

## The Nations of the Americas



### The American Convention on Human Rights

The American Convention on Human Rights is a legally binding instrument as concluded under international law adopted by the nations of the Americas (OAS 2011).

24 Member States of the Organization of American States (OAS) have ratified the American Convention on Human Rights 'Pact of San José, Costa Rica'. They are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. The treaty has not been ratified by the USA, Canada and several Caribbean nations.

### Part I: State Obligations and Rights Protected, Chapter 1: General Obligations

#### Article 1. Obligation to Respect Rights

1. *"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 ..."*

The widespread introduction of RF/microwave emitting Smart Meters (and related wireless emitting technology) may be discriminatory against individuals who may be detrimentally affected by them.

#### Article 4. Right to Life

1. *"Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."*

Since research indicates that some RF/microwave regimes may increase risk of infertility, miscarriage and cause damage to human offspring (Cherry 2000), and RF/microwave radiation is now classified as a Class 2B carcinogen (WHO/IARC 2011), claims might be brought that raising involuntary exposures may be against individuals' right to life. Refer also to section on 'Health Matters'.

Claims might also be brought that individuals may be arbitrarily deprived of their lives through health conditions exacerbated or brought on as a result of the involuntary exposures they receive – refer also to section on 'Health Matters' in present document.

### **Article 5. Right to Humane Treatment**

1. *"Every person has the right to have his physical, mental, and moral integrity respected."*
2. *"No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. ..."*
3. *"Punishment shall not be extended to any person other than the criminal."*

Some Smart Meter regimes are indicated as being potentially inhumane to susceptible individuals (KCRA 2011).

### **Article 7. Right to Personal Liberty**

1. *"Every person has the right to personal liberty and security."*

Insights into individuals' living patterns and relationships, gained through Smart Meters and related devices (if data is not suitably anonymised), may impinge on their freedom of liberty to do as they please within their own homes and therefore be in breach of their Human Rights (Anderson & Fuloria 2010, metering.com 2009).

2. *"No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto."*

The physical liberties of some individuals may be violated if EMF emissions from the units prevent them from being able to go where they wish, even within their own homes, without feeling unwell and/or having their health compromised.

6. *"Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, ..."*

It appears highly likely that individuals who consider that they are deprived of their liberty to go where they wish will seek recourse.

### **Article 11. Right to Privacy**

1. *“Everyone has the right to have his honor respected and his dignity recognized.”*

Some individuals may have their dignity severely compromised as a result of some types of Smart Meter exposure making them feel unwell - Refer to section on ‘*Smart Meter Health Impacts Testimonials*’.

2. *“No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”*

There are concerns that unless data from Smart Meters is suitably anonymised, it may provide sensitive data to third parties allowing them to cause unwarranted interference.

3. *“Everyone has the right to the protection of the law against such interference or attacks.”*

Protection against interference and the right to privacy may be compromised, unless suitable precautions are undertaken by providers. At present many cyber-security experts have grave reservations over the level of security provided by Smart Meters – Refer to section on ‘*Cyber Security*’.

### **Article 17. Rights of the Family**

1. *“The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”*

2. *“The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, ...”*

1. Claims of negligence may be brought if the Smart Meter technologies that are adopted are indicated as placing the family at increased risk of ill health, identity theft, etc.
2. The right to raise a family may be compromised if emissions from some Smart Meters and related technology are proven to reduce human fertility and increase risk of miscarriage.

### **Article 19. Rights of the Child**

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

The rights of the unborn child may be compromised through increased chance of miscarriage due to exposure to increased levels of RF/microwave radiation from some Smart Meter technologies - increased exposure RF/microwave radiation is linked to incidence of ill health after birth (De Iuliis et al. 2009).

### **Article 21. Right to Property**

1. *“Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.”*

EMF emissions from wireless Smart Meters are documented as preventing some individuals using and enjoying parts of their properties on health grounds (EMFSN 2011, Havas 2011, KCRA 2011). Wireless smart appliances and devices may additionally compromise their use and enjoyment. It is suggested that it is not in society’s interest to subordinate such use and enjoyment.

2. *“No one shall be deprived of his property except upon payment of just compensation ... ”*

Compensation claims may be brought by individuals.

### **Article 22. Freedom of Movement and Residence**

1. *“Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”*

The freedom of movement and residence of some individuals, particularly those who are electrosensitive (EHS), may be severely compromised if/where wireless regimes are introduced. (There are already incidences of people being forced to move home and/or sleep elsewhere to try and escape from the emissions of wireless Smart Meters).

### **Article 24. Right to Equal Protection**

*“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”*

Those whose rights may be seen to be compromised by some Smart Meter regimes may seek recourse through law.

It is important to take such matters on board when considering the choice of systems to adopt.

### **Chapter 3: Economic, Social and Cultural Rights**

#### **Article 26. Progressive Development**

*“The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”*

Progressive development may be hindered by:

- Smart Meter regimes that hinder economic development through increasing health-related problems and security risks.
- Inappropriate wireless Smart Meter regimes that restrict some individuals' freedom of movement both at home and outdoors.

#### **Article 29. Restrictions Regarding Interpretation**

*“No provision of this Convention shall be interpreted as:*

*1. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; ..”*

It appears highly likely that claims will be brought unless suitable action is taken.

#### **Article 32. Relationship between Duties and Rights**

*1. “Every person has responsibilities to his family, his community, and mankind.”*

It is important to ensure that these responsibilities are met with regard to creating appropriate Smart Meter provisions that reduce the likelihood of Human Rights being violated.

### **Protocol of San Salvador**

This is an additional protocol of the American Convention on Human Rights. It was created to bring inter-American Human Rights to a higher level through protecting second-generation rights in economic, social and cultural spheres. It came into effect on 16<sup>th</sup> November 1999 and has been ratified by 14 nations.

## SMART METERS - SMARTER PRACTICES

The countries which have adopted it are: Argentina, Bolivia, Brazil, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay. Some of these countries (Argentina, Brazil, Columbia and Mexico) also have Smart Meter installations.

Under the 'Protocol of San Salvador' (CIDH 2011) the following additional articles might be referred to on matters related to Smart Meters based on the essential rights of humankind:

### **Article 3: Obligation of nondiscrimination**

*"The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind ..."*

Claims may be made that the creation of field regimes inappropriate to those suffering from EHS, or other health ailments, may be a form of discrimination, particularly when practical alternatives that do not create such regimes are available.

### **Article 6: Right to Work**

1. *"Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence ..."*

The right to work of individuals may be compromised by Smart Meter field regimes that compromise their health.

### **Article 7: Just, Equitable, and Satisfactory Conditions of Work**

*"... the States Parties undertake to guarantee in their internal legislation, particularly with respect to:"*

a. *"Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families ..."*

*"Dignified and decent"* living conditions may be compromised by emissions from some Smart Meters and related appliances (EMFSN 2011).

In particular claims may be brought by some that their introduction may result / has resulted in reduced quality of home life and restrictions on which rooms in a dwelling may be used by vulnerable individuals.



e. *“Safety and hygiene at work; ...”*

Claims may be brought that raised field regimes caused by the introduction of Smart Meters and related technologies in the workplace may compromise best practice as related to safety and hygiene at work and compromise health, wellbeing and productivity, particularly as RF/microwave radiation has now been classified as a Class 2B carcinogen (WHO/IARC 2011).

**Article 10: Right to Health**

1. *“Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.”*

Some Smart Meter regimes may compromise health. Others may, in comparison, help maintain it. Specifying the right type of system will help reduce likelihood of ill health and claims.

2. *“In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:”*

d. *“Prevention and treatment of endemic, occupational and other diseases;”*

e. *“Education of the population on the prevention and treatment of health problems, and”*

f. *“Satisfaction of the health needs of the highest risk groups ...”*

As the right to health is a public good, it may be said that the States Parties have a duty to adopt measures to prevent diseases that may otherwise be exacerbated by some Smart Meter regimes - Refer also to section on ‘*Health Matters*’.

State Parties may also be required to educate the public of the possible health risk of exposure to field regimes from some Smart Meters and related items of technology.

**Article 11: Right to a Healthy Environment**

1. *“Everyone shall have the right to live in a healthy environment and to have access to basic public services.”*

Claims may be brought that the right to live in a healthy environment is being violated in instances where unhealthy Smart Metering regimes are created.

2. *“The States Parties shall promote the protection, preservation, and improvement of the environment.”*

State Parties might be held liable if they adopt Smart Meter regimes that can be proven to be harmful to the environment.

#### **Article 14: Right to the Benefits of Culture**

1. *"The States Parties to this Protocol recognize the right of everyone:"*

a. *"To take part in the cultural and artistic life of the community;"*

Individuals may claim that their Right to the Benefit of Culture is compromised if field regimes prevent them from taking part in the life of the community.

b. *"To enjoy the benefits of scientific and technological progress;"*

Properly undertaken, everyone has the right to enjoy benefits of scientific and technological progress. It is necessary to ensure that the correct Smart Meter systems are specified to help achieve this.

4. *"The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields."*

There are many benefits that can be created through international cooperation. One of these is the creation of safe, secure and environmentally friendly smart grids. To achieve this successfully a larger range of stakeholders may be required - *Refer to Appendices 5 and 6.*

#### **Article 15: Right to the Formation and the Protection of Families**

1. *"The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its ... material conditions."*

2. *"Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation."*

3. *"The States Parties hereby undertake to accord adequate protection to the family unit and in particular:"*

c. *"To adopt special measures for the protection of adolescents in order to ensure the full development of their physical, intellectual and moral capacities; ..."*

Individuals may claim that the State's duty to protect their 'Right to the Formation and the Protection of Families' may be compromised by some Smart Meter regimes that may reduce their ability to form and protect their family.



### **Article 16: Rights of Children**

*“Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. ...”*

Some may claim that as the right to protection for children is from the moment of conception, electromagnetic field regimes that compromise this may breach children’s Human Rights.

### **Article 17: Protection of the Elderly**

*“Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:*  
*a. Provide suitable facilities, ...”*

States Parties may be required to revise their Smart Meter provisions for the elderly if they wish to avoid potential breaches of Human Rights related to conditions (*including Alzheimer’s Disease and cancers*) that may be aggravated by inappropriate field exposures.

### **Article 18: Protection of the Handicapped**

*“Everyone affected by a diminution of ... capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:”*

- a. “Undertake programs specifically aimed at providing the handicapped with the ... environment needed for attaining this goal ...”*
- c. “Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans; ...”*

Low field Smart Meter regimes might become a priority component of urban development plans, to protect those who are vulnerable by providing them with the specific environment they require to allow the greatest possible development of their personality.

### **Article 19: Means of Protection**

*1. “Pursuant to the provisions of this article ... the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.”*

The creation of secure low field Smart Meter regimes may prove an appropriate progressive protective measure.

## References

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## Chile, South America

### Political Constitution of the Republic of Chile

Human Rights, as set out within the individual constitutions of South American countries, may also come into play with regard to Smart Meter rollouts.

In December 2009, the Appeal Court in Rancagua, Chile, confirmed by unanimous decision the demolition of Entel PCS' mobile phone mast for the protection of the public in the O'Higgins district of Santa Cruz affected by its radiation (El Mercurio 2009).

That decision was made on the grounds that the structure violated the constitutional rights and obligations of the Political Constitution of the Republic of Chile (PCRC 1980), namely that the State guarantees to all persons:

Article 19:

1. *"The right to life and to the physical and psychological integrity of the individual" - this law also 'protects the life of those about to be born.' ...*

8. *"The right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of nature."*

*"The law may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment." ...*

9. *'The right to protection of health.'*

*"The State protects the free and egalitarian access to actions for the promotion, protection and recovery of the health and rehabilitation of the individual."*

*"The coordination and control of activities related to health shall likewise rest with the State." ...*

One of the specific factors that led to the Appeal Court's decision was a report from the Instituto de Salud Pública de Chile (Institute of Public Health of Chile) acknowledging human health can be damaged by RF/microwave emissions from by mobile phone masts.

As wireless Smart Meters emit similar radiation, their introduction might also be prohibited under such legislation.

### References

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