M., C.D. s/ Aggravated sexual abuse", sentence 1040 of August 31, 2023: the judge, in order to affirm the materiality of the fact and the authorship by the accused, must primarily weigh the credibility of the victim's statement in the Cámara Gesell (special interview room) and her technical report (which can then be corroborated with other evidence). Such standards imply not being able to demand that a minor, woman, and person with disability (triple vulnerability in the case sub judice) specify traumatic circumstances such as those experienced, which she undoubtedly did not know and still does not know, in their scope. Therefore, neither can we demand of the prosecution, and even less the sentencing magistrate, to determine what the victim could not do.

> otros factores, de la ruptura de los lazos familiares que la aislaron en el domicilio del imputado.[39]

Furthermore, the highest court in Tucumán conceived the state of necessity as a cause of vulnerability and a basis for reinforcing judicial protection. Precisely, it stated that

> la decisión de distribuir las costas por el orden causado luce equitativa y ajustada a derecho, encontrando esa solución sustento, como bien lo destaca el fallo en crisis, en las reglas particulares aplicables a este tipo de procesos, en su naturaleza tuitiva, en la efectiva y reforzada tutela judicial que debe dispensarse a quienes se encuentren en situación de vulnerabilidad y en las específicas circunstancias de la causa, concretamente el estado de necesidad denunciado por la propia accionante y la consecuente modificación de las condiciones tenidas en vista para requerir las medidas de protección.[40]

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[39] CSJTuc *in re* "R., S.J. s/ Sexual abuse with carnal access, illegitimate deprivation of liberty", sentence 300 of March 26, 2024: abusive event accounts for the nature of the facts that occurred later, which took place within a situation of absolute vulnerability that prevents considering that the victim provided valid consent. On the matter, it deserves to be highlighted that the legitimacy of consent must be measured by analysing the context in which it could take place , so the passivity that the girl may have shown cannot be considered a valid will in the concrete circumstances of the case , insofar as she suffered enormous vulnerability resulting, among other factors, from the rupture of family ties that isolated her in the defendant's home.

[40] CSJTuc *in re* "G., S.E. vs. L., O.A. s/ Protection of person", judgment 1158 of September 4, 2024: the decision to distribute costs in the order incurred (por el orden causado) seems equitable and adjusted to law, finding support for that solution, as the contested ruling rightly highlights, in the particular rules applicable to this type of process, in its protective nature, in the effective and reinforced judicial protection that must be dispensed to those in a situation of vulnerability, and in the specific circumstances of the case, specifically the state of necessity reported by the plaintiff herself and the consequent modification of the conditions taken into account for requesting the protection measures.

Still further, the Supreme Court of Justice of the Province of Tucumán attended to the extreme vulnerability of the victim in order to flexibilise the peremptory nature of procedural deadlines with the purpose of ensuring effective judicial protection. Specifically, it stressed what it had stated in the same

> legajo cuando expresó que "es válido convencionalmente el artículo 120 del NCPPT al establecer un plazo perentorio de duración máximo del proceso" pero que "se debe declarar inaplicable en el presente caso debido a que, por sus particularidades, la garantía de ser juzgado en un plazo razonable no luce desoída conforme los criterios dados por el derecho internacional de los derechos humanos para determinarlo", y aclarando que dichas particularidades están vinculadas fundamentalmente a la extrema vulnerabilidad de la víctima de autos (niña, mujer, desalojada de su hogar junto a su familia).[41]

Starting from this basis, the adoption of the standards of the Inter-American System of Human Rights by the highest court in Tucumán demonstrates not only its applicability to the local reality, but also the importance of sufficiently circumscribing the concept of vulnerability. Following this course, far from employing vulnerability as an unlimited and vague notion, the Supreme Court of Justice of the Province of Tucumán uses it as a necessary interpretive tool to analyse, identify, and remedy the affectation of rights in concrete events, as demanded by the structural examination promoted by the Inter-American Court of Human Rights.

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[41] CSJTuc *in re* "M., R.N. s/ Aggravated sexual abuse", sentence 187 of March 14, 2025: file when it expressed that Article 120 of the NCPPT is conventionally valid in establishing a maximum peremptory duration period for the process, but that it must be declared inapplicable in the present case. This is because, due to its particularities, the guarantee of being judged within a reasonable period does not seem unheeded according to the criteria given by international human rights law to determine it. It clarified that said particularities are fundamentally linked to the extreme vulnerability of the victim in the case (sub judice) (girl, woman, evicted from her home along with her family).

Undoubtedly, by integrating Inter-American jurisprudence, the highest court in Tucumán prioritises a hermeneutical line that provides greater content to its protective mechanisms, in accordance with the *pro persona* principle. Based on this platform, it can be inferred that it is essential for all State operators to observe Law 9602 in light of the criteria emerging from the regional mechanism for safeguarding human rights. These criteria understand vulnerability as a condition or situation linked to structural, historical, and systemic barriers that impede the effective enjoyment of rights.

Taking into account what has been pointed out so far, resorting to the Inter-American System of Human Rights in order to provide operational and delimited content to the concept of vulnerability brought by Law 9602 is not only legitimate and necessary, but already constitutes a way of reasoning validated by the highest court in Tucumán. This leads to the local mechanism for adapting to the law of vulnerabilities being applied with the maximum guarantee of effectiveness.

5. CONCLUSIONS

Analysing the concept of vulnerability enshrined by Law 9602, it is possible to deduce the following conclusions:

5.1.- The Honourable Legislature of the Province of Tucumán conceived a mechanism aimed at providing specific protection to individuals who are experiencing natural conditions or circumstances that hinder the development of their personal autonomy or the enjoyment of essential rights, and who, consequently, suffer from defencelessness and interdependence.

5.2.- It emerges from the parliamentary precedents that the sanctioned law rests on a more restricted notion of vulnerability, which stands out for considering it a peculiar situation that entails dependence on the support of a third party, defencelessness, and the impossibility of enjoying human rights.

5.3.- The current text seems highly promising, as it addresses the complications of subjects suffering from aggravated vulnerability, starting from a generous interpretation of the principle of equality and non-discrimination. However, it raises some concerns about the nature of the circumstances it aspires to cover, as an excessive claim could conspire against the effectiveness of State systems in granting adequate responses.

5.4.- Law 9602 possesses absolutely positive facets, as it assimilates an equality paradigm suitable for addressing the instances of structural discrimination that abound in the region, which makes it a legal instrument capable of materialising the parity that crowns the constitutional and supra-constitutional order.

5.5.- The sanctioned law establishes a protective framework that sows certain perplexities, since its good intentions may be affected by the exhaustion involved in offering specific solutions to vulnerable subjects. This is because the universality of this character, which is consubstantial to the human species, makes this task arduous, permanent, and perpetual.

5.6.- The current text oscillates between the unavoidable obligation to shelter the legitimate claims for equality and justice presented by vulnerable subjects and the complexity of doing so through a concept that multiplies the possible responses, potentially damaging the sustainability of State resources. Therefore, the best solution is to concentrate on specific cases, relying on the collaboration of the Inter-American System of Human Rights Protection, as it clearly indicates the degree of fragility that warrants robust protection.

5.7.- The normative instruments of the regional mechanism conceive as especially weak: older adults, Afro-descendants, stateless persons, asylum seekers, displaced persons, people with disabilities, the sick, undocumented persons, migrants, women, girls and boys, people of diverse gender identities and sexual orientations, persons deprived of liberty, indigenous and traditional peoples, and refugees. Furthermore, they understand that the fragility that characterises them responds to multiple causes enhanced by armed conflicts, discrimination, exclusion, overcrowding, intolerance, poverty, racism, and violence. On the other hand, they postulate that this

fragility affects human rights such as due process of law, education, dignified home, property, and health. Finally, they require the problem to be contained by addressing and considering the difficulties it generates. This includes providing adequate information, developing appropriate approaches and policies, eliminating, preventing, prohibiting, and punishing harmful practices, granting necessary protection and priority treatment, taking suitable measures, and making accessible what is not.

5.8.- The concept of vulnerability inserted in said instruments emphasises the circumstances surrounding the individual, so its application must be the result of an analysis that bears in mind both the subject and the context in which they survive, unable to abstract itself from that underlying reality. Furthermore, such a notion is susceptible to degrees or levels, since it encompasses cases in which causes that autonomously cause weakness converge, leading to instances of aggravated fragility that must entail robust legal responses.

5.9.- The Inter-American Court of Human Rights considers vulnerability both a condition inherent to individuals and a circumstance they must go through, which demands everything from special attention to strengthened protective measures. Maintaining this line, it begins by using the weakness common to people to stop at the point where that fragility becomes more severe due to the intersectional confluence of causes that autonomously lead to a pernicious position. Still further, it directs its concern to the negative impact it produces on the enjoyment of fundamental rights, which encourages action against effective injuries and against the danger of this happening. It also draws a connection with contexts that imply weakness, lack of knowledge, and defencelessness, in the same way as with situations where discrimination that entails exclusion and marginalisation stands out. Following this course, it refers to instances where access to public resources administered by the State is disparate, and there is no suitable protection that remedies such an inequity.

5.10.- The idea of vulnerability reasoned by the Inter-American jurisdictional body appreciates both the subject and the space that surrounds them, turns on its mechanisms when it reaches a level higher than

the average, and aims to offer containment to discriminatory situations devoid of sufficient protection.

5.11.- The parameters provided by the Inter-American System of Human Rights are extrapolable to the local reality, seeming imperative that they be fully incorporated into the reasoning of the various operators and that their observance fosters a constructive dialogue for those who are going to apply them.

5.12.- Resorting to the Inter-American System of Human Rights with the purpose of providing operational and delimited content to the concept of vulnerability brought by Law 9602 is not only legitimate and necessary, but already constitutes a way of reasoning validated by the Supreme Court of Justice of the Province of Tucumán. This leads to the local mechanism for adapting to the law of vulnerabilities being applied with the maximum guarantee of effectiveness.

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