

COVID-19 and the Need for a Holistic and Integral Approach to Human Rights Protection

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While the pandemic is global, the challenges the individual regions are currently facing in their combat against COVID-19 are different and specific. In Latin America, the combat is embedded in a context of deep social and economic inequality, systematic violence and poverty. As the crisis is likely to exacerbate these structural inequalities it is clear that its implications must be examined in the light of human rights and in the light of intersectionality.

This post therefore aims to give an overview of the actions taken by the Inter-American Human Rights System to address the current challenges. At the same time, this post argues that the crisis does not only pose a risk to many fundamental human rights but that it also provides a chance to finally recognize the interdependence and indivisibility of human rights and the ensuing need to protect them in their entirety and integrity. While the principle of interdependence and indivisibility of human rights has traditionally been mainly used to support the argument for the full judicialization of economic and social rights, it is argued that the current situation evinces an inverted application of this principle, that is, that also the full guarantee of economic, social, cultural and environmental rights (ESCER) requires the assurance of civil and political rights, not only vice versa.

Specific Latin American challenges and the reactions of the Inter-American Human Rights System to COVID-19

In Latin America, even in normal times, the enjoyment of the right to health depends first and foremost on the social status as the *de facto* enjoyment of ESCER is unfortunately not everywhere guaranteed equally for all. While the Pan American Health Organization (PAHO) suggests that 6% of countries' public spending should go to their health systems, in Latin America, countries only invest 2.2% in average. [According to the Economic Commission for Latin America and the Caribbean](#) (ECLAC), as of today 30% of the population in Latin America lives in poverty and 11% in extreme poverty. The current crisis and all its implications are likely to increase the structural inequalities – this year alone, extreme poverty could rise to 13.3%. What is more, the reactions of American States to the COVID-19 pandemic have a particularly negative impact on the ESCER of vulnerable groups. Such vulnerable groups are elderly people, children, persons with disabilities, migrants, refugees, stateless persons, persons deprived of liberty, the LGBTIQ+ community, pregnant or postpartum women, indigenous communities,

Afro-descendants, those who work in the informal sector, the inhabitants of underprivileged districts or areas, the homeless, those living in poverty, and the health care personnel who are responding to this emergency. These groups are specially affected by the current States' reactions as they are often in a weak economic situation and as measures such as quarantine or the closing of shops have of course particularly negative effects on those who have no financial reserves and whose survival depends on a daily income. The measures – social distancing and quarantine – put in place in other regions are not easy to implement in Latin America, where 53% of the population works in the informal sector and largely relies on their daily sales to survive. Additionally, millions of families are disadvantaged when it comes to home schooling or home work as internet connectivity or access to computers is also not guaranteed. According to the [ILO and ECLAC](#) millions of jobs could be lost and child labour could increase too as families will be forced to rely on their children to get by. In fact, it is also women who are particularly affected by this crisis: 72.8% of the health personnel are women who work at hospitals and other facilities during the day and are called to do domestic tasks in their afternoons/evenings.

Notably, these typically vulnerable groups partly overlap with the groups of persons having a higher risk to develop severe symptoms of Covid-19 or to even die of it.

Therefore, all institutions forming part of the Inter-American Human Rights System that reacted to COVID-19 stressed in their respective response, that anytime a measure is taken, the intersectional impacts on vulnerable groups it will have need to be taken into account.

As one of its first reactions to the spread of COVID-19, the Inter-American Commission on Human Rights (IACHR) and the Office of the Special Rapporteur on Economic, Social, Cultural, and Economic Rights (OSRESCER) have issued several [press releases](#) that should guide the measures of the American States in their fight against the outbreak. They focus on: i) guaranteeing the right to health for all people within the jurisdictions of the States, without any form of discrimination; taking into account the standards related to the right to health: availability, accessibility, acceptability, and quality; ii) prioritizing the protection of the right to health to elderly and other groups at particular risk in particular states like [Venezuela](#) and [Nicaragua](#); iii) protecting vulnerable groups (in general) since pandemics have a disproportionate impact on populations with greater difficulties in accessing healthcare facilities and technologies; iv) and taking specific protection measures with regard to some particularly vulnerable groups, such as [persons with disabilities](#) and [persons deprived of their liberty](#).

Furthermore, the IACHR has set up the [Rapid and Integrated Response Coordination Unit for the Crisis](#) (SACROI COVID-19), as an institution to strengthen and expand the IACHR's expertise and capacities for protecting human rights in the context of the pandemic. Beyond that, the Organization of American States (OAS) launched the "[Practical Guide to Inclusive Rights-Focused Responses to COVID-19 in the Americas](#)", which contains measures to support groups in a situation of vulnerability.

Last but not least, the Inter-American Court of Human Rights (IACtHR) published Resolution [01/20](#) urging that all challenges and problems related to COVID-19 be faced from a human rights perspective, presenting more than 80 recommendations to States of the region. The Court emphasized the need to guarantee the economic, social, cultural and environmental rights without discrimination, paying particular attention to the groups that are disproportionately affected by the pandemic. Additionally, the Court reminded of the importance of ensuring the right to life and health, among others.

With regard to the measures adopted by American States in order to address the COVID-19 pandemic that may impair or restrict the enjoyment and exercise of human rights the Court reminded that they must be temporarily limited, legal, adjusted to well-defined aims based on scientific criteria, reasonable, absolutely necessary and proportionate and in accordance with other requirements developed in Inter-American human rights law. Second, the ESCER must be guaranteed, without discrimination, to every person subject to the State's jurisdiction and, especially, to vulnerable groups. Third, in light of the social distancing measures that may result in a sharp increase of violence against women and girls in the home, it is necessary to underscore the State's obligation of strict due diligence with regard to the right of women to live a life free of violence. Fourth, the IACtHR referred to the State's special situation as guarantor for persons deprived of liberty in prisons as well as the need to guarantee both a subsistence level of income to uphold basic human dignity and access to accurate and reliable information.

Inverted principle of the interdependence and indivisibility of human rights

Whereas the pandemic and its social and economic consequences above all constitute a serious threat to human rights it is hoped that all guarantors of human rights finally recognize the interdependence and indivisibility of human rights and the need to guarantee their efficient enforcement in their entirety, independent of categories such as civil and political on the one hand and social and economic rights on the other.

Traditionally, the principle of interdependence and indivisibility of human rights has mainly been used to argue that economic and social rights must be judicialized as only their full guarantee and enforcement allows the full enjoyment of civil and political rights. The current crisis shows however not only that fundamental civil and political rights such as the right of assembly are practically suspended in order to protect the social right to health. It shows moreover, that also the full guarantee of ESCER presupposes the full protection of civil and political rights, thus highlighting that the principle of interdependence and indivisibility of human rights can be applied also vice versa.

The inverted application of the principle of the interdependence and indivisibility of human rights assumes that guaranteeing ESCER also implies assuring civil and political rights. This assumption is reflected by the measures that are required to

combat the coronavirus pandemic. If these aim at the full implementation of ESCER rights, they require the assurance of civil and political rights, too. For example, the right to health, which is primarily affected by COVID-19, is interrelated with other human rights, such as the right to life, human dignity, the right not to be subjected to ill-treatment and the right to have free and full access to information. Furthermore, the measures taken in reaction to the virus show that the right to work, typically classified as economic right, heavily depends on the guarantee of the civil right of freedom of movement.

Consequently, it is extremely important to adopt all the strategies to combat this pandemic and its impacts in light of the advances of strengthening a vision of integral and joint protection of human rights. All measures must respect unrestrainedly the inter-American and international human rights standards, relative to the universality, interdependence, indivisibility, intersectionality and transversality of human rights.

In short, efforts are necessary to optimize the justiciability and enforceability of economic, social and cultural rights and to strengthen the implementation of the right to social inclusion. Besides, it must be emphasized that the coronavirus pandemic has created an “inverted” interpretation of the interdependence and indivisibility of human rights. As shown, the current health emergency context illustrates that full ESCER can only be guaranteed if civil and political rights are safeguarded at the same time. Up to now, it has always been necessary to justify the judicialization of social rights based on interdependence and indivisibility, but the current crisis demonstrates that the interdependence and indivisibility of human rights is not a one-way argument but that also the other way round, the full enjoyment of ESCER depends on the effective guarantee of civil and political rights. Therefore, any restriction imposed by the States in a state of emergency must be guided by the *pro persona* principle, and considering the principles of proportionality, reasonability and temporality. Also, they must comply with the public health objectives, respect the principle of non-discrimination and may not disproportionately impair the right to privacy and personal data protection.

There is no doubt that this virus outbreak will be transformative and long-lasting, demanding resilience and reinvention. It is to be hoped that it will lead in the end to a better, more holistic and integral approach to human rights protection as the crisis shows us once and for all that human rights protection is no cherry picking but that the enjoyment of any human right also depends on the full guarantee of the others.

